

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGGO**

**CORAM: ODOKI, C.J., ODER, KAROKORA, MULENGA, KANYEIHAMBA,
J.J.S.C.**

CRIMINAL APPEAL NO. 8 OF 2002

BETWEEN

BAGAGA PETER ::: APPELLANT

AND

UGANDA ::: RESPONDENT

[An appeal from the judgment of the learned Justices of Appeal (Kato, Mpagi-Bahigeine, Engwau, J.J.A.) delivered on 17th January, 2002 in Criminal Appeal No. 106 of 2000].

REASONS FOR THE DECISION OF THE COURT

On 2nd January, 2004, we heard this appeal and dismissed it for lack of merit. We intimated that we would give our reasons for the dismissal on a date to be notified to the parties. We do so now.

The facts leading to the conviction and sentence of the appellant may be summarised as follows. On 14.04.1997, at Nambogo village in Kamuli District, the parents of the deceased, one Isanga left him at home and went to attend to their garden. On their return, they did not find the boy at home. A search for him was mounted.

Subsequently, the body of the boy was found buried in a shallow grave in a bush. The appellant became the prime suspect in the murder of the child because at the time of the child disappearance, his wife saw him within the vicinity of the scene of murder, apparently having escaped from prison where he was serving a sentence of imprisonment for theft.

The appellant was later arrested on the strength of his wife's information and on being charged, he confessed to the murder of the child. At his trial he retracted his confession and pleaded an *alibi* to the effect that he was in prison at the time the murder was committed. His defence was rejected and he was convicted for murder contrary to Sections 183 and 184 of the Penal Code Act and sentenced to death. His appeal to the Court of Appeal was dismissed. Hence this appeal.

His Memorandum of Appeal to this court contained three grounds of appeal framed as follows:

1. *That the learned Justices of Appeal erred in law and fact in upholding the findings of the learned trial judge that the appellant's charge and caution statement was voluntary.*
2. *That the learned Justices of Appeal erred in law and fact when they failed to evaluate the evidence as a whole and as a result came to a wrong decision.*
3. *That the learned Justices of Appeal erred in fact and law in upholding the finding that the circumstantial evidence of PW4 had destroyed the appellant's defence of alibi.*

Mr. Edward Ddamulira Muguluma, learned counsel for the appellant argued ground 1 separately and grounds 2 & 3 together.

On ground 1, counsel for the appellant contended that the trial judge erred in law and fact in finding that the appellant's confession had been obtained voluntarily and that in confirming that finding, the learned Justices of Appeal were equally in error. Counsel contended that the appellant had been tortured by the police, having been held and detained in custody from the 17th to the 22nd, April, 1997. Under those circumstances, the two courts below erred in holding that the confession was voluntary.

Mr. Muguluma further argued that the circumstances under which the appellant came to be charged with murder were not fully explained. The evidence on record shows that he had only been arrested for escaping from prison. Counsel contended that no eye witness testified and no police officer explained how the appellant came to be implicated in the murder of the deceased.

On grounds 2 and 3, Mr. Muguluma contended that the two courts below failed to evaluate and reevaluate the evidence properly. Had they done so, counsel argued, they would have found that the charge and caution statement he is alleged to have made was wrongly recorded and wrongly admitted in evidence. Mr. Muguluma submitted that no one explained why the appellant had been arrested and taken to Kamuli Police Station instead of being returned to prison from where he had escaped. According to appellant's counsel's opinion, both the trial judge and the Court of Appeal heavily relied on the prosecution's evidence. The appellant's own evidence and his defence of *alibi* were ignored by the learned trial judge and the learned Justices of Appeal.

For the respondent, Mr. Ssemalemba, Principal State Attorney, supported both the conviction and sentence. On ground 1, learned counsel for the respondent contended, and rightly, in our opinion, that after the appellant had retracted his confession, the trial court held a trial-within-a-trial and found that the confession was indeed voluntary. On the 2 and 3 grounds, it was the contention of counsel for the State that all the material pieces of evidence surrounding the murder and how the appellant was implicated in it had been fully explained and properly assessed by both the learned trial judge and the Justices of the Court of Appeal.

We agreed with learned Principal State Attorney for the respondent that all the three grounds of appeal lacked merit.

There was no doubt in our minds that the confession was voluntary. We agreed with the findings of the learned Justices of Appeal when in their judgment they held,

"According to the evidence of D.I.P. Meshak Mulobole (PW6), there is no doubt that the appellant was subjected to some beating after his arrest and before he gave his confessional statement We are, however, of the view that the beating was not connected with the confession. According to the evidence of Moses Waibale (PW 5) of the Local Defence Unit (LDU), who arrested the appellant, it was not known that the appellant was a suspect in a murder case at the time of his arrest. He was only being arrested for having escaped from prison. This case must be distinguished from Mateo Ochieng v. Uganda. (S.C), Crim. Appeal No. 25/2000 (unreported), in that the appellant made a statement in the presence of a military Captain who had a pistol . which is not the case here, in our view, the judges correctly held that the statement was voluntary, he also properly considered the law concerning a repudiated confession and rightly applied it to the facts of this case."

On grounds 2 and 3, it was dear to us that apart from the appellant's confession, the case against him depended on circumstantial evidence. This consisted partly of the evidence of his wife that on the day of the murder, and while she was taking her goats to the bush to graze, she saw the appellant seated in the bush near where the victim's body was later found buried in a shallow grave. She further testified that on seeing her, the appellant ran away. In our view, the behaviour of the appellant at the time cannot be that of an innocent escapee from prison. The wife's evidence supports the confession of the appellant which was further corroborated by the evidence of Moses Waibale (PW 5). PW 5's evidence was that the appellant who had escaped from prison was in hiding and a search found him hiding in a house within the vicinity of the murder scene even though all that PW 5 knew at the time was that the appellant was only wanted because he had escaped from prison. In our view, the appellant's

confession together with the evidence adduced for the prosecution amply justified the conviction of the appellant. It was for these reasons that we dismissed his appeal.

Dated at Mengo this 18th day of May 2004.

B.J. ODOKI
CHIEF JUSTICE

A.H.O. ODER
JUSTICE OF THE SUPREME COURT

A.N. KAROKORA
JUSTICE OF THE SUPREME COURT

J.N. MULENGA
JUSTICE OF THE SUPREME COURT

G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT