

PROSECUTION v. NTAKIRUTIMANA

[Rwanda SUPREME COURT– RPA 0197/10/CS
(Havugiyaremye, P.J., Kanyange and Mukamulisa, J.)
November 21, 2014].

Constitution – Right to legal assistance and defence – When a person and his counsel behave in the way that proves unwilling to plead the case, the behaviour that may violate one’s right and delays judicial procedure, till the court decides to hear the case without legal representation, it should not be interpreted as violating one’s legal assistance and defence rights – Constitution of Rwanda of 4 June 2003 as amended to date, article 18.

Criminal Law – Mitigating circumstance – The judge puts in consideration the mitigating circumstances which preceded, accompanied or followed an offence – Decree - Law n°21/77 of 18/8/1977 instituting the penal code in Rwanda, article 82.

Facts: A lifeless body of Brother Rutamunuga Jean Marie Vianney was found in his bedroom, where he was strangled using a rope, his head was also smashed using sharp objects. After investigations, Brother Harerimana and his young brother Sibomana Protégène, Ntakirutimana Jean Claude and Biramba Cartone nicknamed Dudu were aligned before the High Court which decided that Sibomana Protogène would be tried separately because he was sick.

The Court rendered verdict and found the accused guilty of forming a criminal gang, murder of Brother Rutamunuga JMV and armed robbery. The court sentenced Harerimana Innocent to life imprisonment with special provisions; Ntakirutimana Jean Claude was sentenced to life imprisonment while Biramba Cartone was sentenced to fifteen years of imprisonment. The court also ordered them to jointly pay damages to the civil party and ordered the return of the deceased's property including a radio that were routed from his home and give them to his rightful successors.

Ntakirutimana appealed against the ruling before the Supreme Court, arguing in his various written submissions that the court disregarded his right to defence and legal counsel as he had prayed to court, that he was also convicted basing on the false and contradicting statements and sentenced to life imprisonment basing on the statements retracted by the witnesses. He also argues that Biramba Cartone did not at any time implicate him before court and that his confession before the judicial police was due to duress.

The prosecution submits that the High Court gave reasons as to why he was heard without his legal counsel, citing the hierarchy of courts implying that he would not have preferred to plead the case in the Intermediate Court leaving the one in the High Court he was aware of. He also adds that this decision was not appealed against. The civil party argues that the procedure of review and sending back (cassation) was repealed, and that the Supreme Court has the jurisdiction to hear all cases in substance.

Held: 1. The right to defence and legal assistance provided for in Article 18 of the Constitution should not be confused with violation of one's rights and delaying Judicial procedure, therefore, the arguments presented by Ntakirutimana and his counsels are baseless.

2. In examination of Ntakirutimana's reasoning when he claims to have intention to plead guilty and explain his role in the death of brother Rutamunuga J.M.V, the court finds him pleading not guilty, thus the penalty reduction he requested for cannot be granted.

3. On the request to increase damages due to the existing trace of the stolen money, the court finds no reliable evidence proving its value for the court to base on while increasing damages granted by the High Court.

Appeal has no merit.

Appealed judgment sustained.

Court fees be charged to the public treasury as the accused is in jail.

Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 4 June 2003
as amended to date, article 18.

Decree - Law n°21/77 of 18/8/1977 instituting the penal code in Rwanda, article 82.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] In the night of 7 January 2007, in the congregation of Maristes Brothers located in Rukatsa cell, Kagarama Sector, Kicukiro district Kigali City, Brother Rutamunuga Jean Marie Vianney was found in his room dead, strangled with a rope and his head smashed with sharp objects.

[2] The investigations started and based on information from Semigabo Laurent (cook to the Maristes Brothers) and Mutabaruka Anastase (gardener) the suspects were brother Harerimana with whom they had conflicts, Sibomana Protogène (brother to Harelimana) Ntakirutimana Jean Claude and Biramba Cartone nicknamed Dudu.

[3] In the hearing of 30 April 2008, the High Court decided that Sibomana Protogène will be separately heard because of sickness.

[4] The Court rendered verdict and found Harerimana Innocent, Ntakirutimana Jean Claude and Biramba Cartone guilty of forming a criminal gang, murder of Brother Rutamunuga JMV and armed robbery. The court sentenced Harerimana Innocent to life imprisonment with special provisions; Ntakirutimana Jean Claude was sentenced to life imprisonment while Biramba Cartone was sentenced to fifteen years of imprisonment. The court also ordered them to jointly pay to Umulisa Cansilde, Mukakinani Godelene and

Bakayiganwa Esther 1,500,000Frw each, as moral damages, 50,000Frw spent in the course of court proceedings and refund to them 400,000Frw paid to the lawyer. The court also ordered that the radio and other staff that were routed from the deceased be given to his successors.

