

PROSECUTION v. GATERA

[Rwanda SUPREME COURT – RPA0084/10/CS (Mutashya, P.J., Gakwaya and Hitiyaremye, J.) May 9, 2014]

Criminal Procedure Law – Doubt – 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 – Law n°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

Facts: Gatera was prosecuted for murder committed on 6 August 1998 against Mpagazahayo aged 12, The Court decided that Gatera Célestin was guilty of an offence herein, sentenced him to death penalty. appealed before the Court of Appeal of Kigali, after the judicial reform in 2004, this case was transferred into the High Court, which found it incompetent to hear the case on murder on appeal level, and then it transferred it to the Supreme Court, the one competent to try such case on the appeal level, pursuant to new laws determining the jurisdiction of the Courts.

The accused appealed stating that the Court of the first instance of Byumba did not give him an opportunity to defend himself, and ignored the investigation he requested to be conducted as it was provided for by the Law. The prosecution stated that the grounds for the appeal of Gatera Célestin are without merit since he was not denied an opportunity to defend himself, but he was given enough time to defend himself, yet the fact that the Court of the first instance of Byumba did not conduct a deep investigation, the prosecution explained that it was not necessary in case the evidences it provided were enough. Furthermore, he added, the Court does not consider the number of the witnesses to find the truth.

Held: there is no clear evidence proving that the accused killed Mpagazahayo, rather the interviewees contradicted on both committing an offence and the used weapon in killing him. Therefore, as doubt favours the accused, he is acquitted.

**Appeal has merit.
Accused is to be acquitted and immediately released.
Court fees charged to the public treasury.**

Statutes and statutory instruments referred to:

Law n° 15/2004 relating to evidence and its production, article 119.

Law n°30/2013 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] This case was heard on merit by the Court of the first instance of Byumba, where Gatera was prosecuted for murder committed on 6 August 1998 against Mpagazahayo aged 12, by hitting him with a blow of machete on head, between 2h: 00pm and 3h: 00pm. The Court decided that Gatera Célestin was guilty of an offence herein, sentenced him to death penalty and ordered him to pay the court fees amounting to 7,300Frw.

[2] Not pleased with the judgment, Gatera Célestin appealed before the Court of Appeal of Kigali, after the judicial reform in 2004, this case was transferred into the High Court, which found it incompetent to hear the case on murder on appeal level, and then it transferred it to the Supreme Court, the one competent to try such case on the appeal level, pursuant to new laws determining the jurisdiction of the Courts.

[3] Gatera Célestin appealed stating that the Court of the first instance of Byumba did not give him an opportunity to defend himself, and ignored the investigation he requested to be conducted as it was provided for by the Law.

[4] The case was heard on 17 March 2014, Gatera Célestin being assisted by Nsengumuremyi Senglo Louis, the counsel, and the Prosecution being represented by Mutayoba Alphonse, the Prosecutor at the National Level. The Supreme Court reminds that on 10 February 2014 it postponed the hearing so as to give time to prosecution to conduct an investigation on people presented by Gatera Célestin who may know where he was at the time when the offence was committed.

II. ANALYSIS OF LEGAL ISSUES

Whether there are tangible evidences incriminating Gatera Célestin.

[5] Gatera Célestin and his counsel stated that the grounds for the appeal is that he was not given an opportunity to defend himself, the reason why he was sentenced to death penalty, disregarding the defence statements he had prepared and the fact that the Court of the first instance of Byumba did not conduct a deep investigation, so as to find the circumstances in which the late died since he had witnesses to discharge him, who know that he was not around the time the child was killed, yet they were not interviewed, and the Court only considered the statements of the prosecution witnesses.

[6] Nsengumuremyi Senglo Louis, the counsel for Gatera Célestin, states that witnesses stated that Gatera Célestin used a machette to hit the child, but none stated s/he had seen him, reason why he requested for a deep investigation. With regards to the fact that there was someone accusing him to have seen him hitting the victim with the blow of machete and another one affirming to have seen him with a blooded machette, Gatera Célestin stated that these are lies since none of them caught him red handed, rather a plot to exclude based on the fact that they want to exclude him so as to find a golden opportunity to share his mother's property since as well as the mother of the victim were defeated by him before the courts.

[7] The prosecution disputed that the grounds for the appeal of Gatera Célestin are without merit since he was not denied an opportunity to defend himself, but he was given enough time to defend himself, yet the fact that the Court of the first instance of Byumba did not conduct a deep investigation, the prosecution explained that it was not necessary in case the evidences it provided were enough. Furthermore, he added, the Court does not consider the number of the witnesses to find the truth.

