

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
CRIMINAL SESSIONS CASE No. 0659 OF 2019

UGANDAPROSECUTOR

5

VERSUS

SSEBANDEKE YAHAYA.....ACCUSED

Before Hon. Justice TADEO ASIIMWE

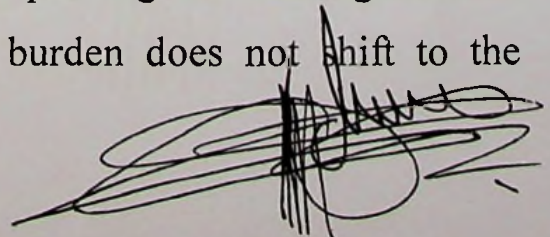
JUDGMENT

10 The accused was indicted with two counts of *Aggravated Robbery* contrary to section 285 and 286(2).

It is alleged that accused person and others still at large on the 21st day of December 2018 at Mirimu Zone Ndejje Parish Makindye Ssabagabo, Wakiso District robbed 2 mobile phones belonging to Baguma Swabur
15 and Cash of shs 400,000/ and also in count two robbed Sakina Abudalla 1 phone and 50,000/ cash.

The Accused pleaded not guilty and the matter proceeded for trial, By pleading not guilty, it is a position of the law that everything is in issue and therefore prosecution has to prove the whole of their case including
20 the identity of the accused, the nature of the act and existence of any necessary knowledge or intent.

Therefore, prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the



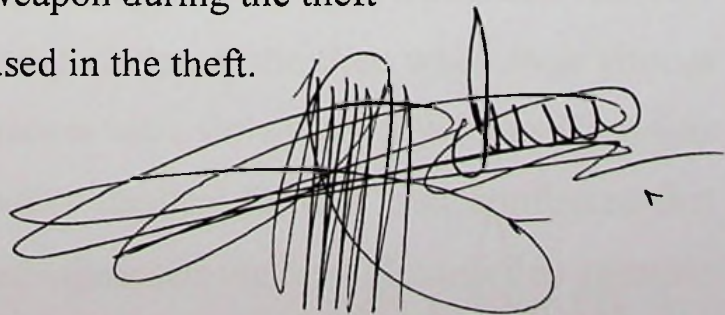
accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (see *Ssekitoleko v. Uganda* [1967] EA 531). The accused does not have any obligation to prove his innocence. Similarly, by his plea of not guilty, the accused puts in 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 a conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller v. Minister of Pensions* [1947] 2 ALL ER 372).

I shall now proceed to deal with ingredients of each offence

On a charge of aggravated robbery, the prosecution has the burden to prove the following elements beyond reasonable doubt: -

1. A theft of property belonging to the victim
2. Use of violence or threat of use of violence during the theft
3. Possession of a deadly weapon during the theft
4. Participation of the accused in the theft.

Whether there was of theft



Theft of the items in the indictment was not contested. According to Section 254 PCA, theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen.

PW1 testified to this court and stated that on the fateful night at two am 2
5 persons came armed with pangas and robbed 3 phones belonging to him
and his mother Sakina Abudalla. That they also stole money worth UGX
worth 900,000/= belonging to both of them. His evidence was
corroborated by his mother pw2, Sakina Abudalla who testified that that
as she was in the house with PW1 they were attacked by two people who
10 robbed them of phones and money. Pw3 the investigating officer
confirmed that he interrogated the victims who reported the theft and was
told that the accused and another robbed them of phones and money.
Although the stolen properties were never recovered, the evidence of the
prosecution witnesses is sufficient as to proof of theft in both counts.

15 I therefore find that prosecution led sufficient evidence to prove that there
was theft beyond reasonable doubt.

Whether there was Use or threat to use violence during the robbery

Courts have over time held that there has never been a peaceful robbery.
20 It was the evidence of pw1 and pw2 that at the time when their phones
and money were stolen, the attacker were violent and PW1 was injured as
he tried to stand up. PE1, a police medical form of pw1 confirmed that
indeed he sustained he sustained injuries on the head classified as grievous

harm. I therefore find that there was use of violence during the robbery in both counts.

