

# PROSECUTOR v. NTAWICUMURAME

[Rwanda SUPREME COURT– 2014SC– RPAA0149/10/CS (Nyirinkwaya, P.J., Hatangimbabazi and Hitiyaremye, J.) March 14, 2014]

*Criminal Law– Child defilement – Evidence beyond reasonable doubt – Law n°13/2013 of 24/5/2013 relating to the code of Criminal Procedure, article 165*

**Facts:** The appellant was charged with child defilement against a five year old girl. He based his plea of not guilty on the medical certificate and an alibi. He argued that he left the household in which the offence was committed two weeks prior to the commission of the offense. The Intermediate Court of Nyarugenge convicted of the offence and sentenced him to fifteen years of imprisonment. He appealed to the High Court and it confirmed the judgment of the Intermediate Court. He appealed to the Supreme Court arguing that he was convicted of a crime that he did not commit and that the Court failed to consider his defence and based its judgment on doubtful evidence.

**Held:** The Prosecution failed to refute the appellant’s defence grounds and demonstrate the place where the appellant could have met the child on the day the offence was committed. The Prosecution was also unable to confirm that the appellant committed the offence described in the medical report. Considering the appellant’s defence, the evidence provided in this case is doubtful. Therefore, because doubt favours the accused, the appellant must be acquitted.

**The appeal has merit.  
The accused is acquitted because of doubt.  
The appealed judgment is overturned.  
The accused must be released immediately after the verdict.  
Court fees are to be paid by the public treasury.**

**Statute and statutory instruments referred to:**

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

**No case referred to.**

**Authors cited:**

Henry Bosly et Damien Vandermeersch, *Droit de la procédure pénale*, 4e édition, p. 1316, § 5

## JUDGMENT

### I. BRIEF BACKGROUND OF THE CASE.

[1] On the 2<sup>nd</sup> November 2001 Uwamahoro Jeannette filed a complaint with the Judicial Police alleging that Ntawicumurame Faustin defiled her five (5) years old daughter called M.J and it was discovered on the 31<sup>st</sup> October 2001 when the domestic touched her sex while bathing her and the child cried it ached. As for him, Ntawicumurame pleads not guilty by arguing that he is falsely accused since the offence was committed two weeks after he left that household. The Prosecution filed the case with the Intermediate Court of Nyarugenge and on the 10<sup>th</sup> May 2002 the Court ruled that Ntawicumurame was guilty and sentenced him to fifteen (15) years of imprisonment.

[2] Unsatisfied with the judgment, Ntawicumurame Faustin appealed. On the 19<sup>th</sup> April 2010, the High Court confirmed the judgment appealed against since Ntawicumurame's defences lacked merit because there were enough evidence proving his guilt of which the medical certificate and his identification by the victim as her rapist.

[3] Unsatisfied with the decision again, Ntawicumurame Faustin appealed to the Supreme Court. He argued that he was convicted of an offence he has not committed and that the Court relied on doubtful evidence and refused to consider the evidence he produced.

[4] The hearing was held on the 3<sup>rd</sup> February 2014 where all parties were present. The accused was assisted by Counsel Uramije James and the Prosecution represented by National Prosecutor Mutayoba Alphonse.

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

### **Whether there are evidences incriminating Ntawicumurame beyond any reasonable doubt.**

[5] During the hearing, Ntawicumurame was given the opportunity to speak and said that he appealed because the Court did not consider his defence and supporting evidence he produced. He added that the offence of which he is accused is not proved beyond reasonable doubt because no date when the offence was committed was provided and the medical certificate creates doubt. In explaining his appeal, Ntawicumurame avers that the medical certificate wherein the doctor noted that the child was sexually abused by the houseboy was written two weeks after he left that household and was replaced by another houseboy. He states that he returned there when he was requested to do so and he was accused for sexually abusing the child. He asks himself why the allegations were not brought against him while he was still in the household. He realises that he is betrayed by his incriminators because he was serving them well in return for a very low salary and this led him to resign.

[6] Uramije James, Counsel for Ntawicumurame argues that the medical certificate is unreliable because it states that the child was sexually abused by the houseboy as if the doctor was the eyewitness. He asks whether the child could not have been abused by the houseboy who replaced Ntawicumurame. He submits the report would have been reliable if the doctor had collected some piece of evidence from the child which matched those collected from Ntawicumurame. He concludes by criticising the doctor's report since the latter stated that he would test the child for other diseases such as AIDS after three (3) months; but the test was not conducted. Therefore, Counsel requests the acquittal of his client because of doubt created by the evidence produced.

[7] As for the Prosecution's representative, there is no doubt about the time at which the offence was committed, since the documents in the case file demonstrate that the offence was committed in November 2001. The case was filed on the 2<sup>nd</sup> November 2001, the day on which the commission of the crime was discovered and on the same day Ntawicumurame was interrogated and the medical report was delivered.

[8] Regarding the evidences not included in the case file as invoked by the accused, the Prosecutor contends that because this kind of offence is normally committed behind closed doors. Thus, Ntawicumurame could not be expected to first call witnesses to watch him committing the offense. In addition, to suppose that the crime might have been committed by another houseboy is invalid because he does not identify that houseboy. As for the medical report, the Prosecutor admits that a minor error was committed by demonstrating the one who sexually abused the child while it was not within the doctor mission and adds that the person who delivered it was possibly a trainee doctor (*médecin stagiaire*). He adds that this should not, however, invalidate the report as the doctor noticed that the child was sexually abused and the fact that HIV test was not performed should not invalidate the medical report because it was not required, but it was only recommended.

## **THE VIEW OF THE COURT**

[9] The documents in the case file demonstrate that on the 2<sup>nd</sup> November 2001 Uwamahoro Jeannette filed a complaint with the Judicial Police alleging that Ntawicumurame Faustin who had been their houseboy sexually abused a five year old child as the latter told her. Those documents also prove that the child was taken to the doctor and the report confirmed that she was sexually abused. Furthermore, it is indicated in the documents in the case file that on the 2<sup>nd</sup> November 2001 Ntawicumurame was interrogated before the judicial police and denied the charges arguing that, at the time the offence was committed, he was no longer in the household and on the 6<sup>th</sup> November 2001 before the prosecutor he stated that he had left the household two (2) weeks ago.

[10] The Court finds that the evidence in the case file regarding the person who sexually abused the child is the statement of her mother when she was filing the claim. But, the Court also finds that the prosecution failed to contradict Ntawicumurame's defence and prove where he could have met the child in order to confirm that the sample of evidence the doctor found on the child's sex is from Ntawicumurame Faustin.

[11] Article 165 of Law n°13/2013 of 24/5/2013 relating to the code of Criminal Procedure states that the benefit of doubt shall be given in favour of the accused and keeps on stating 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 notion is also emphasised by criminal procedure scholars who state that at the end of a trial, no one can be convicted unless the prosecution has proved 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).<sup>1</sup>

[12] Regarding this case, the Court finds that, basing on the defence of Ntawicumurame Faustin, all evidence submitted in this case create doubt and, therefore, the accused must be acquitted.

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

[13] The Court decides that Ntawicumurame Faustin's appeal has merit;

[14] The Court decides that Ntawicumurame Faustin is acquitted because of doubt;

[15] The Court rules that the judgment RPA 0574/06/HC/KIG by the High Court on the 19<sup>th</sup> April 2010 is totally overturned;

[16] The Court orders the immediate release of Ntawicumurame Faustin after the delivery of the verdict;

[17] The Court orders that the court fees are to be paid by the public treasury.

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<sup>1</sup>Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4<sup>e</sup> édition, p. 1316, § 5