

PROSECUTION v. SIBOMANA

[Rwanda COURT OF APPEAL – RPAA00327/2018/CA (Hitiyaremye, P.J.) December 07, 2018]

Evidence Law – Elements of evidence – Suspicion – The fact that the accused and the victim had conflicts cannot be considered as conclusive incriminating evidence.

Facts: This case started at the Intermediate Court of Muhanga whereby Sibomana and his wife Mukanyiriminega were prosecuted after Munyensanga was shot at his boutique by an unidentified person in the night of 16/12/2014, the accused were prime suspects because of the witnesses who testified that they had conflicts with the deceased. The accused pleaded not guilty. That Court found Sibomana guilty and sentenced him to life imprisonment whilst his wife Mukanyiriminega was acquitted.

The accused was not contented with the rulings of that judgment and appealed to the High Court, chamber of Nyanza stating that he was convicted for the offence he did not commit, that Court found his appeal without merit basing on the testimonies that the accused had vowed to kill the deceased.

He appealed again before the Supreme Court but the case was transferred to the Court of Appeal due to the judicial reform. Among the grounds of the appeal, he demonstrated that the High Court has only considered the witnesses of the Prosecution and refused to hear his defense witnesses, he plays that the Court conducts its own investigation at the place where the deceased was shot. The accused also added that he has never vowed to kill the deceased and that he did not attempt to bewitch him as alleged by some witnesses.

The Prosecution demonstrates that all witnesses interrogated confirmed that he had hatred against the deceased, and also that what proves that Sibomana participated in shooting of the deceased, is that one of the witnesses testified that before the commission of the offence, he saw Sibomana's motorbike carrying strangers and the victim was shot shortly thereafter.

Held: 1. The fact that the accused and the victim had conflicts cannot be considered as conclusive incriminating evidence.

**Appeal has merit;
Court fees to the public treasury.**

Statute and statutory instruments referred to:

Law N°68/2018 of 30/08/2018 determining offences and penalties in general, article 2 para 1
litera 5.

Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 62, 65 and 119.

No case referred to.

Authors cited:

Etienne Vergès, Géraldine Vial & Olivier Leclerc, Droit de la preuve, 1^{ère} Edition 2015, p. 552.
Henri-D. Bosly & Damien Vandermeersch, Droit de la procédure pénale, 4^{ème} Edition, Bruxelles, 2005, P. 1316.
Michel Franchimont, Ann Jacobs & Adrien Masset, Manuel de procédure pénale, 2^{ème} édition, p. 1028.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 16/12/2014 at around 8h30 PM, Munyensanga Protégène was shot at his boutique by an unidentified person who was wearing a black jacket and a hat, at the beginning of the investigation by the judicial police, Sibomana Valens and his wife Mukanyiriminega Sylvie were prime suspects due to the conflicts with the deceased, because of the witnesses who testified that they used to boast that they will kill him with a gun, however, the suspects when interrogated denied the offence.

[2] After the investigation, the Prosecution sued them to the Intermediate Court of Muhanga, before court, they also denied the offence. That court rendered the judgment RP0111/15/TGI/MHG on 12/06/2015 convicting Sibomana Valens of murder and sentenced him to life imprisonment while Mukanyiriminega Sylvie was acquitted because the Prosecution failed to produce irrefutable elements of evidence to prove her role in the commission of the offence.

[3] Sibomana Valens appealed to the High Court, chamber of Nyanza stating that he was convicted for the offence he did not commit, on 21/01/2016 that court rendered the judgment RPA0389/15/HC/NYA deciding that his appeal lacks merit because all witnesses testified that he plotted to kill Munyensanga Protégène with bullets or thunder, this was due to the conflicts they had originating on the allegation that he poisoned his child.

[4] Sibomana Valens appealed to the Supreme Court stating that the High Court refused to hear his defense witnesses, instead, it only considered the statement of the witnesses of the Prosecution, he adds that Munyaneza Florien allegedly to have shot the deceased did not implicate him, he requests that the court seized on appeal conducts its own investigation in Nyabuhuzu center, where Munyensanga Protégène was shot.

