THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

CORAM: HON. MR. JUSTICE S.T. MANYINDO, DCJ.

HON. MR. JUSTICE C.M. KATO, JA.

HON. MR. JUSTICE A. TWINOMUJUNI, JA.

CRIMINAL APPEAL NO. 92 OF 1999

SSEGONJA PAUL::::::::::::::::::::::::::.:::::::::::APPELLANT

VERSUS

UGANDA ::::::::::::::::.::::::::::::::::::::::::::::::: RESPONDENT

(Appeal from the judgment and orders of High court (Akiiki-Kiiza J.) at Masaka in a criminal Session Case No. 178 of 1998 dated 28/6/99)

JUDGMENT OF THE COURT

This is an appeal against conviction and sentence for robbery contrary to sections 272 and 273 (2) of the Penal Code Act. The appellant was convicted of simple robbery and sentenced to 12 years imprisonment. He was also ordered to receive 12 strokes of the cane, to pay compensation of Shs. 100,000/= and to undergo police supervision for three years after serving the sentence.

The prosecution case was that on l October 1995, one John Semogerere was operating his taxi motor vehicle Reg. No. 640 UAF Toyota Carina white in colour at Nyendo taxi stage in Masaka Municipality. At around 6.00 p.m. he was hired by the appellant and one other person to take them to Kitwe village. On the way the appellant pulled a knife, put the taxi driver on gunpoint, threw a rope around his neck and strangled him leaving him on the road for dead. The two robbers then drove the vehicle to Mutukula at the Uganda — Tanzania border and tried to cross

with the vehicle to Tanzania but were prevented by police as it was already at midnight. They left the vehicle at the border Post and went and spent the night in a nearby lodge. By next morning the police had become suspicious and when they searched the vehicle, they discovered a blood-socked knife and some clothes. When they cross-checked with the police at Masaka, they learnt that the vehicle had been reported stolen. The appellant and his companion were arrested and taken to Masaka Police station where the appellant freely confessed to the crime. At the trial the appellant retracted the confession and denied the robbery. He was convicted and sentenced as already stated above, hence this appeal.

The appellant filed four grounds of appeal, namely:

1. **That the learned trial judge erred in law and in fact in accepting the charge and caution statement purportedly made by the appellant.**
2. **That the learned trial judge erred in law and fact in accepting and upholding hearsay evidence and thus came to a wrong conclusion.**
3. **That the learned trial judge erred when he failed to evaluate evidence as a whole and thus arrived at a wrong decision.**
4. **That the learned trial judge erred in law and was unconstitutionally wrong when he ordered corporal punishment (12 strokes) to be given to the accused and the judge was also wrong in law in ordering compensation to the state.**

Mr. Dhamulira Mugulurna, learned counsel for the appellant abandoned the fourth ground of appeal and argued the other three grounds separately.

On the first ground of appeal, he submitted that the trial judge was wrong to accept the charge and caution statement of the appellant because it was not the original statement of the appellant. In his view the statement should have been recorded in the appellant's language - Luganda. Failure to do so invalidated the statement and it should not have been accepted in evidence. He relied on the case of ***Festo Androa Asenua Vs Uganda, Criminal Case No. 1 of 1998 (unreported) S. C).***

Secondly, Mr. Muguluma argued that the English translation was not read back to the appellant before he signed it. Thirdly, that the trial judge admitted and relied on hearsay evidence of PWI, PW2 and PW3 and fourthly, that the appellant was severely tortured at Mutukula three days before he recorded the statement.

In reply, Mr. Simon Semalemba, the learned State Attorney who represented the respondent submitted that the statement was properly admitted in evidence by the trial judge. He argued that the fact that it was not recorded in Luganda was not fatal. He relied on the case of ***Namulodi Hassad Vs Uganda, Criminal Appeal No. 16 of 1997, Supreme court, (unreported).***

On grounds two and three which the learned State Attorney argued together, he conceded that the learned trial judge had admitted some hearsay evidence but that even if all that evidence was expunged from the record, there was sufficient evidence to implicate the appellant. He cited the evidence of PW6, the police officer at Mutukula who found the stolen vehicle with the appellant just a few hours after it was stolen. He searched it and found therein a toy pistol arid a blood soaked knife which items the appellant also mentioned in his statement at Masaka Police station three days later.

