**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.

Page 532 of [2000] 2 EA 531 (CAK)

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**

**Judgment**

**ODER, TSEKOOKO, KAROKORA, MULENGA, AND MUKASA–KIKONYOGO JJSC:** This is

a second appeal. The Appellants were convicted by the High Court sitting at Mbale of the offence of

aggravated robbery contrary to sections 272 and 273(2) of the Penal Code and were sentenced to death.

Subsequently, the Court of Appeal confirmed the conviction and the sentence, whereupon the

Appellants appealed to this Court. When the appeal came up, we heard counsel for Appellants, and

dismissed the appeal without hearing counsel for Respondent and reserved our reasons to be given later.

We now give the reasons.

The facts of the case are that on 6 September 1996 at about 8:00pm the complainant Nabeta Siraji

(PW1) was approached by two people who wanted to hire his taxi registration number 954 UBR to take

them to Nabumali. Hiring charges were agreed at Shs 7 000. After the two men entered the car, he drove

them to Palace Hotel in Mbale Town where he found Ali Wanyakala (A3) and another person. These two

joined them in the car. One of the two

Page 533 of [2000] 2 EA 531 (CAK)

men had a bag. Situma (A1) provided money for fuel. After fuelling the vehicle at Total Petrol Station,

the complainant drove them in accordance with the agreement to Nabumali Trading Centre. Instead of

the passengers getting out of the vehicle, they persuaded the driver to drive them further. After going for

some distance one of the occupants at the back threw a rope around the complainant’s neck while the

other passengers hit him with a hammer on the head. A struggle ensued. The complainant was able to get

rid of the rope and managed to get out of the car. He was hit with a hammer and a spanner used for

opening water pipes. When he tried to run away, he was hit again and fell down. After beating him and

leaving him for dead they made off with the vehicle.

He later regained consciousness and through difficulty got transport back to Mbale Town where he

was admitted at Mbale hospital for treatment.

On the following day the vehicle was recovered at Kawempe near Kampala in the compound of

Ramathan Situma (A1). All the three Appellants were arrested at the home of Ramathan Situma and later

they were transferred to Mbale where they were charged with the offence of robbery.

Their defence was that they had taken the vehicle with the complainant’s consent after he had agreed

to sell it to them at Shs 2 500 000. They said that they paid him Shs 500 000 and the balance of Shs 2

million was to be paid to him in Kampala. The Learned trial Judge rejected the Appellants’ story and

accepted the prosecution case, convicted them and sentenced them to death. Their appeal to the Court of

Appeal was dismissed on 24 November 1999 and hence this appeal.

The appeal to this Court was based on six grounds, namely:

1 T hat the Learned Justices of Appeal made an error of mixed law and fact when they held that the

inconsistencies in the testimonies of PW2 and PW4 were minor and had been rightly disregarded

by the trial Judge.

2 T he Learned Justices of Appeal made an error of mixed law and fact when they found that

violence was proved to have been used during the alleged theft.

3 T he Learned Justices of Appeal made an error of mixed law and fact when they upheld that deadly

weapons were used during the alleged theft, hence wrongly upholding the conviction of the

Appellants for capital robbery.

4 T he Learned Justices of Appeal erred in law when they found that the judgment of the lower court

was tainted/prejudiced by reliance of hearsay evidence and in so doing, wrongly upheld the said

judgment.

5 T he Learned Justices of Appeal made an error of mixed law and fact when they summarily rejected

the Appellants’ alternative prayer for conviction for simple robbery.

6 T he Learned Justices of Appeal made an error of mixed law and fact when they upheld the finding

of the trial Judge that the tests results tendered by the prosecution sufficiently corroborated the

allegation that the tools in question had been used to assault the complainant.

In arguing the appeal, Mr *Tusasirwe* who appeared for the Appellants argued grounds 1 and 4 together.

Ground 2 was argued separately whilst grounds 3, 5 and 6 were argued together.

Page 534 of [2000] 2 EA 531 (CAK)

The thrust of grounds 1 and 4 was that if the Court of Appeal had properly exercised its duty as first

appellate court and re-evaluated the evidence as required under Rule 29 of the Rules of the Court of

Appeal, 1996, the Justices of Appeal would have found that the inconsistencies in the evidence of Siraji

Nabeta (PW1) and deputy sergeant Muganga (PW4) were major. He contended that in view of those

inconsistencies and the hearsay evidence, it was wrong for the Court of Appeal to uphold the judgment of

the High Court.

On the issue of hearsay, the Court of Appeal held that it was true that the evidence relating to what

Lukiya Ssonko told PW2 and PW4 was hearsay. However, the Court of Appeal held rightly, in our view,

that since in reaching his decision the trial Judge relied on some other evidence which was not hearsay at

all, the portion of hearsay evidence was severable. In any case we do not accept the contention that

hearsay evidence occasioned any miscarriage of justice.

