

UGANDA / JUDGMENT

Turyatemba v Uganda (Criminal Appeal 255 of 2019) [2024]

UGCA 281 (4 October 2024)

[2024] UGCA 281

COURT

Court of Appeal of Uganda

BEFORE

Cheborion-Barishaki, JA, Obura, JA, Luswata, JA

CASE / FILE NUMBER

Criminal Appeal 255 of 2019

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheboion Baishaki, Hellen Obura and Eva Luswata, JJA.)

CRIMINAL APPEAL NO. 255 OF 2019

5 TURYATEMBA GAD:.....APPELLANT

VERSUS**RESPONDENT**

(Appeatfrom the High Court of Ilganda at Fort Portat before Anthony Oyuko Oiok, J delivered on 7/04/2018 in Criminal Session Case No. 027 of 2013,)

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JUDGMENT OF THE COURT**Introduction**

The appellant was indicted, tried and convicted of the offences of Murder contrary to sections ¹⁸⁸and 189 and Aggravated Robbery contrary to sections 285 and 286(2) of the Penal Code Act (PCA) by the High Court (Anthony Oyuko-Ojok, J.) on 7th April 2018. He was sentenced to 34 years and 4 months' imprisonment. 15

Background Facts

The facts of this case as ascertained from the court record are that Makuwa Jackson (A1), Turyatamba Gad (A2) who is the appellant, Ssembatya Yeremiah, Baluku Farouk, Ssenyonjo Simon alias Katongole, Nkyiriyeh Ibrahim and others still at large on the 8th day of May 2012

at Mpanga Village in Kamwenge district murdered Kizito Miir (the deceased). The accused persons on the same day robbed Kizito Miir of Motor Vehicle Reg. No. UAM 018M Toyota Premio Silver Gray in colour which was the property of Mawanda Abdallah and during the robbery caused the death of Kizito Miir. They were arrested and indicted of the aforementioned offences but they denied the charges. 20

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At the trial, the prosecution called 6 witnesses to prove its case. At the onset of the trial, the following agreed documents as contained in the Memorandum of Agreed Facts were admitted and relied on by the prosecution: - a post mortem report of the deceased (pE 1); DNA Analysis Report (PE2); PF 17A being two swabs from the deceased's prostrate and parts of his femur

5 head and fibula for analysis (PE3) and PF 17A for blood stained cotton wool and blood stained piece of cardboard both picked from the deceased's car (PE4); Search Certificate in respect of one spare tyre (Yokohama size 15), one jerk (Nissan), and one spanner (pES); and photograph of the deceased (PE6).

It appears during the hearing the following documents, among others, were also admitted as prosecution exhibits: - a photograph of the appellant and 41 while holding a car tyre with its rim and a car jerk (PE7), a piece of blood-stained cardboard picked from the deceased's car (PE8), a piece of blood-stained cotton wool picked from the deceased's car (pWG), Exhibit Record for one pair of light blue shorts/underwear with white stains and one light blue pair of shorts with dark blue and white strips on both left and right sides which were recovered from 10

- River Mpanga on a drowned and decomposed human remains suspected to be that of the deceased (PW1 1), Exhibit Slip for one car tyre with its rim and a car jerk Nissan make and one wheel spanner (PE13). Finally, the English version and Runyangkole-Rukiga version of the charge and caution statements of A1 were also admitted with no objection by the maker and marked PE14 and PE15 respectively. 15
- The appellant's co-accused (A1) appeared to have executed a Plea Bargain Agreement (PBA) after all the prosecution witnesses had testified and the defence was to open its case. He was convicted and sentenced under the PBA. Meanwhile the appellant gave evidence on oath in his defence but did not call any witness. He was found guilty, convicted and sentenced as aforementioned. 20

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Being dissatisfied with the decision of the trial court, the appellant appealed to this Court on the following grounds;

- 1. That the learned trial Judge erred in law and fact when he convicted the appellant basing on the accomplice evidence which was not corroborated and arriving on a wrong decision of convicting the appellant thereby occasioning a miscarriage of Justice.
- 2. That the learned trial Judge erred in law and fact when he convicted the appellant basing on circumstantial evidence of involuntary confession and arrived at a wrong decision of convicting the appellant thereby occasioning a miscarriage of justice
- 3. That the learned trial Judge erred in law when he sentenced the appellant to 40 years' imprisonment which was harsh and excessive leading to a miscarriage of justice.

