

UGANDA / JUDGMENT

Birikadde v Uganda (Criminal Appeal 12 of 1982) [1986] UGCA 24 (2 September 1986)

[1986] UGCA 24

COURT

Court of Appeal of Uganda

BEFORE

Wambuzi, CJ, Lubogo, Ag. JA, Odoki, JA

CASE / FILE NUMBER

Criminal Appeal 12 of 1982

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IN THE COURT OF APPEAL

AT MENDO

(Coram: Wambuzi, C. J., Lubogo, Ag. J. A., Odoki, J. A.)

CRIMINAL APPEAL NO 12 OF 1982

BETWEEN

HAJI MUHAMAD SENYOMO BIRIKADDE APPELLANT

AND

UGANDA ** RESPONDENT (Appeal from conviction of the High Court of Uganda at Kampala (Kityo^T Ag. J) dated 18th August, 1982)

IN

Criminal Session Case No.58/82)

JUDGMENT OF THE COURT-

The appellant, Haji Muhamad Senyomo Birikadde, was indicted charge of kidnapping one Smarts Guweddeko, with intent to murder contrary to section 2(5) of the Penal Code,. 1982 he was convicted by the High Court of kidnapping with intent to confine under,section 2(6) of the said Code, and sentenced to a term; of imprisonment for eight years. He now appeals to this court against both conviction and sentence. on a minor cognate offence on a n 18th August,

The facts of the case are as follows,

Wandegeya Trading Centre. He used to play with Musiige and Kavuma (P. W.2) among others. \ \$he appellant used to come to the saloon for cutting his hair. On 20th February, 1977 at eiout 4.30 p.m. Guweddeko arrived at the saloon in nis Mercedes Benz car Reg. No. UVN 500. He found there both Kavuma and Musiige and others who were playing the game. He joined them and started playing with Musiige. At this juncture, vehicle came and parked near the saloon. There wei ** five people in the vehicle drassed in civilian clothes. Four of them came Smarts Guweddeko used to play the game of draughts at tne hair dressing saloon of Musiige (P. W.1) which was situated at a Volks Waggen Combi

/2

out armed with guns and surrounded Guweddeko\'s pa^ty while pointing guns to them. . They warned that if anybody moved he would be shot.

The appellant then came out of the Combi and told Guweddeko that he.was needed in the vehicle for a short while. Guweddeko stood up and went to his car and asked what he should do with his car. One of the armed assailants ordered him to hand over the keys of his car to the appellant. Guweddeko did so and entered the Combi which drove away with four of the assailants. The appellant apologized to those present for having disturbed them, On learning Magadalene Guweddeko and his brother Noah Guweddeko to trace him at1several nearby Police Stations but in vain. Since that day, Guweddeko has not been seen nor heard of. then drove away Guweddeko\'s jar following the Combi. of Guweddeko\'s seizure, attempts were made by Guweddeko\'s wife"

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an alibi that he was attending a burial of his brother-in-law at the material time. The trial judge rejected this alibi. He believed the evidence of the two e.ye v/itnesses on which he mainly basea the conviction against the appellant. The appellant made an unsworn statement in ^v tch he put up

Nine grounds of appeal were preferred but at the hearing of the appeal, the last ground which had attacked the sentence as too excessive was abandoned. The first ground of appeal is that the learned trial judge erred in law in convicting the appellant of an offence which is not defined under the law of Uganda. Mr. Mayanja who appeared for the appellant submitted that the trial judge convicted the appellant of the common law offence of kidnapping since he did not consider and direct himself on the necessity to prove intention to confine which is an essential element of the offence of kidnapping with intent to confine under s.2?6 of the Penal Code. Cc. nsel argued th .t ⁴ he specific

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intent must be proved but none had been proved nor was there any evidence from which it could be inferred-. Mrs. Luyimbazi for the state submitted that the trial judge convicted the appellant not of a common law offence but an offence defined in our law and interpreted by case law.

It was her contention that courts have followed English authorities in interpreting the offence of kidnapping. She cited the case of *Kimeze & Another v. Uganda* Criminal Appeal No. J of 1979 (UCA), in support of her contention.

Section 2j6 of the Penal Code under which the appellant was convicted provides,

> "Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined is guilty of ^a felony and is liable to imprisonment for ten years."

