

PROSECUTION v. MANIRAGABA

[Rwanda SUPREME COURT – RPAA0257/10/CS (Hatangimbabazi, P.J., Kalimunda and Munyangeli, J.) September 11, 2015]

Criminal procedure Law – Concurrence of evidence – The court shall decide at its sole discretion on the veracity and admissibility of incriminating or exculpatory evidence – Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 86.

Criminal Law – Child defilement – Any sexual relations with a child, whatever the means or methods used, are considered as rape – Law N°27/2001 of 28/04/2001 relating to the rights and protection of the child against violence, article 33.

Facts: The prosecution accused the accused before the Intermediate Court of Musanze, for having defiled 17 years old girl. The court convicted and sentenced him to a reduced penalty of twenty years of imprisonment and a fine of 100,000Frw, on the ground that he pleaded guilty and sought forgiveness. He appealed against the decision before the High Court, chamber of Musanze, where the court sustained the appealed judgment, and found the civil claim filed by the defiled child’s mother with merit in part, therefore ordered Maniragaba Eugène to pay her 200,000Frw for damages.

The accused lodged an appeal to the Supreme Court, admitting to have had a consented sexual intercourse with the concerned girl, and that later, he came to know that she intended to have sexual intercourse with him because she was pregnant, therefore he apologises to have had sexual intercourses with her under provocation and improvisation but emphasizing that she was 18 years old or older.

The prosecutor argues that with regard to the issue of the age of N.A, there is a birth certificate proving that she was born on 3 March 1990, identity card of her mother proving that N.A was born in 1990, therefore, the court could not take into consideration the allegations of Maniragaba Eugène that the girl was born in 1988, while the individual form he based on is not trustworthy as it was not adequately filled, and differs from other forms issued countrywide, especially that the one who signed on it was not the Executive Secretary of the sector, rather someone who signed in lieu of the Executive Secretary (P.O.). The victim’s mother stated that she went to the Sector administration, where she got the birth certificate of her daughter, and that she has already communicated it to the court.

Held: 1. The court shall decide at its sole discretion on the veracity and admissibility of incriminating or exculpatory evidence.

2. After analyzing different documents, the court finds that N.A was defiled by the accused when she was less than 18 years. Therefore, alleging that they consented to have sexual intercourses cannot be given any consideration, because it is obvious that he used ruse to defile the child who was younger than him, as any sexual relations with a child, whatever the means or methods used, are considered as rape”.

**Appeal lacks merit.
Appealed judgment sustained.
Court fees charged to the public treasury.**

Statutes and statutory instruments referred to:

Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 86.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 119.

Law N°27/2001 of 28/04/2001 relating to the rights and protection of the child against violence, article 33.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The prosecution brought Maniragaba Eugène before the Intermediate Court of Musanze, accusing him to have defiled a 17 years girl named N.A. The court convicted and sentenced him to twenty years of imprisonment and a fine of 100,000Frw, reducing his penalty because he pleads guilty and seeks forgiveness.

[2] Maniragaba Eugène appealed against the decision before the High Court, chamber of Musanze, where the court sustained the appealed judgment and decided that the civil claim filed by Nyirarugendo Madeleine, the mother of N.A, has merit in part, therefore it ordered Maniragaba Eugène to pay her 200,000Frw for damages.

[3] Maniragaba Eugène lodged an appeal in the Supreme Court, and the public hearing was held on 11 May 2015, and closed on 13 July 2015. Maniragaba Eugène was assisted by Counsel Mbonyimpaye Elias, the claimant for damages named N.A was represented by her mother Nyirarugendo Madeleine assisted by counsel Kayirangwa Marie Grace, while the Prosecution was represented by Niyonkuru Françoise, the National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE.

To determine whether when N.A was defiled by Maniragaba Eugène she was an adult.

[4] Maniragaba Eugène admits to have had a consented sexual intercourse with N.A on 27 February 2008, explaining that she came to his home telling him that it was for thanking him because he had once accompanied her, as she could not find him before.

[5] He keeps on explaining that he finally discovered that the girl intended to have sexual intercourse with him because she was pregnant and that there were other people who helped her in that plot including the Mayor of Gakenke, with whom he used to work. He states that he repents for having had sexual intercourse with the girl, under provocation and improvisation by her, and that she was 18 years old or older at that time.

[6] With regard to the age of N.A, Maniragaba Eugène argues that in the case file there is the birth certificate proving that she was a student born in 1990, while she had dropt out of school in 2006. Furthermore, he alleges that there is another birth certificate in the case file proving that she was born on 3 March 1990 which was issued based on the doubtful identity card of Nyirangorore Anastasie.

