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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE**

**CRIMINAL SESSION CASE NO. 0026 OF 2019**

**KIS AA 08/2018**

**CRB373/2018**

10 **UGANDA=====PROSECUTION**

**VERSUS**

**MANIRAKIZA DENIS Alias GIANT=====ACCUSED**

**BEFORE: HON. JUSTICE SAMUEL EMOKOR**

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**JUDGMENT**

This case entails an Indictment for murder contrary to Section 188 and 189 of the Penal Code Act (PCA) against Manirakiza Denis Alias Giant. The facts giving rise to this Indictment are that on the night of the 18/04/2018 at Gasave Village, Rwaramba parish, Nyakinama Sub County in Kisoro district with malice aforethought Manirakiza Denis Alias Giant unlawfully caused the death of Nsabagasani Emmanuel.

The accused pleaded not guilty.

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5 **Representation:**

Ms. Nabagala Grace Ntege (Chief State Attorney) appeared for the Prosecution while Mr. Felix Bakanyebonera appeared for the accused on state brief. The assessors were Ms Kembabazi Christine and Ms Muhawenimana Sylvia.

10 During the preliminary hearing sanctioned under Section 66 of the Trial on Indictment Act (TIA) medical evidence in PF48 A, PF48 B, PF24, 1 sketch plan and 3 photographs were admitted as uncontested.

PF48 A is the request for post-mortem examination of a one Nsabagasani Emmanuel originated by D/ASP Mubangizi Innocent to the medical  
15 officer Kisoro Hospital and admitted as Exhibit P1 while PF48 B is the post-mortem report in respect of the deceased conducted at Kisoro Hospital Mortuary. The body was identified by the deceased's brother Stephen to the examining doctor Twiine JohnBosco whose findings revealed that the deceased had multiple abrasions over the limbs, legs  
20 and arms. A deep cut on the left side of the arm and that abrasions were consistent with a rope being tied on to the limbs and his conclusion on the cause of death was strangulation with a cloth or hands over the mouth of the deceased and nose and that he died as a result hypoxia. The PF48 B was received as Exhibit P2.

25 PF24 was in respect of Examination of the Accused that was carried out on the 20/042018 that he had no recent injuries and his mental state was normal. The same was received as Exhibit P3. The sketch plan was

5 received as Exhibit P4 while the photographs were collectively admitted  
as Exhibit P5.

### **The burden and standard of proof:**

The accused pleaded not guilty and this being a criminal case the  
prosecution has the burden of proving the case against the accused  
10 beyond reasonable doubt. The burden does not shift to the accused  
person and the accused can only be convicted on the strength of the  
prosecution case and not on the weakness of the defence case. (*See also*  
*Ssekitoleko vs. Uganda (1961) EA531*)

The accused doesn't have any obligation to prove his innocence and the  
15 onus is on the prosecution to prove each of the ingredients beyond  
reasonable doubt before it can secure a conviction. Proof beyond  
reasonable doubt though doesn't mean proof beyond a shadow of doubt.  
The standard is satisfied once all evidence suggesting the innocence of  
the accused, at best creates a mere fanciful possibility but not any  
20 probability that the accused is innocent.

*(See Miller vs. Minister of Pensions (1947) 2 ALLER 372*

### **Ingredients of the offence.**

The prosecution must prove each of the following essential ingredients  
beyond reasonable doubt for the accused to be convicted of murder.

- 25 1. Death of a human being.
2. The death was caused by some unlawful act.

- 5 3. the unlawful act was actuated by malice aforethought: and lastly
4. That it was the accused who caused the unlawful death.

a) **Death of a human being**

Death maybe proved by production of a post-mortem report or evidence  
10 of witnesses who state that they knew the deceased and attended the  
burial or saw the dead body.

In the instant case Scovia Nyiramuzero (PW<sup>2</sup>) the wife of the deceased  
Nsabagasani Emmanuel testified that in the morning of 19/04/2018 she  
received information that her husband had been killed at the home of the  
15 accused and that she moved to the scene where she found her husband's  
body and observed that it had injuries on the face, arms and legs. She  
testified that the body was taken to Kisoro Hospital before it was buried.

