Chapter 5

Physical Assault and Domestic Violence

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Physical assault: "Physical violence that is not sexual in nature. Examples include hitting, slapping, cutting, shoving, honour crimes of a physical nature (not resulting in death), etc."

Although homicide does not fall within this definition, cases involving physical assault resulting in death are examples of the most serious consequences of VAWG.

In VAWG cases, many such physical assaults take place in a domestic context. Accordingly, cases of domestic violence are addressed here. Cases of physical violence resulting in death are therefore also addressed here.

Kenya 

Republic v. Jackline Kwamboka Ombongi [2016] HC

Principle or Rule Established by the Court's Decision

Leniency in a murder sentence where provoked by domestic violence.

Judge: Okwany | HC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Sentenced to 2 years' probation	High Court, Kisii (Kenya)	Criminal Case No. 6 of 2016; judgement delivered on 7 March 2018	Other GBV (domestic violence)

Case Summary

The accused was charged with murder, which was reduced to manslaughter pursuant to a plea-bargaining agreement. The deceased and the accused were husband and wife, respectively. On the material night, the deceased came home drunk and picked an argument with the accused, as was common in their relationship. This degenerated into a physical confrontation during which the accused strangled him to death. The accused then screamed loudly.

This raised the alarm to neighbours and relatives, who converged at the house.

In mitigation, the accused expressed remorse for the act and stated that she had no intention of killing the deceased. She had dodged his blows and got hold of his neck only to realise he had died. A report by the probation officers confirmed that the couple had a troubled marriage and that the deceased was a habitual drunkard who would cause chaos at home. Further, the accused was known to be a responsible woman not previously known for anti-social behaviour. Counsel for the accused urged the Court for a non-custodial sentence to enable the accused to take care of her young five-year-old child who had been placed in the care of an aged grandmother.

Okwany J. considered the circumstances and the mitigating factors of the case – namely, that the accused was a victim of domestic GBV and was susceptible to being maimed or fatally injured by her husband. The judge was persuaded that the accused did not intend to kill her husband but merely fought back against the deceased in self-defence, which was evidenced by her quick action in raise an alarm upon realising that the deceased was dead. In passing sentence, the judge also considered the fact that the accused was a mother of a young child aged five. The accused was therefore sentenced to two years' probation.

Points to Note

- This decision shows the Court's willingness to accept the severity of domestic violence and its impact on women.
- Section 205 of the Penal Code provides that any person who commits the felony of manslaughter is liable to imprisonment for life. However, the judge noted that this is not a mandatory sentence and allows for the Court's discretion not to impose the maximum sentence where the circumstances warrant this.
- Judicial officers have wide discretionary powers in sentencing to bring to bear mitigating factors such as "battered wife" syndrome and implications of the far-reaching effects of GBV.
- The case confirms that the use of plea-bargaining agreements by the prosecution is an important tool to deal with such cases that saves also judicial time and ensures timely dispensation of justice.
- The Court acknowledged the delicate balance to be struck between punishing the offender and the competing interests of an innocent child.

Others cases/decisions referred to	
Country/case	Decision
UK | *R v Thornton 1 WLR 1174*; *R v Ahluwalia 4 All ER 889*; *R v Duffy [1949]* 1 All ER 932	*R v Thornton:* Battered woman syndrome may be part of provocation if it causes a loss of control. The history of the relationship between the appellant and the deceased could properly be taken into account in deciding whether the final provocation was enough to make the statutory ordinary person act as he did.
	R v Ahluwalia: The appellant, Ahluwalia, suffered abuse and violence from her husband for years. After one violent evening, she went to bed thinking about her husband's behaviour and could not sleep. She finally went downstairs, poured petrol into a bucket, lit a candle, went to her husband's bedroom and set it on fire. Her husband died from his injuries. Ahluwalia pleaded manslaughter on the grounds that she did not intend to kill him, only to inflict pain. She also pleaded the defence of provocation on grounds of her treatment during the marriage. Ahluwalia was convicted of murder and appealed the decision.
	The definition in *R v Duffy* as "sudden and temporary loss of control" is still good law as it is a readily understandable phrase. However, in cases of abused wives, the harmful act is often a result of a "slow burn" reaction, rather than immediate loss of self-control.
	At the time of the trial, there was a medical report showing that, at the time of the killing, the defendant was suffering from endogenous depression. It was overlooked and the appellant was not consulted as to the possibility of investigating it further. The appeal was therefore allowed and a retrial ordered.

Rwanda 

Prosecution v Cyuma Miruho [2010] SC

Principle or Rule Established by the Court's Decision

- A case charged initially as physical assault may be treated as a case of murder if the bodily injuries resulted in death and there was an intent to kill the victim.
- A person may benefit from mitigating circumstances in sentencing only if they are able to prove those mitigating circumstances to the satisfaction of the court.

Judges: Rugege Sam, Mukanyundo Patricie and Rugabirwa Ruben | JJSC

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction and sentence upheld	Supreme Court (Rwanda)	Case No. RPA 0142/10/CS	Physical assault

Case Summary

The accused inflicted multiple blows on his wife with a machete and a large piece of wood, in reaction to a suspicion that she was cheating on him. She was immediately taken to hospital but died on the way. The prosecution charged the husband with assault and with intentionally causing bodily injuries resulting in unintentional killing. The Intermediate Court, which was seized of jurisdiction, ruled that the accused should be prosecuted for murder instead and transferred the case to the High Court. The High Court found the accused guilty of murder and sentenced him to 25 years' imprisonment.