On the issue of contradictions in the evidence of Kiyingi Christopher (PW2) and deputy sergeant

Muganga (PW4) as to who recovered the exhibits from the house of Situma, the First Appellant, the

Court of Appeal addressed itself to the contradictions and found that these were minor and had not been

deliberately made in order to mislead the court. The Court of Appeal relied on the case of *Tajar v*

*Uganda* [1969] EACA number 167 of 1969 (UR) for the above proposition. We agree with the

conclusion of the Court of Appeal on the issue of contradictions. In any case, we do not see any

substance in the complaint concerning the contradictions since Situma (A1) admitted that the exhibits

were picked from his residence. In the result we found that grounds 1 and 4 must fail.

The issue of whether or not the Appellants used violence in taking the vehicle from the complainant

was clearly raised and considered by the trial court and the Court of Appeal. We agree with the findings

of both courts that if the complainant had sold the vehicle as claimed by the Appellants, they would not

have assaulted him, inflicting cut wounds on his head and abandoning him for dead at night in the bush

around Nabumali. The signs of struggle at the scene of the robbery as observed by William (PW5) during

the investigation of the case was evidence that the vehicle was not voluntarily handed to the Appellants

by the complainant. This evidence coupled with the absence of the number plates from the vehicle when

they parked it outside the First Appellant’s residence at Kawempe in Kampala was clear indication that

the Appellants could not have got the vehicle with the consent of the complainant.

Clearly, the conduct of the Appellants in the whole exercise was rightly construed by the two courts

below as not of ordinary buyers but of robbers. In the premises, we found that ground 2 must also fail.

We now turn to grounds 3, 5 and 6 which were argued together. The prosecution evidence which was

accepted by the trial court was that the Appellants assaulted the victim with a hammer which is used in

crushing stones and a spanner used by plumbers. The hammer was estimated to weigh about 2

kilogramms. In our view, the Learned trial Judge rightly held that if the hammer was used for offensive

purpose on the head of the victim, it was capable of causing the death of the victim. In our view, the case

of *Wasajja v Uganda* [1975] EA 181 is distinguishable from this case, because, in that case, the alleged

pistol used in the robbery had not been produced at the trial to

Page 535 of [2000] 2 EA 531 (CAK)

prove that it was a deadly weapon and secondly the pistol had not been fired in the course of the robbery

nor had it been fire tested to prove whether or not it could fire ammunition. There the finding of simple

robbery by the trial court was upheld. The case of *Birumba and Another v Uganda (SC)* criminal appeal

number 32 of 1989 (UR) is also distinguishable from the instant case, for similar reasons. The pistol

alleged to have been used in the robbery was not produced in court and was neither fired in the robbery

nor fire tested. The Supreme Court could not in the circumstances uphold the conviction for aggravated

robbery.

In the instant case, the weapon used was a hammer used in crushing stones. The issue was whether it

was a deadly weapon within the meaning of section 273(2) of the Penal Code. In our view, a hammer

weighing about 2 kilograms which was exhibited, when used for offensive purpose on the victims’ head,

was capable of smashing the victim’s skull, resulting in his death. We would not interfere with the

holding of the lower court on that issue. Consequently, we cannot fault the Court of Appeal’s finding that

the weapon used in the robbery was deadly. We agree with the Court of Appeal that the absence of

medical evidence on the nature of the injuries sustained by the victim of the robbery was immaterial, as

the victim of the robbery need not sustain injuries in the robbery. It is enough to show that the robbers

used or threatened to use a deadly weapon. In this case, there was ample evidence that the Appellants

used a deadly weapon in the process of taking the complainant’s vehicle. The Appellants’ alternative

prayer for a conviction of simple robbery was therefore unsustainable and was rightly rejected by the

Court of Appeal.

We think, however, that the criticism raised in ground six has substance. Clearly there was serious

omission on the part of the investigating officer who submitted blood samples and blood-stained exhibits

to the government chemist for analytical examination. He submitted the complainant’s blood samples

only but failed to submit the Appellants’ blood samples to rule out any possibility of the bloodstains on

the exhibits being those of any of the Appellants. We have to stress that if the prosecution had intended

to prove that the blood stains on the exhibits was the victim’s blood, it was necessary to submit to the

government chemist blood samples from both the victim and the suspects (Appellants) together with

blood-stained exhibits for analytical comparison. That way it would have been determined if the

bloodstains on the hammer were not those of any of the Appellants. As it happens this was not done with

the result that the evidence of the blood test results is not as weighty corroboration as it would otherwise

have been.

However, in our view, the omission to submit blood samples from the Appellants for analytical

examination by the government chemist did not weaken the prosecution case as there was overwhelming

evidence by PW1 that a hammer and a spanner were used by the Appellants to hit him on his head during

the robbery.

In the circumstances, we found no merit in the appeal and dismissed it.

For the Appellant:

*Information not available*

For the Respondent:

*Information not available*