The appellant prayed this Court to allow the appeal, quash the conviction and set aside the sentence and, or in the alternative substitute it with one deemed appropriate. The respondent opposed the appeal.

Representation

At the hearing, Mr. Kumbuga Richard represented the appellant on State brief while Mr. Ssemalemba Simon Peter, Assistant Director of Public Prosecutions represented the respondent. The appellant was not physically in court but he was facilitated to participate in court proceedings from Prison via zoom technology. Counsel for both sides filed written submissions which have been considered in this judgment. 15

Preliminary Observation by Court 20

We must observe from the outset that the trial court did not properly handle the numbering of the prosecution witnesses and the exhibits. We note from the handwritten notes of the learned trial Judge which we found on the lower court file, but unfortunately was not typed and made part of the record that was shared, that witness numbers were assigned to the agreed documents as follows: the post-mortem report (PE1) indicated as PW1, the DNA analysis

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It is further noted that

report (PE2) indicated as PW2 and the two Police Forms (PF) A (PE3 & PE4) were indicated as PW3.

Inadvertently, the first witness to testify in court, namely; Mubiru Fred (father of the deceased) was not assigned witness number. No. 40223 D/CPL Kwosiima Amon who testified after him was indicated as PW3 and the third witness to testify, AIP Kibuuka Apolo was stated to be PW4. The

witness who was called after him, D/AIP Tumwesigye A. was not assigned any witness number but No. 21769 D/SGT Bobera Sylvester who testified after him was referred to as PWS and the last prosecution witness, D/AIP Edson Bagembe was referred to as pW6. Ordinarily the first witness should have been PW1 and the subsequent five witnesses should have been sequentially numbered up to PW6. Since the learned trial Judge chose to adopt

- the style of assigning witness numbers to the agreed documents, he should have still continued to consistently and sequentially assign witness numbers to the witnesses who testified in court. The first two witnesses to testify in court should have then been pW4 and PWS respectively. The rest of the witnesses, namely; AIP Kibuuka Apolo, D/Alp Tumwesigye
 - A and No. 21769 D/SGT Bobera Sylvester should have been PW6, PW7 and pW8 respectively.
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As regards the exhibits that were admitted either as agreed documents (in respect of which a memorandum of agreed documents was signed) or during the trial, there is nothing on the record of proceedings to show that they were assigned exhibit numbers, save for the first three that appears in the learned trial Judge's handwritten notes we alluded to earlier. We had to look at the markings on the documents themselves for reference purposes. As a result of the confusion highlighted above, we have opted to call prosecution witnesses by their names in this Judgment.

We respectfully urge trial courts to pay close attention to such important details that can bring confusion at the judgment writing stage and on appeal. Be that as it may, we find that in this 25

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case the irregularities highlighted above were not fatal and therefore no miscarriage of justice was occasioned to the appellant.

Appellant's Submissions

Counsel raised 3 issues, each relating to the grounds of appeal, for determination by this s Court. He commenced by stating the well-settled law on the duty of this Court as a first appellate court. Counsel quoted the relevant portion that relate to this principle from the decision of the Court of Appeal for Eastern Africa in *Pandya vs R* (1957) EA 336. He further relied on snippets on the same principle in the cases of *Ruwala vs R* (1957) EA 570, *Kifamunte Henry vs Uganda*, Supreme Court Criminal Appeal No. 10 of 1997 and *10 Bogere Moses & Anor vs Uganda*, Supreme Court Criminal Appeal No. 1 of 1997.

On the 1st issue that relate to ground 1, counsel contended that the ingredient of participation by the appellant in the commission of the alleged offence of murder and aggravated robbery were not proved. He submitted that the learned trial Judge erred by deciding otherwise. He asserted that there was no direct evidence linking the appellant to the commission of murder

- 1s and aggravated robbery. Counsel pointed out that No.402223 D/C CPL Kwosiima Amon gave hearsay evidence basing on what he was told by A1 that 'the work of the appellant was to get out with a hammer and crush the chest of the deceased.' Further, that according to A1, the appellant banged the deceased three times until he died. On realising that the deceased was dead, they threw his body into the river, then they drove to Congo'
- 20 Counsel argued that the words of the appellant's co-accused did not state the role the appellant played during the commission of the offence but only what he was supposed to do. He argued that this left doubt on who hit the deceased and therefore that evidence required corroboration.

