

UGANDA / JUDGMENT

Uganda v Sebuuma (Criminal Session 86 of 2016) [2022] UGHCCRD 30 (23 June 2022)

[2022] UGHCCRD 30

COURT

HC: Criminal Division (Uganda)

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Criminal Session 86 of 2016

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI CRIMINAL SESSION CASE NO. 86 OF 2016

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

VERSUS

SEBUUMA EMMANUEL :::::::::::::::::::::::::::::::::: ACCUSED

JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] The accused **Sebuuma Emmanuel** was indicted with the offence of **Murder C/ss 188 & 189 PCA**. It is alleged that during the night of 20/5/2015 at Kakinda L. CI in the Kibaale District, the accused murdered **Nakakande Scovia**.
- [2] The prosecution case is that around 21/5/15, the body of the deceased **Nakakande Scovia** was found lying inside **Kiryabichori Market**, Kakindu village alongside the path towards the accused's place. Immediately, the on lookers who included a one **Kwesiga Mubiru Godfrey** (PW1) alerted police which responded and came to the scene.

- [3] **D/AIP Arinaitwe Jackson** (PW2) visited the deceased's place, a semipermanent structure roofed with a tarpaulin and recovered a piece of wood, an unused condom and an exercise book which contained the business records of the accused to wit, a list of the accused's debtors. The accused was a pork vendor. Inside the deceased's house, there were signs of struggling as things were turned upside down signifying that there was a fight. The accused was reported to had been co-habiting with the deceased.
- [4] As a result, of his findings, **PW2** sent for a sniffer dog to help in the investigations. A sniffer dog by the name "**spike**" led by **P. C Etiau Moses** (PW3) was introduced to the scene which had been firmly secured. The dog picked the scent from where the body was lying and

the scent led it to the deceased's house, then to the grass thatched shade in the market and then to a pork joint operated by the accused. The dog then rotated around the shade until when it spotted the accused who was seated on a bench with others thus identifying him as the culprit. As a result, the accused was arrested and consequently charged with the instant offence.

- [5] **Dr. Timbihurira** came and conducted a post mortem examination at the scene. The post mortem examination revealed abrasions on the right side of the neck and chest of the deceased's body. It was in a state of rigidity. Though no open injuries were sighted, there were some blood stains on the deceased's clothes and mouth and a pallor of mucus membranes. The cause of death was revealed to be haemorrhagic shock following injury of the subchondral vessels caused by a piece of wood that was lying 20ft away or any other blunt object which could have been used.
- [6] In his sworn defence, the accused denied committing the offences. He narrated how on the 21/5/2015 he and other people had gone to the market to view the body of the deceased that lay along the road to the market and police arrested him from there. That though he could not recall the sniffer dog sniffing him out, police came and arrested him on allegations of murdering the deceased.
- [7] As in all criminal cases, the prosecution has the burden of proving the case against the accused person beyond reasonable doubt. The burden does not shift to the accused and the accused can only be convicted on the strength of the prosecution case and not because of the weaknesses in the defence; **Ssekitoleko Vs Uganda** [1967] EA 531. The accused does not have the obligation to prove his case.

Ingredients of the offence

For the accused to be convicted of murder, the prosecution has to prove each of the following ingredients of the offence beyond reasonable doubt.

- 1. Death of the person named in the indictment
- 2. That the death was caused by an unlawful act.

- 3. That the unlawful act was actuated by malice aforethought.
- 4. That it was the accused who caused the unlawful death.

1 st Ingredient of the offence; Death of the person named in the indictment.

- [8] In the instant case, **Kwesiga Mubiru Godfrey** (PW1) a resident of the area where the deceased was murdered, both **D/AIP Arinaitwe Jackson** (PW2) and **Etiau Moses** (PW2) visited the scene and all of them found the body of the deceased **Nakakande Scovia** lying along the path to the market. A Post mortem report by **Dr. Timbihurira** which was admitted by consent of both counsel for the prosecution, the defence and the accused revealed that the death of the deceased arose out of haemorrhagic shock. The body was found in a state of rigidity. It was identified by **Ssemale Joseph Kabukuro**, the husband. The pictures of the body of the deceased were also exhibited as **P. Exh.5**.
- [9] The above evidence was not challenged by the defence, I conclude that the death of the deceased **Nakakande Scovia** has been proved beyond reasonable doubt.

2 nd Ingredient of the offence: The death was caused unlawfully.

- [10] It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was authorized by law/execution of a lawful order, or was in defence of person or property or, accidental or an act of God (**See R Vs Gusambuzi S/o Wesonga [1948] 15 EACA 65**. In **Festo Shirabu S/o Musungu Vs R (1955) 22 EACA 4 54**, it was held that the presumption in unlawful homicide may be reverted by showing that the killing is covered under any of the excusable circumstances. That standard of proof of such rebuttal is on the balance of probabilities.
- [11] In the instant case, there is no suggestion that the deceased died from any of the above exceptions of homicide. To the contrary, the post mortem report (**P. Exh.1**) which was admitted without objection revealed blood stains on the clothes and mouth of the deceased. There were abrasions on the right side of the neck and chest wall which were suggestive of a fight and the neck being one of the vulnerable parts of the body of which death can occur out of suffocation when squeezed,

it is my view that the death of the deceased amounted to homicide thus unlawful.

3 rd Ingredient of the offence: Malice aforethought

- [12] Malice afore thought is defined by **S.191 PCA** as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. In this case, it is my view that whoever assaulted the deceased by use of the piece of wood and caused abrasions on the right side of the neck must have intended to kill her or knew that the manner and degree of assault would probably cause death. It must have been the ferocity with which the weapon was used, that caused the haemorrhagic shock that led to the death of the deceased. I find that the prosecution has proved beyond reasonable doubt

that the deceased **Nakakande's** death was caused with Malice Aforethought.

4 th Ingredient of the offence: Whether it is the accused who caused the death of the deceased.

- [13] There should be credible direct or circumstantial evidence placing the accused at the scene of the crime as a participant in the commission of the offence.
- [14] In the instant case, the available evidence relied on by the prosecution is majorly, the exercise book that bore the accused's name and contained his business records to wit, the list of his debtors (**P. Exh.3**) and then the identification by the police canine sniffer dog, "spike".
- [15] According to **D/AIP Arinaitwe Jackson** (PW2), the deceased's place was about 10 metres from where the deceased's body was lying and 6 metres from that of the accused (**P. Exh.4**). He went to the deceased's house where he recovered a piece of wood, an unused condom and an exercise book which contained a list of the debtors of the accused. In the house, there were also signs of struggling because the household items were turned upside down signifying that there was a fight inside. In his analysis, **PW2** found and observed that the exercise book (**P. Exh.3**) which the accused did not deny, placed him in the house of the deceased during or around the time she lost her life, though there is no evidence that she died from the house. There is however evidence

that a scuffle involving her started from her house as evidenced by the signs of struggle therein.

- [16] According to **P. C Etiau Moses** (PW3) when he introduced the sniffer dog "Spike" at the body of the deceased, it picked and followed the scent up to the accused's place. This again placed the accused inside the deceased's house thus certifying the suspicion of **PW2** when he relied on the accused's exercise book that bore his name which was recovered inside the deceased's house. Then from the deceased's house, the sniffer dog proceeded to a grass thatched shade in the market and then to the pork joint operated by the accused. The dog then returned to the shade, rotated around and then spotted the accused person who was seated with others on a bench.
- [17] Though the accused claim that he never recalled the police dog sniffing him out of others, both **Kwesiga Mubiru Godfrey** (PW1) and **D/AIP Arinaitwe Jackson** (PW2) witnessed the police dog tracing the scent of the murderer to the accused who was seated with other people in one of the shelters in the market.
- [18] With the above evidence, I am satisfied that the dog picked the scent of the culprit from the deceased and it led the dog up to the accused who was in the market seated together with others on a bench thereby identifying him as the murderer.

- [19] Evidence of sniffer dogs when admitted must be corroborated by some other evidence which gives strength to the canine evidence as presented through its handler or trainer. It has to be cautiously admitted; **Omondi & Anor Vs R [1967] EA 802.**
- [20] According to **P. C Etiau Moses** (PW3), he had acquired various certificates in 2012 and 2016 in dog handling from Nsambya police training. He had been or had worked with the sniffer dog "Spike" since 2010. His reflections on "**Spike**" presented it as experienced in tracing human scent.
- [21] Considering the movements of the sniffer dog from the body of the deceased, the deceased's house, the market grass thatched shade, the accused's pork joint and then spotting the accused out of many that were seated on the bench, I find that this evidence amply corroborated

by the recovery of the accused's exercise book from the deceased's place thus pointing at the accused as the culprit. The inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other hypothesis than that of guilt; and there are no co-existing circumstances that would negative the inference of the guilt; **Simon Musoke Vs R [1975] EA 715.**

- [22] It cannot be said that the sniffer dog was on a fishing expedition but rather on a specific investigatory mission to fish out the murderer of the deceased. In his defence the accused denied ever visiting the deceased's house but he never commented on the exercise book that bore his name and contained his business records that were recovered from the deceased's house. The exercise book, **P. Exh.3** rendered his denial a lie. The accused nevertheless conceded that he last saw the deceased on 20/5/22 and indeed, that is the last time she was seen alive.
- [23] The foregoing considered with the scent dog trail from the deceased's body, to the deceased's house, then to the market or around the market shade up to the pork joint operated by the accused and then back to the shade up to specifically the accused person is a precise follow up of what must have been the accused's movements right from the scene of the crime to the scene of identification of the culprit by the sniffer dog.
- [24] Basing on the totality of the above, in agreement with the Lady and Gentleman assessors, I find that the prosecution has proved its case beyond reasonable doubt by placing the accused person at the scene of the crime as the one or one of those behind the death of the deceased.
- [25] In the premises, I find the accused guilty of committing the offence of murder and he is convicted accordingly.

Dated at Masindi this 23rd day of June, 2022.

..... **Byaruhanga Jesse Rugyema JUDGE.**

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