UBUSHINJACYAHA v. SINGIRANKABO

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00279/2021/CA (Kaliwabo, P.J.) 27 Gicurasi 2022]

Amategeko nshinjabyaha – Icyaha cyo kwica – Ubushake bwo kwica – Ubushake bwo kwica bushobora gusuzumirwa mu ntwaro zakoreshejwe n'igice cy'umubiri cyakubiswe.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranye uregwa ku cyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi nyuma yuko uregwa atemye mu mutwe umuhungu we witwa Iragena, uyu yikubita hasi arabye ahita ajyanwa ku bitaro. Urwo Rukiko rwaciye urubanza, rwemeza ko uregwa ahamwa n'ubwinjiracyaha mu cyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25).

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Musanze, anenga Urukiko Rwisumbuye ko rwirengagije ukuri kwe, rumuhanisha ibihano birebire kandi umuhungu we ari we wahoraga amukorera urugomo rurimo kumutemera urugano no kumugurishiriza imirima kandi akaba ari we wabanje kumutema mu gahanga, asaba kurekurwa agataha kuko umuhungu we yakize, ubu akaba ari mu kazi gasanzwe. Urwo Rukiko narwo rwaciye urubanza rwemeza ko ubujurire bw'uregwa nta shingiro bufite, ko imikirize y'urubanza yajuririye idahindutse.

Uregwa nanone yajuririye Urukiko rw'Ubujurire avuga ko mbere yaburanye atemera icyaha ku buryo bwuzuye, ko ku rwego rw'ubujurire bwa kabiri yemera ibyo Ubushinjacyaha bumurega, asaba kugabanyirizwa ibihano kuko imbabazi yasabye umuryango we yazikuye ku mutima, ko icyaha yakoze nta ngaruka zikomeye cyateje kuko umuhungu we yavuwe agakira, akaba yarasubiye mu buzima busanzwe.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa yakoze icyaha cy'ubugome kandi akaba atacyemera uko bikwiye kuko adasobanura imikorere y'icyaha. Bwavuze ko igihano yahanishijwe cyagumaho kuko ari cyo giteganywa n'itegeko.

Incamake y'icyemezo: 1. Ubushake bwo kwica bushobora gusuzumirwa mu ntwaro zakoreshejwe n'igice cy'umubiri cyakubiswe, Bityo kuba uregwa yaratemye Iragena abigambiriye amutemesha umupanga (intwaro yica) mu mutwe (mu cyico) kandi atitabara, niyo mpamvu uregwa yahamwe n'ubwinjiracyaha bw'ubwicanyi.

2.Igifungo cy'imyaka icumi (10ans) nicyo gikwiranye n'ingaruka zatewe n'icyaha uregwa yakoze bityo akaba aricyo akwiye guhanishwa mu mwanya w'igifungo cy'imyaka 25 yari yahawe mu rubanza rujuririrwa.

Urubanza ruhindutse ku bijyanye n'igihano.

Amategeko yakoreshejwe:

Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 21, igika cya 3, iya 49 n'iya 107.

Imanza zifashishijwe:

Ubushinjacyaha v. Cyuma Miruho, RPA 0142/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/09/2014, ruboneka mu Cyegeranyo cy'Ibyemezo by'Inkiko, RLR V2- 2015.

Ubushinjacyaha na Uwamurengeye, RPAA 0110/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2014, ruboneka mu Cyegeranyo cy'Ibyemezo by'Inkiko RLR V1-2014.

Ubushinjacyaha v. Gatema Pascal, RPA 0266/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/02/2016.

Ubushinjacyaha v. Kabalisa Alexis, RPAA 00575/2018/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 08/11/2019.

Inyandiko z'abahanga:

M. Véron, Droit Pénal Spécial, 11 éd., Sirey, Paris, 2006, p. 33.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 09/09/2019, Singirankabo Samuel yatemye mu mutwe umuhungu we Iragena Yohana, uyu yikubita hasi arabye ahita ajyanwa ku bitaro. Ssingirankabo yakurikiranyweho ubwinjiracyaha mu cyaha cy'ubwicanyi mu gihe we yavugaga ko yirwanagaho kubera ko Iragena ariwe wabanje ku mutema mu gahanga.

[2] Kuwa 08/10/2019, Urukiko Rwisumbuye rwa Rubavu rwaciye urubanza RP 00536/2019/TGI/RBV rusanga igikomere Singirankabo Samuel afite ari we wakiteye agamije kwerekena ko yakoze icyaha yitabara, rwemeza ko ahamwa n'ubwinjiracyaha mu cyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25).

