

UGANDA / JUDGMENT

Uganda v Draleke (Criminal Session Case 255 of 1993) [1994] UGHC 54 (25 April 1994)

[1994] UGHC 54

COURT

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Criminal Session Case 255 of 1993

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the republic of Uganda IN THE HIGH COURT OF UGANDA AT MOYO CRIMINAL
SESSION NO. 255/93

UGANDA ::::::::::: PROSECUTOR

VERSUS

DRALEKE SETIMO ::::::::::: ACCUSED

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BEFORE: THE HON. MR. JUSTICE G. M, OKELLO

JUDGMENT:

The accused, Draleke Setimo was indicted for the murder of Sabina Indiya contrary to section 183 of the Penal Code Act. The particulars of the offence alleged that the accused committed the offence on 7/12/91 at Ringa village in Moyo District^t BWhen the charge was read to him the accused denied the offence.

The prosecution called the evidence of a total of 7 witnesses.. The evidence of four witnesses PW1 to PW4 were admitted under section 64 of the T. I. D. PW5 to PW7 were examined in open court. According to Delphina Eimani (PW1) on 7/12/91 people who included Lanyini Kareyo (PW7) Sabina Indiya (deceased) and the accused Setimo had gathered at her home to drink enguli, which she was brewing. Then a drunkard quarrel broke out between Lany[^]Ljiji [^]J[^]but soon home*. heard . and the accused so she chased everybody from .her-- * alarm which was. being made by Night the daughter of Sabina Indiya. She was calling for help allegedly because

Setimo the accused had killed her mother. She answered the alarm. At the scene she found the deceased lying down and vomiting* The accused *i* was not there. She reported the matter to the local authorities and returned to the scene with Daniel Amoko (PW2) only to find tha^ the deceased had I already died. Amoko Daniel (PW2) confirmed that he came to the seen with (PW1). That on arrival they found that the deceased wks dead. While they were still at the scene, they heard an alarm amanatin^from the accused'^s home. He answered it. On arrival, he found the acousted telling his wife

- to hurry up packing things and to run away to escape the mip - justice. He arrested the accused and took him to Zaipi Sub County Hqs. The evidence of No. 911 P. C. Richard Anyama (PW3) shows that he is an administration Police man attached to Zaipi sub.county Headquarters. On 8/12/91 an RC official from Ringa village handed him the accused on allegation of murdering Sabina Indiya. He immediately transfered the accused to Adjumani police post. The evidence of No. 23516 P. C. Emilyson Gule (PW4) is to the effect that he is a police officer attached to Adjumani Police Post. On \$10/12/91\$ on instruction he visited the scene of murder at Ringa village. He drew the sketch plan of the scene. The sketch plan was later received in evidence and marked Exh. P1.

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Night Aselua PW6 who because of her inability to understand the nature of an cath due to her tender age, did not give evidence on cath. But because she was possessed of sufficient intelligence and understood the duty to tell the truth, I received her evidence not on cith.

According to her, she knows the accused as a village mate. At the material time the accused was fighting another person and her mother had gone to separate them. Then she saw the accused struck her mother a blow with his hand. Due to darkness she was unable to see from a distance of 8 meters the actual part of her mother body on which the blow landed.

Both Maurina (PW5) and Lanyini Kareyo PW7 denied that they saw the accused hit the deceased. They however both stated that they heard the sound of a followed by the sound of a fall. Maurina Vuciri PW5 claimed $\cdot \angle$ blow which wa that she heard the accused swearing that he would kill a person that day. They were thereby frightened by the threat and ran away from the accused. All these three witnesses told court that the deceased was buried after three days. No post mortem examination was performed on the body.

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The accused gave swum statement in his defence* In the statement he admitted that the deceased who was his sister in-law is dead. He described the circumstances which led to her death. In the description, the accused admitted that he was struggling to remove from Lanyini Kareyo (PW7) a stick which the latter had struck him with. In pulling the stick from her, he used great force and in the process his elbow knocked the deceased who unknown to him was standing behind him. That from that knock, the deceased fell down and died. He had no quarrel at all with her. It was her who had invited him for a drink.

