

Uganda v Twisenge Sam and Others
(Criminal Session No. 0060 of 2023)
[2025] UGHC 346 (20 February 2025)
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30 money all valued at UgX 731,500/= and at or immediately before or immediately after the said robbery used deadly weapons to wit iron bars on the said Munyanziza Leonard.

All three Accused pleaded not guilty.

5 Representation.

Ms. Nambi Erone (State Attorney) appeared for the Prosecution while Mr. Kibulirani Nicholas represented the Accused persons on state brief.

The Assessors at the commencement of the trial were Mr. Rwengyeyo Joseph and Ms. Idah Mugenga. The trial was concluded with the aid of the latter as a single

10 Assessor.

During the preliminary hearing pursuant to **Section 67** of the **Trial on Indictment Act** evidence in Police Form 3 and Police Form 24 were received as uncontested evidence.

Police Form 3 was in respect of the medical examination of the Victim Munyanziza

15 Leonard and was received as Exhibit P1. While Police Form 24 in respect of the medical examination of A1, A2 and A3 were received as Exhibit P2, P3 and P4 respectively.

Burden and standard of proof.

- 20 This being a criminal trial it is one whose proof lies squarely on the Prosecution and the Accused persons have no duty to prove their innocence. It is also proof beyond reasonable doubt. Any doubts must be resolved in favour of the Accused and the Accused must only be convicted on the strength of the Prosecution case and not on the weakness of the defence case.
- 25

See **Ssekitoleko versus Uganda (1961) EA 531.**

Ingredients of the offence.

The Prosecution must prove each of the following essential ingredients beyond

- 30 reasonable doubt for the Accused to be convicted of Aggravated Robbery.
- a) **That there was theft of property.**
- 5 b) **Use of actual violence at, before or after the theft or that the Accused persons caused grievous harm to the Victim.**
- c) **That the assailants were armed with a deadly weapon before during or after the theft.**
- d) **That the Accused participated in robbery.**
- 10

- **1) That there was theft of property.**

Section 254(1) of the Penal Code Act provides that theft occurs when a person fraudulently and without claim of right and with intent to permanently deprive

15 the owner of a thing capable of being stolen takes that thing from the owner without a claim of right.

To prove its case, the Prosecution relied on the evidence of the Victim Munyanaza Leonard (PW3) who testified that on the 26/11/2022 at around midnight he was

20 on his way home from watching a football game when he heard footsteps/vibrations of someone running after him and that he ran after realising the danger he was in because the man running after him had an iron bar.

It is the evidence of Leonard (PW1) that two other boys who he passed while running also joined the chase and that he fell down upon which they caught with

25 him and assaulted him. That the trio stole his watch, mobile phone Techno Spark, canvas shoes "Adidas" make, and cash UgX 150,000/=. It is his testimony that none of these items have ever been recovered.

The evidence of the Victim Leonard (PW3) that these properties were stolen from him on the night in issue remained unrebutted by the defence and I accept the

30 same to be true. It is therefore my finding that the Prosecution has proved the first ingredient of theft beyond reasonable doubt.

5 1) Use of actual violence at, before or after the theft or that the Accused persons caused grievous harm to the Victim.

It is the evidence of the Victim Munyanziza Leonard (PW3) that in the night of the 26/11/2022 at around midnight while on his way home he was chased by the three Accused and that when he fell down he was assaulted by the trio who kicked

- 10 him and he sustained injuries to his eye and further he was held by the neck by one of the Accused persons (brown man) who began to struggle him until he lost consciousness before they stole his property. This evidence is well corroborated by the medical examination in Police Form 3 received as Exhibit P1 that details that the Victim Leonard suffered conjunctival haemorrhage to his left eye and
- 15 blunt trauma to the neck. The most likely cause of these injuries was indicated as use of a blunt object.

The evidence of the Victim Leonard that he was assaulted resulting into injuries to his eye and neck as corroborated by Exhibit P1 was not challenged the defence. I am persuaded by the Prosecution evidence and I find that actual violence was 20 used against the Victim during the theft of his properties.

