

PROSECUTION v. BIGOBOKA ET AL

[Rwanda SUPREME COURT – RPA 0172/09/CS (Mutashya, P.J., Rugabirwa and Hatangimbabazi J) 5 September 2014]

Criminal procedure – Doubt favours 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. – Law n°13/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

Facts: The High Court, Rusizi Chamber, convicted Nizigiyimana, Amouri and Bigoboka of armed robbery and murder. The Court also decided Nizigiyimana and Nshutiyumukiza were guilty of illegal possession of firearm and sentenced Nizigiyimana to twenty years of imprisonment, Amouri and Bigoboka to life imprisonment each and Nshutiyumukiza to one year imprisonment. Nizigiyimana, Bigoboka and Amouri appealed to the Supreme Court where Nizigiyimana alleged that he should get further penalty reduction because the High Court sentenced him to the heavy penalty while he pleaded guilty and sought forgiveness. As for Bigoboka and Amouri, they state that they should be acquitted because they are innocent.

The Supreme Court rendered the interlocutory decision and decided that before the final decision that the Prosecution should conduct additional investigation for the Court to get a clear understanding of the collaboration between Nizigiyimana, Bigoboka and Amouri as well as of how they are all known by the community they come from so as to know whether they were normally known as thieves or not.

Held: 1. Bigoboka and Amouri must be acquitted, because there is no evidence that they are guilty of the offence they are charged with.

2. Although Nizigiyimana sincerely pleaded guilty and sought forgiveness before this Court, he cannot get further penalty reduction because 20 years of imprisonment he was sentenced to by the first instance court is reasonable considering the gravity of the offences he committed including murder and armed robbery and that of falsely incriminating his fellows which led them to pass 7 years in prison, innocent though.

**Appeal of Nizigiyimana is without merit.
Appeals of Bigoboka and Amouri have merit.
Bigoboka and Amouri are acquitted.
Appealed judgment only changes with regard to Bigoboka and Amouri.
Immediate release of Bigoboka and Amouri is ordered.
Court fees charged to the public 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 referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The High Court, Rusizi Chamber, convicted Nizigiyimana Djumatatu, Amouri Assoumani and Bigoboka Amosi of armed robbery and murder. The Court also found Nizigiyimana Djumatatu and Nshutiyumukiza Japhet guilty of illegal possession of firearm and sentenced Nizigiyimana Djumatatu to twenty years of imprisonment, Amouri Assoumani and Bigoboka Amosi were each sentenced to life imprisonment and Nshutiyumukiza Japhet was sentenced to one year imprisonment.

[2] Nizigiyimana Djumatatu, Bigoboka Amosi and Amouri Assoumani appealed to the Supreme Court. Nizigiyimana Djumatatu alleges that he should benefit from more penalty reduction because the High Court sentenced him to the heavy penalty while he pleaded guilty and sought forgiveness. As for Bigoboka Amosi and Amouri Assoumani, they state that they should be acquitted because they are innocent.

[3] The case was publicly heard on 28 November 2011 where Nizigiyimana Djumatatu requested more penalty reduction because until then he pleaded guilty and sought forgiveness. He explains that he conspired with Bigoboka Amosi and Amouri Assoumani to commit the offence while the latter plead not guilty and aver that Nizigiyimana Djumatatu falsely incriminates them. The prosecutor contends that all the accused committed the offences they are prosecuted for and consequently, they must be punished for that as decided by the High Court.

[4] On 13 January 2012, the Supreme Court rendered the interlocutory judgment and decided that before the final decision, the Prosecution should conduct additional investigation for the Court to get a clear understanding of the relationship and collaboration among Nizigiyimana Djumatatu, Bigoboka Amosi and Amouri Assoumani and how they are all known by the community they come from so as to know whether they were normally known as thieves or not.

The public hearing was reopened on 27 July 2014 where Nizigiyimana Djumatatu was assisted by Counsel Shema Gakuba Charles, Bigoboka Amosi assisted by Counsel Uwase Aline and Amouri Assoumani assisted by Counsel Mubangizi Frank while Higaniro Hermogène represented the Prosecution.

II. ANALYSIS OF LEGAL ISSUES

1. Whether Bigoboka Amosi and Amouri Assoumani should be acquitted

[5] Bigoboka Amosi, Amouri Assoumani and their counsels state that they should be acquitted because they did not commit the offences of armed robbery and murder as explained by witnesses including Nduwimana Hasani alias Caméleon interrogated by the Prosecution during the additional investigation requested by this Court. They added that the plot to falsely incriminate them was arranged by Nizigiyimana Djumatatu and Kanani Ismaël alias Kibundira when they were imprisoned in Nyakabuye custody because Bigoboka Amosi cohabited with the wife of Kanani Ismaël alias Kibundira and they got a child together and Amouri Assoumani rented to them the house to stay in.

[6] Counsel for Amouri Assoumani further stated that the High Court convicted his client disregarding that Nizigiyimana Djumatatu wrote a letter on 12 December 2011 discharging him even though he charged him again.

