

PROSECUTION v. FATIRAKUMUTIMA

[Rwanda SUPREME COURT – RPA 0255/09/CS (Nyirinkwaya, P.J., Havugiyaremye and Mukamulisa, J.) April 26, 2013]

Criminal Law – Murder – Murder is intentional killing of a person – Decree-Law N° 21/77 of 18 August 1977 instituting the penal code, article 311.

Criminal Law – Penalty reduction – Guilty plea – None could benefit the penalty reduction when his guilty plea is not sincere.

Criminal Law – Provocation – Provocation cannot be presumed when it is not proven – Decree-Law N° 21/77 of 18 August 1977 instituting the penal code, article 79.

Facts: The accused killed his wife with whom he had 4 kids. The next morning, he informed his neighbour who advised him to report himself to the authority but the accused persisted till the informed neighbour revealed it to the authority. The accused went into hiding but he was later arrested. The High Court that was seized ruled that he was not guilty of assassination since there is no evidence proving that he had intent to kill his wife but that he was guilty of murder and was sentenced to life imprisonment.

The accused lodged an appeal in the Supreme Court, claiming that the High Court disregarded that he killed her wife by accident and sentenced him to the heavy penalty regardless the mitigating circumstances, as he had pleaded guilty, that he is left with orphans who need to be looked after and the fact that he was provoked based on that his wife squeezed his testicles. The prosecution contended that his allegations were wrong as he normally used to beat her and that the offense was committed in September 2007 and went to hospital after along time on 26/07/2011 and what is stated in the medical certificate is what Fatirakumutima told the doctor. Another thing is that the doctor did not prove that it was because of being squeezed the testicle. He added that this medical certificate had a defect since it had no stamp of the doctor or his name.

Held: 1. Considering the fact that the accused strangled and slapped the deceased at the face, it proves that he killed her intentionally. This is even proven by the fact that he did not take her to the hospital when he noticed that she was unconscious, as there is a witness who stated that around 3a.m she was still alive, calling for help. Therefore, the accused is guilty of intentional murder of his wife.

2. The accused failed to prove that his wife squeezed his testicles as he alleges. Consequently, the court found it unnecessary to analyse the issue of provocation. The court also found no ground for overturning the appealed judgment. Therefore, it is sustained.

3. The accused could not benefit the penalty reduction he requested, as he admitted to have killed his wife by accident, while it is proven that it was intentionally. Therefore, his guilty plea is not sincere.

**Appeal has no merit.
Appealed judgment sustained.
The court fee is to be charged to the state.**

Statutes and statutory instruments referred to:

Decree-Law N° 21/77 of 18 August 1977 instituting the penal code, articles 79 and 311.

No case law is referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] In the night of 2 September 2007, Fatirakumutima killed his wife Uwamahoro Marie Louise with whom he had 4 kids. The next morning, he called his neighbor Mugemangango Venuste, who advised him to report himself to the authority but Fatirakumutima persisted till Mugemangango decided to report the incident to the authority. Fatirakumutima was hiding for a while but he was later arrested.

[2] Investigations started and the prosecution alleged different offences as above mentioned against the accused. The High Court was seized and delivered the verdict on case RP 0085/07/HC/KIG on 2 October 2009. The court found him not guilty of assassination, forgery and the second marriage because the prosecution failed to prove, but guilty of murder and he was sentenced to life imprisonment.

[3] Fatirakumutima lodged an appeal in the Supreme Court, claiming that the High Court disregarded that he killed her wife by accident and sentenced him to the heavy penalty regardless the mitigating circumstances.

[4] The hearing was held public on 18 March 2013, Fatirakumutima being represented by Counsel Nyamunanage Atticus and Mukahiganiro Julienne while the prosecution was represented by Muhumuza Richard, the National Prosecutor.

II. ANALYSIS OF LEGAL ISSUES:

A. To examine whether Fatirakumutima unwillingly killed Uwamahoro.

[5] Fatirakumutima states that the High Court convicted him of murder disregarding his explanations that he committed the offence by accident. He explained that his wife refused to have sex with him and when he tried to force her, she squeezed his testicles and he strangled and beat her, and when he released her, she fell down. He added that at that time, he called Mugemangango for help, so that they may take her to the hospital but they realized she was dead, and Mugemangango advised him to report himself to the authorities, but he states that he had fear to do so.

[6] Counsel Nyamunanage states that what proves that Fatirakumutima says the truth about the fact that his wife squeezed his testicles which caused him to strangle her to death is that, he is left with sickness as proven by the medical certificate.

[7] Counsel Mukahiganiro states that Fatirakumutima and Uwamahoro had conflicts based on the jealousy of the wife and that her death resulted from the fight she had with her husband but Fatirakumutima did not intended to kill her.

[8] The prosecutor contends that Fatirakumutima alleges that Uwamahoro refused to have sexual intercourse while it is not true; he takes this as an excuse because he even used to beat her.

[9] Regarding the medical report presented by Fatirakumutima as proof that he killed his wife by accident while she was squeezing his sexual organs, the prosecution argues that it could not be considered because the offence was committed in September 2007, while he saw the doctor on 26 July 2011, long after the incident and the content of the report is based on what Fatirakumutima told the doctor.

[10] He also states that the sickness talked about in the medical report could be due to another cause especially that the doctor did not mention whether it was due to the fact that his testicles were squeezed. He added that the report is under criticism, because it does indicate neither names nor signature of the issuer.