3). That the assailants were armed with a deadly weapon before or after the theft.

It is the evidence of the Victim Leonard that Bizimana Jackson (A2) was armed 25 with an iron bar on the night in issue.

Section 285 of the Penal Code Act defines a deadly weapon to include an instrument adapted for shooting, stabbing or cutting and any imitation of such an instrument.

5 The medical evidence in Exhibit P1 details that the Victim (PW3) suffered injuries to his left eye and neck with the possible cause being use of a blunt object. I find this evidence to corroborate the testimony of the Victim that his assailants were armed with an iron bar.

It is my finding that the prosecution has proved beyond reasonable doubt that the 10 assailants were armed with a deadly weapon.

4). Participation of the Accused persons.

It is the evidence of the Victim Munyanziza Leonard (PW3) that on the 26/11/2022 at around midnight on his way home he heard footsteps of someone running

- 15 after him from behind and that he thought that it was possibly a village mate or neighbour and that he turned around and torched at the sound when he saw a brown man with scars holding an iron bar and that is when he realised that it is not what he expected. According to the Victim he was filled with fear and started to run towards home and as he did so he turned and pushed the man who fell and
- 20 he continued to run until he came across two boys standing at the side of the road.

That they gave him way to pass and when he passed them they also started to chase him and he fell down upon which they began to assault him and he became weak. He states that they then lifted him to the side of the road where the man 25 he met first joined them and they continued to assault him with kicks and that the brown man then held him by the neck and began to strangle him using one hand until he lost consciousness That when he regained consciousness his properties had been stolen and he was bleeding from the mouth and finally made his way home by climbing over the wall. It is the evidence of the Victim Leonard

- 5 (PW3) that on the night in issue there was moonlight and he had with him a torch and a power bank that was charging the torch and that the brown man he torched and saw was A2 who he knew before the night in issue because he used to work in a street garage in Town and he would see him there each time that he would take his father's car.

- 10 It is the testimony of Leonard (PW3) that he reported the matter at Kisoro Police Station and about a week later he was called to the Police that an operation had been conducted in Kisoro Town and several arrests had been made. That an identification parade was organised for him of about 20 suspects and he was able to identify the brown man with a scar (A2) who he already knew together with
- 15 the other two boys in A1 and A3 and that he identified all 3 in 2 separate identification parades.

In **Abdalla Bin Wendo VR (1953) 20 EACA 166** the Court laid the following conditions as necessary for correct identification;

- 1. **Familiarity of the Accused to the witness at the time of the offence.**
- 20 **2. Conditions of lighting.**
- **3. Proximity of the Accused to the witness at the scene of the crime.**
- **4. The length of the time Accused came under the observation of the witness.**

It is the evidence of the Victim Leonard (PW3) that A2 was well known to him

25 prior to the night in issue and that A2 worked in a street garage where he used to take his father's car. A2 in his unsworn defence admitted that he was indeed a mechanic. There is no way that Leonard (PW3) would have known this unless he had interfaced with A2 in a setting that allowed him to come to such a conclusion. 5 I therefore accept his evidence of the Victim that he was indeed familiar with A2 before the night of the 26/11/2022.

It is the evidence of Leonard (PW3) that he identified A2 by aid of moon light and a torch that was being powered by his power bank. That he was able to see that he had a scar on his face and was light skinned and the face was familiar to him.

10 It is trite law that moon light and torch light are sufficient to aid in identification. In this case the assailant (A2) came very close to the Victim and strangled him until he passed out. This Court did indicate on its record that A2 is indeed light skinned with a scar on his face.

This is a distinguishing factor that sets the Accused (A2) apart from the other 15 Accused persons.

I would therefore find that the lighting in place did favour proper identification of A2 and this was further made possible by the close proximity at the commission of the offence.