Her evidence is corroborated by that of Bosco Nkinze Pw<sup>2</sup>, Ndaberese  
Emmanuel (PW<sup>3</sup>) and Maniraguha Philip (PW<sup>4</sup>) who all testified to  
20 viewing the body of the deceased. This court is also in receipt of a post-  
mortem report in Exhibit P<sup>2</sup> that confirms the same. Indeed the accused  
in his defence does not dispute the death of Nsabagasani Emmanuel.

I find that the prosecution has proved beyond reasonable doubt the death  
of Nsabagasani Emmanuel.

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5        **b) That the death was caused by some unlawful act.**

The law presumes that any homicide killing of a human being by another is presumed to have been caused unlawfully unless it was accidental or it was authorised by law.

*(See R vs. Gusambizi s/o Wesonga (1948) EACA 65.)*

10        It is the evidence of PW1 that the body of her deceased husband had injuries on the face, arms and legs. The post-mortem report in Exhibit P2 details the findings of the body having multiple abrasions over the limbs, legs and arms and a deep cut on the left side of the arm with the  
15        cause of death being strangulation with a cloth or hands over the mouth and nose resulting into death by hypoxia.

It is my finding that the prosecution has proved beyond reasonable doubt that the death of Nsabagasani Emmanuel was unlawful.

**c) Was the death actuated by malice aforethought?**

20        Under Section 191 of the Penal Code Act, malice aforethought maybe proved by direct evidence or maybe inferred from the evidence indicating knowledge that the conduct of an accused would probably cause the death.

The courts, however, are cognisant of the difficulty of proving an accused  
25        person's mental disposition but are agreeable to an inference of such

5 disposition from the circumstances surrounding the homicide under investigation.

*(See R vs. Tubere (1945) 12 AECA 63).*

The manner in which the deceased in this case Nsabagasani Emmanuel met his death as per Exhibit P2 which is strangulation by a cloth or hand  
10 over the mouth and nose leading to hypoxia leaves no doubt that the intension of his assailant was to cause his death.

It is therefore my finding that the prosecution has proved malice aforethought beyond reasonable doubt.

**d) Participation of the accused.**

15 It is the evidence of PW2 Nkinze Bosco that in 2018 he was the LC 1 Chairperson of Gasave village and that on 18/04/2019 between 11:00 pm to Mid-night a one Babirye and her daughter Angela Uwimana, mother and sister to the accused respectively came to his home and informed him that the accused had killed Nsabagasani Emmanuel from  
20 their home and that she had also reported the incident to a police officer a one Philip (PW4) a neighbour and that when he called Philip PW4, he told him that he would go there. It is the evidence of PW2 that he visited the scene the next morning at 6:30 am and that they met the accused who told him that he was going to Bunagana but that they went back  
25 with him to his compound where they found the body of the deceased by the doorway of the accused's house and that when he asked the accused if he was still alive, the accused said that he didn't know and that when

5 he called out to the deceased there was no response prompting him to report the incidence to the police. It is also the evidence of PW2 that there is a path by the home of the accused about 10 metres away from Bukara village leading to Gako.

This evidence is corroborated by that of Maniraguha Philip (PW4) a  
10 police Constable who in 2018 was attached to Kisoro Police station. It is the evidence of PW4 that on 18/04/2018 at around 9:00 pm while at home a one Babirye the mother of the accused called out to him from his compound and informed him that the accused was beating the deceased and that he should go there and separate them.

15 PW4 states that he moved to the home of the accused where he found the deceased seated in the compound and that when he asked him what the problem was, the deceased told him that he had been beaten by the accused but that when the accused came out of his house he denied assaulting the deceased.

20 According to PW4 when he told the deceased to get up and go back home the deceased refused saying that he would not leave the place where he had been assaulted from and that he advised the accused to go back into his house and sleep because the deceased would leave at any time that he chooses to.

25 PW4 testified that they left the home of the deceased at around 9:30 pm and admits that he didn't examine the deceased if he had indeed been assaulted and that it was the next morning at around 6:30 am that

5 Babirye the mother of the accused went to his home and informed him that the deceased had died and that when he went to the scene he found the deceased lying where he had left him dead and that when the accused came out of his house and he questioned the accused, the accused told him that he didn't know what had happened.

10 The accused in his unsworn defence denied the indictment of murder testifying that on the 18/04/2019 in the morning at around 7:00 am he was washing his face when his brother Ntiringanya Nsabiyunva called him to go and see and that when he went there he found a person laying on the road facing his mother's house and that he then raised an alarm  
15 and people gathered with the police arriving at 8:30 am and that he was arrested to go and tell the police what had happened because he was the one who had raised an alarm and that he has been in detention since then.

