UBUSHINJACYAHA v BAKOMEZA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00011/2020/CA (Gakwaya, P.J.) 24 Nyakanga 2020]

Amategeko agenga imanza mpanabyaha – Icyaha cy'ubwicanyi – Icyaha cyo gukubita no gukomeretsa byateye urupfu – Ubushake (élément intentionnel) – Ubushake (élément intentionnel) nibwo butandukanya icyaha cy'ubwicanyin'icyaha cyo gukubita no gukomeretsa byateye urupfu – Icyaha cyubwicanyi kigaragazwa n'ubushake bwo kuvutsa undi ubuzima naho icyaha cyo gukubita no gukomeretsa byateye urupfu hagomba kugaragazwa ko ubushake uwabikoze yari afite ari gukubita cyangwa gukomeretsa gusa.

Incamake y'ikibazo Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Musanze, Bakomeza aregwa icyaha cy'Ubwicanye ko yishe Batema ariko abvurahana ahakana icyaha, Urukiko rwmeje ko icyaha aregwa kimuhama rumukatira gufungwa burundu.

Bakomeza yajuririye Urukiko Rukuru yemera icyaha asaba imbabazi akabuga ko yishe Batema yasinze kuko yamwirukanseho akagwa mu mwobo agahita apfa, Urukiko Rukuru rwaciye urubanza ruvuga ko ubujurire bwe nta shingiro bufite rugumizaho ighano yari yahawe n'Urukiko Rwisumbuye.

Uwarezwe nabwo ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ubujurire aho yajuriye yemera icyaha ariko asaba Urukiko ko rwahindura inyito y'Icyaha ikaba icyaha cyo gukubita no gukomeretsa byateje urupfu kuko atari yagambiriye kwica Batema.

Ubushinjacyaha bwavuze ko ibyo asaba ataribyo kuko icyaha yakoze yagikoranye ubushake kuko we ubwe mu myanzuro yatanze yiyemereye ko yamusunitse bitandukanye nibyo yavuze ubu ko yamucitse akagwa.

Incamake y'icyemezo: 1. Icyaha cyubwicanyi kigaragazwa n'ubushake bwo kuvutsa undi ubuzima naho icyaha cyo gukubita no gukomeretsa byateye urupfu hagomba kugaragazwa ko ubushake uwabikoze yari afite ari gukubita cyangwa gukomeretsa gusa, bityo Bakomeza akaba ahamwa n'icyaha cyo kwica kuko bigaragara ko kwica Batema yabikoranye ubushake bitari ibyamugwiririye.

Ubujurire ntashingiro bufite.
Amagarama y'urubanza aherereye k'isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Ngenga N° 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 76 niya 140

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe:
Jean Pradel et Michel Danti- Juan, Droit Pénal Spécial, 4ème Ed., Editions CUJAS, 2007, Paris, P.34
Michel Veron, Droit pénal spécial, 11e édition, Dalloz, 2006, P.53

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Bakomeza Samuel aregwa n'Ubushinjacyaha icyaha cy'ubwicanyi bwakorewe uwitwa Batema Innocent ku wa 18/2/2017, bumushinja kuba baratonganiye mu kabari bapfuye inzoga, akaza kumukurikira atashye, aramwica, amujugunya munsi y'ikiraro.

[2] Bakomeza Samuel yaburanye ahakana icyaha, avuga ko we yari ku kiriyo cy'umuntu wari wapfuye, ko atari kumwica ngo ajye ku kiriyo, ahubwo ko yari guhita ahunga. Mu rubanza RP 00101/2017/TGI/MUS rwo ku wa 18/2/2017, Urukiko Rwisumbuye rwa Musanze, rwemeje ko icyaha cy'ubwicanyi gihama Bakomeza Samuel, rumuhanisha igifungo cya burundu.

[3] Bakomeza Samuel yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yemera icyaha akagisabira imbabazi, asobanura ko yagiye mu kabari anywa inzoga arasinda, aza kwaka inzoga Batema Innocent bituma bagirana amakimbirane, amwirukaho agwa mu kiraro, arapfa. Mu rubanza RPA 00330/2017/HC/MUS rwo ku wa 11/5/2018, Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko ubujurire bwa Bakomeza Samuel nta shingiro bufite, ko igihano yahanishijwe n'Urukiko Rwisumbuye rwa Musanze kigumyeho