The accused appealed to the Supreme Court. The accused contended that:

i. His charge should have been the original charge of merely intending some harm, rather than intending to cause death.
ii. The High Court disregarded the mitigating circumstances in sentencing.

The Supreme Court ruled that:

i. Considering the nature of weapons that the accused had used – namely, a machete and a large piece of wood – and the number of times he used them to hit the victim, there was sufficient proof that the accused had intent to kill the victim. The accused therefore needed to be punished accordingly, rather than for assault and intentional bodily injuries resulting in unintentional killing.
ii. The accused failed to prove that his wife had been cheating on him. Therefore, this could not be taken into account as a mitigating circumstance.

Obiter Dictum

The appellant did not challenge the fact that a period of 25 years' imprisonment imposed on him was in contravention of Article 35 of the Decree Law No. 21/77, which prescribed a maximum period of imprisonment of 20 years. However, the Court, *ex propio mutu*, corrected the judgement, substituting a sentence of 20 years' imprisonment.

Points to Note

- The case emphasises that the methods and means used in committing an offence should be taken into consideration when determining the appropriate charge.
- It further demonstrates the power of the appellate court to, *proprio motu*, correct the sentence in accordance with the range of penalties as provided by the law.

- The case also emphasised that, in order to benefit from a mitigating circumstance, such as the conduct of the victim, the accused must prove it.

Prosecution v Fatirakumutima [2013] SC

Principle or Rule Established by the Court's Decision

- An accused may benefit from a guilty plea to accidentally killing his wife only if the court accepts that there was no intention to kill on his part.
- Provocation of the accused by his wife must be proved to the satisfaction of the court before it can be taken into consideration as a mitigating factor.

Judges: Nyirinkwaya Immaculée, Havugiyaremye Julien and Mukamulisa Marie Thérèse | JJSC

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction and sentence upheld	Supreme Court (Rwanda)	Case No. RPA0255/09/ CS of April 26 2013	Physical assault

Case Summary

The accused killed his wife, with whom he had four children. The next morning, he informed his neighbour, who advised him to report himself to the authorities. The accused failed to do so and the neighbour reported the matter. The accused went into hiding and was later arrested. The accused pleaded guilty to the accidental killing of his wife. He claimed that his wife had provoked him by squeezing his testicles. The High Court found him guilty of murder and sentenced him to life imprisonment.

The accused lodged an appeal in the Supreme Court, claiming that:

i. The High Court disregarded his averment that he had killed his wife by accident.

ii. The sentence was excessive because it disregarded the fact that he had pleaded guilty, any provocation by his wife and the fact that he had been left with orphans who need to be looked after.

The Supreme Court found that:

i. The accused was guilty of the intentional murder of his wife. This was supported by the fact that the accused had strangled and slapped the deceased in the face. Furthermore, he then chose not to take her to the hospital when he noticed that she was unconscious.

ii. The sentence was appropriate. The guilty plea to the accidental death of his wife was insincere because the accused had intentionally killed her. Furthermore, the accused had failed to prove any provocation of the part of the wife.

Points to Note

- The case merits consideration because it analysed the sincerity of the accused's guilty plea through a thorough assessment of his statements in comparison with other evidence available to the Court.
- The accused's guilty plea that he accidentally killed his wife can be in his favour only when it is found to be sincere.
- In this case, the accused's guilty plea to accidental killing could not be taken into consideration in his favour. The accused had strangled and slapped his wife. He then failed to seek medical treatment for her.
- Although the law provides that provocation is a mitigating factor, the accused must prove it before the accused may benefit.

Prosecution v Gatare [2014] SC

Principle or Rule Established by the Court's Decision

The mitigation of being a first-time offender will be negated if the offence is committed with cruelty and then concealed.

Judges: Nyirinkwaya Immaculée, Hatangimbabazi Fabien and Munyangeri Innocent | JJSC

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
Appeal dismissed	Supreme Court (Rwanda)	Case No. RPA 0317/08/ CS of 24 October 2014	Physical assault

Case Summary

The accused was convicted of murdering his wife and child, who had been set on fire in a car in Belgium. The accused's jacket was found close to the scene and the day after the fire the accused was found to have burns. He did not report his wife and the child missing and gave contradictory accounts about their location, telling people in Belgium that they were in Rwanda and people in Rwanda that they were in Belgium. When the accused arrived in Rwanda, he filed a divorce petition and revoked his adoption of the wife's children.

Three months after they were killed, the accused was arrested and found to be in possession of identification documents of the deceased.

The accused was convicted at the High Court and was sentenced to life imprisonment with special provisions. He was also ordered to pay damages to the deceased's young sister, who filed a civil action.

The accused appealed to the Supreme Court, alleging that the conviction was against the weight of the evidence. He also argued that the sentence was excessive.

The Supreme Court, after considering all of the evidence, upheld the appealed judgement. Regarding the penalty, the Court ruled that, although the accused was a first-time offender, he should not benefit from mitigating circumstances, taking into account the cruel manner in which he had plotted and killed the deceased, his efforts to conceal the crime and the fact that the deceased's children had lost the only surviving parent and their eldest sister, killed by their adoptive father.

Point to Note

The case stands out because of the Court's firm refusal to consider mitigating circumstances when the crime was committed with unprecedented cruelty and the accused sought to conceal the evidence of the crime.