[5] After the establishment of the Court of Appeal, his appeal was transferred to that court pursuant to article 105 of the Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts¹.

[6] The hearing of the case was held in public on 07/11/2018, Sibomana Valens assisted by Counsel Nkundirumwana Joseph while the Prosecution represented by Rudatinya N.Gaspard, the National Prosecutor.

¹ Article 105, paragraph one: From the day this Law comes into force, except cases already under trial, all cases that are no longer in the jurisdiction of the court seized are transferred to the court with jurisdiction in accordance with the provisions of this Law.

II. ANALYSIS OF LEGAL ISSUE

Whether there are no irrefutable incriminating evidence based on by the High Court, chamber of Nyanza to convict Sibomana Valens.

[7] Sibomana Valens states that he appealed because the High Court prejudiced him whereby it held that he is the one who shot the deceased Munyensanga Protégène whereas he has never been as a soldier or getting military training, he adds that the court refused to hear his defense witnesses and failed to conduct investigation he requested in order to reveal the truth, that he is not the author of that offence, rather he came to rescue as others.

[8] With regard to the findings of the High Court that he is the one who earlier manifested hatred against the late Munyensanga Protégène, and that he also said that he will do everything to kill him, that if necessary, he would use bullets, Sibomana Valens argues that he demonstrated to the court that they had an issue of encroachment, but that dispute was settled by Abunzi committee and decided in his favour, therefore there is no reason of murdering him.

[9] Sibomana Valens further states that he never boasted to kill Munyensanga Protégène and that he did not try to poison him before he was shot as declared by some of the witnesses of the Prosecution, instead there is a neighbour witchdoctor who asked him 100,000Frw so that the former heals his child because he told him that his house is possessed with demons but he refused to give him that money, that is why he falsely accused him. He concludes stating that he seeks for fair justice because the High Court convicted him on the basis of the rebuttable elements of evidence full of doubt.

[10] Counsel Nkundirumwana Joseph states that the witnesses who testified against Sibomana Valens, are all related to Munyensanga Protégène and that none of them affirmed that he is the one who shot him, that he requested for further investigation but the court failed to conduct it. He adds that the elements of evidence relied on by the Intermediate Court of Nyarugenge to convict Sibomana Valens, include Munyensanga Protégène's dying declaration whereby he said that he is shot by someone wearing the black jacket and a hat and that he suspects that he is Nsabimana Valens, the court should not have considered that declaration because it is doubtful, instead, the Prosecution should have gathered sufficient elements of evidence, or otherwise he should be released.

[11] With regard to the role of Sibomana Valens for which he is accused in this case, Counsel Nkundirumwana Joseph states that Sibomana was prosecuted before the Intermediate Court as an accomplice but that court convicted him as the principal author basing on Munyensanga Protégène's dying declaration that he suspects he has been shot by Sibomana, this is also dubious and doubtful because once he is considered as an accomplice, one may wonder why the principal author was not prosecuted. He concludes playing that his client be acquitted.

[12] The Prosecution contends that Sibomana Valens was prosecuted as an accomplice because he is the one who incited the murderer of Munyensanga Protégène. In explaining the participation of Sibomana in the commission of the offence, the Prosecution states that the witnesses who were interrogated, have all affirmed that he had hatred against Munyensanga Protégène and that he even tried to poison him, therefore he is the one who got the hit man.

[13] The Prosecution also states that among the witnesses who were interrogated there is one witchdoctor called Hitabatuma Janvier who accuses Sibomana Valens to have told him that he will kill Munyensanga Protegène, and the chief of the village Ntuyenabo Alexis who also confirmed to have heard those statements and testified that after Munyensanga Protegène knew Sibomana valens's plot, he immediately sought for protection. It further states that there is a witness who testified that before the commission of the offence, he saw Sibomana's motorbike carrying strangers and the victim was shot shortly thereafter, which also proves that Sibomana valens participated in the murder of Munyensanga Protegène.