Whether there was Use of a deadly weapon

It is provided under Section 286(3) (a) (i) of the Act that,

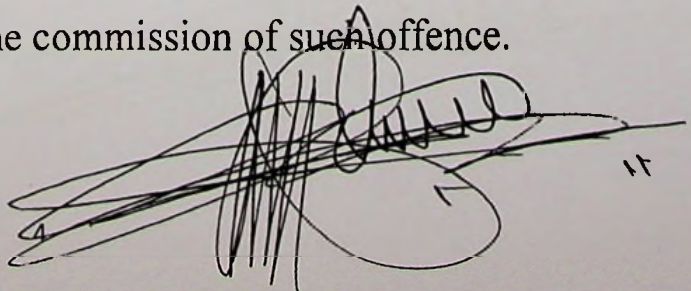
5 **“Deadly weapon” includes any instrument made or adopted to
.....stabbing.....or any imitation of such instrument which when
used for offensive purposes is capable of causing death or grievous
harm or is capable of inducing fear in a person, that it is likely to
cause death or grievous harm...”**

10 In this case, although no weapon was exhibited, PEX1 confirmed that the complainant was assaulted on the head during the robbery with either a panga or knife. Pw1, and Pw2 also confirmed that indeed Pw1 was injured during the said robbery and that the injury was a result of a panga cut by the assailants.

15 The instrument was described to be a sharp object as a Panga or a knife. In my view such object is a deadly weapon. This element was equally proved beyond reasonable doubt

Proof of participation of the accused persons

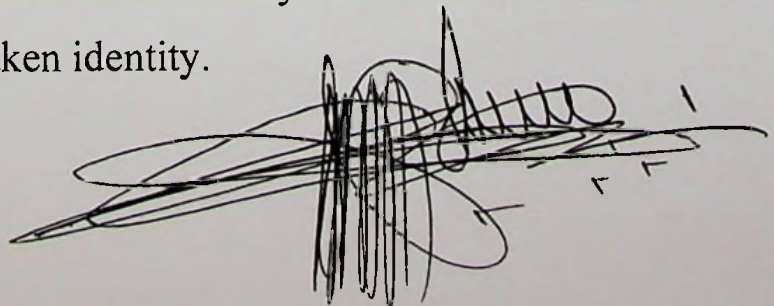
20 For court to convict an accused of any offence, there should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of such offence.



In this case, there was direct evidence from both victims PW1 and PW2 on both counts who testified that they identified the accused as one of the assailants that attacked them and robbed phones and money from them.

Being at night one would question the quality of I identification as the
5 learned state attorney tried to clarify with the principles in **Abdallah Naburere vs Uganda CA CS NO 8 of 1978.**

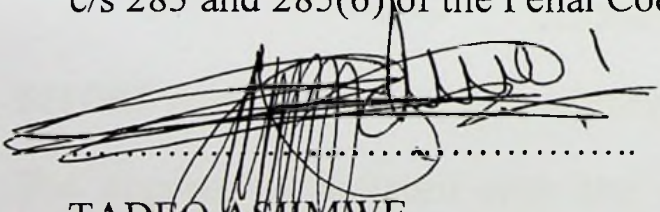
Although the principles laid in **Nabdalla Naburere** (supra) are applicable in only cases of a single identifying witness which is not the case in this matter, the witnesses in this case, PW1 and Pw2 were very clear that they
10 knew the accused before the incident as a village mate who was commonly known as mzee. That they managed to identify him but the light from the assailant's torch and light from the outside veranda. Pw2 stated that she knew the accused before the incident and saw the accused leading pw1 to her bedroom and that when they entered her bedroom she
15 directed them where the money was. PW1 also clarified that he identified the accused with help of the touches they carried and that he refused to cover his head and the accused cut him on the head and led him to the bedroom of PW2. That the accused was known to him as a village mate known as mzee and that he was close to him with a torch light on. I am
20 therefore convinced that the witnesses correctly identified the assailants and there is no danger of mistaken identity.



On the other hand, the accused raised an alibi in his defense and stated that on the fateful day he was at his home with his father and mother and never left home. That the complainants are not known to him and that he did not participate in the commission of the crime. His defence was simply
5 a total denial and prosecution placed him at the scene of crime as an active participant on the commission of the offences of robbery on both counts.

This element is proved beyond reasonable doubt.

In the final result, in agreement with the assessor's opinion, I find that the prosecution has proved all the ingredients of the offence of Aggravated
10 Robbery as against the accused on both counts. He is therefore found guilty and consequently convicted of the offence of Aggravated robbery c/s 285 and 285(6) of the Penal Code Act on both counts.


15 TADEO ASIMWE

JUDGE

7/06/2022