

UGANDA / JUDGMENT

Uganda v Siragi Rubowa and Odida Aron (Criminal Session Case No. 342/94) [1996] UGHC 72 (5 August 1996)

[1996] UGHC 72

COURT

High Court of Uganda

BEFORE

Mukanza, J

CASE / FILE NUMBER

Criminal Session Case No. 342/94

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. THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBARARA CRIMINAL SESSION CASE NO.342/94

UGANDA-. PROSECUTION VS

A1. SIRAGI RUBOWA '..... ACCUSED A2: ODIDA ARON

BEEQRE4 THE HON. MR. JUSTICE I. MUKANZA: ••* .

RULING.

This ruling arises as a result of a submission of no case to answer. The two accused persons namely Siragi Rubowa and Odida /iron hereinafter referred to as A1 and A2 respectively stand indicted of murder contrary to Sections. 183 and 184 of the Penal Code Act. The particulars being that on or about the 19th day of June 1993 at Mbarara Town in the Mbarara District the two accused persons and another still at large murdered one Asiimwe Alex.

In an endeavour to establish its case the prosecution called the evidence of one witness and then offered no further evidence. The evidence of this sole prosecution witness emanated from one Burnali Med PW1, His testimony was to the effect that he stays at Hundi village Kakoba ward Mbarara Municipality. He is a businessman oi^RC 1 Hundu cell.

On 20th July, 1993 in the morning he came to open his shop in Mbarara town there came two bicycle repairers who informed him that there was a dead body of a certain person. He went there saw the dead body was in his cell. This was a place near the film Hall. The hall is called Lotus Cinema and it is near the Central " Club. At that time the

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night club was working. It is the same club called 'Hod Club. When he saw the dead body he tried to look for his committee members. He got his secretary for defence one called Erika Rutahigwa and both proceeded to Mbarara Police station where they reported the incident. At the police station they were given two policemen from the CID and they proceeded with them to the scene. After that the policeman asked them to hire a vehicle and take the dead body to the Hospital. He complied with the order.

Basu identified the body as that of Alex Asiimwe, He had the chance to look at the body but he never touched it. It was swollen. After taking the body to the Hospital they returned to the scene where they found two boys having been arrested namely the two accused persons. They were suspected to have been with the deceased in the previous night. He had not known the deceased and the suspects before.

As I said earlier on the prosecution called only one witness and closed its case by offering no further evidence. Mr. Katembeko counsel appearing for the accused persons submitted that the evidence produced by the prosecution witness does not in anyway connect the two accused to this charge. The evidence of the sole prosecution witness is to the effect that he found a dead body which was later identified and two boys were arrested. He knew nothing about the accused persons. He submitted that the witness has not established any prima facie case and prayed that the accused be acquitted because of having no case to answer.

The principles upon which a submission of no case to answer may be properly made and upheld are well settled

and are as follows:

- (a) where the prosecution has not adduced satisfactory evidence to establish one or more of the essential ingredients of the alleged offence.

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- (b) when the prosecution evidence has been discredited as a result of cross-examination or is manifestly or so unreliable that no reasonable tribunal could safely convict on it. See Uganda vs Alfred Ateu 1974 HCB 179. Raimlal Bhatt vs R 1957 BA 33.

In a murder charge the prosecution has to prove the following essential ingredients of the offence:

- (1) That the deceased is dead.
- (2) That the death was due to unlawful act.
- (3) That the unlawful act caused the death of the deceased with malice aforethought.
- (4) That the unlawful act was caused by the accused persons. . . , " Eusambizi , " , "

However in the case of R vs Jesonga 1948 J.5 bACA it was held that homicide unless accidental is always unlawful except when committed in circumstances making it excusable.

As regards the first essential ingredient of the offence whether Asiimwe Alex is dead. There is the evidence of PW1. \[*■ ' He found the dead body near the cinema Hall which was identified by Busa to be that of Alex Asiimwe. The first ingredient has therefore been proved.

As to whether death was due to unlawful act **and** whether *it was* the unlawful act which caused the death of the deceased. ^wt.ft led ty v-»€ **prosecution** to that effect There is no evidence that an unlawful act caused the death of the accused nor does the question of malice aforethought comes in. And initially I agree with the submissions of Mr. Katembeko that there is no evidence to connect the accused persons

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with the commission of the offence with which they were indicted. And from that explanation the accused persons have got no case to answer and they are hereby acquitted of the charge of murder contrary to section 103 and 104 of the Penal Code and unless they are held for any other cognisable offence I order for their immediate release.

I. Mukahza ' Judge 5/0/96

5/0/95 Both accused before court.

fir. Wagona RSSA present

Mr, Katembeko on state brief for the '2 accused persons present.

Court clerk Mr. Baguma

Assessor Mr. Binyindo present.

Mr. Rwabambari absent.

Court: Ruling is read in open chambers and signed

a) ■' I. Mukanza Judge

5/0/96

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