The prosecution evidence in this case is circumstantial since none of the prosecution witnesses was a direct witness to the murder of the deceased.

20 The Supreme Court in **Mabira Siragi Vs Ugand SCCA No 07/2004** held that:

*“... in a case depending exclusively on circumstantial evidence the judge must find before deciding upon a conviction that the exculpatory facts where incompatible with the innocence of the accused and incapable upon any other  
25 reasonable hypothesis than that of guilt”*

The evidence of PW<sub>2</sub> and PW<sub>4</sub> that the mother of the accused reported to then on the night of 18/04/2018 that the accused had killed the



5   deceased on the part of PW2 between 11:00 pm to mid-night and on the  
part of PW4 that the first report was at around 9:00 pm and it was that  
the accused assaulting the deceased before later in the morning the death  
being reported to him by the same Babirye was consistent.

The contradictions that would appear in the evidence of PW2 and PW4  
10   can be explained by the time intervals of the reporting by Babirye. It is  
clear Babirye first reported the assault to PW4 at 9:00 pm before she  
went to the home of PW2 between 11:00 pm to mid-night. At 11:00 pm  
to Mid-night. She reported to PW2 that the accused her son had killed  
the deceased Nsabagasani Emmanuel.

15   The conduct of PW2 obviously upon receipt of the report as the LC1  
Chairperson was very wanting and left a lot to be desired. This court is  
nonetheless persuaded that the report to PW2 between 11:00 pm to mid-  
night was after the death of Nsabagasani Emmanuel.

The evidence of PW4 that he didn't bother to examine the deceased when  
20   he got to the scene after the accused's mother had reported to him that  
the accused was assaulting the deceased does not weaken the prosecution  
case but corroborates the evidence given to him by Babirye because the  
deceased confirmed the same to him that he had been assaulted by the  
accused that night and that he was not leaving that place.

25   It is imperative to note that from the evidence given by the prosecution  
witnesses the deceased was crippled on both legs having sustained this  
disability in a car accident and as a result moved with the aid clutches.

5 This incapacity obviously disadvantaged the deceased when it came to a physical confrontation it must be observed.

The location of the body which was at the doorway of the accused's house in a compound that the accused shared with his mother Babirye points irresistibly to the fact that the accused had a hand in the death of  
10 Nsabagasani Emmanuel. The body was found by PW2 lying where the deceased was seated the night before and this was outside the house of the accused.

I don't accept the defence of the accused that he only woke up in the morning and that as he was washing his face, his brother called him to  
15 go and view the body. This defence is totally false. The body from the evidence of PW1, PW2, PW3, and PW4 was right at the doorway of the accused's house and there was no possibility of the accused missing to view this body as he moved out.

This court also viewed photographs of the body in Exhibit P5 lying next  
20 to a house that PW2 confirmed to this court to belong to the accused. This court is convinced that the accused is deliberately telling lies that he didn't immediately view the body upon getting out of his house and this can only lead to the inference that the accused obviously knew what had happened to the deceased on the night in issue.

25 The conduct of an accused person before or after the offence in question might sometimes give an insight into whether he or she participated in the crime. (*See Rex vs. Tubere son of Ochen (1945)*)

5 The evidence of PW2 that the accused informed them that he was going to Bunagana in the morning when the incident was reported with the body still lying outside his door until they prevailed upon him to wait for the police points irresistibly at his guilty conscience.

I do not accept the defence of alibi that the accused has attempted to put  
10 that he was inside his house the whole of the night of 18/04/2018. This evidence has been discredited by the prosecution evidence that has placed the accused at the scene of crime. I therefore reject the defence of alibi set up by the accused as a mere afterthought devoid of any credibility.

This Court has not found any co-existing circumstances that would  
15 weaken or destroy the inference of the accused's guilt in the commission of the offence of murder. The facts in this case are closely knitted and this court is persuaded that they are true

After considering the evidence adduced by the prosecution and defence together and in full agreement with the assessors It is my finding that  
20 the prosecution has successfully proved its case beyond reasonable doubt and I accordingly find the accused guilty of the offence of murder contrary to section 188 and 189 of the Penal Code Act and convict him of the said offence.

25 .....

**SAMUEL EMOKOR**  
**JUDGE**  
**02/05/2023**