[7] The representative of the Prosecution contends that Bigoboka Amosi and Amouri Assoumani should be acquitted because the witnesses interrogated during additional investigation including Nduwimana Hasani alias Cameléon, Bizimana Abdou, Zaïnabo Omar, Kanyarengwe, Ntacyontahimana, Nyaminani and Habyarabantuma stated that, apart from the fact that they were drunkards, they did not commit armed robbery and murder of which they are charged, rather, they were falsely incriminated by Nizigiyimana Djumatatu and Kanani Ismaël alias Kibundira in order to take revenge on them because Bigoboka Amosi cohabited with the wife of Kanani Ismaël alias Kibundira and they got a kid together while Amouri Assoumani rented to them the house to stay in.

THE VIEW OF THE COURT

[8] Article 165 of Law n° 30/20013 of 24/05/2013 relating to the code of criminal procedure provides that “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”.

[9] With regard to this case, in his letter of 21 April 2008 and before this Court, Nizigiyimana Djumatatu pleaded guilty of armed robbery and murder committed against Magorwa Elias. He explained that he was with Aboubacar, Elidione and two (2) young men from Burundi; but that Bigoboka Amosi and Amouri Assoumani did not commit the offence they are charged with, rather, he falsely incriminated them because Kanani Ismaël alias Kibundira paid him an advance of 70,000 Frw on 400,000 Frw promised in return for falsely incriminating them in order to take a revenge on them because Bigoboka Amosi cohabited with his wife while Amouri Assoumani misappropriated his bicycle.

[10] Furthermore, there are testimonies in the case file given by various witnesses including Nduwimana Hasani alias Cameléon and Nyaminani Djumatatu during the additional investigation that prove that Bigoboka Amosi and Amouri Assoumani did not commit the offence they are charged with as mentioned above, but rather, the plot to falsely incriminate them was prepared by Kanani Ismaël alias Kibundira with Nizigiyimana Djumatatu when they were jailed in Nyakabuye custody because Bigoboka Amosi cohabited with the wife of Kanani Ismaël alias Kibundira and got a child with her whereas Amouri Assoumani rented to them the house to stay in.

[11] Considering the above explanations, the Court finds that Bigoboka Amosi and Amouri Assoumani must be acquitted basing on article 165 of the Law mentioned above, because there is no evidence proving they are guilty of the above mentioned offences they are charged with.

2. Whether Nizigiyimana Djumatatu should get more penalty reduction

[12] Nizigiyimana Djumatatu states that he should get more penalty reduction because he keeps pleading guilty and seeks forgiveness. He explains that he is guilty of armed robbery and murder committed against Magorwa Elias with two young men from Burundi who escaped to their country when he was arrested; but he falsely incriminated Bigoboka Amosi and Amouri Assoumani because Kanani Ismaël alias Kibundira and Nduwimana had promised him 400,000 Frw of which they only paid him 70,000 Frw because Bigoboka

Amosi cohabited the wife of Kanani Ismaël alias Kibundira and got a kid with her while Amouri Assoumani misappropriated his bicycle.

[13] Counsel for Nizigiyimana Djumatatu states that he should get more penalty reduction as decided by this Court in the case of Prosecution v. Kabahizi, where the latter was sentenced to 10 years of imprisonment because he finally sincerely pleaded guilty as his previous guilty plea was not sincere and an additional investigation carried out by the Prosecution on request by this Court contradicted him.

[14] The prosecutor states that Nizigiyimana Djumatatu cannot get more penalty reduction because his penalty was already reduced at the first instance.

THE VIEW OF THE COURT

[15] With regard to further penalty reduction requested by Nizigiyimana Djumatatu because he pleaded guilty and sought forgiveness, the judgment appealed against proves that the High Court sufficiently reduced his penalty because it sentenced him to 20 years of imprisonment instead of life imprisonment basing on mitigating circumstance constituted by his pleading guilty and seeking forgiveness although the Court finds his guilty plea was not sincere because he falsely incriminated his fellows of having conspired with him in committing the crime.

[16] Pursuant to above explanations, the Court finds that although Nizigiyimana Djumatatu sincerely pleaded guilty and sought forgiveness before this Court he cannot get further penalty reduction because 20 years of imprisonment he was sentenced to by the first instance court is reasonable considering the gravity of the offences he committed including murder and armed robbery and falsely incriminating his fellows which led them to pass 7 years in prison, innocent though.

III. THE DECISION OF THE COURT

[17] The Court finds the appeal of Nizigiyimana Djumatatu without merit;[

[18] The Court decides that the appeal of Bigoboka Amosi and Amouri Assoumani have merit;

[19] The Court decides that Bigoboka Amosi and Amouri Assoumani are acquitted;

[20] The Court decides that the judgment RP 0163/07/HC/RSZ rendered by the High Court, Rusizi Chamber, on 28 May 2009 is only overruled with regard to Bigoboka Amosi and Amouri Assoumani;

[21] The Court orders immediate release of Bigoboka Amosi and Amouri Assoumani;

[22] The Court orders that court fees are charged to the public treasury.