THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA HOLDEN AT ARUA

CRIM. SESS. CASE 0098/2008

UGANDA ::::::::::::::::::::::::::::

PROSECUTOR

=VERSUS =

FIBO ALEX ::::::::::::::::::::::::::::

ACCUSED

JUDGMENT

(Before Justice J.W. Kwesiga)

FIBO ALEX, the accused person in this case is indicted for murder under sections 188 and 189 of the penal code Act. It is alleged that on 22nd January, 2008 at Okalia village, in Arua District the accused unlawfully and intentionary killed his wife called INZIKURU MARGARET.

On the 22nd day of January, 2008 the accused and the deceased spent most of the afternoon hours of that day at RIKI market where they had gone separately. Both the accused and the deceased spent time in the market drinking local waragi with other people in the market. At about 7.00 pm the accused and deceased met at home, quarreled and fought. The accused picked a knife and stabbed the deceased in the chest and she died due to severe hemorrhage and a punctured spleen.

PW.1 Dr. Mugaya Julius, examined the body identified to him as that of INZIKURU MARGARET. He found a stab wound between the 6th and 7th ribs and the cause of death as severe bleeding leading to hypovolomic shock and raptured spleen.

PW.2 Dr. Asea Sam examined the accused and found him mentally normal, he had bruises on the back, chest, ear, right knee and torn wounds on the mouth.

PW.3 OJOATRE GEOFREY, the brother of the accused stated that, he found FIBO at 9.00 pm squatting near the dead body of the deceased. FIBO was quiet and could not answer. The

accused person look confused. PW.4 responded to the call of PW.3, he found FIBO seated by the side of the dead body looking down. PW.4 asked FIBO what had happened, he did not answer but only started crying.

PW.6 WD/CPL Isimuru Jolly said she went to the scene of crime, observed evidence of a scuffle in the accused/deceased house. Everything was scattered. There were drops of blood on the door steps. She received and exhibited the knife that had been used to stab the deceased to death.

PW. 7 D/AIP ANYAMA took a charge and caution statement from the accused person. The charge and caution statement was admitted as P 3 & 4.

PW.7 Robert INZIKU got the knife from the verandas grass thatch, he handed it over to the police.

In his defence the accused stated that on the fateful evening he returned from the market at about 8.00 pm, he found the deceased drunk and asleep in bed. That she got up to go for a short call and in the process she fell down, over the knife, and started bleeding. That he picked the knife and put it in the roof to avoid the children getting in contact with the knife.

In the charge and caution statement he said he questioned the deceased as to why she came home late, the deceased "got annoyed and boxed my mouth where I sustained injury and bleeding. By then a knife was just near by me, due to that bleeding of mine, I stabbed the deceased on the chest, she fell down unconscious. When I realized that I have stabbed her on the wrong side, I started giving her first aid but she died".

On the basis of the above summarized evidence the prosecution seeks a conviction of murder under SS.188 and 189 of the penal code.

The burden of proof is upon the prosecution and the standard of proof is beyond reasonable doubt. The prosecution must adduce sufficient evidence to prove each ingredient of the offence beyond reasonable doubt. The essential ingredients of the offence are as follows;-

a) Proof that Inzikuru Margaret is dead.
b) That Inzikuru Margaret's death was unlawfully caused.
c) That the accused person caused or participated in causing death of Inzikuru Margaret.
d) That the accused person had malice aforethought when he caused the deceased's death.

The above elements were settled in the case of **UGANDA Vs BOSCO OKELLO (1992-93) HCB 68.**

In proof of the first element of the offence the prosecution produced evidence of PW 1 Dr. Mugaye Julius who examined the body of the deceased and made a report admitted as 'P.I'. He medically confirmed that INZIKURU Margaret died due to severe bleeding from the stab wound on the trunk between the 6^{TH} and 7^{th} right ribs.

PW.3, PW.4, PW.6 confirmed that they came to the scene and saw the body of Inzikuru Margaret. She was already dead.

The accused person, in his statement in defence and the charge and caution statement confirmed that the said deceased died on 22^{nd} January, 2008. I am satisfied that the fact of death of Inzikuru Margaret has been proved beyond reasonable doubt. Unless there is a proof of accident or if justification the homicide of Margaret Inzikuru is presumed unlawful.