[5] The court based its decision on the fact that Biramba Cartone pleads guilty and seeks forgiveness, explaining how it was committed, and on Harerimana Innocent's statement who admitted that he was the head of the criminal gang and killed Brother Rutamunuga J.M.V. with the help of Sibomana Protogène, Ntakirutimana Jean Claude and Biramba Cartone.

[6] Ntakirutimana appealed against the ruling before the Supreme Court, alleging in his numerous written submissions that the court disregarded his right to defense and that of being legally assisted as he has been claiming for, that he was also convicted basing on the false and contradicting statements and sentenced to life imprisonment basing on the statements denied by their authors. He also stated that Biramba Cartone has never charged him before courts and explains that before the judicial police, he was forced to admit that he committed the offence.

[7] The case was heard in public on 13 October 2014, Ntakirutimana being assisted by the Counsels Ndagijimana Augustin and Gashema Félicien, civil parties represented by Counsel, Mutembe Protais, and the prosecution was represented by Higaniro Hermogène, the National Prosecutor.

[8] At the start of the hearing, Ntakirutimana presented his wish to withdraw the previous submissions he made denying to have committed the offence, revealing the new one made up of 142 pages in which he pleads guilty and explains his role in the death of brother Rutamunuga and seeks forgiveness.

[9] The prosecutor declared having no knowledge and response to Ntakirutimana's new submissions but requests him and his counsels to state briefly and be honest about what happened, while the civil party stated that when one appeals, he/she demonstrates what is being criticised in the appealed decision and regarding Ntakirutimana, they stated that he should point out what was not heard by the previous court, bearing in mind that he should not appeal for what was not based on by the previous court when deciding the appealed case .

[10] Court rejected the filing of the new submissions by Ntakirutimana basing on the fact that they were not submitted to the court before and were not notified to the parties, therefore allowed him to briefly explain its content for others to have a defense on it.

II. ANALYSIS OF LEGAL ISSUES

a. Whether the High Court denied Ntakirutimana the right to legal representation and defense.

[11] Ntakirutimana appealed to the Supreme Court to overrule the judgment rendered by the High Court in respect of article 18 of the Constitution of 04 June 2003 as amended to date. He states that he was denied his

right to defense basing on article 51 of the Law relating to the civil, commercial, labour and administrative procedure, he finds unconstitutional.

[12] Council Ndagijimana, on behalf of Ntakirutimana presents his request stating that his client was denied the right to be heard in the lower court, therefore he claims for review of the decision and grant him the right to be heard in both courts.

[13] The prosecution submits that the High Court gave reasons as to why he was heard without his legal counsel, citing the hierarchy of courts implying that he would not have preferred to plead the case in the Intermediate Court leaving the one in the High Court he was aware of. He also adds that this decision was not appealed against.

[14] Counsel Mutembealso argues that the procedure of review and sending back (cassation) was repealed, and that the Supreme Court has the jurisdiction to hear all cases in substance.

THE VIEW OF THE COURT

[15] The file information reveals that Ntakirutimana was given the right to find a legal counsel and he got one. .

[16] In the hearing of 30 April 2008 in the High Court at Kigali, Ntakirutimana and Brother Harerimana Innocent stated that they would not plead in the absence

of their counsel because he had another case in the Intermediate Court of Ngoma chamber of social cases and he requested for the adjournment of their case. The court found the reasons given baseless and decided upon hearing the case because it has been adjourned for many times and the Advocate was communicated in time on when it would be heard so as to delegate another Advocate in case he found himself busy. The Court also based on the fact that the social case in the Intermediate Court would not be given priority when there was a criminal case pending in the High Court.

[17] The court finds that no right to legal assistance or defence was denied Ntakirutimana by the previous court, instead, the decision was motivated basing on the accused and his counsel's behaviour, unwilling to plead the case after being adjourned for 11 times.

[18] The court also finds that the right to legal assistance and defence provided for by Article 18 of the Constitution should not be seen as violating any one's right and delaying Judicial procedure; therefore, Ntakirutimana and his counsel's point of argument is regarded by Court as baseless.

b. Whether Ntakirutimana Jean Claude pleads guilty to the extent that he could benefit the penalty reduction.