On the 2no issue that relate to ground 2, counsel submitted that No. 40223 D/CPL Kwosiima 2s Amon testified that the photograph of A1 and the appellant was taken in his presence but he

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was not the one who took it. Counsel argued that this creates doubt on the source of information since the evidence was not tendered in court by the photographer to prove that the appellant was holding spare parts of the stolen motor vehicle. He added that the photograph could have been related to a different thing not connected to the alleged offences.

- s Counsel further submitted that the appellant testified that on the day the offence was committed, he heard Muka telling A1 that they had completed the mission and the appellant reported the matter to the Local Council (L. C) 1. After one month, A1 came back with ^a Policeman and the appellant was arrested. Counsel argued that the conduct of the appellant of reporting to the LC1 was sufficient to prove that he never participated in robbing or killing
- 10 the deceased. He pointed out that the appellant testified that he did not know the deceased but he was forced to confess, and he was not aware that a trial within a trial was conducted.

Regarding the Prosecution Exhibits Nos. 14 and 15 being the charge and caution statements, counsel contended that they were made under duress since the appellant contended that he was forced to confess and therefore they could not be relied on to convict the appellant.

1s Further that the learned trial Judge having noted that the appellant had been forced to admit participating in committing the offence under plea bargain, he nonetheless relied on unproved circumstantial evidence of involuntary confession to convict the appellant.

Counsel also contended that it was unfair for the learned trial Judge to rely on unproved circumstantial evidence and find that the appellant used a rope and a hammer while attacking 20 the deceased and yet the evidence of 41 did not indicate that the appellant used a hammer and a rope.

In respect of ground 3, counsel submitted that the learned trial Judge did not take into consideration the mitigating factors presented by the appellant that he was a first time offender, was of advanced age of 55 years with 6 children. Counsel argued that had the learned trial Judge considered the mitigating factors and the vital principle of consistency in

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sentencing, he would not have arrived at a harsh and excessive sentence of 40 years' imprisonment.

In support of his submission, counsel relied on the decision in Aharikundira Yustina vs Ilganda, SCCA No.221 of 2005 where it was held that consistency is a vital principle of the sentencing regime which is deeply rooted in the rule of law and requires that laws be applied without unjustifiable differentiation.

Counsel prayed that the conviction be quashed and the sentence set aside or in the alternative the sentence be reduced to such terms as this Court deems fit.

The Respondent's Submissions

- 10 Counsel argued grounds 1 and 2 together and ground 3 separately. On grounds 1 and 2, counsel conceded that there was no direct evidence linking the appellant to the commission of the offence. However, he asserted that there was ample circumstantial evidence adduced by the prosecution which proved the participation of the appellant in the commission of the offences beyond reasonable doubt.
- 1s He alluded to the evidence of and No. 40223 D/CPL Kwosiima Amon that they arrested A1 who was a co-accused to the appellant and he revealed to them that he, together with the appellant and another person killed the deceased with the intention of robbing his vehicle No. UAM 0189. Further, that A1 revealed how they killed the deceased and specifically that the appellant was in possession of a hammer which he used to crush the chest of the deceased three times before he died. and No. 40223 D/CPL Kwosiima Amon further testified that the appellant and A1 led them to the exact point where they dropped the body and it was recovered from there. Counsel referred this court to section 29 of the Evidence Act and argued that the fact that the deceased's body was found at the spot where A1 and the appellant led PW3 corroborated the prosecution circumstantial evidence regarding his participation.

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Counsel also submitted that according to No. 40223 D/CPL Kwosiima Amon, the appellant and A1 led the Police to where they had left the spare parts of the vehicle, one jerk and ^a spanner which were recovered from the home of Aisha Ali and that this recovery also provided further corroboration of the evidence of the appellant's participation in the commission of the

offences. Counsel concluded that the recovery of the above exhibits following the information provided by the appellant and his co-accused corroborated the fact that the appellant participated in the murder of the deceased. 5

In regard to ground 2, counsel submitted that the charge and caution statements of A1 were tendered in evidence without any objection by the co-accused. He referred this Court to 10 section 27 of the Evidence Act which provides that court takes into account a confession by accused person against a co-accused as well as the person who makes the statement. Counsel concluded that the learned trial Judge properly found that the co-accused's statement proved participation of the appellant in the murder of the deceased and that the said charge and caution statement was amply corroborated.