[4] Bakomeza Samuel yajuririye Urukiko rw'Ubujurire, avuga ko yemera icyaha akaba asaba imbabazi, ko yishe nyakwigendera Batema Innocent nyuma y'amakimbirane bari bamaze kugirana, akomoka ku kuba yari yanze kumusomya ku nzoga bari mu kabari, bigatuma agira uburakari bwinshi, akamwica, ko kuba mu ntangiriro yarabanje guhakana icyaha, byari ukugihunga ariko ko ubu yamaze kumenya ububi bwacyo kandi ko yagororotse. Bakomeza Samuel kandi, asaba Urukiko guhindura inyito y'icyaha kuko icyo yakoze ari ugukubita no gukomeretsa bigatera urupfu, aho kuba ubwicanyi, akaba asaba Urukiko kumugabanyiriza igihano, kuko ari n'ubwa mbere akurikiranywe.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 22/6/2020, Bakomeza Samuel yunganiwe na Me Musabyimana Aphrodis, Ubushinjacyaha buhagarariwe na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba icyaha bakomeza Samuel aregwa ko yakoze bigize icyaha cyo gukubita no gukomeretsa bigatera urupfu aho kuba icy'ubwicanyi

[6] Bakomeza Samuel avuga ko yemera ko ariwe wishe Batema Innocent, ariko ko ntacyo bapfaga, ko ari impanuka yagize kuko aho hantu yaguye hasanzwe hagwa abantu benshi, ko nta kintu yamukubise, ko n'umuganga yemeje ko yishwe n'ibikomere kubera ahantu yahanutse. Avuga nanone ko nyakwigendera yari afite amafaranga na telefoni kandi ko polisi yasanze akibifite, ko rero nta muntu wamufashe ngo amuryamishe neza, ko n'ibyo kuba mu mwanzuro we hagaragaramo ko yavuze ko yamusunikiye mu kiraro, ari uwabimwandikiye, ko ntabyo yamubwiye.

[7] Me Musabyimana Aphrodis, umwunganira, avuga ko Bakomeza Samuel na Batema Innocent bashwaniye mu kabari, aramwirukankana, undi mu kwiruka agwa mu mugezi, ko urupfu rwe rwatewe n'uko yaguye ku mabuye, ko kuba yaramwirukanseho akaza kugwa ku mabuye, icyabaye ari ugukubita no gukomeretsa byateye urupfu.

[8] Me Musabyimana Aphrodis avuga kandi ko ntacyo Ubushinjacyaha buheraho buvuga ko ukwemera icyaha kwa Bakomeza Samuel kutuzuye, ko buvuga ko atagaragaza uburyo yamwishe, ariko ko butabigaragaza, ko ibikomere byinshi nyakwigendera yari afite nabo batabihakana, ariko ko

byatewe n'amabuye yaguyeho, ko uwo yunganira azi inyungu zo kwemera icyaha, bityo ko ibyo avuga bigaragaza ukwemera icyaha kwe kuzuye, akaba akwiye kuabanyirizwa igihano hashingiwe ku ngingo ya 152 y'Itegeko Ngenga rishyiraho Igitabo cy'amategeko ahana.

[9] Ubushinjacyaha buvuga ko mu myanzuro ye, Bakomeza Samuel avuga ko yasunitse nyakwigendera, mu kuburana akavuga ko yamwishikuje, ariko ko abahageze mbere bavuze ko uko bamusanze atariko yagombye kuba yari ameze nk'umuntu wigushije, ko niba yaramusunitse bikamuviramo urupfu, atari byo bikwiye kwitwa gukubita no gukomeretsa byateye urupfu, ko umuganga yagaragaje ko icyamwishe kitaturutse ku kugwa, ko yari afite ibikomere byinshi, ndetse ko n'uburyo yari aryamyemo ahindukije, bigaragara ko ari umuntu wahamushyize.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 140 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, iteganya ko '' Kwica umuntu ubishaka byitwa ubwicanyi. Bihanishwa igifungo cya burundu''.

[11] Raporo ya muganga iri muri dosiye, igaragaza ko umurambo wa Batema Innocent wari ufite ibikomere byinshi ku mutwe, cyane cyane mu gahanga, ko amagupfwa y'umutwe aherereye ku gice cy'ibumoso bw'agahanga yari yatebeyemo imbere, ko yari yirumye ururimi kandi afite amaraso yibumbiye mu mazuru no mu mu kanwa, ko yari afite kandi ibikomere byoroheje mu kiganza cy'ibumoso, ahandi hose ku mubiri we hakaba nta bisebe cyangwa ukwibumbira kw'amaraso mu mubiri cyangwa ugukoboka byari bihari, uretse ku mutwe. Umuganga akaba yaranzuye ko urupfu rwa BATEMA Innocent rwatewe n'ibikomere bikomeye byo ku mutwe no mu maso[1].