[19] Ntakirutimana argues that the court convicted him basing on forged and false statements, especially the one made before the Judicial police by Biramba Cartone in which he stated that Brother Rutamunuga was killed

due to existing hate between his family and Harerimana Innocent's family.

[20] Regarding the way the crime was committed, Ntakirutimana states that initially the intention was not to kill Brother Rutamunuga but to steal the car and the two moto-cycles that were located in Kicukiro.

[21] He continued to narrate that together with Uwimana Bernard and Sibomana Protogène had plotted on stealing the two motorcycles and later included the car that was found there, after Uwimana had revealed to them that he had no time to find clients, he then connected them to Ahimana André with whom they agreed he will look for clients of the Motorcycles. He states that Uwimana Bernard convinced him to steal the deceased's money saying that it had more value than the motorcycles they were intending to steal. When uwimana was questioned on how he got the information, he told him that he knew the person who gave it to the deceased and how he got it, but he promised that he was going to find out for more information, and this is when he talked to Brother Rutamunuga pretending to be the person supposed to send him money, and they promised each other that money will be sent in July. He narrates that from this talk, they both committed themselves to stealing this money in July and the initial plan of stealing motorcycles was left with the rest of the group members.

[22] He also states that he went to look for Biramba Cartone and shared with him about the plot to steal money and Biramba told him how he is an expert at cyber crimes and that he can even apply somniferous

substance to the person he intends to steal. After realising that the application of somniferous substance was the best to use, they agreed to use it and also to share the money they will have got amongst the three of them.

[23] He states that before stealing the money, they also shared the information with Brother Harerimana Innocent, who gave them a copy of Brother Rutamunuga's room key and the one for the gate.

[24] He explains that on the due day as planned, Biramba Cartone went in the room first because he was to apply the somniferous substance while he was waiting outside. He recounted that it went as planned, and after 30 minutes Biramba Cartone came out with a poliseline bag [emballage], ignorant of whether the substance was applied, he states that he was told to meet him in Cyahafi, where he found him with many wounds on his body and from the story, he was informed that they were caused by Brother Rutamunuga who fought him when he was asked to surrender his money peacefully, and that when he refused, Biramba declared he killed him, Ntakirutimana goes on to say that he never believed in what biramba was telling him, he thought it was a way to convince him that the mission was hard to achieve.

[25] Ntakirutimana declared false the fake story he gave about the hate between Brother Rutamunuga and the family of Brother Harerimana, confessing that they forged it when told by Biramba Cartone that they use it as their defence once arrested by the police. Otherwise,

he declares, Brother Rutamunuga had no conflict with neither them nor Brother Harelimana.

[26] He argues that while at the police, Biramba Cartone changed his statement and falsely incriminated him for having killed Brother Rutamunuga and it was believed as such, yet he says that he learnt about his death on Monday when the crime was committed the previous day.

[27] Regarding the contradicting statements made by Biramba Cartone, Ntakirutimana states that what he declared in the judicial police on 11 January 2007 is different from what was declared on 12 January 2007, where he falsely stated that they were neighbours, and that they knew each other before. He also explains that even the statements he made in the Supreme Court is different from the one made before the High Court, showing this as the reason why he did not appeal.

[28] Counsel Ndagijimana as a defence lawyer appreciates Ntakirutimana's guilty plea as he admits and explains his role in the comitment of the crime, and highlighting that he holds a big role because he is the one who went for Biramba Cartone and involved him and even planned together for the theft of the money, he highlights also that his client was on guard outside, when Brother Rutamunuga was being killed recognising that he was accomplice in the death of the deceased. Even though he claims he was ignorant about what was hapenning inside and not believing that Brother Rutamunuga would be killed, he confirms that he is responsible and should be punished for the crime

committed. He adds that Ntakirutimana could have even stated that they went together in the room to kill him, because what he committed is equally punished.

[29] He argued to court to examine why Ntakirutimana started with false statements, and explained that he was trapped into committing the offence by Biramba who is experienced and used to pleadings. He also states that before the accused appeared both before the judicial police and the Prosecution officer, that Biramba had terrorised his accomplices instructing them to never mention anything concerning money. He kept on stating that the later benefited from his false statements that were considered as truth while the statements of Ntakirutimana are similar to those of Sibomana though he has never been heard by courts. He requested the court to analyse different ways of pleading guilty, that pleading guilty may not mean agreeing to having cut off or strangled the deceased justifying that even those who may be silent, could be a principle actor in the commission of an offence.

[30] Gashema, another counsel for Ntakirutimana pleaded to court requesting the judges when sentencing him, to consider articles 82 and 83 of the penal code that was into force at the time when the crime was committed, considering his explanations on how the crime was committed, and that he is not a recidivist.

