

PROSECUTION v. HAGUMIRAGIRA

[Rwanda SUPREME COURT – RPA 0223/09/CS (Kayitesi PJ. Hatangimbabazi and Munyangeri J) November 2, 2013]

Criminal Procedure law – Collection of incriminating and/or exculpatory evidence – Benefit of the doubt to the accused – The Prosecution should search exculpatory evidence as well; otherwise, it creates doubt and doubt benefits the accused – Law N° 30/2013 of 24/5/2013 relating to the code of Criminal Procedure, as amended to date in its articles: 5, 19 and 165.

Facts: The High Court acquitted the accused for aggravated assault and battery, theft by housebreaking and attempted murder. The Public Prosecution appealed to the Supreme Court but in the course of the hearing, the prosecution changed its position by recanting that there is doubt on the incriminating evidences produced against the accused since it failed to interrogate the exculpatory witnesses stated by the accused.

Notwithstanding, during the hearing, the Prosecution retracted that though it filed an appeal, there is doubt about the commission of the crime since Hagumiragira had had indicated that he was in conflict with some of his family members in addition to exculpatory witnesses he listed who, unfortunately, were not interrogated.

Held: The Prosecution itself states that it merely focused on incriminating witnesses against the accused and failed to examine exculpatory evidence comprised of statements made by witnesses, it should be decided that, as it is stated by the its Representative, there is doubt on the fact that the accused has committed the offences he is charged of, and thus the fact that doubt benefit the accused, he should be again declared innocent.

Appeal dismissed.

The court decision of the precedent court upheld.

The court fees are charged to the public treasury.

Statutes and statutory instruments referred to:

Law n° 13/2004 of 17/5/2004 relating to the code of Criminal Procedure, article 5, 19 and 165.

Decree Law n° 21/77 of August 18, 1977 instituting the penal Code, articles 21, 22, 24,312 and 400.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case commenced in the High Court, the Prosecution charging Hagumiragira Narcisse with aggravated battery, theft through housebreaking and attempted murder committed against Kabagina and her daughter on May 5, 2008.

[2] The Court delivered its verdict on 31/07/2009 and acquitted him of the allegations against him and thus declared he won the case.

[3] The Prosecution appealed against the judgment to the Supreme Court contesting in its submissions that, the High Court disregarded the produced evidence incriminating Hagumiragira.

[4] The hearing started on September 9, 2013. Hagumiragira assisted by counsel Simbizi, the counsel while the prosecution was represented by Mutayoba Alphonse.

II. ANALYSIS OF LEGAL ISSUE

Whether there is evidence beyond reasonable doubt incriminating Hagumiragira.

[5] In its appeal submissions, the Prosecution contends that the High Court acquitted Hagumiragira Narcisse of the alleged crime *inter alia* aggravated assault and battery, theft through housebreaking and attempted murder directed against Kabagina and her daughter disregarding the produced evidence which include different witnesses statements proving that he has committed the alleged offences.

[6] However, in the course of hearing the Prosecution states that even though they have filed an appeal, there is doubt regarding the offences as contained in the indictment against Hagumiragira. In his defence he proved that he was incriminated due to the conflicts with his relatives and that there were witnesses exculpating him yet not interrogated so as to know whether he went with those who ran to save Kabagina and her daughter or to prove that he participated in the attack directed against Kabagina's house.

[7] The Prosecution concluded requesting the Court to uphold the judgment appealed against Hagumiragira and in his acquittal acquitted since the doubt benefits the accused.

[8] Hagumiragira and his defence counsel support the request of the Prosecution and add that as the Prosecution exculpates him proves that it stands for the whole community and agree that it was required to interrogate all persons who rushed with Hagumiragira to save Kabagina and her daughter instead of solely focusing on those from Kabagina's family. They argue that as long as the interrogation has not been carried out and this leads to doubt for the allegations against Hagumiragira thus; he must be acquitted basing on Article 165 of the Law n° 30/2013 of 24/5/2013 relating to the Code of Criminal procedure.

[9] The documents contained in the case file indicate that when Hagumiragira initially appeared before the Judicial Police suspected of having committed the aforementioned offences, he announced that he was falsely incriminated for being member of the attack directed against Kabagina. He states that he rushed with other neighbors who came for Kabagina's rescue and he even listed their names including Munyambonera, Jerimani, Nibamwe, Sipiriyani, Inosenti, Angélique, Sezibera, Makanika, Sadamu and others. He requested that all of them be interrogated in order to prove whether he cooperated with others to rescue Kabagina who was

attacked. This was not done until he was tried in the High Court. The Prosecution only indicted him basing on the statements made by people he declared he was in socio -familial conflicts.

[10] Article 5 and 19 of the Law n° 30/2013 of 24/5/2013 relating to the code of Criminal Procedure as amended to date indicates the manner in which criminal investigation is carried out for the offences against a person who is suspected of having committed them whereby they indicate that incriminating and exculpatory evidences should be collected¹.

[11] The Court notes that since the Prosecution admits it focused only on persons incriminating Hagumiragira without examining also the exculpatory evidence made of statements made by witnesses above mentioned who saw him rushing to rescue Kabagina. Therefore, as the prosecution states it should be affirmed that there is doubt on the offences alleged against Hagumiragira, basing on article 153 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure which stipulates that the doubt benefits the accused, Hagumiragira must remain acquitted.

III. THE DECISION OF THE COURT

[12] Holds that the appeal of Prosecution is without merit.

[13] Holds that Hagumiragira remains acquitted of the offences he is charged of.

[14] Holds that the decision of the High Court is not changed.

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

¹ Article 5 : An investigative measure refers to all actions which are meant to search for offences, to collect evidence whether for the prosecution or the defense, as well as those of examining whether to prosecute the accused for trial or not.

Article 19 : The Judicial police is responsible for investigation of crimes, receiving complaints and documents relating to the offences, gathering evidence for the prosecution and defense and, searching for perpetrators of the crimes, their accomplices and accessories so that they can be prosecuted by the Prosecution.