

UGANDA / JUDGMENT

Matovu Musa Kassim v Uganda

[2005] UGSC 17 (18 August 2005)

[2005] UGSC 17

COURT

Supreme Court of Uganda

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The appellant and three other persons were indicted on two counts namely, of murder, contrary
 to sections 183 and 184 and aggravated robbery, contrary to sections 272 and 273(2) of the Penal
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{\cs39\fs22\insrsid12784761 accused person on both counts. At the end of the trial, the 3}
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accused persons were acquitted on both counts for lack of evidence. Only the appellant was
 convicted on both counts. He was sentenced to death on each of the counts but sentence

on count 2 was suspended. He appealed to the Court of Appeal which dismissed his appeal. Hence this appeal.

The facts of the case may be summarized as follows: On 28 September 1996, robbers attacked the residence of one Markowski, at Mackay Zone, Mengo in

Kampala District. They stole several of his household items including a knife which was Exhibit

P2 at the trial. In the course of the robbery, Mr. Mike Markowski was shot dead. His wife was raped. None of the robbers was seen or identified by any eyewitness

s.

The incident was nevertheless reported to the Police and after investigations; the appellant and his co-accused were arrested and charged with the murder and the robbery. Later, the appellant made a charge and caution statement in which he confessed to

the offences.

At the trial, the appellant gave sworn evidence in which he repudiated the confession which had

been received in evidence without objection from his counsel. He set up a defence of alibi. The trial judge, while treating the appellant's confession as repudiated, accepted it as true and rejected the appellant's defence of alibi. Having taken

into account the surrounding circumstances of the case and the detailed account of what occurred as narrated in the repudiated confession, the learned trial judge convicted the appellant and sentenced him to death. The learned Justices of Appeal reevaluated the evidence and came to the same conclusion as the trial court. They therefore dismissed the appellant's appeal and confirmed the sentence.

The Memorandum of Appeal before this court contains two grounds of appeal framed as follows:

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Mr. Edward Muguluma Ddamulira, counsel for the appellant argued the two grounds together. He contended that the findings by the trial judge that the repudiated statement was made by the appellant and it contained the

truth of what actually occurred in the night of the murder and the aggravated robbery was wrong. He further contended that the learned Justices of Appeal erred both in law and fact when they confirmed the findings and judgment of the trial judge when they

themselves had not reevaluated the evidence.

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Mr. Muguluma contended further that the fact of the matter was that police officers who investigated and charged the appellant had prior knowledge of what had occurred and they also knew that the appellant had

not participated in the commission of the crimes with which he was subsequently charged. The police had deliberately framed the charges against him. There had been more than one police officer interrogating the appellant - a fact which counsel contended w

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s against the law. He contended that even assuming that the repudiated confession was admissible, it still lacked one necessary ingredient, namely corroboration. He argued that in law it is assumed that if a judge finds that there is no corroboration to s

upport an accused's alleged statement, the judge should acquit the accused. Counsel cited }
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\cs39\fs22\insrsid12784761 (1967) EA 84, as authorities in support of his submissions.

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 {\cs39\fs22\insrsid12784761 For the respondent, Miss Sa

rah Kerwegi, Senior State Attorney supported both the conviction and sentence of the appellant. She contended that the treatment and consequences of a repudiated confession as determined by the learned trial judge were the only correct approaches to adopt

in this case. She further contended that whereas corroboration is desirable, it is not the position in law that where it is not available a court cannot convict. As long as the trial judge is satisfied that the statement was made voluntarily and that what

it contains is the truth of what occurred, the judge is entitled to bring in a verdict of guilty as happened in this case.

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 {\cs39\fs22\insrsid12784761 Miss Kerwegi further contended that in this case, the learned justices of Appeal on their own volition analysed the facts and eviden

ce of the case and came to the same conclusion as that of the trial judge whose findings and judgment they confirmed. Miss Kerwei conceded that there may have been some loopholes in the way the evidence was presented to court but on the whole none was any

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here near rendering the trial a miscarriage of justice. Counsel for the respondent contended further that the information the appellant revealed in his repudiated confession could only have been known and come from a person who had personal and intimate k

nowledge of both the murder and the robbery. In Counsel's opinion, the courts below made the proper findings and reached the correct decisions and they should be upheld.