The offence created under this section comprises of two elements, the first of which is the prohibited ^c r [•] duct or actus reus which may consist of kidnapping or abduction, and the second being the specific intent to cause the person to be secretly and wrongfully confined. The intent must be present at the time the victim is seized and taken away, and it must be proved, not merely presumed. See *R. V. Steane* (19⁷)32 Cr. App. R-61, of *Haji Sulaiman Kawere and Others v. Uganda*, Criminal Appeal No.15 of 1984 (unreported).

in *R. V. Reid* (1972)3 W. L. R. 395 (1972)56 Cr. App. R. 703 continuing' offence and it is complete when the victim is seized and carried away, and secreting or concealment of the victim is not a necessary ingredient. the English court of Appeal held that kidnapping is not a Cairns L. J. said,

> "We find no reason in authority or in principle why the crime should not be complete when the person is seized and carried away or why kidnapping should be regarded as was urged by counsel as a continuing offence involving the concealment of the person seized.\^{*}"

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This principle was approved and applied by this court in the case of *Haji Sulaiman Kawere & Another v. Uganda* (Supra) where the appellants were charged with the offence of kidnapping with intent to murder under s.2j5 of the Penal Code.

4 -

The words "Kidnap" and "Abduct" are not defined in s.2j6. However, s.231 defines kidnapping from Uganda as follows:

> "Any person who conveys any person beyond the limits of Uganda without the consent of that person or some person legally authorised to consent on behalf of that person is said to kidnap that person from Uganda."

And in s.2j2, the same word is defined in relation to lawful guardianship, thus,

> "Any person who takes or entices any minor under fourteen years of age if a male or under sixteen years of age if a female or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship."

In both these two sections the elements of conveyance or taking away and lack of consent must be present. On the other hand section 2J3 defines abduction in the following terms,

> "Any person who by force compels or by any deceitful means induces any person to go from any place -is said to abduct that person."

fraud is a necessary ingredient of the offence of kidnapping with, intent to confine under s.2j6 of the penal Code.- In view of the authorities we have considered we hold that kidnapping means the unlawful seizure and taking away of a person by force or fraud against his will. *Vie* are therefore of the opinion that force or

The learned trial judge held that the prosecution had failed to establish that the appellant had the necessary intention under s.235, namely the intention to expose the victim to the danger of

/5

being murdered; But he held that the prosecution had established the offence under s.2j6 of the Code in the following terms,

> But, "In order to establish the necessary intention required by law, in the instant offence, my attention has been drawn to the case of Kimeze cited as H. C. Criminal Appeal No.79, by the Court of Appeal. In that case, the indictment charged of kidnapping with intent to murder, as in the present case. The victim was arrested by police officers, he was intended and indeed was hand-over to the P. S. U. The police officer (accused) arresting the victim, was identified to be a member of the intelligence squad, which was, in that case, judicially taken to be notoriously known as the murder squad- The common intention of two kidnappers was also established; in those circumstances the kidnappers clearly knew or foresaw that their victim was, by handing him over to the P. S. U, in danger of being murdered. But, in the present case, it is not established by the prosecution evidence that there was a common intention between the accused and the four kidnappers. The accused may or may not have known that Guweddeko was exposed to the danger of being murdered. There was no evidence of joint preparation to arrest or kidnap before the kidnapping took place; as was the case in Kimeze's case. I, therefore, disassociate myself with the opinion of the two assessors in this case, that the intention on the part of the accused as required in the offence in the present indictment was established beyond doubt. But I hastoly add that since the offence of kidnapping under s.235 of the Penal Code is an offence against LIBERTY of the individual and that the same liberty is guaranteed and entrenched in the Constitution of the Republic of Uganda, See Art.8(2) and Art.10(1). In my estimation it is the climax of all the offences of kidnapping as set out under. Chapter XXV of the Penal Code, and it includes abduction as well as taking away of the victim as some of the ingredients of the offence. It is also my view that those two ingredients have been established in the evidence adduced by

the prosecution in the present case. I am therefore, satisfied that the prosecution evidence has established beyond doubt a minor cognate offence of kidnapping in the same chapter XXV of the Penal Code. I am also satisfied that the offence can be substituted without causing the failure of justice. I accordingly, substitute that offence and convict the accused of the same."