- 1s On ground 3, counsel conceded that the sentence passed against the appellant was excessive. He thus submitted that the appellant in his allocutus stated that he was of an advanced age of 55 years, a first time offender and a family man. He argued that the learned trial Judge considered those mitigating factors before sentencing the appellant to 40 years' imprisonment. He referred this Court to the decision in *GutohaRogers vs Ilganda*, Criminat
- 20 Appeal No. 57 of 2013 where the appellant was convicted of murder and aggravated robbery and sentenced to 47 years' imprisonment. On appeal, this Court reduced the sentence to ³⁵ years' imprisonment. Counsel therefore submitted that a sentence of 35 years' imprisonment would be appropriate in the circumstances.

On the whole, counsel prayed that the appeal against conviction be dismissed and the sentence be reduced to 35 years' imprisonment. 25

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Analysis and Decision of the Court

We have carefully studied the court record and considered the submissions of both counsel as well as the law and authorities cited to us plus others which we find relevant to the issues under consideration. We are alive to the duty of this court as a first appellate court to review the evidence on record and reconsider the materials before the trial court, and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. See Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions, s.t 13-10.

We shall resolve grounds 1 and 2 of the appeal together so as to avoid repetition since they are related. While in ground 1, the appellant faulted the learned trial Judge for convicting the appellant basing on the accomplice evidence which was not corroborated, in ground 2, he complained about the circumstantial evidence of alleged involuntary confession which the trial court relied on to convict the appellant. In both grounds, he faulted the learned trial Judge for arriving at a wrong decision of convicting the appellant thereby occasioning a miscarriage of justice. 10 15

The Supreme Court has dealt with the law on the evidence of an accomplice witness in the case of *Rwatinda John vs Uganda*, Supreme Court Criminal Appeal No.3 of 2015 where it considered the decision in *R vs Baskerville* (1916) 2 KB 658 as follows;

"The law in respect of accomplice evidence was considered and the authority of *R vs Baskerville* (supra) was relied on by the Court. In that case the prisoner had been charged with committing acts of gross indecency with two boys contrary to section 11 of the Criminal Law Amendment Act 1885. The only direct evidence of the commission of the acts charged was that of the boys themselves who were accomplices from their own statement in the offence. The letter was produced addressed to one of the boys and contained ten shillings Treasury note. The letter was inviting the boys Harry and Charles to the appellant's flat at 8 not 7:30 and he (appellant) signed it. The prisoner (appellant) in this case gave evidence and admitted that the boys who were of a humble position in life went to his flat by invitation and he accounted for it.

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The Jury found the prisoner (appellant) guilty after the judge warned the jury that they ought not to convict the prisoner upon the evidence of the boys unless it was in their opinion corroborated in some material particular affecting the accused, but told them that the above mentioned letter afforded evidence which they would be entitled to find was sufficient corroboration. At page 518B of the above case it was stated; ... where on the trial of an accused person evidence is given against him by an accomplice, the corroboration which the common law requires is corroboration in some material particular tending to show that the accused committed the crime charged. It is not enough that the corroboration shows the witness to have told the truth in matters unconnected with the guilt of the accused.

The Court of Appeal citing with approval the case of *Baskerville* (supra) reproduced the following: "the evidence of an accomplice must be confirmed not only to the circumstances of the crime but also to the identity of the prisoner... (it) does not mean that there must be confirmation of all circumstances of the crime, as we have already stated that is not necessary. It is sufficient if there is confirmation as to the material circumstances of the crime and the identity of the accused in relation to the crime. The corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connection to the crime." 10 15

> The Supreme Court of India in *Rameshwar v. V. A.* (1952) sc. 54 held that there must be additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. The case of *Nasolo vs Uganda* (supra) held among others that:

"... a Judge must warn himself and the assessors of the danger of acting on an accomplice's evidence without corroboration. However, failure to warn himself of the necessity for corroboration is not fatal to an accused's conviction if the Judge made a finding that the evidence was corroborated."

Turning to this appeal, we find that contrary to counsel for the appellant's contention, there was ample circumstantial evidence linking the appellant to the commission of the offences he was charged with as highlighted below.

