

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN KAMPALA
HCT-00-CR-SC-0044-2020

UGANDA **PROSECUTOR**

Versus

1. MUGERA THADDEO
2. ARUHO ALLAN **ACCUSED**

BEFORE: THE MR. JUSTICE MICHAEL ELUBU

JUDGEMENT

The accused persons **A1 - Mugeru Tadeo** and **A2 - Aruhu Allan** were indicted with the offence of Aggravated Robbery contrary to sections 285 and 286 (2) of the **Penal Code Act**.

The particulars of offence are that the accused persons with others at large, on the 10th day of January 2019, at Lungujja, Rubaga Division in Kampala district robbed one Musinguzi Julius alias Mbubu of a motor cycle, and at the time of the robbery were in possession of a deadly weapon to wit a hammer.

At their arraignment, the accused persons pleaded 'Not Guilty' thereby bringing all the elements of the offence in issue.

The brief facts for the prosecution are that one Musinguzi Julius PW 1 was employed to ride a boda boda Registration Number UEH 663N a Bajaj Red in

Colour. He operated from a stage on Rubaga Road. At about 7.30 pm on the 10th day of January 2019 he was hired by people who wanted to go to Kosovo in Lungujja. When he got to a cross road on Makamba road, the passengers told him to stop as they had gotten to their destination. Just then people emerged from the surrounding and got hold of PW 1. That a man he recognised as A1 - Mugeru Tadeo started hitting him with a hammer on the head. Then A2 was one of those who held PW1 tightly to stop him struggling. There were several others that PW 1 did not recognise. That he was hit several times on head. He had on a helmet and several whacks landed on the helmet but they hit his mouth rendering him unconscious. PW 1 woke up to find himself in Mulago hospital.

That Musinguzi immediately informed PW 2 Manderu Philip that he had recognised his attackers as A 1 Mugeru Tadeo and A2 Aruhu Allan. The two were arrested and charged.

PW 1 was medically examined. At time he had already been stitched in Mulago hospital. The medical examination found that he had suffered grievous harm.

In their defence, both A1 and A2 elected to keep quiet.

It is trite law that in criminal cases such as this the burden of proof rests with the prosecution which must prove all elements of the offence to a standard beyond reasonable doubt (see **Okethi Okale Vs Republic [1965] 1 E.A. 555 at 559**).

Ms Amy Grace, State Attorney, appeared for the Prosecution while all three accused persons were represented, on State Brief, by Ms Susan Sylvia Wakabala.

The offence of aggravated robbery is provided for in Section 285 and 286 (2) of **The Penal Code Act**.

The essential elements of the offence of Aggravated robbery are:

1. theft of property;
2. use of; or threat to use violence;

3. use of a deadly weapon
4. the participation of the accused.

1. Theft of property;

The first element is theft which is complete when something is taken from another, without a claim of right, and with the intention of permanently depriving the owner of the thing taken (see S.254 of **the Penal Code Act**).

It was the evidence of the victim, Musinguzi Julius PW 1, that he used to ride a motorcycle Bajaj red in colour which he used as a boda boda. He lost it when it was taken from him by assailants on the day he was attacked at Lungujja and that he has never set eyes on it since. There is no evidence to challenge this assertion by the victim. In the circumstances the element of theft has been proved beyond reasonable doubt in these circumstances.

2. The use of violence with a deadly weapon

The second element of this offence is whether the theft was committed with violence and the use of a deadly weapon. I will examine these jointly.

In his testimony, PW 1 said he was held by his assailants. One started by strangling him; a second one held him; the other wielded a hammer which he used to hit the victim whose helmet remained on the whole time. In spite of the helmet however, the victim received a direct hit on the left of his upper lip. It shattered his teeth and knocked him unconscious. The court saw the victim's scar which was long with several stitches. The medical examination report on Police Form 3, recorded that the upper lip and cheek had stitched wounds. He also had a sub congenital haemorrhage on his right eye and a bruise on the left of the eyebrow. The victim did a CT scan which showed a fracture of the left maxilla. These

injuries, particularly the fracture of the left maxilla, the upper jaw bone, are consistent with the victim's description that the weapon used was a hammer. It also shows that the hammer was applied with such heavy or extreme force that it fractured the jaw bone. PW 1 remained on treatment for two and a half months which is an indication of how serious the injuries were. The medical officer who examined Musinguzi described the injury as grievous harm, which is a life endangering harm or an injury that causes permanent disfigurement.

In subsection (2) of Section 286 of **the Penal Code Act**, a deadly weapon includes any instrument made or adapted for shooting, and any instrument which, when used for offensive purposes, is likely to cause death.