The judge's reference to the Constitution and to the whole of Chapter XXV of the Penal Code, was, with respect unfortunate

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offence under which the appellant was convicted. Be that as it may it is possible to construe this passage in relation to intention as saying that while in Kimeze's case the common intention of the kidnappers exposing their victim to the danger of being not established but instead the intention to confine was established. We would have been happier if the learned judge had expressly said so, murdered was established, in the present case such intention was and unnecessary, since it did not assist him in interpreting the

carriage of justice since there was sufficient evidence adduced to prove that intent. There was no direct evidence to prove this intent but it can be inferred from the actions of the appellant and his party. Guweddeko was surrounded by armed men. He was lured by the appellant into the vehicle of the captors who did not identify themselves. he was whisked away in the vehicle without being informed of the reason for his arrest or where he was being taken. His car was driven away by the appellant to an unknown destination. Those present were not told why he was arrested or who arrested him and where they were taking him. Attempts to trace him at nearby Police Stations were in vain. The captors were in civilian clothes and there was no evidence to show that they were law enforcement officers empowered to arrest and detain Guweddeko, who has never been seen nor heard of since that time. In our opinion, the inference that appellant and his fellow captors kidnapped Guweddeko with at least the intent to cause him to be unlawfully and secretly confined is irresistible. Therefore, we find no merit in the first ground of appeal which accordingly fails. However, finding on the specific intent to confine did not occasion a misview of the view that the failure to make a finding

We consider it convenient here to deal with the complaint

/7

6 -

in the fourth ground of appeal which is that the learned judge erred in law in that he convicted the appellant of kidnapping without sufficient evidence of any common intention on the part of the appellant and the other four men and without proof of kidnapping at all. Mr. Mayanja for the appellant submitted that each of the captors could have had his own intention. On the other hand Mrs. Luyimbazi for the state argued that common intention could be inferred from the actions of the appellant and his failure to disassociate himself from the actions of the other men.

It is trite law that in order to prove common intention it is not necessary to prove a prior agreement between the assailants. It is sufficient if their intention can be inferred from their See *Dafasi Magui & Others v. Uganda* (1965) E. A. 667, actions. *Dracaku Afia v. R.* (1963) E. A. 363. Common intention may be inferred from the presence of the appellant, his actions and his omission to disassociate himself from the attack. *R. V. Tabulayenka & Another* (1943) 10 E. A. C. A. 51. In *Ismail Kisengerwa & Another v. Uganda Cr. App. No.6 of 1978* (Unreported), this court had this to Commo say on common intention,

\$, \pm\$ "In order to make the doctrine of common intention applicable it must be shown that the accused had shared with the perpetrator of the crime a common intention to pursue a specific unlawful purpose which led to the commission of the offence. If it can be shown that the accused persons shared with one another a common intention to pursue a specific unlawful purpose, and in the prosecution of that unlawful purpose an offence was committed, the doctrine of common intention would apply irrespective of whether the offence committed was murder or manslaughter. It is now settled that an unlawful common intention does not imply a pre-arranged plan, See *R. V. Okute* \$(1941)8\$ E. A. C. A. at page 80. Common intention may be inferred from the presence of the accused persons, their actions and the omission of any of them to disassociate himself from the assault. See *R. V. Tabulayenka* (supra). It can develop in the course of events though it might not have been present

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from the start. See. *Wanjiro Wamiro v- R.* *(1955)22 E. A. C. A. 521 at page 523 quo ,ed with approval in *Mungai's* case. It is immaterial whether the original common intention was lawful so long as unlawful purpose develops in the course of events. It is also irrelevant whether the two participated in the commission of the offence. See *Mutebi's* case Cr. App. 1W75 (E. A. C. A.).

The trial judge found that the prosecution had failed to establish that the appellant had a common intention with the other four men to put Guweddeko in danger of being murdered. He however, did not specifically address himself to the question whether the appellant shared a common intention with the others to confine Guweddeko. With respect, we think he erred in not doing so. However, we are satisfied that the error did not occasion a failure of justice because in our view, there was sufficient evidence to establish common intention. The appellant came with the other four men. He fully participated in the seizure of Guweddeko. He is the one who deceived Guweddeko that he was needed in the . Combi for a short while but as soon as Guweddeko entered the vehicle he was driven off to an unknown destination. The appellant is the one who took custody of the keys of Guweddeko's car which he drove away, and was never returned. At no time did the appellant disassociate himself from the actions of the other four men. An inference of common intention can readily be drawn from the appellant's presence, actions and his failure/disassociate himself from the actions of the other four men. We find no merit in this ground of appeal which must accordingly fail. £t°

In the second ground of appeal the appellant complains that the learned judge erred in law in convicting him of the offence under s.276 of the Penal Code without sufficient evidence to prove the ingredients of the offence. Counsel for the appellant submitted that the trial judge failed to direct his mind on the element of seizure which is necessary in the offence of kid-

- 8 -

napping. He argued further that the prosecution evidence on this matter was very doubtful since the two prosecution witnesses contradicted themselves on how many guns the assailants had.