Prosecution v Mpitabakana [2014] SC

Principle or Rule Established by the Court's Decision

The accused cannot rely on the consequences of his or her offending to benefit from a reduction in penalty.

Judges: Nyirinkwaya Immaculée, Havugiyaremye Julien and Mukamulisa Marie Thérèse | JJSC

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction and sentence upheld	Supreme Court (Rwanda)	Case No. RPA0129/10/ CS of 7 March 2014	Physical assault

Case Summary

The appellant reported himself to the police, confessing to the killing of his wife. An autopsy revealed that the cause of death was blows to the head and the stomach. The victim was seven months pregnant. At first instance, the High Court convicted the appellant of intentionally killing his wife and sentenced him to 20 years' imprisonment. The Court reduced his penalty

because he pleaded guilty and reported himself to the judicial police immediately after the offence.

He appealed to the Supreme Court on the basis that the High Court had erred in finding that that he had deliberately killed his wife. He contended that the death was accidental. He also contended that the sentence was excessive in light of his guilty plea, which facilitated justice. He also had orphan children left by his wife, whom he had to take care of.

The Supreme Court found that the injuries supported the finding that the accused intentionally killed his wife.

The sentence imposed had been appropriate. The appellant's sentence had already been reduced from life imprisonment to a term of 20 years in light of his guilty plea. Furthermore, he was the one who made his children orphans. He could not rely on the horrific consequences of the offence he committed to benefit from a reduction in penalty.

Points to Note

- An accused may benefit from a penalty reduction if they have cooperated and facilitated justice.
- An accused cannot rely on the horrific consequences of their own offending to justify a penalty reduction.

Prosecution v Naramabuye [2014] SC

Principle or Rule Established by the Court's Decision

In assessing whether a husband intended to either assault or kill his wife in the matrimonial home, the court must consider whether there was anything that could have stopped him from killing his wife.

Judges: Mutashya Jean Baptiste, Hitiyaremye Alphonse and Kanyange Fidélité | JJSC

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction overturned	Supreme Court (Rwanda)	Case No. RPA 0071/10/CS of 10 January 2014	Physical assault

Case Summary

The appellant pleaded guilty without reservations to the attempted murder of his wife. The appellant had strangled her and caused wounds to her neck. In light of his guilty plea, the High Court sentenced the appellant to a reduced sentence of 20 years' imprisonment. He also lost his civil rights.

He appealed to the Supreme Court. The appellant contended that he should have been charged with assault and battery and not attempted murder.

The Court held that an attempt is punishable when it is proved that an offender planned to commit an offence and that such a plan was then not carried out. The plan to commit an offence is proved by observable and unequivocal acts constituting the beginning of the offence meant to enable its commission. The offence must then have been suspended or have failed in its purpose because of circumstances beyond the offender's control.

If the appellant's goal was to murder his wife, nothing intervened to stop him from achieving that aim, for example a person or any other force. The appellant and his wife remained in the house after the fighting had ceased. She had not sought refuge elsewhere. If he had intended to kill her, he had ample opportunity to do so.

The offence committed by the appellant was therefore not attempted murder. Instead, the appellant had committed the offence of assault and battery, punishable by imprisonment of one month to one year and/or a fine of 500FRw to 2,000FRw. The High Court's decision was therefore overturned.

Points to Note

- When there has been fighting causing wounds, this alone cannot justify a charge of attempt to commit murder.
- When assessing the offence of attempted murder, it is important for the Court to consider whether there are other circumstances beyond the accused's control that may have stopped him/her achieving the plot. If there are none, the offence should be assault and battery rather than attempt to commit murder.
- In this case, no evidence was adduced as to what prevented the accused from ending the victim's life.

Prosecution v Nkinamubanzi [2016] SC

Principle or Rule Established by the Court's Decision

A history of violent conduct should be considered an aggravating factor in determining an appropriate sentence for physical violence against a spouse.

Judges: Nyirinkwaya Immaculée, Munyangeri Innocent and Hitiyaremye Alphonse | JJSC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Sentence upheld	Supreme Court (Rwanda)	Case No. RPA 0067/13/CS of 16 December 2016	Physical assault

Case Summary

Following a constant pattern of domestic violence, the accused and his wife had separated. One evening, the wife was returning to her parents' home when her husband saw her. He concluded that she had been committing adultery, whereupon he undressed her and raised a machete to hit her. The wife ran to a neighbour's home. The accused followed her to that home and hit her seven times with the machete on various parts of the body, including the head. He then fled. When he was arrested, he confessed to having committed the offence. The High Court convicted him on the basis of his confession and sentenced him to a reduced penalty of 20 years of imprisonment on the grounds that he had pleaded guilty and that he was a first-time offender.

The accused appealed to the Supreme Court. The accused requested a reduction in his sentence to at least a half of the term to which he had been sentenced on the grounds of his guilty plea and a lack of premeditation.

The Court held that the sentence could not be reduced further. The accused had committed a pre-meditated act. He had hit his wife on delicate parts of her body. In his interrogation, he admitted that he had hit her three times on the head, twice on the back, on the neck once and on the hands once. The constant background of domestic violence that had caused the couple to separate was an aggravating feature. No evidence had been adduced to support the contention that the victim had committed adultery and so no consideration could be given to those claims in the sentencing exercise.

Points to Note

- The Court found that suspicion of adultery committed by a wife is not an excuse for a physical assault against her.
- Constant domestic violence may be taken into consideration in determining the appropriate sentence.

