**Situma v Uganda**

[2000] 2 EA 531 (SCU)

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

**Date of judgment:** 21 November 2000

**Case Number:** 9/00

**Before:** Oder, Tsekooko, Karokora, Mulenga and Mukasa-Kikonyogo

JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Criminal law – Deadly weapon – Hammer weighing about 2 kilograms used in robbery – Whether*

*hammer a deadly weapon under section 273(2) of the Penal Code.*

*[2] Criminal law – Robbery – Aggravated robbery – Complainant robbed of his car – Minor*

*contradiction in testimony of witnesses – Whether minor contradiction prejudicial to prosecution case –*

*Whether use of violence proved against Appellants.*

**Editor’s Summary**

The complainant was approached by two people at about 8:00 pm in September 1996 who wanted to hire

his taxi. Hiring charges were agreed on and the complainant drove the people to a hotel where two other

people joined them in the car. The complainant then drove towards the agreed destination. The

Appellants were among the four persons. Upon reaching the destination, the persons refused to alight

from the car. One of the passengers threw a rope around the complainant’s neck while the others hit him

with a hammer and a spanner. When the complainant tried to run away, he was hit again and he fell down

unconscious. The assailants then escaped with the car.

The complainant later regained consciousness and sought treatment. The vehicle was recovered the

following day in the First Appellant’s compound. All the Appellants were arrested at the home of the

First Appellant and charged with robbery. In their defence the Appellants stated that they had taken the

complainant’s vehicle pursuant to a sale agreement with the complainant. The High Court rejected the

Appellants’ story, accepted the prosecution’s case convicted and sentenced the Appellants to death.

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The Appellants appealed to the Court of Appeal and the appeal was dismissed. They then appealed to

the Supreme Court on the grounds that there were material contradictions in the testimonies of the

prosecution witnesses, and that the court haderred in finding that violence had been used and that deadly

weapons had been used on the complainant.

**Held** – Minor contradictions not deliberately made in order to mislead the court did not prejudice the

Appellant’s case; *Tajar v Uganda* EAC number 167 of 1969 (UR) followed. Concerning hearsay

evidence, the trial court had relied on some other evidence which was not hearsay and the portion of the

evidence which was hearsay was severable from that shed upon by the court.

There was sufficient evidence to show that violence had been used on the complainant. The conduct

of the Appellants, including removing the number plates from the complainant’s vehicle was not

consistent with that of ordinary buyers but of robbers.

The evidence showed that the Appellants had used a hammer weighing 2 kilograms to assault the

complainant on the head, which was capable of causing death; *Wasajja v Uganda* [1975] EA 181 and

Bir*umba and another v Uganda (SC)* criminal appeal number 32 of 1989 (UR) distinguished. The

weapon used by the Appellants, a hammer, was a deadly weapon within the meaning of section 273(2) of

the Penal Code.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Birumba and another v Uganda (SC)* criminal appeal number 32/1989 (UR) – **D**

*Tajar v Uganda* EAC number 167/1969 (UR) – **F**

*Wasajja v Uganda* [1975] EA 181 – **D**