In his judgment, the trial judge reviewed the evidence relating to the manner in which Guweddeko was kidnapped as follows,

> "There is the evidence of Musiige (P. W.1) which is supported by that of Kavuma (P. W.2) to the effect that Birikadde called Guweddeko aside and that in doing so Birikadde was in company of four other men who had come with him, that one of the four men ordered Guweddeko to board the Volks Wagen Combi in which the four men together with the accused, had travelled together to the place of the incident. That although Guweddeko had clearly indicated that he had his own transport, nevertheless, he was ordered to hand over the keys of his vehicle to the accused, The two witnesses testified further that the accused was clearly seen gladly removing the keys from Guweddeko and indeed went and drove Guweddeko's M/Benz following the same Combi which was taking away

who was Guweddeko. There is further evidence from P. W.1 and P. W.2 to the effect that the people (the accused and the four men) took away Guweddeko had fire-arms, there is no clear indication from the evidence as to whether the gun or guns were actually used, and there is a conflict between the evidence in court and that in the statement recorded by the Police from the same witness; as regards to how many and what kind of guns the assailants had. "

He then concluded by making these findings,

"The evidence as a whole established one important fact, that the party that took and carried away Guweddeko was armed with fire-arms. In my view it would not make much difference whether there was one pistol or four long guns or whether the firearms were actually fired or not, because the presence of firearms would suggest to me that Guweddeko could not be imagined to resist being taken away in those circumstances."

In his statement to the Police, Musiige (P. W.1) had stated "I saw four men but only one of them was armed with a pistol. ¹¹ But in his evidence in court he testified that four men were armed with firearms[®] and only one of them, the appellant was not armed.

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/10

his evidence in court. The inconsistency could be explained by the long lapse of time of about three years between the time of the incident and that of . making the statement. The Police Officer who recorded the statement admitted that the witness informed him that what he had told down the statement. This was merely an inconsistency between his Police statement and It was not a contradiction in his evidence. him was all that he could remember at the time. Secondly, it could be explained by the manner in which the police officer took

* This is how he described the procedure followed,

"I just let the witness to tell me the story and then I recorded afterwards, stating what I needed. I read it back. This- recording is not verbatim reporting but the gist of what I had been told"

This procedure may lead to inaccurate recording of statement, unless the witness repeats again the story as guided by the police officer.

The evidence of Musiige was however, supported and corroborated by that of Kavuma (P.,.2). There was no contradiction in their evidence. The learned judge believed and accepted their evidence and made a finding that the evidence as a whole established one important fact, that the party that took and carried away Guweddeko was armed with firearms". He also went further and found that Guweddeko was taken away against his will. In view of these findings we are satisfied that the trial judge was alive to the issue of forcible seizure as an essential element of kidnapping, and came to the conclusion, rightly in our view, that force was used in taking away Guweddeko. are satisfied that there was sufficient evidence to prove all the ingredients of the offence with which the appellant was convicted, and therefore the second ground of appeal must fail. For the same reasons, we think that the seventh grou ' of appeal Accordingly, we

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that the trial judge erred in law and fact in that he convicted the appellant on weak, contradicted and unreliable evidence, must fail.

In the third ground of appeal, the appellant attacked the trial judge for reaching his judgment before properly summarising the evidence as a whole and directing his mind to the same. At the beginning of his judgment after he had stated the particulars of the offence in the Indictment, the learned trial judge said,

> in private. "According to the above particulars of the offence in this indictment, the accused Birikadde, is alleged to have been forcibly carried away Guweddeko. Therefore if that *. was a matter of fact, that Guweddeko was carried away with force, then the act or acts of force done by the accused e.g. pulling, pushing and the like should be required to be proved beyond doubt. But according to the prosecution witnesses evidence available, it was not the direct act or acts of force as such that was used but some fraud or deceitful means which would give the false* impression that Guweddeko wilfully moved from the company of the prosecution witnesses# The device of inducing him to move was that Birikadde intimated to speak to Guweddeko something Therefore, the Appellant's willingness to go or move from where Guweddeko was seated and playing was vitiated by the fact that the calling him, was only a deceitful device to induce the

victim to move and to enable the four men who came with the accused and carried the victim further away, to identify him, from the other people who were present at the scene. I now turn to deal with the evidence as a whole that was adduced by the prosecution."