[3] Singirankabo Samuel yajuririye Urukiko Rukuru, Urugereko rwa Musanze, anenga Urukiko Rwisumbuye ko rwirengagije ukuri kwe, rumuhanisha ibihano birebire kandi umuhungu we ari we wahoraga amukorera urugomo rurimo kumutemera urugano no kumugurishiriza imirima kandi akaba ari we wabanje kumutema mu gahanga, asaba kurekurwa agataha kuko umuhungu we yakize, ubu akaba ari mu kazi gasanzwe.

[4] Kuwa 26/02/2020, Urukiko Rukuru, Urugereko rwa Musanze rwaciye urubanza RPA 00514/2019/HC/MUS rwemeza ko ubujurire bwa SINGIRANKABO Samuel nta shingiro bufite, ko imikirize y'urubanza yajuririye idahindutse.

[5] Mu gufata icyo cyemezo, Urukiko rwasanze SINGIRANKABO Samuel yarakoze ubwinjiracyaha mu cyaha cy'ubwicanyi abigambiriye, ko kandi nta mutima wo kukicuza afite, akaba akeneye igihe kingana n'icyo yahanishijwe kugira ngo agororwe bihagije.

[6] SINGIRANKABO Samuel yajuririye Urukiko rw'Ubujurire avuga ko mbere yaburanye atemera icyaha ku buryo bwuzuye, ko ku rwego rw'ubujurire bwa kabiri yemera ibyo Ubushinjacyaha bumurega, asaba kugabanyirizwa ibihano kuko imbabazi yasabye umuryango we yazikuye ku mutima, ko icyaha yakoze nta ngaruka zikomeye cyateje kuko umuhungu we yavuwe agakira, akaba yarasubiye mu buzima busanzwe.

[7] Ubushinjacyaha bwasubije kuri iyi ngingo buvuga ko SINGIRANKABO Samuel yakoze icyaha cy'ubugome kandi akaba atacyemera uko bikwiye kuko adasobanura imikorere y'icyaha. Bwavuze ko igihano yahanishijwe cyagumaho kuko ari cyo giteganywa n'itegeko.

[8] Iburanisha ryabaye kuwa 17/05/2022 SINGIRANKABO Samuel yunganiwe na Me UMUGWANEZA Diane naho Ubushinjacyaha buhagarariwe na BUNYOYE Grâce, Umushinjacyaha ku rwego rw'Igihugu.

[9] Urukiko rurasuzuma niba SINGIRANKABO Samuel yagabanyirizwa igihano kubera kwemera icyaha n'ingaruka nkeya zatewe n'icyaha yakoze.

II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA:

Kumenya niba SINGIRANKABO Samuel yagabanyirizwa igihano kubera kwemera icyaha n'ingaruka nkeya zatewe n'icyaha yakoze

[10] SINGIRANKABO Samuel mu mwanzuro we, yajuririye Urukiko rw'Ubujurire avuga ko mbere yaburanye atemera icyaha ku buryo bwuzuye, ariko ko kuri uru rwego yemera ibyo Ubushinjacyaha bumurega, asaba kugabanyirizwa ibihano no kubisubikirwa kuko imbabazi yasabye umuryango we yazikuye ku mutima.

[11] Mu iburanisha ryo kuwa 17/5/2022, SINGIRANKABO Samuel yavuze ko yajurijwe no gusaba kugabanyirizwa igihano ku mpamvu yuko yemera icyaha ku buryo budashidikanywaho no kuba ingaruka z'icyaha zidahambaye kuko umwana we IRAGENA Yohana yakoreye icyaha yakize agasubira mu buzima busanzwe, ndetse akaba yaramusuye aho afungiwe.

[12] SINGIRANKABO Samuel avuga ko umwana we yahoraga amuhemukira, ko ku munsi yakoreyeho icyaha yabuze ukwihangana akamukomeretsa ariko ko nawe yari yabanje kumutema mu gahanga, akaba yarakoze icyaha kimugwiririye kuko ataba yarabyaye umwana, akamurera bimugoye ngo noneho amwice kandi aribwo nawe yarakeneye kurerwa n'umwana umaze kuba umugabo. Asoza asaba kugabanyirizwa igihano kuko umuryango we wamubabariye, ko kandi igihano yahawe kimuremerereye dore ko aribwo bwa mbere yari aguye mu cyaha.