Prosecution v Nshutirakiza [2015] SC

Principle or Rule Established by the Court's Decision

The judge may consider mitigating circumstances that preceded, accompanied or followed an offence. However, when the offence involves serious cruelty, it may be aggravated to such an extent that mitigating factors are negated.

Judges: Mutashya Jean Baptiste, Gakwaya Justin and Hitiyaremye Alphonse | JJSC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Sentence upheld	Supreme Court (Rwanda)	Case No. RPA0047/11/CS of 27 March 2015	Physical assault

Case Summary

The accused pleaded guilty to murdering his wife by repeatedly stabbing her in the head. He stated that the reason for doing so was that he and his wife had run into constant conflict after he had abandoned her for a concubine. He had killed his wife in order that he and his concubine could live peacefully. The High Court convicted him of murder and sentenced him to 20 years' imprisonment after reducing his penalty because he was a first-time offender and because he had pleaded guilty and sought forgiveness.

The accused appealed to the Supreme Court, arguing that his sentence should be further reduced. He contended that the High Court did not sufficiently take account of his guilty plea. The accused continued to insist that he had admitted the charges and that he sought forgiveness. In particular, he averred that he had repented to his family in-law as well as to Rwandan society. He also asserted that he had four young children and that there was no other person who could look after them.

The Supreme Court found that the requested penalty reduction could not be granted. The High Court had considered the circumstances in which the offence was committed, including the *mens rea* and its gravity. The offence involved serious and intentional cruelty. This outweighed other mitigating factors, such as his young children. There were no other grounds that could lead to further reduction of the penalty imposed on him. Therefore, the penalty imposed by the High Court corresponded to the offence committed.

Points to Note

- This case serves as an authority in cases where murder of a wife by a husband is committed with serious cruelty and the accused pleads mitigating circumstances.
- The Supreme Court held that the judge might consider mitigating circumstances that preceded, accompanied or followed an offence. However, when the offence was committed with serious cruelty, it may be grounds for not reducing the penalty.

Prosecution v Uwiringiyimana [2017] SC

Principle or Rule Established by the Court's Decision

When the court is sentencing an accused for domestic violence, it must consider aggravating factors, including the level of cruelty and violence and a lack of remorse.

Judges: Mutashya Jean Baptiste, Rugabirwa Ruben and Kalimunda Aimé | JJSC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction upheld	Supreme Court (Rwanda)	Case No. RPA 0099/13/CS of 17 March 2017	Physical assault

Case Summary

The accused was prosecuted for attempted murder before the High Court. It was alleged that he had hit his wife with a hammer several times on delicate parts of her body before fleeing. The victim was rescued by her neighbours. When arrested, the accused pleaded guilty only to beating his wife, explaining that he had never intended to kill her. Rather, he had beaten her with a stroke to both her stomach and backside. He argued that his intention was to discipline his wife because he found that she had a new cloth (*kitenge*) from an unknown person. He asserted that it was a usual practice between spouses to discipline in such a way. He therefore requested that the offence with which he was charged be reclassified as assault and battery.

He was convicted of attempted murder and sentenced to a reduced penalty of eight years of imprisonment because he was remorseful and a first-time offender.

The accused appealed to the Supreme Court. The accused again contended that he should have been convicted of assault and battery rather than attempted murder. He argued that he had never intended to kill his wife.

The Supreme Court upheld the decision because the accused had committed the offence with clear cruelty. The penalty was also appropriate because the accused was in no way remorseful.

Points to Note

- When the court is sentencing an accused for domestic violence, an accused who still believes he has the right to discipline his wife must face a serious penalty. This represents a failure to appreciate the gravity of the offence and does not demonstrate remorse.
- In this case, the cruelty involved in the commission of an offence prevented any appreciable reduction in penalty.

Prosecution v Uwizeye Eustache [2017] SC

Principle or Rule Established by the Court's Decision

- In sentencing, cruelty used in the commission of an offence may negate any mitigating circumstances.
- Violence against women is serious and requires a serious penalty.

Judges: Mutashya Jean Baptiste, Rugabirwa Ruben and Karimunda Aimé | JJSC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Appeal dismissed	Supreme Court (Rwanda)	Supreme Court Case No. RPA 0225/13/CS of 21 April 2017	Physical assault resulting in murder

Case Summary

The accused was charged with murdering his partner, to whom he was not legally married. The accused pleaded guilty. The High Court found that the accused had confessed that he planned to kill her. He was sentenced to life imprisonment and ordered to pay court fees.

The accused appealed to the Supreme Court. He argued that the previous court had misinterpreted the facts, because he never intended to kill her. Rather, he acted under provocation owing to her adultery. He therefore killed her out of anger. He sought a pardon, sentence reduction and sentence suspension to enable him to return home and take care of his mother and his children who had been left abandoned.

The Supreme Court ruled that the defendant should not be pardoned. The accused's failure to appreciate the gravity of the offence and his lack of remorse needed to be taken into account in determining the appropriate penalty. An accused person cannot falsely justify their actions through invented accusations of wrongdoing on the part of the victim. Domestic violence is serious and violence against women should be reflected through the imposition of a serious penalty. Furthermore, the high level of malice shown in the commission of the offence prevented any penalty reduction. The accused's sentence was therefore maintained.

