

UGANDA / JUDGMENT

Uganda v Mayeku (HCT-04-CR-0200-2002) [2004] UGHCCRD 6 (15 July 2004)

[2004] UGHCCRD 6

COURT

HC: Criminal Division (Uganda)

BEFORE

Rugadya, J

CASE / FILE NUMBER

HCT-04-CR-0200-2002

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REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CR-0200-2002

UGANDA.....PROSECUTOR

VERSUS

MAYEKU STEVEN..... ACCUSED

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

RULING

The accused person in this case was indicated for robbery with aggravation, contrary to section 285 and 286(2) of the Penal Code Act. It was alleged in the indictment that the accused and others not in court on the night of 22nd and 3rd August 2002, at Makonje Busiu Mbale district, robbed Wandwasi Richard of a bicycle and cash Ush. 11,500/=, and during or immediately before or immediately after, used a deadly weapon to wit a panga on the said Wandwasi Richard. On arraignment, the accused person denied the offence.

At the close of the case for the prosecution, the court is enjoined to make a finding whether a prima facie case had not been made out from the evidence adduced to require the accused person to make his defence.

For a submission of a no case to answer to be upheld, it must be shown that the prosecution evidence adduced before the court does not make out a prima facie case against the accused person. A prima facie case is not made out of an essential ingredient of the offence charged is not proved by the evidence, or if the evidence is so discredited in cross examination or is so manifestly unreliable that no reasonable tribunal properly directing its mind to the law and the evidence would convict the accused person on it. *Bhatt v Rep.* [1957] E. A. 332.

To put the above principle in a practical perspective, one cannot do better than to apply the passage in *Bhatt*, (supra), when explaining what is meant by a prima facie case. The court said thus,

“remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to suggesting that the court would not be prepared to convict if no defence is made but rather hopes the defence will fill the gaps in the prosecution case.”

The offence of robbery as charged has the following essential ingredients which must be proved by the prosecution beyond reasonable doubt.

1. That there was a theft;
2. With violence;
3. That there was use or threat to use a deadly weapon during, immediately before or after the theft, or causing or grievous harm; and
4. That the accused person participated in the theft.

See *Wassajja vs. Uganda* [1975] HCB 181.

For purposes of this ruling, I will deal with the ingredient of the participation of the accused in the offence charged. The evidence of the participation of the accused person in the offence charged depended on his identification at the scene of crime.

PW2 Wandwasi Richard was the complainant in this case. He was riding his bicycle from work in town where he engaged in transporting people on his bicycle for a fee, commonly known in local parlance as ‘boda boda’. The time was about 9.00 p.m., and there was moonlight. He struggled with them as they attempted to take his bicycle. Two of them cut him each on the arm, as the third struggled with him. A fourth one held him by his trouser pockets and removed his three days earnings amounting to shs. 11,500/-

One of the thugs hit him in the stomach, and he let go to the bicycle. He made alarms and neighbours responded immediately. He informed his rescuers that he was robbed of his bicycle and money by thugs who included Mayeku Robert, the accused. He was rushed to a health facility as he was bleeding profusely. Two days later he reported to Busiu police station, as the accused, was chased by a mob, and the police rescued him, and detained him.

The bicycle was recovered as were the graduated tax tickets, and taken to the police. He identified the bicycle PEIII in court. He knew the accused prior to the incident. They were both 'boda boda' riders, but operating from different stages. The incident lasted just 4-5 minutes only. The accused approached from the right, as the other three thugs were on either side of him struggling to take away his bicycle. Each of the thugs was wearing a cape on the head, with dark clothes, but he was able to identify the accused from the group. He did not know the others.

PW3 Robert Kitongo was a neighbor who responded to the alarms. He found Wandwasi lying on the ground bleeding. Wandwasi told him and others present what befell him, and that Mayeku was one of the thugs. He took Wandwasi to the health centre for treatment, and later to Wandwasi's sister nearby there.

He heard further alarms and run off in answer thereto. He found that Wandwasi's bicycle was recovered together with his graduated tax tickers. These were taken to the local authorities of the village. He and others went and laid siege at the home of Mayeku. After 1 – ½ hours, Mayeku was nowhere to be seen. They approached his father whom they told of their suspicions. The father called out to Mayeku, and the wife opened. Mayeku was inside asleep. They did not talk to him that night, but returned to their homes.

The assailants were many, as many, as many as four. The assailants were all under disguise. They were wearing dark jackets, with caps on their heads which covered their heads. They were assaulting their victim. Each of his arms were severely injured. Scars were still visible, and the doctor classified those injuries as grievous harm. The person who was identified did not approach from in front. There were three others already in front in front and at the sides of the victim. He was on the side, and the victim was already wounded, but still resisting the thugs. Those were very difficult conditions under which the identification was made. This was evidence of a single identifying witness.

The cases have set out guidelines to follow even in situations where the identification was made in difficult condition. The Court of Appeal for Uganda, in the case of Abdalla Nabulere vs. Uganda, [1979] HCB 79, held thus,

“where the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correct identification or identifications. The reasons for the special caution is that there is a possibility that a mistaken witness can be a convicting one, that even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances the identifications came to be made, particularly the length of time, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of a mistaken identity is reduced, but the poorer the quality the greater the danger.”

The evidence of PW2 Wandwasi was not reliable. The identification was made in very difficult condition. It would be extremely unsafe to rely on such evidence in absence of corroboration.

What was therefore required was evidence of corroboration. Evidence of corroboration means independent which affects the accused by connecting him or tending to connect him with the crime, confirming in some material particulars not only the evidence that the crime has been committed, but also that the accused committed it. See *Kibale Ishma vs. Uganda Cr. App. No. 21 of 1998, (SC), (unreported)*.

There was no such evidence of corroboration. The evidence of the only other witness in court was to the effect that a bicycle was recovered. The home of the accused was visited that very night. The feeling being that he could not possibly have returned home yet from his stealing mission, but upon his wife opening, the accused was found inside asleep. No wonder that they left him in peace. That conduct was more consistent with innocence. It is surprising that two days later, the mob chased him up to the police for this same attack. This was a case where there obviously was a lot of injury occasioned on the complainant. But unhappily, there was no reliable evidence of identification. What there was required corroboration, but none was available.

A prima facie case will not be held to have made out where the prosecution has failed to prove an essential ingredient of the offence charged. The participation of the accused person was not made out sufficiently to require him to be put on his defence. In view of my finding in respect of the ingredient of the participated in the offence charged, it is not necessary to consider the remaining ingredients of the offence.

Under section 73(1) of the Trial on Indictment Act, a finding of not guilty against the accused person is hereby made in respect of the offence of robbery contrary to section 285 and 286(2) of the Penal Code Act. He is acquitted of the same. He is to be set free immediately unless held on other lawful charges.

RUGADYA ATWOKI

JUDGE

15/7/2004

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