

UGANDA / JUDGMENT

Uganda v Isoke (Criminal Session Case 190 of 1992) [1993] UGHC 84 (21 December 1993)

[1993] UGHC 84

COURT

High Court of Uganda

BEFORE

Kireju, J

CASE / FILE NUMBER

Criminal Session Case 190 of 1992

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OF Ur-'J!').

XE XILlHlfUi OQURT QF JJUjJWA AT FORT PORTAJj

UCt.'A-tda ==VT??US== "PROSECUTOR!

SULAIKAN I30KE: <sup>s</sup>."ACCUSED^ B3F03F. S ^HOTOimrELLABY JUSTIN M, KIRE.ttt.

The accused Sulaiman Isoke is indicted with Kurder Contrary to Sections 183 and 184 of the penal Code Act. He is alleged to have murdered Absolcm Bulemu between 18th and 25th of June, 1991 at Kyawarwa village, in Kabarole District. The accused denied the offence. The prosecution called 4 witnesses, the postmortem report was admitted in evidence under S. 64 of TID. Detective Assistant Tom Kajagi P. W.4 indentified the cautioned statement recorded by late *>/IP Trophimus Balinda allegedly made by the accused.

The accused objected to the admissibility of this statement on the ground that it was not made by him and he thumb marked it because he was scared. As a result of this objection I held a trial within a trial to find out whether the accused made the cautioned statement and if so whether he made it voluntarily.

The prosecution did not call any witnesses as the Officer who recorded the statement late Balinda, died according to the testimony of P. W.4. However, the cautioned statement and the statement by late Belinda as to how he recorded the cautioned statement were indentified and received on Court record as relevant facts in terms of S. 30 (1) of the Evidence Act. In brief this section allows statements written or verbal or relevant facts made by a person who is dead when made by such a person in the ordinary course of business in the discharge of professional duty to be received in evidence.

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The accused elected to make an unsworn statement* His evidence was to the effect that, he was aged 58 years, a butcher and cultivator of Mahezi, Kihura, Mwenge. He was arrested on 5/9/1991 at .around 10.30 p.m. at his home. He first heard gunfire outside and he was told to come out and he complied. He was tied up and kicked by the Policemen and other people he did not know. He was brought to the Police Station while he was being beaten they told him to admit that he had killed a person. He was taken to Kyenjojo Police Station and they continued beating him. After one day at ' ~ Kyenjojo he was transferred to Port Portal Police Station, the following day ho was removed from the cell and taken to an office in the same Station. In the office he found 2 Policemen one had a cane and another one had a gun. He said that he could not hear what was being read although some words were read to him. He was told to come near the table and thumb nark papers. He said that he was not beaten in that office but the man looked at him with fierce eyes and ho was scared of being beaten again. He denied being the source of the words in the cautioned statement. He said that he never fought with the late Bulomu. He said that ho stayed in the office for % an hour. He added that the Officer who was seated was dressed in

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plain clothes, that the- one with a gun had on Police Uniform. He said that he was operated on at Buhunga Hospital because he had a swelling on the stomach. He said that by the time he was taken to the office ho was bally off, he could not understand, he was as if ho was mad.

After the evidence of the accused Mr. Musana learned Counsel for the defence submitted that according to the evidence of the accused the statement was made 2 days after the arrest. After the arrest and during the arrest the accused was seriously beaten to the point that he had to be operated. Counsel submitted that it was natural for the accused to thumb print, for fear of further beating, especially in view of the Policeman with a gun and cane who remained in the office. Counsel further submitted that late Belinda was not around, to give testimony, that the Court can only go by the testimony of the accused. Counsel submitted the accused never said the words and therefore they cannot be used against him and should not be admitted in evidence.

Mr. Kikomcko learned Counsel for the state submitted that although the recorder of the statement was dead evidence could be admitted under S. 30 (b)jjf Eyidefice, Act already referred to above if the state-cent fulfils other conditions of taking a statement. Counsel submitted that in order for a statement to be voluntary it had to be given by the suspect in an atmosphere devoid of any coercion, duress or undue influence. The recorder of the statement is required to caution the suspect and inform him of the consequences of the statement he is going to make, Counsel submitted that from, the statement of late Belinda the conditions for taking the

'j-tr.-tcMcn-t soon be complied with. It was <unfortunate> that late Belinda was not present to answer the questions and the accused could also not be cross examined on his unsworn statement in Court.