[14] Regarding the issue of the judge of the Intermediate Court basing on the dying declaration of the deceased that he was shot by Sibomana Valens and this was also emphasized by the High Court, the Prosecution states, that declaration should not be considered because he was interrogated when he was in critical state as he was about to die, the fact that he said that he was shot by Sibomana Valens, was because he heard that Sibomana plotted to kill him.

THE VIEW OF THE COURT

[15] Article 62 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production provides that testimonial evidence is a statement made in court by an individual regarding what he or she personally saw or heard which is relevant to the object of trial.

[16] Article 65 of that law provides that only the court can assess the relevance, pertinence and admissibility or rejection of testimonial evidence. It shall not be influenced by the number of witnesses. It shall mainly consider their knowledge of facts and the objectivity and sincerity of their testimonies.

[17] Article 119 paragraph two of the Law N°15/2004 of 12/06/2004 relating to evidence and its production states that the court rules on the validity of incriminating or discharging evidence and whether they can be considered

[18] The content of the case file demonstrates that the elements of evidence which were based on in the appealed judgment to convict Sibomana Valens for the murder of Munyensanga Protegène who was shot on 16/12/2014, those elements of evidence are mainly composed of the statements of the witnesses who affirmed that Sibomana Valens told them or those who heard that he will kill the deceased.

[19] Those witnesses include Hitabatuma Janvier, the witchdoctor who testified that he was told by Sibomana Valens himself that he has a plot of shooting Munyensanga Protegène, that he instantly revealed it to the concerned one and the village authorities, this witness also explained that he went with Sibomana Valens and his wife to Mushishiro sector, Muhanga District to bewitch Munyensanga Protegène on the allegation that the former killed their child.

[20] The other witness is the chief of the village called Nturanyenabo Alexis who affirmed that Sibomana Valens and Munyensanga Protegène had a severe hatred against each other, that the latter told him that Sibomana Valens was plotting to kill him, he adds that Sibomana Valens and his wife should be responsible for the victim's death, however, he states that he does not know the one who executed the murder, the issue of conflicts were also testified by numerous

witnesses such as Nyirahabimana Emerthe, Karemera Célestin, Bahigabose Eugène, Gahutu Viateur, Ndatimana Vianney, Kayitesi Marie Jeanne, Uwitonze Lucie and Musabyimana.

[21] The Court of Appeal finds that the statements of the witnesses who testified that Sibomana Valens had severe hatred against late Munyensanga Protégène, and that he used to vow that he will kill him, cannot be relied on to convict Sibomana Valens for murder as was the case before the court which rendered the appealed judgment because none of the witnesses testified that he saw him perpetrating the offence or heard it from the one who saw *the commission of crime pursuant to article 62 of the Law N°15/2004 of 12/06/2004* mentioned above. This is also the opinion of the legal scholars, whereby they explain that the witnesses are those who narrate what they saw or heard [...](*Le témoignage ou preuve testimoniale n'a pas été défini par aucun texte. La doctrine s'accorde cependant pour admettre qu'il s'agit de la preuve résultant des déclarations de personnes qui relatent ce qu'elles ont vu ou entendu [...]*).² The testimony of those witnesses would be considered as grounds for suspecting Sibomana Valens but they cannot be considered as reliable evidence to be based on to convict him.

[22] With regard to the arguments of the Prosecution that Sibomana Valens was prosecuted as an accomplice in the murder of Munyensanga Protégène, this court finds that the Prosecution fails to produce evidence of any act to prove that he abetted the offender as it is provided by article 2 paragraph one, *litera 5* of of the Law N°68/2018 of 30/08/2018 determining offences and penalties in general³, concerning the issue that Sibomana Valens got the hitman who murdered Munyensanga Protégène, there is no evidence produced by the Prosecution except suspicion, especially that the Prosecution states that the principal author was not identified, the statements of the witnesses that he had hatred with the deceased, are based on the suspicion as motivated above because though they had hatred, this is not sufficient proof that Sibomana Valens abetted the offender because it is not always necessary that you have to harm someone you detest.