We are unable to accept Mr. Mayanja's contention that the passage quoted contains findings or conclusions reached before reviewing the evidence. We are satisfied that the learned trial judge was only summarising the case for the prosecution before reviewing the evidence. This ground of appeal must accordingly fail.

We propose to deal with the fifth and sixth rounds of

/12

appeal together since they both attack the trial judge's summing up to the assessors. The grounds are stated as follows:

- ¹5. The learned trial judge erred in law in that he convicted the appellant of a minor cognate offence, without putting the same to the assessors for consideration.
- 6. The learned trial judge erred in law and fact in that in directing the assessors and in his judgment, he got involved in matters relating to the Constitution which were irrelevant to the Criminal proceedings before the court and which might cause a confusion in the minds of the assessors."

In their submissions both Counsel were in agreement that the trial judge ought to have left to the assessors, for consideration, the issue of a minor cognate offence under s.2⁶ of which he convicted the appellant. Counsel for the State however, submitted that the error did not cause a failure of justice since the judge was not bound by the opinions of the assessors. As regards the trial judge's reference to the Constitution in his summing up, counsel for the appellant contended that it was confusing to the assessors. He submitted further that the trial judge appeared to have convicted the appellant under the umbrella of the Constitution and the whole chapter of the penal Code, and not specifically under s.236. Counsel for the State argued that the trial judge referred to the Constitution in a bid to find a definition of the offence. She argued further that the reference to the Constitution did not even refer to it in their opinions. cause any confusion in the minds of the assessors since they did

In his notes of summing up to the assessors, there is no record that the trial judge summed up to them on the possibility of advising him to convict the appellant of any minor cognate offence. But after explaining the indictment, he went on to sum up as follows,

"SIGNIFICANCE OF THIS OFFENCE

I have explained to the assessors the

/13

importance and role of the offence of kidnapping under s.2J5» This is the climax of the offences in chapter XXV of the Penal Code. The offences in the chapter are aimed 'at preservation, protection of LIBERTY of the individual as proclaimed and (enthroned) contained in the CHAPTER 3 of the Constitution of this Country with particular reference to the provisions of Art.8(1)(2) and Art.10.

The law requires that when the case on both sides is closed, to the assessors. In this regard s.81(l) of the Trial on Indictments Decree provides, I have therefore, read out those two arts." the trial judge must sum up the law; and the evidence in the case

> "When the case on both sides is closed the judge shall sum up the law; and the evidence in the case to the assessors and shall require each of the assessors to state his opinion orally and shall record such opinion. The judge shall take note of his summing up to the assessors."

As regards summing up the law, we think that it should be done in simple language and the judge should restrict himself to it. It is undesirable for a trial judge to engage himself in long discussion of fine legal principles which may confuse rather than assist the assessors in forming their opinions. As De Lestang V-P. said in *Kigotho v. Republic* (1967) E. A. at page 46, explanation of the law which is applicable to the case.

> the judge should direct the assessors as to the law applicable but he should do so in simple language and restrict his observations strictly to what is required by the case in hand. A long and detailed lecture on the niceties of legal problems is more likely to confuse than to assist the assessors in arriving at a correct opinion."

With respect to the learned trial judge, we think that his of the importance and role of the offence of kidnapping as aimed at preservation and protection of liberty both under the Penal Code and the Constitution which was not strictly necessary in considering the case in hand. This error was repeated in his summing up to the assessors degenerated into a general discussion

/14

judgment. We are however satisfied that the error did not confuse the assessors who did not refer to the Constitution in their opinions. We are also satisfied that the reference to the Constitution in the judgment did not occasion a miscarriage of justice for the reasons already given.