Points to Note

- This case is of note because it considered the impact of domestic violence and other cruelty observed while committing the offence in assessing mitigating circumstances.
- Courts may consider the appropriateness of mitigating circumstances that preceded, accompanied or followed an offence. However, mitigating circumstances must be justified.
- The mere fact that an offence involves domestic violence is serious and may negate any benefit from mitigating circumstances.
- A high level of wickedness and cruelty in the commission of the offence may also negate any benefit from mitigating circumstances.

Obiter Dictum

The Court, with regard to violence exercised against women, observed that the notion that a man has the right to discipline his wife is deeply founded in the history of society. The wife's obligation is to serve her husband, to remain married at all costs until death separated them and to be punished for failing to please her husband. One of the consequences of this attitude is that violence against women is rarely mentioned, rarely reported, rarely prosecuted and even more rarely punished. Although society has official stopped approving domestic violence, tolerance for it remains in some areas. However, the Court noted that this attitude had changed progressively, and that there is now consciousness that no man has, under any circumstances, the right to brutalise his wife.

Other cases/decisions referred to	
Country/case	*Case*
Canada |	*Angelique Lyn Lavalle v Prosecution*, Supreme Court of Canada, 1 SCR 852, p. 872 [1990]

Uganda 

Mureeba Janet & 2 others v Uganda [2002] SC

Principle or Rule Established by the Court's Decision

Circumstantial evidence may be used to convict an accused person if it is sufficiently corroborated.

Judges: A.H.O Oder, J.W.N. Tsekooko, A.N. Karokora, J.N. Mulenga and G.W Kanyeihamba

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Guilty	Supreme Court (Uganda)	Supreme Court Criminal Appeal No. 007 of 2002 (s. 182 & 183 PCA)	Other GBV (murder, domestic violence meted out by rival)

Case Summary

On 6 June 1999, the three appellants together with other persons murdered Namara Norah, alias Peace Kamusiime (first deceased) and her daughter Gabriela Mureeba (second deceased).

There had been a conflict between two women over one man, Charles Mureeba. Charles Mureeba was married to A1, Janet Mureeba. The first deceased was Charles Mureeba's long-term girlfriend (or customary wife).

The second deceased was the daughter of Charles Mureeba and the first deceased. The two deceased persons lived together at the time they were murdered.

In 1996, Charles Mureeba rented a house for the first deceased to live in. At some point in 1997, the first deceased confided in her neighbour, Kato Muhammad, that she was receiving death threats from A1. A1 was regularly in the vicinity of her residence. This prompted the first deceased to relocate to another place, where A1 continued to keep track of her. Because of the continued death threats from A1, the first deceased convinced her cousin, Kasabiti Rosette, to relocate with her in a new residence.

At some point during 1998, the first deceased made various reports regarding the death threats to the head of the population secretariat (where she worked), who advised her to report the matter to the police.

In around late May 1999, A2 and A3 visited a garage in Kisenyi, Kampala, where Bright Mugabi worked as a mechanic. Bright Mugabi and A2 knew each other very well because they had been in the army together. A2 and A3 informed Bright Mugabi that they wanted to hire a self-drive vehicle, having been hired by a rich woman to kill another woman who lived in Ntinda. Bright Mugabi did not provide A2 and A3 with the vehicle.

On 6 June 1999, A2 and A3 returned to the garage at about 4 p.m., driving a white double cabin pick-up that needed repair. Bright Mugabi repaired the car and opened the rear cabin door of the vehicle to clean the inside of the cabin, wherein he found a brown bag containing a blue overcoat and a gun, which he thought was an submachine gun. Bright Mugabi stated that, before A2 left the garage, A2 asked the manager for a gun rivet and a drill, which are used for pulling off or fixing number plates on vehicles. At about 5.30 p.m., A2 and A3 drove away in the white pick-up.

That same evening at about 6.30 p.m., Jolly Kapere, who lived about 100 m from the deceased's residence, saw a white double cabin pick-up drive past her and found the same vehicle parked up on a road, which is normally not busy, with one of its doors open. Jolly Kapere heard gunshots as she was returning home. She saw a man wearing an overcoat carrying an object running from the first deceased's home towards the pick-up and put the object, which could have been a stick or a gun, into the vehicle. The vehicle then sped off. Afterwards, Jolly Kapere went to the scene, where she saw the dead bodies of the two deceased persons.

At about 7:30 p.m. on that same day, A1 received a telephone call. However, A1 had gone "up country" with Charles Mureeba. Bessi Tumusiime, a niece of Charles Mureeba, who lived in the same house as A1, answered the call. A1's house girl, Ayebare Mariam, heard Bessi Tumusiime ask the caller, "Have you finished?"

When A1 returned home, Ayebare Mariam noticed that A1 was in an exhilarated mood and was exceedingly happy after learning of the murder of the deceased from Bessi Tumusiime. A1, Bessi Tumusiime and a friend of A1 who arrived later all indulged in rejoicing and dancing, apparently because what was troubling A1 was over because the *malaya* (prostitute) had been killed. They danced around as they said that A1 was the winner and she would have all the property.

On 7 June 1999, at about 8.30 a.m., A2 and A3 returned to the garage in the same pick-up. As Bright Mugabi was cleaning that vehicle, he heard A2 saying to A3 in Luganda, *"How could you fail to beat a mere woman?"* (apparently meaning "How could you fail 'to shoot' a mere woman?"). According to Bright Mugabi, the pick-up had no number plate. Later that day, Bright Mugabi learned of the murders.