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We are constrained to observe that the police investigations in this case were unsatisfactory. It is clear that the appellant did not play the most significant roles in both the murder and the rape, if his repudiated confession is to be believed. On the o

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her hand, the main planners and principal participants in the two crimes were either uncovered or not successfully prosecuted because of lack of adequate inquiries for which the police were responsible. However, we are satisfied that the evidence availabl

e before the courts below was more than sufficient to justify the conviction of the appellant.

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Before his trial, the appellant made a detailed statement disclosing facts and events which only a person who was an active participant and eye witness to much of what occurred on the night of the murder could have been familiar with. It is true that at h

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s trial, he gave sworn evidence in which he repudiated the confession. However, a number of factors exist to discredit any claim that his repudiation, in any way, affected the facts and events he disclosed. We have already observed that the story he told

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ould only have been known by a person who had actively participated in the incidents of the crimes. The appellant's contention that he was framed have no grain of truth in it. At the trial his own counsel, Mr. Muyonjo who must have had instructions from t

he appellant since the latter did not contradict him said;

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 sole ground upon which the appellant challenged the conviction in the Court
 of Appeal was not that he did not make the statement but that it was not voluntary.

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 we agree with the findings of the learned Justices of Appeal and their observation that

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The learned Justices of Appeal further examined the appellant's claim that he was tortured by the
 investigating or and the interviewing police officers and concluded that the claim was an
 afterthought and concocted. The Justices of Appeal concluded;

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{\cs39\fs22\insrsid12784761 We reiterate the law governing retracted or repudiated confessions as

was succinctly stated in }{\cs31\b\fs26\insrsid12784761 Tuwamoi v. Uganda, }

{\cs43\insrsid12784761 (1967) }{\cs39\fs22\insrsid12784761 E. A. 84;

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 {\cs39\fs22\insrsid12784761 The learned trial judge, Katutsi J. commented on the extr

a judicial statement of the appellant when he describes his role as minor compared to the role assigned to his freed and other accomplices. We have already commented on the regrettable circumstances under which those accomplices gained their freedom. Be t

hat as it may, the learned trial judge was alive to the law with regard to alleged minor }
 {\cs43\insrsid12784761 accomplices }{{cs39\fs22\insrsid12784761 like the appellant. The judge
 cited section }{{cs43\insrsid12784761 21 }{{cs39\fs22\insrsid12784761

of the Penal Code Act which enumerates the persons who, if they participate in the commission of an offence they are equally guilty of the same offence and they include;

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 {\cs34\b\i\fs26\insrsid12784761 (c), every person who aids or abets another

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 {\cs34\b\i\fs26\insrsid12784761 person in committing the offence."

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We agree with the learned trial judge when he observes that the appellant cannot be heard to say that for him he was left outside to keep a watch on whoever would be approaching and then warn those who were inside actively committing the offence. He is as

guilty as if he was inside the house looting like the rest of them. The trial judge emphasized his decision by reference to S}{{cs33\fs26\insrsid12784761 .22 }{{cs39\fs22\insrsid12784761 of the same Act which provides that:

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 prosecute an unlawful purpose in conjunction with one another and in the prosecution

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 purpose an offence is committed }{\cs34\b\i\fs26\expnd10\expndtw50\insrsid12784761 of}
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such a nature that its commission was a probable consequence }
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 is deemed to have committed the offence."

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 {\cs39\fs22\insrsid12784761 The Court of

Appeal confirmed this reasoning and the findings and decision of the learned trial judge. We are
 unable to fault those findings and decision.

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 {\cs39\fs22\insrsid12784761 In our view, there is no merit in this appeal. It is accordingly
 dismissed.

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