[12] Nk'uko bigaragara mu gace ka munani (8) n'aka cumi cyenda (9) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko Bakomeza Samuel atavugisha ukuri, ko ibyo avuga ko yirutse kuri nyakwigendera akagwa mu ruzi, nta shingiro bifite kuko raporo ya muganga yo igaragaza ko yishwe n'ibikomere byo mu mutwe, kandi ko raporo yakozwe n'Ubugenzacyaha nyuma yo kugera aho umurambo wari uri, igaragaza ko uburyo umurambo wari uryamye neza bigaragaza ko hari umuntu wawuhashyize, ko n'iyo yaba yarahanutse ku kiraro yagwa areba hepfo, atagwa areba haruguru.

[13] Urukiko rw'Ubujurire rurasanga, ibyo Bakomeza Samuel n'umwunganira bavuga ko icyaha cyakozwe ari icyo gukubita no gukomeretsa byateye urupfu aho kuba icy'ubwicanyi, nta shingiro bifite, kuko hari ibikorwa bigaragaza ko yagize ubushake bwo kwica nyakwigendera Batema Innocent, birimo kuba baragiranye amakimbirane bari mu kabari, amubwira ko azamubona, ibi akaba yarabyemeje abazwa mu Bugenzacyaha, ndetse n'abatangabuhamya Rudasubirwa Jean Bosco, Nsanzabera Sarathiel na Batarigaya Jean Damascène, ubwo babazwaga mu Bushinjacyaha, bakaba baremeje ko ubwo Bakomeza Samuel yari amaze kumena inzoga ya Batema Innocent, uyu akamutera icupa, yamubwiye ko bazabonana, kuba nyuma y'ibyo, Bakomeza Samuel yarahise agenda akurikiye nyakwigendera, amugezeho aramuhutaza, amusunikira mu muzi, aramwica, arapfa, nk'uko yabyivugiye mu mwanzuro w'ubujurire, kandi ibi yavuze, ubisesenguye, ukaba usanga byumvikanisha ko nyuma yo kumusunikira muri icyo kiraro (umuzi), yamusanzemo akamwica, akaba yaramusize azi neza ko yapfuye.

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[1] Nous avons examiné le cadavre de batema Innocent le 19/2/2017 à 10h 49' et nous avons constaté ce qui suit: - (…), - multiple plaie à la tệte surtout au front avec enfoncement visible des os du crâne à la partie fronto-pariétale gauche; - Les dents mordent la langue et présence des caillots de sang dans les narines, dans la bouche et […]; - plaie superficielle à la main gauche; - Pas de plaie ni ecchymose ni écorchures ailleurs sur son corps, sauf au niveau de la tệte. Conclusion: BATEMA Innocent est décédé suite à un traumatisme crânio-facial violent

[14] Urukiko rw'Ubujurire rurasanga kandi, kuri ibi bimaze kugaragazwa mu gace kabanziriza aka, hiyongeraho kuba raporo ya muganga igaragaza ko nyakwigendera yatewe ibikomere mu buryo bukomeye ku gice cy'umutwe, nyamara hakaba hatarigeze hagaragazwa ko aho bamusanze ari ahantu harehare, yagwa agakomereka ku buryo bukomeye, nk'uko byagaragajwe na muganga, kandi nanone iyo ibikomere afite aba yarabitewe no kugwa mu kiraro (mu muzi), yashoboraga kugaragaza ibikomere ku bindi bice by'umubiri. Rurasanga kandi no kuba Bakomeza Samuel ntacyo agaragaza yaba yarakoze nyuma yo kubona nyakwigendera aguye mu kiraro, bigaragaza uruhare rwe mu rupfu rwe.

[15] Urukiko rw'Ubujurire rurasanga nk'uko abahanga babisobanura, ubwicanyi bugaragazwa n'ubushake (élément intentionnel) bwo kuvutsa undi ubuzima[2], bakaba banavuga ko ubwo bushake ari ikintu cy'ingenzi kuko aribwo butandukanya ubwicanyi no gukubita bitera urupfu, aho ubikoze aba atagamije kwica, bikanabutandukanya kandi no kwica umuntu bidaturutse ku bushake, mu gihe ku birebana n'icyaha cyo gukubita no gukomeretsa byateye urupfu nta bushake bwo kwica bwari buhari, ho, n'ubwo ugukubita bitera urupfu, haba hagomba kugaragazwa ko ubushake uwabikoze yari afite ari gukubita cyangwa gukomeretsa gusa[3], bityo ibikorwa bimaze kugaragazwa, bikaba byerekana ko Bakomeza Samuel yagize ubushake bwo kwica Batema Innocent.