[8] Following the findings from the investigation, the Prosecution states that Uzabakiriho, Nkubiri Cyprien and Mutabaruka Jean stated that they heard that it was Gatera Célestin who killed the child, and that he killed him with “iron bar”, and that maches with what proved by the medical practitioner. Rather Bitangishaka Célestin, stated that Gatera Célestin had bad behaviour and had conflicts with Ntawuruhunga Evariste, the father of the late. Kayijuka François stated that it was Gatera Célestin who killed the child, in any case, his statements are based on what he heard from those who saw him coming from the bush where the child was killed. As Nyirabega Julie accused him that the day on which the child was killed, passed at her house, left her a hoe, and told her that he went to drink beer to neighbour and that he had a certain plan, and shortly after he left she heard a bell alarm that the child was killed, in any way her testimony differs from the last one she provided in the Prosecution on 11 August 1998 for she stated that Gatera Célestin passed on her with a machette towards Nyagasozzi cell where the child was found dead.

[9] The Prosecution concludes the findings from the investigation by stating that there are other witnesses who were not interviewed, namely; Karasira since he died, Mutaboba since he was at hospital, and Ntawuruhunga Evariste, the father of the child who is in prison, others moved out, and no longer live in that sector.

[10] Nsengumuremyi Senglo Louis, the counsel for Gatera Célestin, states that during investigation none of interrogated witnesses testified to have saw Gatera Célestin killing the child, all of them stated they heard it, rather what is new is that during btheir initial interrogation they they stated that the child was killed with a machete they are now stating that he was killed with “iron bar”,whereas the medical practitioner proved that it was “a heavy object, not a cutting object”. He states that Nyirabega Julie stated she was temporary left with his machete and later on she pointed on Gatera Célestin’s behaviour, yet person’s social behaviours do not prove someone guilty, furthermore she failed to clarify the plan she stated he told her about.

[11] Relating to the testimony of Nkubiri Cyprien, Nsengumuremyi Senglo Louis questioned the who wasthe child that the latter said was positioned under the body, and on Mutabaruka Jean stating that he heard that the child was killed with “Iron bar”, he stated that the source is not clear “Iron bar” is brought as one of statements that he was killed in the back, thus that investigation is not worth since it is incomplete, for the one requested previously be it the one accusing or defending those who were together with Gatera Célestin when the offence took place yet they were not interviewed.

[12] Nsengumuremyi Senglo Louis continues stating that the fact that the conducted investigation showed that he was killed with “Iron bar” and later on, they stated he was killed with a machete which result in controversy, and the fact that Nyirabega Julie stated that she saw him passing on only, and later on stated that he left his machete at her’s, and the fact that they said the child was aged 12; and later on stated that he was killed in the back when he was carried on back, all these testimonies are doubtful which favours the accused, the reason why he requests that Gatera Célestin should be released pursuant to article 118 and 165 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedures since he spent a lot of time serving provision detention.

[13] Gatera Célestin stated that all accusations against him are based on conflicts that he cannot explain, and those who were interviewed accusing him are doubtful, especially that none of them affirmed to have seen him, they are against him due to the fact that they attempted to kill a woman aiming to ke him away so as he could move out from where he

resided, and he defeated them before the court due to which they were sentenced to imprisonment, the time they were free from the prison they pledged that they will end by making him move out. People against whom he had conflict are Uzabakiriho, Mutabaruka Jean, Kayijuka François and Nkubiri Cyprien.

[14] Gatera Célestin keeps stating that the one they accuse him to have killed died when he was not around, since he had been going to participate in community work, Nyirabega Julie lies by stating that he left his hoe at her's, rather she stated so as she was beaten seriously following that the child died near her house. Yet, basing on conflicts between him and Ntawuruhunga Evariste being rose from the fact that he poisoned his chickens, he stated that it should not lead to that evil act., his chickens truly died, and when he was ready to eat them people told him that Ntawuruhunga Evariste poisoned them.

[15] The prosecutor states that Gatera Célestin failed to provide evidences proving those conflicts, and that it is impossible that he could be hated by the entire village, and the fact that those discharging him were not interviewed, he explained that those who were available were interviewed. The Prosecutor adds that the Court of the first instance of Byumba convicted him basing on the testimony of Mukamazimpaka Eugénie and Mukabugingo Chantal who all of them proved one thing in common that the child was killed with a machette and that Mukamazimpaka Eugénie in particular stated that she saw him hitting him with a blow of machette, yet Kaberuka Jean stated he saw him with fear holding a bloody machette.