As regards the failure of the trial judge to direct the assessors on the minor cognate offence under which he convicted the appellant, we think that he ought to have done so. In summing up, a trial judge must deal with alternative defences that are open to the accused if they emerge from the evidence even if not raised by the defence. See *Didas Kebenge* of 1977 (U. C. A.) (Unreported). In *Archbold Criminal Pleading Evidence and Practice*, 8th Edition paragraph 2510 at page 932 the proper direction in such cases is stated thus, v. Uganda Cr. App. No.14 •

> "Even where the substantial defence is that . of self-defence, the summing up should deal adequately with any other view of the facts which might reasonably arise out of the evidence and which would reduce the crime to manslaughter. The fact that the defending counsel does not stress an alternative case does not relieve the judge from directing the jury to consider the alternative, if there is material to justify a direction that they should consider it.¹¹

with this statement of the law and this issue and leave it to them for consideration. The learned ^A trial judge therefore erred in not leaving this issue with the assessors. His error caused no failure of justice since had he the conclusion that the minor cognate offence had been proved by the prosecution. Accordingly, these two grounds of appeal must fail. would add that where the evidence appears to establish a minor cognate offence, the trial judge should direct the assessors on We respectfully agree directed the assessors on it, they would inevitably have come to

Finally, in ground eight. ¹ the appellant complained that the

/15

- 14 -

trial judge erred in law in that he failed to weigh and properly direct his mind to the case for the appellant. Counsel for the appellant submitted that the trial judge dismissed the appellant's alibi by a supposition not supported by evidence and that he ignored the defence of similarity put forward by the appellant.

In his judgment, the trial judge considered both the defence of mistaken identity and that of alibi. On the question of mistaken identity, the trial judge said,

> "Is it possible that the two prosecution witnesses mistakenly took the person who called Guweddeko from their company on 20/2/77, to be the accused? It was suggested to Musiige (P. W.I) by the Defence Counsel in cross-examination, that there were two named persons in Wandegaya who resembled Birikadde so much so that any of them could be easily be mistakenly taken to be Birikadde. The two named persons were distinctively named as Lubega Kassim and Sekisamba; It was therefore my expectation that the two named persons would be called for defence witness in order to enable the court to see and compare the alleged resemblance itself but this was not done! The witness (Musiige) to whom they were suggested, categorically denied any knowledge of the existence of these persons in Wandegaya or any knowledge of their resemblance to the accused who was well known to the witness. therefore dismiss both the claim and suggestion that the accused Birikadde was mistaken for either of two named persons or any other person."

The trial judge appears to have shifted the burden of proof on the appellant to adduce evidence to prove his claim, of mistaken identity. We think that this was a misdirection on the subdoubt . However, cause a failure of justice- since the trial judge believed the evidence of the two eye witnesses who identified the appellant whom they knew very well and for a long time, and who could not therefore, have possibly mistaken him for another person. We think that the trial judge

considered the issue ~Jeq~ately and onus of proof which remains throughout on the prosecution, ject to a few exceptions, to preve the case beyond reasonable we are satisfied that this misdirection did not

15 -

/16

came to the right conclusion.

As regards the defence of alibi, the trial judge said,

The "There has been an attempt to put up an alibi by the accused that he was attending a burial of his brother-in-law in abother place which was eight miles away from the place .of the incident. I have carefully considered the claim made that the length of the time or duration of the burial which was indicated as having been commenced at J.00 p.m. to 7-00 p.m. on the day and time in issue, distance between Wandegeya and the place of the claimed burial is close enough and in my view within the time stated the accused could have possibly been in both places in sequence, for the time was sufficiently . long and the incident took a very short time i.e. under 10 minutes! I have therefore dismissed any suggestion that Birikadde could not possibly be at Wandegeya (between J. JO and 5.00 p.m.) at the material date, as untrue. I have once again concurred with two gentlemen assessors' opinion that the alibi should be disbelieved."

We are unable to agree with counsel for the appellant that the trial judge failed to consider the .appellant '6 defence. In our opinion he adequately dealt with the defence f alibi. Moreevidence of identity which the trial judge believed. We are satisfied that the trial judge adquately considered the appellant's defences, and was justified in rejecting them. over, the appellant's alibi was destroyed by the prosecution

We, therefore, find no merit in this ground of appeal^

For these reasons, this appeal must fail, and is accordingly 'dismissed.

DATED at Mengo this 2nd day of September, 1986.

SIGNED:

S. W. Wambuzi, CHIEF JUSTICE

/17

SIGNED:

D. L. K. Lubogo, AG. JUSTICE OF APPEAL.

B. J. Olokij JUSTICE OF APPEAL.

Mr. Mayanja of J. B. Mayanja & Go. Advocates for the appellant. Mr. Othieno for the State.

M. K. 5 I / *I* ,1 certify that this is a true copy of the original AlANp/ '1/dUKT OF appeal. •

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