THE VIEW OF THE COURT:

[11] To analyse whether Uwamahoro (his wife) was killed by accident as Fatirakumutima alleges, the following must be considered; the statements he made before the judicial police, the one made by Mwitirihe Théoneste who was his house boy at that time and the statement made by Mugemangango Venuste, the first person he called for help, and the medical report presented by Fatirakumutima on 15 March 2013, confirming that Uwamahoro squeezed his sexual organs, the act that caused her husband to kill him accidentally.

[12] When he was interviewed and asked to explain how Uwamahoro was killed, Fatirakumutima stated “we started quarrelling around 11:00 PM and at 00:00 AM, she stood up and squeezed my testicles; I yelled loud, after which I boxed her in the face after strangling her and she became unconscious”. He also stated that his wife yelled “I am dying”, but the volume of the radio was loud, and when Mugemangango arrived, he asked him to help and throw her in the toilet but he refused, telling him that people may be aware of it (see mark 34-39).

[13] As for Mwitirehe, when he was interrogated, he denied to have heard Fatirakumutima yelling, but he said, around 3:00 AM he heard the deceased yelling “Fatiri”. He also stated that the volume of the radio was loud (see mark 12-13).

[14] Mugemangango, Fatirakumutima’s neighbor states that the latter called him requesting for his help of throwing the deceased in the toilet, so that he could rebuild it after, he refused and told him that he was going to look for money for him to escape and then decided to inform the authority. He also stated that Fatirakumutima explained to him that he had quarrels with his wife during the night and they fought and then she fell down after he slapped her. (See marks 29 – 33).

[15] The court finds that, nothing in statements made by Mwitirehe and Mugemangango prove that Uwamahoro had squeezed Fatirakumutima’s sexual organ because Mwitirehe did not hear him crying, apart from that Mugemangango states that Fatirakumutima told him that he fought with his wife.

[16] The Court finds also that the medical report Fatirakumutima raised as proof that his wife made him physically disabled could not be considered, because apart from it bearing the

names and signature of the doctor nor the stamp of the hospital that provided medical services, its content also is information given to the doctor by Fatirakumutima, and the latter did not prove that his sexual organs were squeezed.

[17] Relating to how Uwamahoro was killed, the court finds that Fatirakumutima strangled her and slapped her at the face, proving that it was intentional. This is proven by the fact that he did not take her to the hospital when he noticed that she was unconscious, because even Mwitire he stated that around 3 AM she was still alive, calling for help.

[18] Considering what has been mentioned, the court finds that Fatirakumutima Jean de Dieu is guilty of intentional killing of his wife Uwamahoro Marie Louise as provided for by article 311 of the Decree-Law N° 21/77 of 18 August 1977 instituting the penal code that was into force at the time the offence was committed.

B. To examine whether Fatirakumutima could benefit the penalty reduction.

[19] Fatirakumutima and his legal Counsels state that the High Court sentenced him disregarding his guilty plea and the fact that he has orphans at home left by the deceased who need to be looked after.

[20] Counsel Nyamunanage adds that Fatirakumutima committed the offence under provocation, and requests the Court to reduce his penalty in consideration of article 78 of the penal code.

[21] The prosecutor states that Fatirakumutima does not deserve the penalty reduction because he did not tell the truth, and his pleadings were full of contradictions, because sometimes he states that Mugemangango helped him to put the body under the bed and other times he states that he carried the body alone and put it under the bed.

[22] Regarding the allegations made by Fatirakumutima saying that he is left with orphans, thus requesting for the penalty reduction so as to be able to join and take care of them, the prosecutor goes on to say that this deserves no merit because he should not take advantage of his wrong doing, as he is the one who made them orphans by killing their mother.

[23] Regarding the provocation as alleged by Fatirakumutima, the prosecutor states that it is not proven.

THE VIEW OF THE COURT

[24] The Court finds the request made by Fatirakumutima without merit. His penalty could have been reduced if he had pleaded guilty but he did not admit to have intentionally killed his wife although he does not prove it.

[25] Regarding his allegations that he is left with orphans who need to be looked after, the court finds that it could not serve as a mitigating circumstance because, as a matter of fact he is the one who killed their mother and made them orphans. Even before, he had abandoned them living with his other wives, as he stated before the judicial police at mark 34 and the prosecution at mark 51, something reinforced by Mugemangango who was his friend as he affirmed in his interview at mark 32.

[26] With regards to the provocation, article 79 of the Decree- Law n°21/77 of 18 August 1977, instituting the Penal Code that was into force at the time the offence was committed, provides that “felony and misdemeanours are reduced when the offenders were provoked, being hit or undergoing severe violence”. Therefore, as above mentioned, the Court finds that Fatirakumutima failed to prove that his wife squeezed his sexual organs as he alleges. Thus, analysing the issue of provocation is not necessary.

[27] Basing on the given explanations, the court finds that there is no ground that could make the appealed judgment overturned. Therefore, it is sustained.

III. DECISION OF THE COURT:

[28] Finds Fatirakumutima Jean de Dieu’s appeal without merit.

[29] Decides that the judgment RP 0085/07/HC/KIG rendered by the High Court on 2 October 2009 is sustained.

[30] The court fees are to be paid by the state.