

## PROSECUTION v. IYAKAREMYE

[RWANDA SUPREME COURT – 2014SC – RPAA0210/10/CS (Kayitesi Z., P.J., Mukanyundo and Gakwaya, J.) March 28, 2014]

*Criminal Law – Child defilement committed against a child under fourteen (14) years old– Evidences beyond reasonable doubt –Law n°13/2013 of 24/5/2014 relating to the Code of Criminal Procedure, Article 165*

**Facts:** The appellant was charged with the offense of child defilement on a child under fourteen (14) years old called B.F but the person who filed a complaint with the Judicial Police (mother of the victim) stated that he sexually abused two other neighbour's children named U.Y and U.D. The Intermediate Court of Karongi seized at the first instance convicted and sentenced him to life imprisonment and a fine of one hundred thousand Rwandan Francs.

He appealed to the High Court, Rusizi Chamber and the latter decided that the appealed judgment remains valid because the accuser and the accused had the same statements on how the offense was committed. He once again appealed to the Supreme Court arguing that the Court convicted him basing on the statement and emotions of his accuser, disregarding his defence and the conflicts between them as well.

**Held:** 1.Evidence incriminating the accused are the statements of the accuser which state that she found the gate closed by the accused and opened with fear. Other evidence is the doubtful medical report, since, concerning B.F, the physician states that he diagnosed some symptoms on her sex which seemed to be small wounds of at least one week and small scars and there were no sperms while the child was immediately taken to hospital, the Court found that there is no basis to confirm that those symptoms were caused by the accused.

2. Evidence produced on child defilement committed against U.Y and U.D by the accused are the statements of the accuser but the mother of the two children says that she was informed by the accuser and then the medical report did not prove that U.D has been sexually abused except that she was no longer virgin; while for U.Y, the physician diagnosed some exceptional things in her sex; but the prosecution didn't manage to prove to the Court that the medical diagnosis has been caused by the accused. This is also doubtful, therefore, as the doubt favours the accused, he must be acquitted.

**The appeal has merit.**

**The accused is acquitted due to the benefit of doubt.**

**The previous judgments are quashed; the accused must be immediately released.**

**Court fees shall be borne by the State treasury.**

**Statutes and statutory instruments referred to:**

*Law n° 13/2013 of 24/5/2013 relating to the Code of Criminal Procedure, Article 165*

**No case law is referred to.**

**Authors Cited**

*Henry et Damien Vndermeersch, Droit de la procedure penale, 4<sup>e</sup> edition, p, 1316, & 5*

## **JUDGMENT**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] On 2<sup>nd</sup> May, 2006, a parent called U.B filed a complaint to the Judicial Police stating that IYAKAREMYE Léonard committed child defilement against her child called B.F and other two neighbour's children called U.Y and U.D, but IYAKAREMYE pleaded not guilty. After the investigations, the Prosecution filed the case before the Intermediate Court of Karongi and on 15<sup>th</sup> June, 2007, basing on the medical report, the Intermediate Court of Karongi ruled that IYAKAREMYE was guilty and sentenced him to life imprisonment and a fine of one hundred thousand (100.000) Rwandan francs.

[2] IYAKAREMYE Leonard was not satisfied with the conviction and appealed to the High Court, Rusizi Chamber. On 18<sup>th</sup> June, 2010, the court ruled that the appealed judgment remains valid. The Court's decision was backed by the same statements of IYAKAREMYE and U.B on how the offense was known.

[3] This decision also did not satisfy IYAKAREMYE Leonard and appealed again to the Supreme Court stating that the Court convicted him of the offense basing on the statements and emotions of his accuser, disregarding his defence and conflicts that are between them as well.

[4] The hearing held on 3<sup>rd</sup> March, 2014, all parties present, the accused assisted by the counsel NEMEYABAHIZI Jean Paul, while the Prosecution was represented by the National Prosecutor, MUNYANEZA NKWAYA Eric.

### **II. ANALYSIS OF THE LEGAL ISSUE**

#### **To know whether there are sufficient evidences incriminating IYAKAREMYE Leonard.**

[5] During the hearing, IYAKAREMYE Leonard stated that he appealed because the Court convicted him basing on emotions. He kept saying that in the interrogations he stated that in case the child defilement is proven by medical report, he shall plead guilty. He knew that children were safe as he was innocent. He also stated that the medical report indicated that there was no child defilement on that day, and the physician had never said that he sexually abused those girls.

There was doubt and doubt sometimes goes with lies. He added that he proved to the Court how he was beaten and admitted due to violence. He also explained that he requested for further investigations so that the population testify about him but the investigations were carried out from one person only who is his accuser at the same time.

[6] IYAKAREMYE further stated that the source of the conflict between him and his accuser is ten thousand Rwandan Francs that she owed and did not want to pay back which resulted in false incrimination against him. She sent him to harvest potatoes so she stayed with her daughters brainwashing them to false incriminations. He also said that if he had committed that offence, he should have been escaped. He concluded stating that if he had committed that offence, he would have come before the Court, kneel down and seek forgiveness as it is done by others, but pleading guilty for the offence that was not committed is also an offence. Therefore, he requests the Court to declare him innocent.