It was the evidence of No. 40223 D/CPL Kwosiima Amon that they tracked Atwine Abraham who led them to 41 and when he was asked about the deceased, he revealed that they killed him with the intention of robbing motor vehicle No. UAM 0189. That A1 then told them he was

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with the appellant and Abdul Mukasa. He also told them how they killed the deceased. We have ourselves reappraised the relevant part of the evidence of PW2 as follows: -

"Tracking /ed us to Atwine Abraham who was operating a saloon in Mpanga Trading Centre in Kamwenge District. On anest, he ted us to A1 (Makuwa Jackson) when asked about Kzito he told s us they had killed Kzito Miro with the intention of robbing vehicle Reg No, UAM 0189 having heard from him, we asked him to demonstrate how he was kilted and with who? He told us that they were 3 Abdul Mukasa who kilted Kzito Miir from Kasese, the 2nd one being Turyatamba Gad A2. How did they kilt him? Whereas Kzito was on the steering, Abdu Mukasa Co-diver then Makuwa behind the driver. They had tools, Turyatamba had a hammer, Makuwa had a rope' When time came of 10 executing the action, Makuwa threw them the rope into the neck of Kzito driving, then immediately Mukasa jumped into the steering struggling. The work of Turyatamba was to get out with the hammer and crush fhe chesf of Kzito. According to him, he banged Kzito three times until Kzito died. On realizing Kzito dead, they put the body in the boot and drove to river Mpanga they dropped the body into the iver, then they drove the vehicle to Congo'(sic)'

1s No. 40223 D/CPL Kwosiima Amon also testified that the appellant and A1 revealed to them where they had kept the spare parts of the deceased's vehicle and led them to the place and they recovered those items. A photograph of the appellant and A1 was taken as they were holding those recovered items (Exhibit PE7).

There was also the evidence of AIP Kibuuka Apolo who testified that he led a team of police zo officers in search for the body of the deceased and that A1 and the appellant who were already arrested by Amon led them to Mpanga River in Kamwenge District and they both showed them where the deceased's body was dumped. He further stated that they searched with the local people until they saw decomposed parts of the body (bones of the legs and buttocks which were in a dark blue trouser) but other parts of the body were missing.

2s ln Cp[. ByasigarahoWilsonvslJganda,supremeCourtCriminalAppealNo.lSof 2003' where the appellant had made a confession in which he revealed the whereabouts of the

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murder weapon and on appeal he faulted the trial court for relying on the evidence of his accomplice like in this case, it was held thus;

"In the confession, the appellant revealed the whereabouts of the murder weapon which only the user could have known. In any event, the evidence of PW3 and PW4 corroborated his confession. Whether or not the evidence of PW3 as an alleged accomplice should have been ignored or not, would not have, in our opinion advanced the case for the defence any further. If PW3 was indeed an accomplice, his evidence was amply corroborated.,

In another case of Bagatenda Peter vs Ilganda, Supreme Court Criminal Appeal No. 10 of 2006 where the appellant gave information on where the head of the deceased was buried and the murder weapon hidden, it was held;

> "The trial judge found, quite rightly in our view, that the appellant would not have known the location where the deceased's head was buried, or where the murder weapon was, unless he had committed the crime himself and hidden them. She found this evidence to be corroborative of the evidence of PW2, and effectively negating the defence of alibi.,

- 1s It is clear from the above two authorities of the Supreme Court that information given by an accused person leading to recovery of the murder weapon or the deceased's body or stolen items corroborates prosecution evidence and can be safely relied upon to convict the accused' We therefore find that in the instant case, the learned trial Judge rightly relied on the information the appellant and A1 gave No. 40223 D/CPL Kwosiima Amon and Alp
- 20 Kibuuka Apolo which led to the recovery of some parts of the deceased's decomposed body parts and motor vehicle spare parts that were removed from his car that fateful night. The appellant would not have known where the deceased's body was dumped and where the spares of the car were kept if he had not been part of the people who murdered him and kept those spares.
- 2s In addition to the above evidence, D/Inspector of Police Tumwesigye testified that they received the remains of a suspected human being that included the lower bones which he

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took to the mortuary and a pathologist from Kampala examined the same. A postmortem was done and samples were taken for DNA analysis.