When Mr. Muguluma abandoned ground four of the memorandum of appeal, he was allowed to argue instead that the sentence of 12 years imprisonment and the 12 strokes of the cane were excessive. In reply Mr. Semalemba submitted that the appellant could have been sentenced to life imprisonment and 24 strokes of the cane. In his view, 12 years and 12 strokes of the cane were not excessive.

We now turn to the merits of this appeal. We think that the main issue in this appeal relates to the charge and caution statement of the appellant that is whether it was made voluntarily, whether proper procedure was followed in recording it and whether it was admitted correctly in evidence. Regarding the voluntariness of the statement, Mr. Muluguma argued that the appellant was tortured after his arrest at Mutukula and that the statement he made at Masaka Police station three days later was a result of his treatment at Mutukula. It is common ground that the appellant was not tortured at Masaka Police station. The learned trial judge accepted the prosecution

evidence that the appellant was not assaulted or tortured at Mutukula or at Masaka Police station. He held further that even if he had been tortured at Mutukula, the threat of further torture had dissipated when he made his statement in Masaka three days later.

We agree. The appellant was arrested at Mutukula and transferred to Masaka on the same day. If his evidence is to be believed, he spent three days in custody at Masaka after which he was made to make the disputed statement. At Masaka he was neither beaten nor tortured in any way. Section 26 of the Evidence Act provides:

> "If such confession as is referred to in section 25 is made after the impression caused by such violence, force, threat, inducement or promise has, in the opinion of the court, been fully removed, it is relevant."

There was a time gap of three clear days from the time of the alleged torture at Mutukula and the time he made the statement at Masaka. None of the police officers who arrested him at Mutukula was present three days later when he made the statement. He had all the opportunity to refuse to make any statement. Furthermore, the learned trial judge found that the statement was corroborated by the evidence of PWI, PW2 and PW3 before whom the complainant (now deceased) narrated how he was attacked, which version is similar to that of the appellant in the charge and caution statement. The most damning evidence is the fact that the appellant was found trying to cross to Tanzania with the stolen car shortly after it had been stolen. On the doctrine of recent possession, the appellant could have been convicted on this evidence alone as he did not give any account of how he came to possess the car.

On whether failure to make the statement in the language used by the maker is fatal, Mr. Muguluma, while relying on the case of ***Festo Androa Asenua Vs Uganda (Supra)*** conceded that in that case the statement of the appellant was not recorded in his mother tongue and this was held not to be a fatal omission. In that case, the case of ***Namulodi Hassad Vs Uganda (supra)*** which is on all fours with the instant case was cited with approval in holding that the omission was not fatal as long as no injustice was occasioned to the appellant. As long as, the statement is read back to the appellant through a translator and he signs the English version, as

was the case here, no such miscarriage of justice is occasioned. On this point, Mr. Muguluma first argued that the statement was not read back to the appellant but he dropped the point when he was shown the statement of the appellant in court to the effect that the charge and caution statement was read back to him in Luganda before he signed it.

With regard to hearsay evidence, Mr. Muguluma conceded, quite rightly, that the trial judge did not base conviction on that evidence. We agree that whatever hearsay evidence the trial judge might have recorded, he did not take it into account or rely on it in convicting the appellant. Grounds 1, 2, and 3 of the appeal should fail.

Finally on the issue of severity of sentence, it is trite law that an appellate court will not interfere with sentence passed by a trial court unless that sentence is manifestly excessive or ridiculously low or it is illegal. In the instant case, Mr. Muguluma did not establish any of these and therefore this ground of appeal should fail.

In the result, we see no merit in this appeal. We accordingly uphold the conviction and sentence and dismiss the appeal.

Dated at Kampala this 8th day of September 2000.

S.T. MANYINDO,
DEPUTY CHIEF JUSTICE.

C.M. KATO,
JUSTICE OF APPEAL.

A. TWINOMUJUNI,
JUSTICE OF APPEAL.