THE VIEW OF THE COURT

[16] Article 119 of the Law n° 15/2004 relating to evidence and its production provides that "In criminal cases, evidence is based on all grounds, factual or legal provided that parties have been given a chance to be present for cross-examination. The courts rule on the validity of the prosecution or defence evidence.

[17] The Supreme Court finds that Ntawuruhunga Evariste (the father of the victim), stated on 12 August 1998 that it was Gatera Célestin who killed his child by using a machete and a stone he hit him in head when he was interviewed in the Prosecution, he further states that the wife of Nsanzineza Etienne whose name is Mukabugingo Chantal and other one called Mukamazimpaka Eugénie saw him killing a child and ran away with a machete afterwards. At the Prosecution level, he stated that those who saw Gatera Célestin hiding in the bush included and limited to Nkubiri Cyprien, Nsanzineza Etienne and his wife Mukabugingo Chantal and Nyirabega Julie. He went on stating that Nkubiri Cyprien is not linked to the death of his son since he is the one who cried for help and that they were altogether the whole day sharing a drink and that as he knew what happened, he called upon him even before he reached his home.

[18] The Supreme Court finds Mukamazimpaka Eugénie (resident in near the crime scene), when she was asked in the Prosecution, she stated that the child of Ntawuruhunga Evariste was killed when he was bringing a baby to her mother to be breast-fed, and that the child passed on his house at about 2pm, reaching in 100m ahead from his house, he saw Gatera Célestin following him with a machete, reaching him he hit him with a blow of machete and then ran away. He stated that Gatera Célestin arrived where the child was killed after others and he was normally wicked and used to reveal that he planned to kill someone and attribute the death to Nyagasozi cell.

[19] The Supreme Court finds Mukabugingo Chantal, when she was interviewed in the Prosecution on 11 August 1998, she stated that after hearing a bell alarm, she went towards where she heard it, she met Gatera Célestin who hit her with a machete while he showed fear in his face and then told her that no woman should rush, he continued towards his home. She continued stating that Gatera Célestin used to reveal that Ntawuruhunga Evariste ate his chickens and that he will pay for them.

[20] The Supreme Court finds Kaberuka Jean, when he was interviewed in the Prosecution on 12 August 1998 stated that when he was coming on the crime scene among the first comers shortly after hearing a bell alarm, he met Gatera Célestin seemingly coming from the bush and looking feared, holding a blooded machete, he later ran away towards his mother's home, later on he came to the crime scene shortly after others already reached the place, arriving there he stated that that child was killed with a blow of a metal of which he was hit on head since the head was crushed and he [Gatera Celestin] added that the killer was determined.

[21] The Supreme Court finds that on 11 August 1998 when she was interviewed in the prosecution, Nyirabega Julie stated that the day on which the child was killed, Gatera Célestin passed by her with a machete around 1:00 pm, and after 30 minutes she heard a bell alarm from Nyamyatano that the child was killed near Mukamazimpaka's home in the bush close to the path. He went on stating that Gatera Célestin was chased by local authorities of sector since he tried to kill his mother with a sword prior to the war period, the people decided to send him to Bibare where he lives, and he used to come to Nyagasozzi as a thief. She said she knew nothing about the conflict between Gatera Célestin and Ntawuruhunga Evariste since she was not her neighbour. Following the investigation conducted by the Prosecution on 11 March 2014, Nyirabega Julie stated that on the day the child was killed, Gatera Célestin passed on hers and left his machete there when he was going to drink beer to neighbour but he planned to do something, and later on she heard that the child was killed shortly after he left, arriving there different people were being beaten and he [Gatera Célestin] said: "innocent people are being beaten yet the criminal is free". She further added that Gatera Célestin normally had bad social behaviour, every time he used to say that he will kill her mother and Remera's people will pay the price.

[22] The Supreme Court finds that Nkubiri Cyprien, when he was interviewed in the Prosecution on 29 October 1998 he stated that the child was killed when he was sharing beer with the father of deceased Ntawuruhunga Evariste. He stated that when he was coming from drinking beer he got back home with Nsanzineza Etienne and Ngwabije, reaching home he washed himself, when he was ready to go to look for a person to buy him beers, he heard a bell alarm and rushed to see what was happening, arriving there he found the village chief (Nyumbakumi) there. He stated that he did not come back home with Ntawuruhunga Evariste since him and his wife stayed there for a while and later on joined them. He continued stating that he was captured with his 11 fellows all alleged to commit the same offence, yet later on all others were released. He stated that there was no conflict between him and Gatera Célestin as there was no blood relationship between them. Following the investigation conducted by the Prosecution on 11 March 2014, Nkubiri Cyprien stated that Gatera Célestin had conflicts with Ntawuruhunga Evariste (the father of the killed child) which rose from the fact that Ntawuruhunga Evariste poisoned his chickens by using coffee tree insecticide, and that was what led to killing his child as revenge. He stated that Gatera Célestin normally had bad social behaviour and abused drugs. He stated that they rushed and found a body on the other child who was bringing him to her mother.