On the other hand, according to the 8th Edition of **Black's Law Dictionary**, violence is the use of physical force unlawfully exercised with intent to harm.

The hammer clearly falls within the above description of a deadly weapon. It is devastatingly lethal if used offensively.

Additionally, the Supreme court has also held that a hammer is a deadly weapon within the meaning of S.286 (2) of the Penal Code Act. (see **Situma V Ug [2000] 2 E.A. 531**).

In the circumstances, I find that the prosecution has proved, to a standard beyond reasonable doubt, the element of the use of violence and a deadly weapon.

4. The participation of the accused.

The last element is participation when the court makes a determination whether it is the accused persons committed this crime. The onus remains on the prosecution to place both accused persons at the scene of crime.

It the evidence of PW 1 that at about 7.30 pm on the 10th of January 2019, he was at the stage on Rubaga road where worked as a boda boda. He got passengers

who wanted to go to Lungujja. After agreeing the fare, he set off with them. When they got to cross roads where the Makamba to Kikandwa road crosses the road to Lungujja, the passengers stopped him. The spot was isolated and there was no other traffic or people at the time. As the passengers alighted from the motorcycle, one of them started to strangle the victim. At that point several other people emerged and joined the passengers now turned assailants. PW 1 recognised A1 - Mugeru Tadeo who had a hammer and started hitting on the head with it. Although the victim was wearing a helmet he was still hit on the mouth and parts of the face. He also saw A2 who came and held him tight while A1 struck with the hammer.

In the circumstances this matter turns exclusively on identification allegedly made by PW 1.

It is the law that an identification, just like any other fact, may be proved by the testimony of a single witness. This rule however, does not lessen the need for testing, with the greatest care, the evidence of a single witness respecting identification. It is also the law that where identification is made in difficult conditions, such as at night, caution must be exercised and court should warn itself to examine such evidence closely to avoid a case of mistaken identity (see **Roria V R 1967 E.A. 583**). Indeed, such a mistaken witness may be very persuasive and sincerely believe the mistaken identification they have made to be correct. I therefore warn myself as I warned the assessors of this danger.

The court should therefore examine such evidence scrupulously. It is for this reason that courts have developed guidelines to test the quality of identification evidence by scrutinising the light conditions; the familiarity of the witness with the accused; the length of time observing the incident; and the distance from which such observation is made (see **Abdalla Nabulere and Ors V Ug Cr App 1/1978**).

In the instant case, PW 1 stated he knew A1 Mugeru well as a chapatti seller near his stage. That he had known him for a period of about two months prior to the incident. It was also his evidence that it was A1 who hit him with a hammer. By its very nature such an action means the assailant was standing very close to the PW1. It was after 7.30 pm at the time. He states however that the scene of crime was near buildings with security lights which properly illuminated the area. PW 3 – Detective Constable Ayebazibwe Caroline confirmed this to the court when she said that the buildings in the vicinity had electric light which shone to the road.

In the case A2, PW 1 stated he was well known to him as well. That he had in fact seen him earlier in the day talking to A1. That he worked as a boda boda rider who was a friend of A1 and came often came to see him. The same light conditions and proximity as with A1 applied.

This court has carefully considered the above evidence of identification. It was tested in cross examination but not discredited in any way.

In spite of the conditions, it would appear that the identification of A1 and A2 by PW 1 was a recognition of familiar faces and not the arduous task of identifying a stranger. There was nothing to impede or hamper a correct recognition to being made. That greatly diminishes the possibility of mistake.

I have also taken into consideration that PW 1 became unconscious at the scene. That he woke up to find himself in Mulago hospital having suffered serious injury. That he immediately told PW 3 - Manderu Philip that he had recognised his attackers as A1 and A2. This can be described as a former statement which tends to corroborate the position that he said he identified his attackers. Section 156 of **the Evidence Act** stipulates,

In order to corroborate the testimony of a witness, any former statement made by the witness relating to the same fact, at or about the time when the

fact took place, or before any authority legally competent to investigate the fact, may be proved.

In light of my conclusions here, and in agreement with the assessors, I find that A1 and A2 were positively identified and placed at the scene of crime thereby proving, to a standard beyond reasonable doubt, that they participated in the commission of this offence.

This court therefore finds and holds that **A1 - Mugeru Tadeo** and **A2 - Aruho Allan** are guilty of the offence of Aggravated Robbery contrary to Section 285 and 286 (2) of **the Penal Code** and hereby convicts them.

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MICHAEL ELUBU

JUDGE

15.11.2022