Counsel submitted that from his evidence the accused said that because of the assault on him he could not hear properly and he was as if he was mad, but in the same breath he said he did not hear what was being read to him although he heard when they told him to thumb print the statement and he noticed what the 2 Policemen were wearing. Counsel submitted that what should the Court believe that the accused was mad or sane Counsel submitted that this leads to an irresistible inference that the accused is telling lies and his evidence should be rejected. Counsel added that the accused was not only assaulted in the office. Counsel contended the cautioned statement is so clear and detailed, Belinda who was a stranger and did not go to Mwangi to talk to the relatives of the deceased could not have gathered that much of information. Counsel submitted that the only reasonable author of the statement is the accused. Counsel invited the Court to admit the statement as it was made voluntarily.

settled

It is now the law that once the voluntary nature of confession is challenged by the defence, the Court has to make a thorough investigation. The burden of proving the admissibility of a repudiated or retracted confession lies on the prosecution. *Rashid, Otlgers, vs, R...* 1969. RA 138 refers. The Court must also decide whether the statement was

made in conformity with the established procedure of taking confessions as set down in *Idinco v Police Officers*. Ilulps. S. Ir 43. - *tj... Vol.* In case *DIP Late Belinda* made a statement on 6/3/92 where he reported how he took a statement from the accused; He said the accused was brought to him by Detective Corporal Qngwen of Fort Portal Police Station who told him that the accused was confessing to a charge of Murder. The Corporal left him with the accused after handing him the charge sheet. The accused was made to sit comfortably in front of his table. The charge was read to the accused and the caution administered. After recording the statement in the language of the accused, it was read back to him, after being satisfied that it was true and correct, he thumb marked it and the Officer counter signed it, after which the accused was escorted back to the cells. Later the Officer translated the statement in English. The perusal of the cautioned statement also shows that the above procedure was followed by late Belinda and the accused appeared to understand what was going on. I am therefore satisfied that the late Belinda, followed the proper procedure when he recorded the statement. The accused's objection is that some words were said to him but he did not hear them as he was in a state of madness, however this does not mean that the above procedure was not followed.

The next issue is whether the statement was made by the accused and made voluntarily. The law relating to confessions is set down in 3... 24. and 25 of the Jjio. Act 5/1985. S. 24 deals with the procedure which I have already dealt with above. S. 25 talks of a confession being irrelevant ...,/6

if the making of the confession appears to the Court, having regard to the state of the accused and to all circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the Court to cause an untrue confession to be made.

However, if the violence, force, threat, income- tax or promise has been removed then the statement becomes relevant. The accused denied making the statement and said that he was made to thumb print it and this he did because of fear as there was an armed Policeman in the office and there was also a cane on the table. He said that he was not assaulted in that office and spent there about 30 minutes. He said although words were said to him he did not hear but at the same time he said that he heard when they told him to thumb print and he complied. It is hard to believe that the accused was able to hear some words which were said to him while he was in late Belinda's office and others he did not hear. The accused also said that he was beaten in the stomach and at the back but one wonders why he became unable to the extent of not hearing what was said to him. Although he said that he was kind of mad when he was in the office, he managed to observe that the Policeman was looking at him with fierce eyes. He also said, that he was operated upon but it appears that the operation took place after the statement was made, since it was made only about 2 days after his arrest. So I do not see what effect the operation had on the statement. The above said inconsistencies in the accused statement has led me not to believe his evidence. I am of the opinion that this was an attempt by the accused to disassociate himself with the

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cautioned statement when it was read in Court, and I found it very detailed and clear, and I find it hard to believe that the recording Officer made up the story staged therein. It appears to be the work of a person who had the first hand information and no other than the accused himself. I have found what late Belinda stated in his statement more believable than the story of the accused. I have come to the conclusion that the accused was not assaulted or threatened when he was in the cautioned statement. Any minor omissions or assault which may have been noted on the accused were no longer there at the time he made the statement. At this stage it is important to point out that in these proceedings the Court is not usually upon to determine whether the confession is true or not, this is a matter to be considered after receiving all evidence in the case.

I have found after careful consideration of the facts and circumstances of this case, the cautioned statement made by the accused on 17/9/91 before late Belinda was made voluntarily and was properly recorded and is therefore admissible in evidence.

> • V 1/4a a; ^a Sgd. (1,1. KIRBJU) 21/12/93.

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