[7] The Counsel, NEMEYABAHIZI Jean Paul who assists IYAKAREMYE Leonard stated that the Court had requested the prosecution to conduct additional investigations by interrogating the children and their mothers, but they only interrogated the mother of the two children called T.E. Therefore, her statements cannot be considered as long as she got information from the children after beating them. Furthermore, testimonies provided for by minors cannot be accepted in the absence of other corroborative evidence but rather, there could be interrogations of other persons as it was requested by the accused.

[8] The counsel NEMEYABAHIZI also said that on page four (4), from paragraph twelve up to fourteen, the Court stated that it based on IYAKAREMYE guilty plea, medical report and the contradiction of IYAKAREMYE since in one hand, he stated that the source of conflict with his accuser was the hatred and on the other hand, he said that it was the debt she owed to him. Counsel NEMEYABAHIZI states that IYAKAREME had never pleaded guilty in all interrogations, even the medical report indicates no child defilement against B.F (pas de trace de violence), and the symptoms indicating the defilement diagnosed on the sex of the child were of one week while her mother stated that she was sexually abused on the same day. Therefore, the medical report should favour his client since it comprises of doubt, according to Article 165 of the law relating to the Code of Criminal Procedure. He concluded stating that IYAKAREMYE had never contradicted himself because the issue of the debt was not only raised before the judge but also before the judicial police, and therefore, the Court must order that IYAKAREMYE is acquitted.

[9] The Prosecution contended that investigation requested by the Court was not partially carried out as invoked by the counsel, The prosecution went in Bwishyura Sector, Ruhanga Cell when children had already gone to school then interrogated T.E. mother of other 2 children whose sexually abused. She explained that IYAKAREMYE deceived children with cheap things, playing with them the hiding game intending to become familiar with them and finally he sexually abused them. The content of mother's statements especially where she mentions that the accused first got familiar with children, the Prosecution finds it enough basing on Articles 65 and 119 of the Law relating to evidence and its production, again the physician clearly mentioned that children were no longer virgin which prove that they have been sexually abused.

[10] Concerning what is stated by IYAKAREMYE that he was beaten to plead guilty, the prosecution stated that it cannot be considered since no evidence produced and requests the Court to refer to the decision rendered by the Supreme Court in the judgment RPAA0010/06/CS, the accused invoked that he was beaten but the Court did not consider that due to the lack of evidences.

## OPINION OF THE COURT

[11] The documents found in the case file indicate that on 2<sup>nd</sup> May, 2006, U.B filed a complaint against IYAKAREMYE Leonard with the Judicial Police stating that on 25<sup>th</sup> April, 2006, he sexually abused her daughter B.F, and even before he had sexually abused other two children of her neighbour called U.D and U.Y. These documents also indicate that on that same day, those children were taken to hospital, and the medical report came up indicating that there was no defilement nor ejaculation (il n'ya pas de traces de violence ni d'ejaculat) but none of them was yet virgin. Specifically, on B.F, the physician indicated that there were symptoms on her sex which seemed to be small wounds of at least one week and small scars ( notion de traumatisme qui vient de faire au moins une semaine avec de petites cicatrices).

[12] The Court finds that child defilement related evidences are the statements made by U.B when who filed the case stating that she arrived at home when IYAKAREMYE had closed the gate and opened with fear, and the medical report of the physician who carried out the test on the children alleged being sexually abused by IYAKAREMYE. The Court again finds doubtful the medical report which mentions that B.F had symptoms on her sex seeming to be small wounds of at least one week and small scars but there were no sperms while the child was immediately taken to hospital for a test, therefore, the Court cannot find any basis to confirm that those symptoms were caused by IYAKAREMYE.

[13] Concerning U.D and U.Y, the Court finds that except the statement made by UWANTEGE Bernadette, the only evidence found in the case file, is the statement of T.E, mother of the two children who said that she was informed by U.B that IYAKAREMYE has sexually abused her children and this was finally confirmed by those children. However, the Court finds that the medical report proves that U.D has no evidence proving that she has been sexually abused apart from not having hymen while for U.Y, the physician indicated that there are exceptional things in her sex, but the prosecution didn't manage to prove to the Court that these exceptional things were caused by IYAKAREMYE, this is also doubtful.

[14] Article 165 of the Law n°13/2013 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" the same Article also stipulates that "*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*". This also has been emphasized by the authors who state that a person cannot be declared guilty at the end of the trial unless the prosecution proves beyond any reasonable doubt the guilt of the accused (une personne ne peut être déclarée coupable au terme du procès que si l'accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l'accusé).

[15] Regarding this case, the Court finds that basing on the defense of IYAKAREMYE Léonard , all evidences produced in this judgment are doubtful, therefore, the accused must be acquitted.

### **III. DECISION OF THE COURT**

[16] Court decides that the appeal of IYAKAREMYE Léonard has merit;

[17] Court orders that IYAKAREMYE Léonard is acquitted due to the benefice of doubt;

[18] Court orders that the decision of the judgment RPA 02117/07/HC/RSZ rendered by the High Court, Rusizi Chamber, on 18<sup>th</sup> June, 20120 is quashed;

[19] Court orders that IYAKAREMYE Leonard be immediately released after the verdict;

[20] Court orders that the Court fees are to be paid by the State .