It is the duty of the prosecution to prove the charge against an accused person beyond reasonable doubt. This is one of the canon principle of our law. All the essential ingredients of the offence charged must be proved beyond reasonable doubt to secure a conviction. In the offence of murder like in this case, the followings are the essential ingredients

- (1) that the person alleged murdered is dead.
- (2) that the death was caused by the accused.

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- (3) that the accused unlawfully caused the death.
- (4) that the accused had malice aforethought when he caused the death of the deceased.

There is no dispute that the deceased Sabina Indiya is dead. The accused conceded in his sworn statement that the deceased is dead. I think that concession was well founded because there is ample evidence to prove that fact. As it was stated in the Republic - Vs. Chaya and Anor. (1973) EA 100, whether there is no medical evidence, death can still be proved beyond reasonable doubt by some other cogent evidence. No doubt medical evidence is the best evidence to prove death but it is by no means the only evidence. In this case there was no post mortem examination on the body. -here was the unsworn statement of Night Aselua PW6 the very daughter of the deceased) mother She told court that she saw the dead body of her late and attended her

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burial. True the unsworn statement of a child of tender age like Aselua (PW6) requires corroboration as a matter of law. In this case such corroboration is provided by the evidence of Maurina Vuciri PW5 and of Lanyini Kareyo PW7- Both these witnesses told court that they knew the deceased. They saw her dead body and attended her There is also the admitted evidence of Delphina Eimani PW1• She to claimed to have known the deceased and saw her dead body. On top of that, there is the sworn statement of the accused. In that statement the accused admitted that the deceased was his sister in law and that he saw her dead body. From the above evidence like the gentlemen assessors, I have no difficulty in finding that this ingredient has been proved beyond reasonable doubt. That deceased Sabina Indiya is dead.

This leads me to the question "who caused the death of the deceased? The prosecution contended that it was the accused who caused the death of the deceased and that there was no dispute about this fact. The prosecution relied on the evidence of Night Aselua PW6 who stated that she saw the accused struck her mother the sole fatal blow. The prosecution relied further on the evidence of Maurina Vucini PW5 and Lanyini Kareyo PW7* But both these witnesses denied that they saw the accused struck the deceased. They only claimed to have heard the sound of a blow. I think the evidence of these two witnesses is not helpful to the prosecution in this regard. But there is also the evidence of the accused who admitted that he struck the deceased fatal blow. This evidence of the accused offers the needed corroboration the evidence of Night Aselua

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It was however contended for the accused that there was no sufficient evidence to show that the deceased died from the elbow knock of the Accused. That where ought to have been medical evidence to show the type of injury caused by the knock and the ^erf' ?⁺ of th-* irj—y, Counsel submitted that in the absence of such medical evidence, it was unsafe to assume that it was that

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elbow knock of the accused which caused the death of the deceased. The other possible unconnected causes like over drinking, nt-rvous shock and heard! failure have not been ruled out. Counsel cited Uganda vs. Kulahako Night Jennifer reported in part ¹¹ of Kampala law Report (1990 - 91) 7\\$ as his authority for the above proposition. In Kulabako's case, my brother Justice Kato held that in the absence of any medical report indicating the nature of injuries sustained by the deceased as a result of the assault* on her, the only possible offence that the accused committed was common assault.

I had the chance to read the above case of Kul&ba-ko and I am of the view that it is distiguishable from the.-present case on its facts. The brief facts of that case are that the acci>sed arrested the deceased, beat her with a stick -of a coffee tree which was as big as a human hand- kicked her, then took her to the sub.county Head Quarters where she detained her (deceased)^c This was on 6.11.81. On 31*12opi the deceased died at the Hospital as a result of the rapture of the uterus. She had been • .egnant. The evidence of the husband of the deceased was to the effect that his wife was not in good condition when she was released after she had been detained by the accused. The medical evidence however, showed that the cause of the death of the deceased was rapture of the uterus. As to what caused the rapture nobody knew. It was suggested for the prosecution that the rapture must have been caused by the beating' of the deceased by the accused. That theory was ruled out by the medical evidence which showed that or. examination the deceased was found with a foetus weighing 8 pounds and that a normal woman in Uganda delivers a foetus weighing 61/a pounds. The doctor who gave evidence was of the opinion that the rapture could have been caused by foetus which wao above the average. The husband of the deceased had testified- that on that day when his wife died, she was in labour. The judge held that that evidence did not rule out the possibility of the deceased having died of natural causes one of them being the uterus having been torn by the child or foetus which was of the size aooove the