[16] Ku birebana n'ibyo Bakomeza Samuel n'umwunganira bavuga ko ari impanuka yagize, ko aho hasanzwe hagwamo abantu, Urukiko rw'Ubujurire rurasanga nta shingiro bifite, kuko adasobanura icyo yaba yari agamije ubwo yakurikiraga nyakwigendera Batema Innocent, nyuma yo kwinjira mu kabari akamubura, nanone kandi iyo aba atariwe wamwishe, yari kuba yaragize icyo akora nyuma yo kubona aguye muri icyo kiraro, agahamagara abantu, bukaba bwararinze bucya mu gitondo ntacyo aragaragaza, nyakwigendera akaba yarabonywe n'abantu bihitiraga. Ku birebana kandi n'ibyo Bakomeza Samuel avuga ko nyakwigendera yari afite amafaranga na telefoni kandi ko polisi yasanze akibifite, ko rero nta muntu wamukozeho, Urukiko rw'Ubujurire rurasanga nta gaciro byahabwa, kuko agira umujinya akamukurikira, nyuma yo kumubwira ko amubona, atari agamije kumwiba, ahubwo icyo yashakaga akaba ari ukumuvutsa ubuzima.

[17] Urukiko rw'Ubujurire rurasanga kandi nk'uko byagarutsweho haruguru, ibyo raporo ya muganga igaragaza ku murambo wa nyakwigendera, bishimangira ko, n'ubwo Bakomeza Samuel adasobanura icyo yamwicishije, aho yakubise n'uburemere n'imbaraga yamukubitanye, yari agamije kumwica, bityo icyaha yakoze akaba ari ubwicanyi.

b. Kumenya niba ukwemera icyaha kwa Bakomeza Samuel kudashidikanywaho kukaba kwamubera impamvu yo kugabanyirizwa igihano

[18] Bakomeza Samuel avuga ko indi mpamvu yatumye ajurira ari uko yahanishijwe igihano kiremereye kandi yaremeye icyaha, agasaba imbabazi, akaba asaba Urukiko kumugabanyiriza igihano kuko n'ubu acyemera, kandi akaba ari n'ubwa mbere akurikiranywe. Asobanura ko yagiranye amakimbirane na nyakwigendera bapfuye inzoga, bararwana, aramwishikuza, ariruka yikubita mu mabuye, ko bukeye bagiye ku itabaro aribwo bamubonye aryamye mu kiraro, ko ibyo kuba yaramusunitse byashyizwe mu mwanzuro n'uwamwandikiye, ko ntabyo yigeze amusaba kwandika kuko bitabayeho.

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[2] L'élément intellectuel du meurtre consiste dans la volonté de causer la mort (animus necandi) et cet élément est fondamental car lui seul permet de distinguer le meurtre des coups mortels où l'agent en voulant les coups n'a pas voulu la mort, et de l'homicide involontaire où l'agent n'a même pas voulu les coups. Jean Pradel et Michel Danti- Juan, *Droit Pénal Spécial*, 4ème Ed., Editions CUJAS, 2007, Paris, P.34

[3] ''Sont poursuivis sous cette qualification les violences dont le résultat a dépassé l'intention du coupable qui n'était animé d'aucune volonté homicide à condition d'établir un lien de causalité entre violences et décès''. Michel Veron, *Droit pénal spécial*, 11e édition, Dalloz, 2006, P.53.

[19] Me Musabymana Aphrodis asaba ko Bakomeza Samuel yazagabanyirizwa igihano, hagashingirwa ku ngingo ya 78 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, agahanishwa igifungo cy'amezi atandatu (6), kubera ko amaze imyaka ibiri (2) afunzwe, agahita afungurwa.

[20] Ubushinjacyaha buvuga ko mu mwanzuro Bakomeza Samwel yakoze mu mwaka wa 2018, yavugaga ko yasunitse Batema Innocent bari ku iteme (pont), kandi ko kuri iryo teme hasanzwe hagwa abantu, ko n'umwunganira yavuze ko uko basanze umurambo bigaragara ko hari umuntu wawuhashyize, ariko ko abona ibyo avuga ari uguhunga icyaha kuko raporo ya muganga igaragaza ko yari afite ibikomere byinshi, ndetse ko n'uburyo yari aryamyemo ahindukije bigaragara ko ari umuntu wahamushyize, ko rero ari ikintu yamwicishije, bikaba bitandukanye n'ibyo asobanura, akaba adakwiye kugabanyirizwa igihano kuko atavugisha ukuri.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 76 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, iteganya ko '' Umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye''.