On 9 June 1999, a witchdoctor visited A1's home, where he slaughtered a chicken in what Ayebare Mariam believed to be a ritual, apparently as protection against arrest. Nevertheless, the appellants and two other suspects were arrested and charged with the murder of the two deceased persons. The trial judge and Court of Appeal justices convicted the appellants on the circumstantial evidence.

At the Supreme Court, it was alleged that the previous courts had erred in fact and law by convicting in reliance on circumstantial and uncorroborated evidence.

The Supreme Court held that the evidence articulated above was sufficiently cogent circumstantial evidence to convict the appellants.

Points to Note

- This is a case of murder carried out at the behest of a co-wife within a domestic setting, apparently motivated by the selfish purpose of enhancing her entitlement to the property of the husband.
- The trial judge, Court of Appeal justices and Supreme Court justices held that, with no eye-witness to the murder of the deceased persons, the evidence on record relied on circumstantial evidence.
- The justices of appeal noted that circumstantial evidence could be treated as good evidence if there is other independent evidence corroborating the said circumstantial evidence. This position is especially relevant to prosecuting VAWG offences, because they are often committed in secrecy with no eye-witnesses present. The ability to rely on circumstantial evidence in the prosecution of VAWG cases better enables prosecution.

- Furthermore, it was also noted that, for police statements to be admissible, there should also be independent corroboration. The justices of appeal noted that there was overwhelming evidence to support the police statements on which the appellants were convicted.

Uganda v. Amoko [2014] HC

Principle or Rule Established by the Court's Decision

A child may have to give evidence in cases of VAWG. A *voir dire* may need to be held to determine whether the child has a sufficient appreciation of the particular responsibility to tell the truth involved in taking an oath.

Judge: Elizabeth Ibanda Nahamya | HC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Conviction	High Court (Uganda)	HCT-CR-CN-69/2014 (S.188&189 PCA)	Other GBV (domestic violence, murder)

Case Summary

The accused was convicted of murdering his wife. At around 4 a.m., the accused told his wife to wake up and started to cut her with a *panga*. The accused further hit his wife with a stick and used an axe to cut her. Their child saw what happened through an open door and ran to tell the neighbours, including the mother of the wife.

People came and found the accused still at the house. The accused was asked why he had killed his wife, to which he replied, *"I had no problem with the deceased but I just killed her."* The police were called, who arrived at approximately 6 a.m. The accused showed the police the *panga* he had used to kill the deceased, which he had hidden in the heap of grass in the compound. The accused was then arrested.

During a trial within a trial, Amoko in his defence told the Court, *"I am now in prison; it means that my wife had died. I heard what prosecution witnesses said but I don't know how my wife died. I had no problem with her in our marriage."*

Points to Note

- This case was selected owing to its strange facts.
- It is also indicative of the unrecorded effects of children who witness such brutality. The trauma suffered by such children is in

itself another type of violence. In the context of the wider notion of violence against women, the girl child who witnesses such brutality may be affected mentally and psychologically and may form a damaging opinion about men.

- The Nigerian case of *Ngwuta Mbele v The State* [1990], Supreme Court, is very similar to the Amoko case. In Nigeria, a Commonwealth country, unlike in Uganda, the law does not require that children's unsworn testimony be corroborated. The requirement of corroboration for children's unsworn evidence in Uganda is under scrutiny for being discriminative on the basis of age.
- In the UK, the Code for Crown Prosecutors calls on prosecutors to take into account certain factors and guides that, *"the other public interest factor that must be taken into account is whether a prosecution is likely to have a bad effect on the victim's physical or mental health"* (4.17g). This is equally applicable to deciding whether or not a child witness, who is not a victim, should be required to give evidence in court. The more traumatic the offence for the child (being a victim of or a witness to violence or sexual abuse are the most obvious examples), the more likely it is that criminal proceedings may re-traumatise and cause further emotional damage to the child. Yet the most serious cases are usually the ones that will, on the facts, require a prosecution in the public interest, both to secure justice but also to provide protection for the child and the public at large.
- It follows that prosecutors will have to balance the interests of the child with the wider interests of the public at large in reaching a decision on whether or not to prosecute. Some decisions will inevitably be very sensitive and finely balanced. In such cases, prosecutors should ensure the final decision is fully supported by relevant information and reasoning. In many cases, it is possible to adequately mitigate adverse effects of the trial process by applying for appropriate special measures."
- The CRC stipulates that the best interests of the child should always be paramount. In the UK, the Crown Counsel is advised to consider the likely consequences for any children, be they victims or witnesses, of proceeding with a prosecution. Careful consideration must therefore be given to the factors for and against prosecution. The prosecutors are bound to balance the children' interests against that of the public.

Uganda v Kakaire & Ors [2015] HC

Principle or Rule Established by the Court's Decision

Even when an instance of VAWG is dealt with by way of a plea-bargaining agreement, an act may be so heinous that it cannot be tolerated by any society and so a deterrent sentence is necessary.

Judge: Elizabeth Ibanda Nahamya | HC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Guilty	High Court (Uganda)	Criminal Session Case NAK-AA-11-2015, 23 June 2015	Other GBV (domestic violence, murder)

Case Summary

The deceased was married to the first accused, Kakaire Kasimu (A1). In November 2014, A1 enlisted the help of A2 (Farouk Walusimbi), A3 (Ivan Namanya) and others to carry out an acid attack on the deceased because he believed she had been unfaithful to him and he was tired of her. In exchange for USh 3 million, A2, A3 and another would carry out an acid attack while the deceased was driving. A1 had already withdrawn UShs 12 million from the bank account of the eldest daughter of the deceased under the pretence that the deceased needed the money.

