

PROSECUTION v. NGIRABABYEYI

[Rwanda SUPREME COURT – RPAA 0086/ 10/CS (Mukanyundo, P.J., Hatangimbabazi and Gakwaya, J.) June16, 2014]

Evidence law – Child defilement – Providing evidence attesting that a person sexually abused is a child – Only birth certificate or a medical report attesting the age of an individual prove the age of a person – Failure to produce this evidence brings about doubt and the latter benefits the accused – Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

Facts: Ngirababyeyi Thomas was accused of committing child defilement against a girl of 13 years old. He was found guilty and sentenced to 25 years of imprisonment. He appealed to the High Court and the latter upheld the ruling of the Court of first instance. He appealed to the Supreme Court stating that he was deprived of the rights granted by the law to everyone who figures out the truth about the commission of the offence and seeks forgiveness, requesting the penalty reduction.

Ngirababyeyi stated that he admits to have had sex with Uzamukunda Marie Rose but with her consent. The Counsel for the appellant contends that evidence proving that the potential victim was really 13 year old should be produced; otherwise his client would not be condemned for having sex with adult person since it is not the offence he is charged with. On this issue, the Prosecution states that it failed to get the certificate. and requested the Court to resort to human presumption since it is lawful especially that Ngirababyeyi Thomas, in previous instances, admitted that he committed child defilement though he recanted at the appellate Court that the girl was an adult of likely 20 years old.

Held: The fact that the Prosecution failed to demonstrate that the individual with whom the accused had sex was really a child at the time the offence is alleged to have been committed causes doubt. Therefore, the request of the Prosecution that the Court would resort to human presumption lacks merit since only birth certificate issued by the competent civil servant or the medical report made by a physician prove the individual's age. Therefore, the accused is not guilty of the offence he was accused of since no evidence was provided with regard to the age of Uzamukunda Marie Rose. The appellant was acquitted because of doubt.

**Appeal granted.
The appealed judgment quashed.
Appellant acquitted of child defilement.
Appellant should immediately be released.
Court fees charged to the public treasury.**

Statutes and statutory instruments referred to:

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

Cases referred to:

Prosecution v. Sebiteke, RPAA 015/10/CS, rendered by the Supreme Court, on February 28, 2014

Author cited:

J.-François Renucci et C. Courtin, “Le Droit pénal des mineurs”, 4è éd., PUF, Paris, 1991, p.4.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case commenced the Intermediate Court of Gasabo, Ngirababyeyi being charged with child defilement against Uzamukunda Marie Rose. The Court decided the case n^o RP 0139/06/TGI/GSBO on May 29, 2006 and found him guilty. The Court sentenced him to 25 years of imprisonment and ordered him to pay the court fees totalling 10,500 Rwf.

[2] Not contented with the decision of the Court, Ngirababyeyi Thomas appealed to the High Court. The Court decided the case n^o RPA 0992/06/HC/KIG on June 5, 2010 and found him guilty of the offence he was charged with. It upheld the judgment RP 0139/06/TGI/GSBO rendered by the Intermediate Court of Gasabo in its entirety except the court fees to be paid amounting 17,700 Rwf.

[3] Not satisfied with the Court decision, Ngirababyeyi Thomas appealed to the Supreme Court disputing that the High Court deprived him of the rights granted by the law to everyone who figures out the truth and seeks forgiveness with regards to the offence he/she is charged with. He added that he sought forgiveness and the Court disregarded the law and sentenced him to 25 years of imprisonment not suspended. Furthermore he requests that the law regulating criminal procedure were applied in line with his guilty plea and forgiveness seeking.

[4] The hearing in public was held on March 17, 2014. Ngirababyeyi Thomas was assisted by Counsel Dusenge Vestine while the Prosecution was represented by Mutayoba Alphonse, the National Prosecutor.

II. ANALYSIS OF LEGAL ISSUES

Whether Ngirababyeyi Thomas committed child defilement against Uzamukunda Marie Rose.

[5] Ngirababyeyi states that he appealed because he was sentenced to the heavy penalty while he pleaded guilty of having had sex with Uzamukunda Marie Rose. However he adds that she had consented.

[6] Dusenge Vestine, Counsel for Ngirababyeyi Thomas, contends that even though he admits to have had sex with that girl, there is no evidence proving that she was a minor especially that the case file does not contain the birth certificate proving that child defilement was committed by Thomas Ngirababyeyi. She adds that the mere fact of pleading guilty is not sufficient to confirm that there had been child defilement. She realises that it is necessary to show the birth certificate to the Court that Uzamukunda was a child at the time of the alleged offence. She insists that only birth certificates can confirm this.

[7] Counsel Dusenge Vestine, concludes by stating that if no evidence proving that Ngirababyeyi Thomas committed child defilement is produced, then he would not be accused of rape since it is not listed in his indictment. She requests the Court to avoid analogy by reclassifying an offence at the time when it will be deciding the case as it cannot be qualified as child defilement in case no birth certificate is issued to confirm that Uzamukunda Marie Rose was a child.

[8] The Representative of the Prosecution states that they failed to find the birth certificate proving that Uzamukunda Marie Rose was still a child at the alleged time she was sexually abused, because they wrote to the administrative authorities of the domicile of the child and they got replied

that the child had no address and, therefore cannot manage to issue the certificate because had no reference. The prosecutor requested the Court to resort to the law and assume that the girl was adult at the time she had sex.

[9] The Representative of the Prosecution ends up however concluding that, in deciding the case, the Court would base on the fact that, even though no birth certificate was produced, human presumption can be resorted to; especially that during his interrogation, Ngirababyeyi Thomas admitted to have committed, child defilement but before the Court he told lies and recanted that the girl was likely 20 years old.

THE VIEW OF THE COURT

[10] Article 165 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure stipulates: “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”.

[11] The Supreme Court finds that the failure of the Prosecution to prove beyond reasonable doubt that child defilement was committed against Uzamukunda Marie Rose, causes doubt on one of the constituent element of the offence. Therefore, the statements made by the Prosecution requesting the Court to resort to human presumption because Ngirababyeyi admitted to have committed child defilement lacks merit since only birth certificate issued by competent civil servant or the medical report issued by a physician prove the age of the individua¹. Basing on those explanations, Ngirababyeyi Thomas should be acquitted of child defilement².

[12] The Supreme Court finds that pursuant to article 165 of the Law n° 30/2013 referred to above, Ngirababyeyi Thomas is not guilty of committing child defilement against Uzamukunda Marie Rose since no evidence proving how old she was. Therefore, since doubt is in his benefit, he should be acquitted of the offence.

III. THE DECISION OF THE COURT

[13] Decides that the appeal filed by Ngirababyeyi Thomas has merit.

[14] Decides that the ruling of the case RPA 0992/06/HC/KIG decided by the High Court on January 5, 2010 is quashed.

[15] Acquits Ngirababyeyi Thomas of child defilement.

[16] Orders Ngirababyeyi Thomas’s release immediately after the verdict delivery.

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

¹ “C’est la production d’un acte de l’état de civil qui permettra de déterminer l’âge réel, mais si cet acte ne paraît pas fiable, ou s’il n’existe pas, il sera possible de calculer l’âge probable de l’individu en ayant recours à une expertise fondée sur la morphologie”, Jean-François RENUCCI et Christine Courtin, “le droit pénal des mineurs”, 4^e édition, PUF, Paris, 1991, p.4.

² This is the position adopted by this Court in casein the judgment RPAA 015/10/CS rendered by this Court on February 28, 2014, between Prosecution and Sebiteke Shamungabo.