We note from Exhibit PE2 that the DNA profile generated from the blood stained piece of cardboard and the blood stained cotton wool picked from the deceased's car was compared with the DNA profile generated from the deceased father's blood sample and the result of the analysis was reported to strongly support Mubiru Fred as the biological father of the male donor of the blood in the blood stained cotton wool and the blood stained piece of cardboard picked from the deceased's car.

As regards the submission that the appellant was forced to confess yet he did not know the deceased and he was not aware that a trial within a trial was conducted, we have confirmed from the record that there was no such confession by the appellant and therefore it was a misconception by counsel. We believe he could have been referring to the PBA process which the

appellant and A1 appeared to have unsuccessfully explored at the commencement of the trial. We note from the record that the learned trial Judge before whom the PBA was explored 1s recused himself from the matter when that procedure failed. The learned trial Judge who took over the trial and convicted the appellant was not privy to the PBA process and never

mentioned it in his judgment. Consequently, we find the complaint about that alleged forced confession without any merit.

We, however, note that the learned trial Judge relied on the charge and caution statement of 20 A1 which was admitted and marked as exhibit without any objection from the maker after D/IP Edson Bagambe testified on how he recorded it. In the circumstances, there was no need to conduct a trial within a trial. As mentioned earlier, A1 changed his plea to that of guilty after the six prosecution witnesses had testified and the prosecution closed its case.

Counsel for the respondent referred this court to Section 27 of the Evidence Act which zs provides as follows: -

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"When more persons than one are being jointly tried for the same offence and a confession made by one of those persons affecting himself or herself and some other of those persons is proved the court may take into consideration such confession as against that other person as well as against the person who makes the statement"

- We have looked at the charge and caution statement of A1, the appellant's co-accused and \$ \mathsf{S}\$ we find that it did place both the maker and the appellant at the scene of crime. Although the maker stated that he did not participate in the actual murder of the deceased, he did mention that he witnessed the killing of the deceased. Under the doctrine of common intention, the charge and caution statement of A1 proved that the appellant participated in the murder of
- the deceased. We therefore find that the learned trial Judge properly relied on the charge and 10 caution statement which corroborated the evidence of No. 40223 D/CPL Kwosiima Amon and AIP Kibuuka Apolo that the appellant participated in the commission of the offences he was charged with.

In the result, grounds 1 and 2 of the appeal fail for lack of merit.

On ground 3, counsel contended that the learned trial Judge did not consider the mitigating 15 factors. It was argued that had the learned trial Judge considered the mitigating factors and the vital principle of consistency in sentencing, he would not have arrived at a harsh and excessive sentence of 40 years. We must however point out that the appellant was not sentenced to 40 years as alleged, but rather to 34 years and 4 months' imprisonment after the period of 5 years and 8 months he spent on remand was deducted. 20

Counsel for the respondent conceded to the appellant's erroneous submission that the sentence of 40 years passed against the appellant was excessive. He stated that the appellant in his allocutus stated that he was of an advanced age, a first offender and a family man. In his submission in support of reduction of the sentence to 35 years, counsel relied on

the case of *Guloba Rogers vs Uganda*, Criminal Appeal No. 27 of 2013 where the 25 appellant was convicted of murder and aggravated robbery and sentenced to 47 years'

imprisonment and on appeal the sentence was substituted with that of 35 years' imprisonment.

We are well versed with the principle that an appellate Court is not to interfere with the sentence imposed by the trial court which has exercised its discretion on sentence unless the exercise of discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores an important matter or the circumstances which ought to be considered while passing the sentence or where the sentence is imposed on a wrong principle. See *Kiwalabye Benard vs Uganda*, Supreme Court Criminal Appeal No. 143 of 2001 which was cited with approval in *Kafo*

10 *Kajubi Geoffrey vs Uganda*, SCCA No.20 of 2014.

We have re-appraised the sentencing proceedings and taken note of the aggravating and mitigating factors that were presented before the trial court. We have also looked at the sentencing ruling and we note that although the learned trial Judge mentioned the aggravating and mitigating factors at the beginning of his ruling, he did not indicate that he had taken the 1s mitigating factors into account and weighed them against the aggravating factors while sentencing the appellant.