[23] This Court also finds, the other element of the evidence produced by the Prosecution that there is a witness who testified that before the offence was committed, that he saw Sibomana Valens's motorcycle carrying strangers and thereafter the deceased was shot instantly, this element of evidence cannot be considered since the witness Ntakirutimana Jean Pierre did not

² Etienne Vergès, Géraldine Vial, Olivier Leclerc, *Droit de la Preuve*, 1ère Edition 2015, p. 552, para. 570.

³ accomplice: a person having aided the offender in the means of preparing the offence through any of the following acts;

a) a person who, by means of remuneration, promise, threat, abuse of authority or power has caused an offence or given instructions for the commission thereof;

b) a person who knowingly aids or abets the offender in the means of preparing, facilitating or committing the offence or incites the offender;

c) a person who causes another to commit an offence by uttering speeches, inciting cries or threats in a place where more than two (2) persons gather, or by means of writings, books or other printed texts that are purchased or distributed free of charge or displayed in public places, posters or notices visible to the public;

d) a person who harbours an offender or a co-offender or an accomplice to make it impossible to find or arrest him/her, helps him/her hide or escape or provides him/her with a hiding place or facilitates him/her to conceal objects used or intended for use in the commission of an offence;

e) a person, who knowingly, conceals an object or other equipment used or intended for use in the commission of an offence;

f) a person who steals, conceals or deliberately destroys in any way objects that may be used in offence investigation, discovery of evidence or punishment of offenders;

reveal that those are the ones who murdered Munyensanga Protegène, to believe that Sibomana Valens transported them when they went to kill the deceased.

[24] The legal scholars Henri-D.Bosly and Damien Vandermeersch, state that the judge cannot convict the accused without the elements of evidence lawfully produced, with no doubt, and those elements of evidence must have been subject to contradiction and those elements of evidence must be analysed in his/her intimate conviction. (*Le juge ne peut déclarer un prévenu coupable que s'il a acquis l'intime conviction de sa culpabilité au-delà de tout doute raisonnable sur la base d'éléments de preuve qui lui ont été régulièrement produits et soumis à la contradiction et qu'il apprécie, en règle, souverainement*)⁴. This is also the opinion of the legal scholar Michel Franchimont who states that the court freely assesses the elements of evidence which were produced, and that it also relies on its intimate conviction without being influenced by an element of the evidence over another.⁵

[25] Pursuant to article 165 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure provides that the benefit of doubt shall be given in favour of the accused. If the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judges shall order his/her acquittal. And also on article 119 of the Law N°15/2004 of 12/06/2004 mentioned above as well as to the opinions of the legal scholars, the Court of Appeal finds that the elements of evidence produced by the Prosecution and those which were relied on by the High Court, chamber of Nyanza to convict Sibomana Valens for his role in murder of Munyensanga Protegène, those elements of evidence are doubtful as motivated above, therefore he has to be acquitted.

III. THE DECISION OF THE COURT

[26] Decides that the appeal lodged by Sibomana Valens has merit;

[27] Decides that Sibomana Valens is acquitted of murder because of doubt;

[28] Overtunes the rulings of the judgment RPA0389/15/HC/NYA rendered on 21/01/2016 by the High Court, chamber of Nyanza;

[29] Orders the release of Sibomana Valens with immediate effect after pronouncement of the case;

[30] Orders that the court fees be charged to the public treasury.

⁴ Henri-D. Bosly & Damien Vandermeersch, Droit de la procédure pénale, 4ème Edition, Bruxelles, 2005, P.1316.

⁵ Michel Franchimont, Ann Jacobs & Adrien Masset, Manuel de Procédure pénale, 2ème édition, p.1028 (appréciation des preuves).