

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT SOROTI**

**HCT-09-CR-SC-0101-2013**

**UGANDA:.....PROSECUTOR**

**VERSUS**

**OKINE ANDREW CHARLES:.....ACCUSED**

**BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE**

**JUDGMENT**

**OKINE ANDREW CHARLES** stands indicted with one count of Manslaughter C/S 187 of the Penal Code Act. This amendment was ordered by Court after hearing prosecution evidence on charges of murder C/S 188 and 189 of the Penal Code Act. It was alleged that the accused murdered his wife Aanyu Angella on the 12<sup>th</sup> day of November, 2012 at Bisina village in Katakwi district.

At the trial it had been agreed upon that the deceased died an unlawful death with malice aforethought. It is only the participation of the accused that had been denied. Upon hearing the evidence from prosecution witnesses this Court concluded that it discloses a case of Manslaughter and ordered the prosecution to amend the charges indictment accordingly and put the accused to his defence.

It was the admitted prosecution evidence of a post mortem report that proved beyond reasonable doubt that the deceased died of the sudden rupture of the Liver and Spleen which lead to excessive internal bleeding (exhibit PE1).

The sudden rupture of the Liver and Spleen was traced to the assault the deceased received from the accused. PW1 Elungat Gregory told Court that the accused was annoyed with his wife (the deceased) for refusing to give him **Shs. 2,000/=** for drinking alcohol. The accused wanted to entertain PW1 as his special guest but did not have money. PW1 said the accused thought of selling his cock to raise the money for drinks but he (PW1) offered to buy the drinks. As they walked away to go to the drinking place the accused stopped a few meters away and returned to assault his wife. The couple fought and the accused wrestled his wife to the ground. He kicked

her in the lower parts of the abdomen as the witness and another OLIWA Anna Margret tried to stop the fight. When the accused kicked his wife she fell down and died instantly.

PW2 OLIWA Ann Margret was a daughter in-law of the fighting couple. She was seated with her mother-in-law when he asked for money to drink and she refused. She gave evidence similar to that of Elungat (PW1). She told Court that the accused walked away with PW1 and stopped a few meters away. He looked back and saw the deceased laughing with her daughter in-law and returned to fight his wife. That her efforts with Elungat to stop the fight bore no fruit. The accused kicked the wife in the lower parts of the abdomen and she fell down and died on the spot.

My opinion and that of the two assessors is that the accused was properly identified by the witnesses. He was not a stranger to them. The witnesses were a close friend and a daughter in-law living together with the accused. There was nothing like mistaken identity. My opinion is that the deceased died of the sudden rupture of the Liver and Spleen arising from the kicks she got from the accused.

The accused made a plain statement denying the offence. He said he knew nothing about the allegations because he was suffering from epilepsy.

I reject that defence. He was properly placed at the scene of crime by the prosecution evidence. He was normal although he had tested some alcohol. Fortunately he did not raise the defence of intoxication. He knew very well what he wanted from the wife, **Shs. 2,000/=** for drinking with his friend Elungat. When he was not given that money he got annoyed. He even thought of selling his cock but it disappeared in the bush as it was being chased.

I want to believe that he felt humiliated when he was offered a drink by the very visitor he had wanted to entertain. He got more annoyed to see his wife and daughter in-law (PW2) laughing thinking that they were laughing at him because of his inability to buy drinks for his visitor. Instead of bearing it as a way of life to have no money, he took it for an insult and fought his wife.

From the flow of events where an angry husband kicks a wife and she suddenly falls dead, I would hesitate to rule that he did it with malice aforethought. There is no evidence of a planned murder or hitting of sensitive parts of the body with foreseeable consequences. This was spontaneous loss of temper. Failure to control one's self and causing death in the heat of passion fits squarely in the partial defence of provocation. This accused person killed his wife but without malice aforethought.

In the circumstances, I convict the accused of Manslaughter C/S 187 of the Penal Code Act.

**Judge**  
**11/04/2017**