We are fortified by the decision of the Supreme Court in *Aharikundira Yustina vs Uganda*, Supreme Court Criminal Appeal No. 27 of 2015, where it was held thus: -

"Before a convict can be sentenced, the trial court is obliged to exercise its discretion by 20 considering meticulously all the mitigating factors and other presentencing requirements as elucidated in the Constitutions, statutes, Practice Directions together with general principles of sentencing as guided by case law." [Emphasis ours].

After analysing the record of sentencing proceedings and ruling in *Aharikundira Yustina vs Uganda* (Supra), the Supreme then stated;

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'The holdings of the trial court as laid out above do not reflect consideration of any of the mitigating factors but rather only the aggravating factors. The appellant mitigated her sentence before the trial judge however when giving his decision, the learned Judge did not weigh the mitigating factors against the aggravating factors. These included the fact that the convict was a first offender, of advanced age and had children who needed her attention as the surviving spouse.

The trial judge therefore ignored putting in consideration the mitigating factors raised by the appellant while passing the sentence."

In *Ramathan Magala vs Uganda*, (Criminal Appeal No. 01 of 2014) [201] UGSC 4 (20 September 2017), the Supreme Court held that a judicial officer must record what the accused submitted in mitigation and this should be evident on the record. The judicial officer must state that the sentence was arrived at with both the mitigating and aggravating factors in mind. It is only then that the accused will be sure that the judge addressed his or her mind to the cited mitigating factors but nevertheless came to the conclusion that the aggravating factors outweighed the mitigating ones. (See also *Atemiga James vs Uganda*, Criminal Appeal No. 10 of 2017)

Appeal No.234 of 2017 and Odyambo Juventine, Criminal Appeal No.081 of 2016. 15

For the above reason, and relying on the above authorities, we are inclined to set aside the sentence of 34 years and 4 months imposed by the trial court. Consequently, we shall invoke the powers of this Court under section 11 of the Judicature Act to sentence the appellant afresh. In so doing, we have considered the aggravating and mitigating factors which we earlier summarised in the submission of both counsel. We have also considered the range of sentences in the following cases with more or less similar offences of murder and aggravated robbery.

In *Guloba vs Uganda* (supra), the appellant was convicted of Aggravated Robbery and Murder and sentenced to 47 years' imprisonment. On appeal, this Court reduced the sentence to 35 years' imprisonment. In *Kayondo vs. Uganda*, Court ACA No. 51 of 2018, the appellant pleaded guilty of murder and aggravated robbery and upon conviction, he was sentenced to 25 and 21 years' imprisonment for the offence of murder and aggravated robbery respectively.

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robbery respectively. On Appeal, this Court confirmed the sentences imposed by the trial court.

In *Olupot Sharif and Ojangole Peter vs Uganda*, Court of Appeal Criminal Appeal No.0730 of 2014, this Court reduced a sentence of 40 years' imprisonment handed down to the appellants to 32 years' imprisonment for the offence of aggravated robbery. In *Aharikundira Yusitina vs Uganda* (supra), the appellant who had brutally murdered her husband and cut off his body parts in cold blood was sentenced to death. On appeal this Court upheld the death sentence but on a second appeal, the Supreme Court set it aside and instead imposed a custodial sentence of 30 years' imprisonment. In *Kapolok William vs Uganda*, Criminal Appeal No. 10 of 2017, the appellant was convicted of murder and sentenced to 40 years' imprisonment. On appeal, this Court reduced the sentence to 30 years' imprisonment.

Uganda, Court of Appeal Criminal Appeal No.221 of 2011, the appellant stabbed the deceased in the lower abdomen and his intestines protruded out, the appellant was convicted and sentenced to life imprisonment, He appealed to this Court which reduced a sentence of life imprisonment to 27 years' imprisonment. 10

15 Considering the aggravating and mitigating factors in this case and the range of sentences in the above cases, we find a sentence of 39 years for murder and 30 years for aggravated robbery appropriate. Pursuant to Article 23 (8) of the Constitution, we deduct the period of 5 years and 8 months the appellant spent in custody from each and sentence him to 33 years and 4 months for murder and 24 years 4 months for aggravated robbery. The sentences are to run concurrently from 17th April, 2018, being the date of his conviction.

20 We so order

Dated at Kampala this 11th day of October 2024.

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n Barishaki JUSTICE OF APPEAL

Hellen Obura JUSTICE OF APPEAL \$bullet\$ Eva Luewata
JUSTICE OF APPEAL

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