[31] The prosecutor states that the guilty plea of Ntakirutimana is not sincere, that the statements he made before the judicial police and those of his co offenders who incriminated him until the Supreme Court would be

considered, where during the hearing of Brother Harerimana the witnesses explained that Ntakirutimana was involved in the killing, requesting that the appealed judgment be sustained, because Ntakirutimana and his counsels failed neither to criticize it nor prove whether there is a conflict between the accused and the witness he states also that his written statement are intended to mislead the court.

[32] He kept on stating that as indicated in the case file, when Brother Harerimana appeared before the Supreme Court, he implicated Ntakirutimana like all the accused did, explaining how for the first time they went to visit the place, pretending that they had gone to see the tortoise and that later he had a meeting reception with them at a certain bar in Kicukiro.

[33] Counsel Mutembe, on behalf of the civil party states that Ntakirutimana does not explain well his role in the crime execution. He states that they positioned themselves in a way that one waited in the bathroom, another one in the sitting room and another one waited outside and they collectively murdered Brother Rutamunuga and that his colleague had done all possible ways to absent the worker who used to escort him. Therefore, he states, the statements given before should not be altered by what Ntakirutimana has been practicing in prison with intentions to confuse the Court.

[34] Regarding damages, he requests the court to increase by adding 10,000,000Frw to the one granted by the High Court basing on the fact that the trace of the stolen money was found.

THE VIEW OF THE COURT

[35] Article 82 of the penal code that was into force at the time Ntakirutimana committed the offence provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence.

[36] However much it would consider the allegations of Ntakirutimana claiming that the intention he believed in was only to steal the money which is false and contradictory to the records of the case file, the Court finds that this would not favour him, regarding the crime of murder he is charged and the fact that he admits to his responsibility in the planning and execution of the crime.

[37] Regarding the flawless of Ntakirutimana's pleadings, the court finds it contradictory to what is stated in the case file, proving that from the start, the intention of the group headed by Brother Harerimana who initiated the plot and included also his brother Sibomana Protogène in the group of Ntakirutimana Jean Claude and Biramba Cartone, was to kill Brother Rutamunuga. The above is proved by their statements made before the judicial police, the prosecution and before the court that decided on the provisional detention.

[38] Although Ntakirutimana claims to plead guilty and seek forgiveness, it is regarded as pretence considering the way he explains his role and how the crime was committed. His words are also inconsistent

and contradictory to his initial statements about the murder of Brother Rutamunuga. He only pleads guilty of stealing money from Brother Rutamunuga's room, and claims that he thought the plot was only about stealing money, but in the process, he stated that BirambaCartone decided to kill him with the help of somniferous substances. His guilty plea also contradicts Biramba Cartone's statements before the High Court, where he points out his own responsibility and that of Ntakirutimana in the murder of Brother Rutamunuga, the statements he maintained before the Supreme Court in the appeal case of Brother Harerimana Innocent, with no objection from Ntakirutimana instead, he stated that he was not willing to communicate to the court.

[39] Ntakirutimana argues that Biramba Cartone's statements in the judicial police are contradictory to what himself once said before the High Court, where he explained that his statements were based on fear for his colleges who might harm him because he had disappointed them by rejecting Brother Harelimana's idea requesting both of them to plead guilty and discharge Sibomana and Ntakirutimana Jean Claude, he states therefore that he did it in order to confuse them, finally he stated that he agreed to not tell the whole truth.

[40] Regarding the statements made by Biramba Cartone in the High Court which is taken to be contradicting the one he made in the Supreme Court, the Court finds that neither the two discharge Ntakirutimana from his responsibility in the death of the Brother Rutamunuga.

[41] Considering explanations made by Ntakirutimana that he was intending to plead guilty and explain about the death of Brother Rutamunuga J.M.V the Court finds that instead of pleading guilty, he pleads not guilty; thus, the penalty reduction he requested for cannot be granted.

[42] Regarding the request to increase damages due to the fact that the trace of the stolen money was found, the court finds no reliable evidence proving its value for the court to base on while changing the one granted by the High Court.

III. THE DECISION OF THE COURT

[43] Decides that the appeal lodged by Ntakirutimana Jean Claude lacks merit.

[44] Decides that the appealed judgment RP 0007/07/HC/KIG rendered by the High Court on 3 July 2008 is sustained.

[45] Orders that the court fees be charged to the public treasury as Ntakirutimana Jean Claude is in jail.