[22] Nk'uko bigaragara mu gace ka munani (8) k'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko Bakomeza Samuel atavugisha ukuri ku bijyanye n'icyishe nyakwigendera, ko ibyo avuga ko yamwirutseho akagwa mu ruzi, nta shingiro bifite, kuko raporo ya muganga ibivuguruza, ikagaragaza ko yari afite ibikomere byinshi mu mutwe no mu ntoki, kandi ko raporo yakozwe n'Ubugenzacyaha bugeze aho icyaha cyabereye, igaragaza ko, bakurikije uburyo umurambo wari uryamye neza, ari umuntu wawuhashyize, ko iyo aba yarahanutse ku kiraro, yari kugwa areba epfo, aho kugwa areba haruguru.

[23] Urukiko rw'Ubujurire rurasanga, n'ubwo Bakomeza Samuel avuga ko yemera icyaha, agasaba kugabanyirizwa igihano, atavugisha ukuri ku buryo yishemo nyakwigendera Batema Innocent, uburyo asobanura uko icyaha cyakozwe, bikaba bigaragaza ko hari ibyo ahisha, kuko adasobanura ibikorwa yakoze nyuma y'uko avuye ku kabari, akagenda amukurikiye, ahubwo akaba avuga gusa ko yamwishikuje akagwa mu mugezi, ariko ibi bikaba bitumvikanisha uruhare rwe nk'umuntu uvuga ko yemera icyaha cyo kuba ariwe wamwishe, mu gihe nyamara raporo ya muganga igaragaza ko nyakwigendera yatewe ibikomere byinshi kandi bikomeye ku gice cy'umutwe.

[24] Urukiko rw'Ubujurire kandi rurasanga Bakomeza Samuel yaragiye yivuguruza, kuko aburana yavuze ko nyakwigendera yamwishikuje, akagwa mu mugezi, nyamara mu mwanzuro we akaba yaravuze ko yamusunitse akagwamo, uretse n'ibyo kandi, n'ubwo avuga ko amabuye yaguyeho ariyo yamukomerekeje, nta shingiro bifite kuko raporo yakorewe aho umurambo bawusanze n'Ubushinjacyaha, igaragaza ko uburyo yari aryamyemo, bugaragaza ko ari umuntu wamuhashyizeh.

[25] Ku birebana nanone n'ibyo Bakomeza Samuel n'umwunganira bavuga ko Ubushinjacyaha buvuga ko ukwemera kwe gushidikanywa ariko ko nabwo butagaragaza uko yamwishe, nta shingiro bifite kuko, kuba hataragaye icyo yakoresheje icyaha, bitakuraho ko icyo cyaha kimuhama mu gihe hari raporo ya muganga igaragaza uko umubiri wa nyakwigendera wari umeze n'icyateye urupfu rwe, bigaragaza uko yishwe. Urukiko rw'Ubujurire rurasanga kandi n'ubwo Bakomeza Samuel adashaka kugaragaza ukuri imbere y'Urukiko, ngo avuge uburyo nyakuri yishe nyakwigendera, mu mwanzuro we w'ubujurire yavuze ko akimara kwinjira mu kabari akabura Batema Innocent, yahise asohoka, aramukurikira, amugezeho aramuhutaza amusunikira mu muzi, aramwica, arapfa, ibyo avuga ko

uwamwandikiye umwanzuro ariwe wanditse ko yamusunitse, nta shingiro bifite kuko nta cyemeza ko atariwe wabimubwiye.

[26] Urukiko rw'Ubujurire rurasanga nanone Bakomeza Samuel atemera icyaha aregwa cy'ubwicanyi kuko aburana avuga ko yakoze icyaha cyo gukubita no gukomeretsa byateye urupfu.

[27] Urukiko rw'Ubujurire rurasanga rero Bakomeza Samuel atavugisha ukuri, ukwemera icyaha kwe kukaba gushidikanywako, kutamubera impamvu nyoroshyacyaha yatuma agabanyirizwa igihano yakatiwe. Rurasanga kandi nta yindi mpamvu yatuma agabanirizwa igihano yakatiwe kuko icyo yahawe gikwiranye n'uburyo icyaha cyakozwemo, ndetse n'uburemere bwacyo.

[28] Hashingiwe ku byasobanuwe haruguru byose n'ingingo z'amategeko zagaragajwe, Urukiko rw'Ubujurire rurasanga ubujurire bwa Bakomeza Samuel nta shingiro bufite, urubanza rujuririrwa rukaba rutagomba guhinduka.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko ubujurire bwa Bakomeza Samuel nta shingiro bufite;

[30] Rwemeje ko urubanza RPA 00330/2017/HC/MUS, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 11/05/2018, rujuririrwa, rudahindutse;

[31] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.