A1 said that he would tamper with the co-driver's window so it would remain open and the acid could be poured onto the deceased. On 16 November 2014, A1 provided the acid to be used in the attack to A2 in a 5 litre jerry can and also gave them a small blue bucket to use for pouring the acid on the deceased.

In the late evening, while on the Northern Bypass, the plan was executed. Someone knocked on the back of the deceased's car. A1 stopped to check what had caused the knock. A3 and another poured acid onto the deceased twice and, in the process, some spilt over onto A1, A3, another accomplice, two children in the car and A1's sister. The deceased got most of the acid onto her body, as she was the target of the attack, A3's face was also damaged by the acid as it splashed back onto his face and A1 also had acid poured on his face. The rest suffered minor injuries. A1 drove away from the scene of the crime but he quickly felt weak and stopped at a roundabout, where a taxi picked him up, along with all the other occupants of the car, and rushed them to Mulago Referral Hospital for treatment. A police officer who dealt with the deceased also identified A3 in the same ward. He interrogated A3 about his acid burns, to which he gave unsatisfactory answers.

A2 and A3 entered a plea of guilty. While sentencing them, the judge considered their remorsefulness, youth and ability to reform and the

apologies made to the bereaved family and the community. The judge took account of the gravity of the actions and the premeditation involved. In addition, the judge considered the prevalence of the crime of acid throwing and considered that a deterrent sentence was appropriate. The Court sentenced A2 and A3 to 25 years' imprisonment, including the 6 months spent on remand for Count I of Murder. In respect of the attempted murder of the deceased's baby, the accused were sentenced to 20 years' imprisonment, with the 6 months spent on remand to be deducted.

Point to Note

- Where courts are dealing with an instance of VAWG by way of a plea-bargaining agreement, an act may be so heinous that it cannot be tolerated by any society, making a deterrent sentence necessary.
- In this case, the judge took special notice of the gravity of the actions and the premeditation in the commissioning of the offence in passing sentence. Furthermore, given the prevalence of the crime of acid-throwing, a deterrent sentence was appropriate.

Kooky Sharma and Anor v Uganda [2011] SC

Principle or Rule Established by the Court's Decision

- There is no burden on the prosecution to prove the nature of the weapon used in inflicting the harm that caused death, nor is there an obligation to prove how the instrument was obtained or applied in inflicting the harm.
- Quality of voice identification is a crucial issue if the identifying witness was unable to physically see the speaker whose voice he or she claims to identify. It is not necessary for a witness to understand or be literate in a language being spoken in order to identify the speaker; the issue is one of familiarity with the voice.

Judges: Odoki, Oder, Tsekooko, Karokora and Kanyeihamba | JJSC

Decision	Court/ jurisdiction	Date & case reference (citation)	VAWG incident type
Appeal succeeded in part	Supreme Court (Uganda)	Criminal Appeal No. 44 OF 2000; 15 April 2002	Other GBV (domestic violence, murder)

Case Summary

This was an appeal against the decision of the Court of Appeal, which had confirmed the conviction by the High Court of the appellants for the murder of Renu Joshi, the wife of the first appellant (Kooky Sharma). The second appellant was Kooky Sharma's brother, Davinder Kumar.

It was the case for the prosecution that the two appellants had returned to the residence soon after midnight in the morning of 24 December 1997. A neighbour, Mr Rurebwa Twine, heard quarrels and a female crying and so he woke up his wife, Margaret Twine, saying, "*Your friend is being beaten.*" Margaret Twine woke up and also heard the deceased crying. Margaret Twine heard and recognised the voices of the two appellants from the same house. She also heard banging, followed by cries of the deceased. She went back to sleep after these noises stopped. Margaret Twine later identified both appellants to the police by their voices.

Later that morning, 24 December 1997, Abdi Jamal, a local chairman of the area, learnt of the death of the deceased. He went to Kooky Sharma's house, where he found Kooky Sharma, who was planning to have the body of the deceased cremated. Kooky Sharma claimed that the deceased had died of malaria. Abdi Jamal looked at the deceased's body, which was dressed up to the wrists and ankles except for the face. Kooky wanted to take the body of the deceased for cremation. Because Abdi Jamal was not satisfied with the cause of death of the deceased, he prevented Kooky Sharma from taking the body for a hurried cremation. He contacted the police, and police officers examined the body. On noticing bruises, the officers treated the case as murder.

That same day, Dr Martin Kalyemenya, a pathologist at Mulago Hospital, carried out an autopsy on the body of the deceased. Externally, he observed multiple bruises, which he described as burns caused by electrocution or acid. On opening the body, he noticed that the liver and the spleen were slightly abnormal in colour. He removed a piece of the liver, the spleen, a kidney and a piece of brain and sent them to Senior Government Chemist Mr Emmanuel Nsubuga, for chemical analysis. Dr Kalyemenya formed the opinion that the probable cause of death was "*shock due to electrical burns with blunt injury. Poison could not be ruled out.*"

The toxicology analysis carried out by the senior government chemist revealed some quantities of acaricide poison in the organs. He testified at trial that he had not quantified the poison, but that, because of its highly toxic nature, the amount was sufficiently substantial to kill if ingested.

A second autopsy, conducted by Dr Wabinga, Head of the Pathology Department of the Medical School at Mulago, affirmed the opinion of the first pathologist – that death was the result of electric shock.

