**Otule and another v Uganda**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 2 March 2005

**Case Number:** 41/03

**Before:** Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJSC

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*[1] Appellate procedure – Duty of a first appellate court – Re-evaluation of evidence on record –*

*Whether the court had adequately re-evaluated the evidence.*

*[2] Criminal law – Murder – Deceased attacked and cut with* pangas *in broad daylight – Whether the*

*appellants were responsible for the attack and injuries.*

*[3] Evidence – Identification – Alibi – Corroboration – Single eyewitness – Whether circumstances*

*suitable for identification – Whether the evidence of the deceased’s wife was corroborated.*

**Editor’s Summary**

The appellants herein were convicted on a charge of murder and sentenced to death. Evidence was adduced at their trial to the effect that on the night of 17 to 18 March 1999, KZ and his wife, JK, were woken up by one Kifumbo, the LCI Chairman of their village. KZ opened the door and was asked by the Chairman to accompany him to the aid of a villager, who was in need of help. He left with the Chairman but did not return home. The following morning, JK went looking for her husband at Kifumbo’s house. She eventually found him at the cells at Buseta County Headquarters where he was being held on suspicion of having assaulted one Gondoko, a brother to the two appellants. Many people were outside the cells, some armed with *panga*s or sticks. JK testified that after some time KZ was taken out of the cell to be transferred to Tirinyi Police Station but soon after leaving under escort, he was returned to Buseta. Shortly afterwards, a brother of the two appellants arrived armed with a *panga* and metal rod with which he hit KZ. She then saw the appellants set upon the deceased and cut him with *panga*s as he attempted to get up, on the ground that he had assaulted their brother. During the attack, JK got scared and retreated to hide in a disused butchery from where she continued to watch the attack. The attack took place in broad daylight in the presence of eyewitnesses. However, because the appellants were armed, the witnesses failed to intervene to save the deceased. Once the attack was over, the crowd left the scene, as did the appellants. KZ was later taken to hospital where he died. JK then reported the appellants to the police as the people who cut and killed the deceased. In their defence, both appellants gave sworn evidence denying the offence. The first appellant claimed that at the time of the incident he was attending to his brother who had been attacked by robbers the previous night. The second appellant on the other hand, raised an alibi to the effect that he had been hospitalised between 12 March and 29 March and thus was nowhere near the scene of the crime at the material time. The trial judge found the deceased’s wife to be a credible witness and believed the prosecution evidence over that of the defence. She accordingly convicted the appellants. Their appeal to the Court of Appeal was dismissed. On appeal to the Supreme Court, the first appellant claimed that the Court of Appeal erred in upholding the conviction based on the unreliable and uncorroborated evidence of a single prosecution witness and that it had erred in failing to subject the evidence to a thorough evaluation. The second appellant claimed that the Court of Appeal had erred in deciding that the contradictions and inconsistencies in the prosecution evidence were minor. Counsel for the respondent supported the convictions and argued that the trial judge had been alive to the issue of identification and that there had been no possibility of mistaken identification.

**Held** – The trial judge’s summing up to the assessors left a lot to be desired. She had erred in not directing the assessors about the need for corroboration of JK’s evidence nor had she cautioned herself about the need for such corroboration. The Court of Appeal had, however, properly evaluated the evidence and arrived at the correct conclusion on the facts. The first appellant’s evidence and explanation as to why he was at the scene was not plausible. Once JK’s evidence had been accepted, it was inevitable that the guilt of the two appellants was established beyond reasonable doubt. The trial court had erred in not properly evaluating the second appellant’s evidence of alibi regarding the period he was allegedly hospitalised. However, the Court of Appeal had held that the trial court had been correct in relying on the evidence of the deceased’s wife whom it found to be truthful. Moreover, the alleged inconsistencies did not affect her testimony nor did it affect the fact of the deceased’s murder on 18 March 1999. Though it was a pity that the prosecution chose to call the barest of evidence in support of its case, there was ample evidence to support the conviction of the appellants.

Appeal dismissed.

**No cases referred to in judgment**