Leonard (PW3) a week later was also able to identify A2 at an identification

20 parade that was arranged at Kisoro Police Station by D/AIP Tukwasibwe Nester (PW1) in which he identified A2 in two separate identification parades whose report is continued in Police Form 69 and received collectively as Exhibit P6. I do not accept the unsworn defence of A2 that he was arrested on the 25/11/2022 at 6:00AM and was therefore already under Police detention on the 26/11/2022 25 when the Victim Leonard (PW3) was attacked and robbed. I believe this defence to

be false and a mere afterthought coined by A2. This is due to the failure of the defence to put this to any of the two Police Officers who testified before this Court

in PW1 and PW2. I am persuaded by the evidence of Leonard (PW3) that he saw

- 5 A2 on the night in issue armed with an iron bar and that A2 chased him and later caught up with him assaulted him, strangled him and stole his properties. The Prosecution evidence it is my finding has discredited the defence of alibi put up by A2 and he has been placed at the scene of crime committing the crime.
- 10 A1 and A3 both raised the defence of alibi and presented witnesses. According to A1 on the 26/11/2022 he was in Kabale and on the 27/11/2022 he travelled to Kisoro arriving home at 8:00PM and that he was arrested the following day in an operation conducted by security operatives from a bar in Town at 8:00PM.

His evidence is corroborated by that of Kamahoro Faith (DW3) his sister who testified that A1 was staying with her in Kabale District and left for Kisoro on the 27/11/2022 at mid-day and that she only learnt of his arrest 2 days later on 29/11/2022.

A3 on the other hand also denied the charge and in his unsworn defence testified that he always goes back to spend his weekends with his parents and that he did so on the 25/1/2022 when he travelled to Kisekye village in Nyakinama Sub County and that he spent the entire weekend with his family and returned to work

25 on the 28/11/2022. It is the defence of A2 that on the night of his return he was arrested from a restaurant as he was having his supper at about 8:00PM by security personnel.

His evidence is corroborated by that his mother Uwimana Harriet (DW2) who 30 testified that A2, returned home to visit them on the 25/11/2022 and stayed until 5 the 28/11/2022 when he returned to his work place and was arrested by security forces on that very night in a Police operation.

The Victim Leonard (PW3) admits that prior to the night of the 26/11/2022 he did not know A1 and A3. That he was only able to identify them on the night in issue as they chased him after A2 had already began the chase. In regard to the

- 10 identification of A1 and A3 I am not persuaded that the Victim had ample time to view them and be able to identify them later. Unlike A2 that the Victim flashed his torch at as he ran towards him, for the case of the other two assailants they were in front and gave way for the Victim to pass before they joined the chase. The Victim does not testify to flashing his torch at their faces as he ran passed 15 them or when he fell and they began to assault him.
- The confusion and fear that must have engulfed the Victim Leonard (PW3) as he fled for his life I am persuaded was a hindrance in identifying persons he was not familiar with. The identification paraded conducted for A3 and A1 contained 20 persons who it is admitted had been arrested in a security operation. The manner

- 20 in which the identification parade was conducted for A1 and A3 in Exhibit P5 was cast into doubt by the defence during cross examination when it turned out that one Akankwasa Godfrey appeared as No. 1 and No. 6 in the same parade in which he signed by writing his name in No.1 and thumb printed under No. 6.
- 25 It would therefore appear that the identification parade conducted in respect of A1 and A3 was not in accordance with the guidelines for conducting identification parades that bars the use of one person signing twice as a participant in a single parade. The change of signatures also points irresistibly at an attempt to falsify the report.

5 The evidence presented by the Prosecution has not discredited the defence of alibi that was put up by A1 and A3.

After considering the evidence presented by the Prosecution and defence and in full agreement with the single assessor. It is my finding in respect to A1 and A3 that the Prosecution has failed to prove its case beyond reasonable doubt and I

10 accordingly find A1 and A3 not guilty and acquit them of the offence of Aggravated Robbery contrary to **Section 285 and 286 of the Penal Code Act**. I order that they be set free unless liable to being held for some other lawful purpose. In regard A2 it is my finding that the Prosecution has successfully proved its case

beyond reasonable doubt and I find A2 guilty of the offence of Aggravated Robbery

15 contrary to **Section 285 and 286 of the Penal Code Act** and convict him of the same.

Before me

..... 20 Samuel Emokor Judge 20/02/2025.

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