Kooky Sharma's statement to the police on charge and caution was that his wife had been suffering from malaria and that she had woken him up at 4 a.m., complaining of pain. He alleged that he then called his brother, Davinder Kumar, and sent him to call a doctor.

At trial and in the Court of Appeal, the appellants contended that the victim had committed suicide by consuming acaricide, relying on the evidence of the senior government chemist. Davinder Kumar also relied on an alibi – namely that, soon after midnight, he and two others retired into their bedroom at the back of a shop. Davinder Kumar stated that he did not go to the scene of crime till about 5 a.m. It was contended that Margaret Twine was not in fact familiar with Davinder Kumar's voice and had lied about the identification because her family wished to purchase the whole of the plot of land that her family shared with Kooky Sharma's family.

The trial judge found that, although acaricide poison was traced in the body of the deceased, death was in fact a result of electric shock and that it was the two appellants who had administered the electric shocks. The judge convicted the two appellants of the murder of the deceased and sentenced each of them to death.

The Court of Appeal upheld the findings of the trial judge and therefore dismissed the appeal. The appellants appealed to the Supreme Court. The appellants' arguments centred on two issues:

i. The cause of death.
ii. Identification of Davinder Kumar as having been present at the time.

In the opinion of the justices of the Supreme Court:

i. As to the cause of death, the evidence of the Senior Government Chemist Mr E. Nsubuga that the acaricide found in the body of the deceased was in substantial quantities was inexplicable. Mr Nsubuga had made no contemporaneous note of either the amount of acaricide poison found in the deceased's body or the details of his chemical analysis. He did not record any quantity in his report, written in January 1998. To assert that the quantity was substantial for the first time in testimony in court in 1999 from memory created doubt about his conclusions. It followed that Mr Nsubuga's opinion was based more on speculation than on science. It was therefore unhelpful as to the cause of death. In spite of Dr Wabinga's ambivalence in his own opinion about the cause of death, Dr Kalyemenya essentially supported Dr Wabinga when he stated in his autopsy report that the cause of death was *"shock due to electrical burns with blunt injury"*. Dr Wabinga's medical opinion therefore established the cause of death.

   In addressing the fact that the road on which the murder took place did not have access to electricity on the night in question, the

Supreme Court cited the reasoning of the East African Court of Appeal in *S. Mungai v Republic* [1965] EA 782, p. 787, to the effect that there was no burden on the prosecution to prove the nature of the weapon used in inflicting the harm that caused death, nor was there an obligation to prove how the instrument was obtained or applied in inflicting the harm.

ii. As to the identification of Davinder Kumar, unlike Kooky Sharma, he had denied being present at the material time. It therefore became necessary for the trial court to consider the identification of Davinder Kumar by Mrs Twine with greatest care and caution. The quality of the voice identification was a crucial issue, as the identifying witness was unable to physically see the speaker whose voice she claimed to identify.

Although Mrs Twine had admitted that the language being spoken at the time was one that she did not understand, it was not necessary for her to understand or be literate in a language in order to identify the speaker if she was familiar with their voice. However, Mrs Twine did not clearly demonstrate that she had enough familiarity with the voice to make an identification – her evidence failed to disprove the claim by Davinder Kumar that she had never had a face-to-face discussion with him. This raised the possibility of mistaken identity by voice insofar as Davinder Kumar was concerned.

While Davinder Kumar's "panicky" behaviour could have suggested that he knew what had happened to the deceased, there was no evidence on the record to support a firm conclusion that his conduct could not have had an innocent explanation. Suspicion alone was not enough in a criminal trial to conclude that he was properly identified as having participated in the murder of the deceased.

The Supreme Court decided that the trial judge had correctly appreciated the law on the burden of proof in relation to the alibi but had not adequately evaluated the evidence in relation to it. It was the duty of the prosecution to disprove the alibi. The judge appeared to suggest that Davinder Kumar should have proved the alibi so as to raise a doubt in his mind. Further still, the record indicated that a P. Kumar (DW1) supported Davinder Kumar's account. The Supreme Court held that the prosecution had failed to discharge the burden of disproving the alibi and Davinder Kumar's appeal succeeded.

Obiter Dictum

The Supreme Court endorsed the view expressed by the Court of Appeal that, because the appellants had chosen not to give sworn evidence, it was absolutely wrong for the trial judge to allow the appellants to be led by their counsel throughout the making of their unsworn statements. Counsel on both sides is under a duty to ensure proper procedure in conducting a criminal trial is followed in adducing evidence by both sides so that justice is not only done but also seen to be done.

The justices of the Supreme Court also noted that too many objections were raised during the trial. The objections and adjournments contributed greatly to the delay in concluding the trial of this case and such practice must be discouraged by trial judges.

Points to Note

- This case is an example of a murder of a wife by her husband.
- The Supreme Court made the special effort to guide subordinate courts on criminal procedure when it commented on the many miscellaneous applications and the handling of the unsworn testimonies in this case.
- While the Supreme Court noted the subordinate courts' appreciation of the law, it illustrated particular application of the law when it re-evaluated the manner in which the second appellant's alibi was considered.

Other cases/decisions referred to	
Country/jurisdiction	*Decision*
Kenya | *S. Mungai v Republic* [1965] EA 782	The East African Court of Appeal held that there was no burden on the prosecution to prove the nature of the weapon used in inflicting the harm that caused death, nor was there an obligation to prove how the instrument was obtained or applied in inflicting the harm.