[13] Me UMUGWANEZA Diane umwunganira, avuga ko kuri uru rwego SINGIRANKABO Samuel yemera icyaha ku buryo bwuzuye kandi budashidikanywaho, ko umuhungu we yavuwe agasubira mu buzima busanzwe akaba kandi yaramusuye aho afungiwe bigaragaza ko nta nzika amufitiye, bikaba bigaragaza ko nta ngaruka zikomeye icyaha cyamuteje. Yasoje avuga ko kuba ari ubwa mbere SINGIRANKABO Samuel akurikiranwa n'inkiko, ko hashingirwa ku ngingo ya 49 na 59 z'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, no ku rubanza RPA 0034/08/CS rwaciwe ku wa 28/05/2010, aho Urukiko rw'Ikirenga rwasobanuye ko nta gihe ntarengwa cyagenwe n'itegeko cyo kuba uregwa yagarura umutima akemera icyaha, bityo SINGIRANKABO Samuel akagabanyirizwa igihano, agahanishwa igifungo cy'imyaka 10.

[14] Ubushinjacyaha bwasubije buvuga ko SINGIRINKABO Samuel yagambiriye kwica umwana we amutemye mu mutwe, ko n'ubwo avuga ko agamije kwemera icyaha nyamara ko adasobanura neza imikorere ya cyo. Bwavuze ko SINGIRANKABO uvuga ko yemera icyaha ku buryo bwuzuye, agikomeje kubeshya ko IRAGENA ariwe wabanje kumutema mu gahanga

nyamara byaragaragajwe ko ubwe ari we wikomerekeje agamije kwerekana ko yatemye IRAGENA yitabara. Ubushinjacyaha bwasabye Urukiko kudaha ishingiro ubujurire bwa SINGIRINKABO Samuel hakagumaho igihano yahawe kuko gihuje n'amategeko.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 21, mu gika cyayo cya 3, y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko: "Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (½) cy'igihano giteganyirijwe icyo cyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25). Naho ingingo ya 107 y'iri Tegeko ikavuga ko " Umuntu wica undi abishaka, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igihano cy'igifungo cya burundu".

[16] Ingingo ya 49 y'Itegeko N° 68/2018 rivuzwe haruguru ivuga ibigomba gushingirwaho mu gihe umucamanza agena igihano, kimwe muri byo akaba ari ingaruka zikomoka ku cyaha.

[17] Dosiye igaragaza ko SINGIRANKABO Samuel yatemye umuhungu we witwa IRAGENA Yohana mu mutwe akoresheje umupanga, akamutema ubwo yinjiraga mu nzu, agiye kumubaza impamvu yakingiranye nyina n'abana hanze, ako kanya IRAGENA Yohana yahise yitura hasi, naho SINGIRANKABO ahita yikingirana mu cyumba, maze yikomeretsa mu gahanga ashaka kujijisha ngo agaragaze ko yirwanagaho.

[18] Impamvu y'ubujurire ya SINGIRANKABO ishingiye ku gusaba kugabanyirizwa igihano ku mpamvu yuko yemera icyaha ku buryo budashidikanywaho no kuba ingaruka z'icyaha zidahambaye kuko umwana we IRAGENA Yohana yakoreye icyaha, yavuwe agakira ndetse akaba yaramusuye aho afungiwe, bigaragaza ko yasubiye mu buzima busanzwe.

[19] Urukiko rurasanga SINGIRANKABO Samuel avuga ko yatemye umuhungu we IRAGENA kuko yabuze ukwihangana kubera amakosa umwana we yahoraga amukorera kandi ko uyu ariwe wabanje kumutema. Rurasanga imiburanire ye kuri uru rwego ntaho itandukaniye n'ibyo yaburanishije mu Rukiko Rukuru mu gihe we ubwe, mu mwanzuro we, yavuze ko mu nkiko zibanza atavugishije ukuri kuzuye, Urukiko rukaba rusanga no kuri uru rwego nta kuri kuzuye kuri mu miburanire ya SINGIRANKABO uvuga ko yatemye IRAGENA Yohana yitabara.

[20] Urukiko rurasanga, nk'uko Urukiko Rukuru rwabisobanuye mu rubanza rujuririrwa SINGIRANKABO Samuel yaratemye umuhungu we IRAGENA Yohana agambiriye kumwica, kuko yafashe umupanga yari afite, amutema mu mutwe azi neza ko ari mu cyico, ndetse akamukomeretsa ku buryo bubabaje nk'uko raporo ya muganga ibigaragaza ko yagize ubumuga bw'agateganyo bugera kuri 90%; kuba atarapfuye bikaba bitaraturutse ku bushake bwa SINGIRANKABO Samuel.