[23] The Supreme Court finds that Nsanzineza Etienne, when he was interviewed in the Prosecution on 29 October 1998, he stated that the child was killed when he was sharing drink with others, Ntawuruhunga Evariste later on joined them, when they were told that the drink was over, him, Nkubiri Cyprien and Ngwabije went back home, reaching home they heard Ntawuruhunga Evariste out crying, saying that he came after them since they were in different ways, reaching there they found only Ntawuruhunga Evariste and his wife were crying out. He continued stating that that child was killed near Ndaberetse's, and that time she was inside the house for she is hard of hearing.

[24] The Supreme Court finds that the Court of the first instance of Byumba confirmed Gatera Célestin guilty, basing on the statements of Mukamazimpaka Eugénie, Mukabugingo Chantal, Kaberuka Jean and Nyirabega Julie, however Mukamazimpaka Eugénie is the only one stating that she saw Gatera Célestin hitting the child of Ntawuruhunga Evariste with a machete on head and that the child was carried on back by the other child, yet it is not grounded why that child was not interviewed. It is shown again in the minutes of the interview with Nsanzineza Etienne dated 29 October 2008 which was held before the Prosecutor that the witness stated that the time of the offence, Mukamazimpaka Eugénie was inside her house and that she did not hear anything of what happened, since she is hard of hearing, the Court finds groundless how she saw Gatera Célestin hitting the killed child with a machete, especially that, the medical report after autopsy proved that he was killed with a heavy object," the child called Mpagazahayo died of a cranial traumatism with fracture of the parietal bones and frontal caused by a blow of a heavy object which he would have received on the level of the head", thus, it is clear that the object used in killing him was not a machete as Mukamazimpaka Eugénie stated since a machete is a cutting edge weapon which is used to cut and not to crush.

[25] Irrespective of what is indicated by the case file that Mukamazimpaka Eugénie who also was captured and imprisoned shortly after the child was killed on 06 August 1998, together with Gatera Célestin, both are accused of murder of the child of Ntawuruhunga Evariste, yet what is questionable is the reason why did she wait for three days, meaning on 11 August 1998, to reveal to the Prosecution that she saw Gatera Célestin killing the child.

[26] Relating to committing the offence, the Supreme Court finds Kaberuka Jean, Mukabugingo Chantal and Nyirabega Julie stated to have seen Gatera Célestin after killing the child while he was trying to hide aiming to escape, and he had a blooded machete in his hands, this also is proved to be wrong by the medical report cited in the previous paragraphs which proved that the child was killed with a heavy object, that the machete that witnesses stated to have seen Gatera Célestin with was not used, rather there is a serious contradictory on the weapon used to kill the child since witnesses who were interviewed before by the investigation authorities stated that it was the machete which was used, while those who were interviewed by the Prosecution following the request of this Court confirmed that the child was killed with "iron bar", though none of both of these weapons is heavy as it was proved by the medical report. The Court finds furthermore that the fact that the witnesses were interviewed in the middle of the case should be considered, they all stated that all of what they stated were the "hearsay", and some of them stated that Gatera Célestin is the one who killed the child since he had bad social behaviour, many consider him a maverick and he had some conflicts with Ntawuruhunga Evariste, the father of the killed child.

[27] Following analysis of the findings of interview conducted in the judicial police, prosecution, and the findings of the investigation conducted by the prosecution following the order of the Court which was conducted on 11 March 2014, the Supreme Court finds that the

role of Gatera Célestin in the killing of the child of Ntawuruhunga Evariste is doubtful, there is no clear evidence proving that Gatera Célestin killed Mpagazahayo, rather the interviewees contradicted on both committing an offence and the used weapon in killing him, therefore, pursuant to article 165 of the Law n° 30/2013 of 24/05/2013 relating to criminal procedures providing 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.

III. THE DECISION OF THE COURT

[28] Decides that the appeal of Gatera Célestin has merit;

[29] Decides that the judgementn° RP 516/XXI/99/BY-R.M.P 13508/S3/CT/RRP rendered by the Court of the first instance of Byumba on 14 June 2001 on appeal level , changes in full;

[30] Decides that Gatera Célestin is to be acquitted and immediately released;

[31] Orders that the court fees are charged to the public treasury.