

UGANDA / JUDGMENT

Uganda v Natumanya (Criminal Session 169 of 2023) [2023]

UGHC 430 (18 October 2023)

[2023] UGHC 430

COURT

High Court of Uganda

BEFORE

Tom Chemutai, J

CASE / FILE NUMBER

Criminal Session 169 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KANUNGU CRIMINAL SESSION CASE NO.0169 OF 2023 UGANDA ::::::::::::::::::::::::::::::: VERSUS

<table> NATUMAYA EVANS ACCUSED

JUDGMENT

BEFORE HON. JUSTICE TOM CHEMUTAI

The accused person, Natumaya Evans, was indicted with the offence of Murder contrary to Sections 188 and 189 of the Penal Code Act.

It was alleged that the accused person, Natumaya Evans alias Ivan between the 31st May, 2020 and 8th June, 2020 at Karama Cell in the Kanungu District with malice aforethought unlawfully caused the death of Mutabazi James.

The brief facts of this case are that on 31st May, 2020, the deceased was at a bar at Karama Trading Centre in Kanungu District together with the accused person. That the accused person assaulted the deceased by kicking him on the back and other parts of the body. The deceased was injured. That the deceased went home at about 1700hrs and informed his wife that he had been assaulted and that he was feeling pain in the abdomen. That the pain persisted and on 8th June, 2020, the deceased's condition deteriorated and he was referred to Bwindi Hospital, from there to Mbarara Hospital, where he passed on from.

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The accused person pleaded not guilty to the indictment.

In all Criminal cases, the burden of proof solely rests on the Prosecution to prove the offence for which the accused is charged beyond reasonable doubt. See *Woolmington versus DPP (1935) A. C. 462*).

It is important to note that the burden does not shift to the accused person and the accused person is only convicted on the strength of the Prosecution case and not because of weaknesses in his defence. See *Sekitoleko v. Uganda [1967] EA 531*.

The accused person does not have any obligation to prove his innocence. By his plea of not guilty, the accused person puts in issue each and every essential ingredient of the offence with which he is charged and the Prosecution has the onus to prove each of the ingredients beyond reasonable doubt before it can secure his conviction.

According to Sections 188 and 189 of the Penal Code Act under which the accused person is indicted, the following ingredients must be proved by the prosecution beyond reasonable doubt:

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- 1. That the deceased is dead.
- \$2.\$ That the death of the deceased was caused unlawfully.
- That the death of the deceased was caused with malice aforethought. 3.
- \$4.\$ That the accused participated in causing the death of the deceased.

The accused person chose to remain silent and he did not call any witness.

PW1 Ijambo Benjamini, stated that on 31st May, 2020 at about 3:00pm, he had been informed that the deceased had been assaulted. He went and found the deceased in his sitting room but he was in great pain. That was on 5th June, 2020 he took the deceased to Kambuga Hospital and after about 5 days, he was further referred to Bwindi Hospital. That the deceased told him that he had been assaulted at the Bar by the accused person.

PW2, Kaconco Godfrey, the wife of the deceased, stated that on 31st May, 2020, at about 3:00 pm, the deceased went to Karama Trading Centre. That he came back at about 5:00pm, and informed her that he had been assaulted by a Mechanic from Kihihi Trading Centre. That the deceased had bruises on the knees and elbow.

PW3, Detective Sgt. Wapukhulu Samuel, stated that on 13th June, 2020, he received a case from Kihihi Police Station where the victim who had been assaulted earlier on, had passed on. That It was alleged that the accused had assaulted the deceased. That the witnesses confirmed to him that the accused had assaulted the deceased. That after the assault the accused person gave some money to deceased to buy a drink "waragi." That the deceased left the Bar but experiencing pain in the body.

PW4, ASP Dr. Odulusi Daniel, Police Surgeon, stated that the cause of death of the deceased was a perforation of the stomach caused by a blunt object.

PW5, Mbabazi Jessica, stated that on 31st May, 2020, at about 3:00 pm, she went to the Bar of Christine and found the deceased at the Bar asking for a drink. That she saw the accused person kicking the deceased at the back, after which she ran away and later she heard the residents saying that the mechanic had killed deceased.

There is no doubt that the deceased is dead. All the Prosecution witnesses testified to the fact the deceased had passed on.

The Prosecution is required to prove beyond reasonable doubt that it is the accused person who caused the unlawful death of the deceased with malice aforethought. This is done by adducing direct or circumstantial evidence, and placing the accused person at the scene of the crime as the perpetrator of the offence.

This case was poorly investigated by the Police. In the Bar, where the incident occurred, there were many residents who include John, Moses and the Bar attendant, Christine, but none of them were called to testify in Court. The Investigating Officer did not get enough information from the residents on what happened and also he did not draw a sketch map of the scene of the crime which normally helps in guiding the Court.

The prosecution did not clarify by evidence if the accused person was also known as the Mechanic.

Needless to say, PW1 informed the Court that deceased told him that the deceased told him that he had been assaulted by the accused person. The evidence of PW2 stated the same. The PW5 in her evidence stated that she saw the accused kick the deceased in the back and after which she ran away.

From the evidence, it is clear that the accused assaulted the deceased by kicking him on the back. The next question is to establish if the accused person

had malice aforethought to kill the deceased when he assaulted the deceased. The Investigating officer PW5 stated that he did not know whether the accused had the intention to kill the deceased or not. From the evidence, it was not clear what caused the argument between the deceased and the accused person or what was the motive of the accused person assaulting the deceased. PW4, stated the cause of death of the deceased was a perforation of the stomach caused by a blunt object. PW5 stated the accused person assaulted the deceased by kicking him on the back.

It is therefore my finding that the accused person did assault the deceased by kicking which eventually led to his death. However, the Prosecution failed to prove that the accused person had a motive or malice aforethought to kill the deceased when he assaulted him.

I am in disagreement with the opinion of the assessors who advised me to find the accused person guilty of Murder. Because the ingredient of death being caused with malice aforethought was not proved beyond a reasonable doubt.

I accordingly find the accused person not guilty and acquit him of the offence of Murder contrary to sections 188 and 189 of the Penal Code Act and instead I convict the accused person, of the offence of Manslaughter contrary to sections 187 and 190 of the Panel Code Act.

<table>

Dated this ...18th.....day of

TOM CHEMUTAI JUDGE

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Aggravating factors:-

Prosecution:-

The loss of life.

There was ruthless attack done on the deceased.

I pray for a maximum sentence.

Mitigation:-

Defence Counsel: -

The convict is a first-time offender.

He is a young man of 35 years.

The convict can still be productive.

I pray for a lenient sentence.

Accused person: -

I have children.

I am sickly.

Sentence: -

I have taken into account the Aggravating and Mitigating factors in this case.

I, therefore, sentence the convict to a jail term of 14 years.

The time spent on remand shall be deducted from the sentence (14 years \$-2\$ years and 2 days).

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He will serve a jail term of 11 years and 28 days.

Right of Appeal explained.

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$\begin{array}{c} \bullet \\ \bullet \\ \bullet \end{array}$ TOM CHEMUTAI JUDGE 18/10/2023

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