[21] Urukiko rurasanga ibishingirwaho mu kumenya ko uwakubise umuntu yaba yarafite umugambi wo kumwica cyangwa niba ntawo yarafite, bisuzumirwa mu cyakoreshejwe n'igice cy'umubiri cyakubiswe. Iki gitekerezo ni nacyo Urukiko rw'Ikirenga rwafashe mu manza

zitandukanye harimo urw'Ubushinjacyaha na CYUMA MIRUHO[1] n'urw'Ubushinjacyaha na UWAMURENGEYE[2]. Ibi ni nako bisobanurwa n'abahanga mu mategeko barimo Michel Véron[3], nawe wishingikirije ku manza nyinshi zaciwe n'Urukiko rw'Ubufaransa rusesa imanza, uvuga ko ubushake bwo kwica bushobora gusuzumirwa mu ntwaro zakoreshejwe zishobora gutera akaga ko gupfa, n'igice cy'umubiri cyakubiswe.

[22] Urukiko rurasanga hakurikijwe ibivuzwe mu gika kibanziriza iki SINGIRANKABO yaratemye IRAGENA abigambiriye, amutemesha umupanga (intwaro yica) mu mutwe (mu cyico) kandi atitabara, ari nayo mpamvu SINGIRANKABO Samuel yahamwe n'ubwinjiracyaha bw'ubwicanyi, urukiko rumuhanisha igihano cy'imyaka 25. kikaba gihwanye n'uburemere bw'icyaha yakoze.

[23] Urukiko rurasanga ariko, nubwo SINGIRANKABO Samuel yarafite umugambi mubisha wo kwambura ubuzima umuhungu we amutemesha umupanga mu mutwe, nyamara kandi ku bw'amahirwe uyu yaravuwe agakira ndetse agasubira mu buzima busanzwe nk'uko ushinjwa abivuga Ubushinjacyaha bukaba butabivuguruza. Igabanyagihano rishingiye ku ngaruka nkeya z'icyaha uretse no kuba ryumvikana mu ngingo ya 49 yavuzwe, iki gitekerezo kiboneka mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga harimo n'urubanza RPA 0266/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/02/2016[4]. Ninacyo gitekerezo kiboneka mu manza zitandukanye zaciwe n'uru Rukiko harimo urubanza RPAA 00575/2018/CA[5].

[24] Urukiko rurasanga, igifungo cy'imyaka icumi (10ans) ari cyo gikwiranye n'ingaruka zatewe n'icyaha SINGIRANKABO Samuel yakoze bityo akaba aricyo akwiye guhanishwa mu mwanya w'igifungo cy'imyaka 25 yari yahawe mu rubanza rujuririrwa.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko urubanza RPA 00514/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 26/02/2020 ruhindutse ku birebana n'ibihano gusa.

[26] Rwemeje ko SINGIRANKABO Samuel ahanishwa igifungo cy'imyaka icumi (10) mu mwanya w'igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe mu rubanza RPA 00514/2019/HC/MUS.

[27] Rutegetse ko SINGIRANKABO Samuel asonerwa amagarama y'urubanza kuko yaburanye afunzwe.

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[1] Reba urubanza RPA 0142/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/09/2014 haburana Ubushinjacyaha na CYUMA MIRUHO, ruboneka mu Cyegeranyo cy'ibyemezo by'inkiko, RLR V2- 2015.

[2] Reba urubanza RPAA 0110/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2014 haburana Ubushinjacyaha na UWAMURENGEYE ruboneka mu cyegeranyo cy'ibyemezo by'inkiko RLR V1-2014

[3] M. Véron, Droit Pénal Spécial, 11 éd., Sirey, Paris, 2006, P.33, *La preuve de l'intention ou animus necendi soulève bien des difficultés car la preuve directe en parrait impossible. Aussi, la Cour de cassation admet qu'on puisse la rechercher dans les circonstances qui entourent le meurtre, notamment dans le fait que l'accusé a utilize des moyens mortels, des armes dangereuseset a frappéou visé sa victim sur une partie vitale du corps"*

[4] Reba igika cya 29 cy'urubanza RPA 0266/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/02/2016 haburana Ubushinjacyaha na GATEMA Pascal.

[5] Reba igika cya 21 cy'urubanza RPAA 00575/2018/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 08/11/2019 haburana Ubushinjacyaha na KABALISA Alexis.