The accused person in his charge and caution statement admits that he stabbed the deceased with a knife which he picked from the house while the fight went on between the accused and the deceased. There was no suggestion that he acted in self-defence. I find his allegation that she fell on the knife while she was drunk unacceptable and an afterthought. The medical evidence of PW 2 Dr. Asea Sam corroborates the contents of the charge and caution statement. There was a fight in which the accused person get mouth injuries which bled and caused him to stab the deceased once in the ribs.

PW 3 and PW 4 testified the state they found the accused person. He appeared shocked and unable to answer. He only broke down and cried. The inference is that the accused person was overwhelmed by the outcome of his action, the stabbing of his wife to death which was unlawful.

The participation of the accused person is a foregone conclusion. There is overwhelming evidence of his participation. His admission in charge and caution statement squarely puts him at the scene of the crime and gives detailed evidence of how he stabbed her.

P.W.3 found him squatting next to the dead body. PW 4 also found him seated next to the dead body.

I agree with the Assessors that Accused's conduct of crying and giving no explanation when asked what had happened is not consistent with a conduct of an innocent person who had seen

his wife fall on a knife accidentally. He had opportunity to inform his brother PW 3 or the LC 1 official PW 4 who were the first people to come to the scene. He would have also told the police if it was accidental death. I believe the version in the charge and caution statement for the reasons I have already stated above and I find the accused person participated in causing the death of his wife.

On the issue of malice aforethought the defence contends that it was not proved beyond reasonable doubt. That there was a fight between the accused and the deceased. That the charge and caution statement shows the deceased hit the accused person and the accused fought back with a knife that fatally wounded the deceased. That he acted under provocation and therefore there was no malice aforethought.

Provocation was defined in the case of **DUFFY 919490 1 ALLER 932** to be some act or acts which would cause in any reasonable person, and actually caused in the accused, a sudden and temporary loss of self control rendering the accused so subject to passion as to make him to make him or her for the moment not master of his mind. The act or words of provocation had to be directed at the accused. The test in the defence of provocation is the evidence of sudden and temporary loss of self-control to negative premeditated killing.

Whether the accused has pleaded provocation or not if there is evidence which might lead to a finding of provocation, it is a duty of the court to consider it. Things done to the accused person or both by the deceased or another person and cause the accused person to lose self-control would amount to provocation.

In the instant case, as can be found in the charge and caution statement, the deceased boxed the accused person on the mouth, he got injured and started bleeding, he picked a knife that was nearby and stabbed her. He immediately recovered from loss of self-control, tried to give her first aid but it was too late she died.

PW 3 and PW 4 found the accused perplexed seated next to the body of the deceased. The accused inflicted the deceased with only one wound. The accused was found by PW 2 to have wounds or injuries which tally with the charge and caution statement that the deceased boxed him on the mouth.

Given the above evidence I find that the accused person acted under provocation when he hit the deceased and fatally wounded her. He had no malice aforethought and he is not guilty of murder. I do hereby find him guilty of manslaughter and I convict him.

Signed

J.W. KWESIGA

JUDGE

4/3/2009

Judgment read in the presence of:

Mr. Anguzu Lino for state

Mr. Manzi holding brief for Mr. Oyarmoi for accused.

The accused person in court.

Signed

J.W. KWESIGA

JUDGE

4/3/2009

State:

He has been on remand for 1 year, 1 month – No previous record. Manslaughter is a serious offence maximum sentence is Life Imprisonment. This is aggravated; the deceased was wife of the accused. He had a duty to protect her. All children will miss love of mother forever. We pray for deterrent sentence.

Defence:

Give short sentence. The convict has been on remand for 1 year. He has orphans to look after. He regretted the incident. He attempt first aid unfortunately she passed away. We pray for leniency. He is 45 years, a former policeman. I left police in 2005 after 6 years of service.

Court:

The convict is a retired policeman with six years in police service who ought to have been conscious of seriousness of his action and should have had better self-control as a former member of a disciplined force. The wife-killing homicide through domestic violence is rampant in this country and this court takes very serious view of this mischief which must be punished. After considering the above and the fact that the accused person has been on remand for about 1

year, I have discounted this would have been sentence of life imprisonment, the accused person is hereby sentenced to (10) years imprisonment.

J.W. KWESIGA

JUDGE

4/3/2009