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In the instant case, there was no evidence of any possible natural cause of the deceased's death as it was in Kulubaku's cue. There was even no evidence that the deceased was an excessive consumer of alcohol, or that she was suffering from nervous shock or Heart disease as suggested by counsel for the defence.

In Miller v. Minister-of Pension (19⁷) *2* iSR 272 at 273~[^] Lord Denning said

"the law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strntr against a man to leave only a remote possibility in his favour which c-n bo dismissed with the sentence "of course it is possible but not in the least probable, the case is proved beyond reasonable doubt-.

In the instant case, Night Aselua P7/6 in her unsworn statement told court that she saw the accused struck her mother where upon the mother fell down and died. This evidence of the child of tender was suffienctly corroborated by the accused's own admission. In his sworn statement the accused told court that he knocked the deceased with his elbow and the latter fell down and died. In my view the above evidence is sufficiently strong to leave any of those fanciful possible natural causes suggested by counsel for the defence ton remote to be probable cause of the death of the deceased. I therefore find that it is proved beyond reasonable doubt that the death of the deceased was caused by the accused.

As to whether the accused caused the death of the deceased unlawfully, the accused contended that he did not cause the death of the deceased unlawfully[^] That it was accidental. He explained that when he forcefully pulled from Lanyini Kareyo the stick which the latter had struck him with, his elbow knocked the deceased who unknown to him was standing behind him. This is a plausible explanation.

The prosecution rejected that explanation -nd asserted that the accused deliberately or mistakenly unlawfully struck the deceased. In support oi the above theory, the prosecution relied on the evidence of an([^] PW7. Night Aselua P'J/6 told court that she saw from distance of 0 meters t_ie

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accused struck her mother. But that because of darkness, she did not see the exact part of the body of her mother at which the blow landed. She also stated that the accused was at the material time fighting with another person and her mother had pane to separate them. The evidence of this witness requires corroboration as a matter, of law. Otherwise if the unsworn statement is believed then the death of the deceased resulting from that blow would be unlawfully caused as it is immaterial whether the deceased was not the person the accused intended to strike. The unsworn statement of FWo could have been corroborated by the evidence of Maurina PW5, and of Lanyini Kareyo *P[^]7•* But both these witnesses denied that they saw the accused struck the deceased. They both testified that they only heard a sound of a blow. This type of evidence does not provide the corroboration of needed to the unsworn statementZuight Aselua. That leaves the unsworn 4: statement of the child (PW6) without corroboration. It thus can not be acted upon.

On the other hand, the explanation of the accused is clear and quite plausible. Like the gentlemen Assessors, I believe his version of how the deceased was struck the fatal blow. It was accidental.

Under Section 9 (1) of the Penal Code Act,

"a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident".

The above provision exonerates a man for his accidental act. In the instant case, the deceased died when the accused accidentally knocked her. In terms of the above provision of the penal code Act, the accused is therefore not criminally responsible for that accidental knock which caused the death of the deceased.

Having found as I did, in full agreement with both Assessors, I hereby acquit the accused of the offence with which he was charged and order that he be set free forthwith unless he is being held on some other lawful ground.

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H. M. OKELLO

JUDGE,

25/V94.

Judgment delivered in open court in the presence of:-

- (1) Accused
- (2) Mr. Okwonnirali for the Accused on State brief
- (5) R. S. A. for the State
- (4) Baako Francis Court Interpreter

G. M. CKELLO

JUDGE.

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