[7] Maniragaba Eugène argues that after realising that there were confusion in those certificates, he wrote to the executive secretary for him to issue the authentic one, but he was

relied that it could not be given to his wife that he had sent. He added that he asked the registrar of the court for help and the latter brought the individual form issued by the administration of the sector proving that N.A was born in 1988 but the court disregarded it, the reason why he requested to make available the registry of births, but even without it, he keeps emphasizing that he had sexual intercourses with N.A at the adult age, and denying to be responsible for her pregnancy, as she was already pregnant during the sexual intercourses.

[8] Counsel Mbonympaye, assisting Maniragaba Eugène states that there are two documents both proving differently the age of N.A, the first being the one Maniragaba Eugène got from the administration of the sector proving that she was born in 1988, but which was disregarded by the court in favour of the one N.A brought proving that she was born in 1990. Therefore, he finds that the two are contradicting documents which result in doubt on the real age of N.A.

[9] The prosecutor argues that with regard to the issue of the age of N.A, there is a birth certificate proving that she was born on 3 March 1990, and an identity card of her mother proving that N.A was born in 1990, therefore, the court could not take into consideration the statements of Maniragaba Eugène whereby he alleges that the girl was born in 1988, while the individual form he based on is not trustworthy as it was not adequately filled, and differs from other credentials format issued countrywide, especially that the one who signed on it was not the Executive Secretary of the sector, as he signed in the capacity of a commissioned servant(P.O.).

[10] He keeps stating that the grounds of Maniragaba Eugène whereby he alleges that he had sexual intercourses with N.A under provocation by the latter are mere statements, because he failed to produce supporting evidence. He requests the court to consider the medical report where it is proven that the girl was defiled in 2007 when she was under 18 years old.

[11] Nyirarugendo Madeleine, N.A's mother was given the floor and stated that she went to the Sector administration, where she got the birth certificate of her daughter, and that after she communicated it to the court, Maniragaba Eugène wrote an apology letter to N.A, telling her that they will raise the child together and gave her 25,000Frw.

[12] In order to waive the confusion on the age of N.A, the court decided that the prosecution would go to the sector where the two contradicting documents were issued to seek information on how that could be.

[13] After the investigation requested by the court, the prosecution informed that they found that the birth certificate of N.A coincides with the one they had handed to the court for the purpose of this case, and this indicates that she was born on 3 March 1990, the age which is even similar to that mentioned on her identity and baptism cards, and during the hearing held on 13 July 2015, the prosecution requested that the document presented by Maniragaba Eugène be rejected.

[14] Maniragaba Eugène states that he does not agree with the prosecution, because they requested the certificate proving that N.A was born in 1990, basing on his identity card instead of relying on her individual form, therefore he wonders whether N.A got two identity cards. He kept on stating that the baptism card should not be relied on as the parents of N.A are not legally married, which implies that the declared and registered age would not rely on

individual form. Therefore, he requested the court as he always did to consider the registry of births in order to exclude any confusion.

[15] Counsel Mbonyimpaye, assisting Maniragaba Eugène states that their concern raised when the court requested the prosecution to inquire and find the reliable date of birth of N.A still has merit, as the prosecution is considered as a party to the case as his client is, implying they could not collect the evidence against them, the reason why they did not even search for the individual form. Therefore, he finds that the investigation carried out by the prosecution should not be relied on because it is incomplete as to have been conducted on only one side. He requested the court to conduct its own investigation with regard to the personal form, as the identity card they alleges to have been issued in 1980 differs from the certificate issued by the administration which proves that N.A was born in March 1990, whereas on the identity card, it is mentioned February. He closed his grounds stating that the baptism card and insurance cards commonly known as “mutuelle de santé” could not be relied on as they are credentials relating to civil status documents.

[16] Nyirarugendo Madeleine was given the floor again and stated that she got the identity card in 1980 when she came from Zaire, in which it was mentioned that N.A was born on 20 February 1990. She added that there is even a student’s card issued on 1 June 2015, a baptism card, medical insurance commonly known as “mutuelle de santé”, all proving that N.A was born in 1990.

[17] Counsel Kayirangwa, assisting Nyirarugendo Madeleine, states that the court should consider the presented evidence proving that N.A was born in 1990, and taking into consideration the document written by Maniragaba Eugène, acknowledging to have defiled N.A, as it proves that he committed the offence with knowledge that she was minor.

[18] With regard to the fact that the identity card of Nyirarugendo Madeleine does not correspond to the one of N.A, she states that it was due to mistake, due to the fact that on her identity card only the year is mentioned while the old one mentions even the month when N.A was born, therefore requesting the latter to be taken into consideration.

OPINION OF THE COURT

[19] The Court finds that though Maniragaba Eugène started denying to have defiled N.A, before the Judicial Police, the Prosecution and the courts, it is clear that he changed his position before the Supreme Court, affirming that he had sexual intercourse with her but emphasizing that she was not minor as pretended by the Prosecution, because she was born in the year 1988, while the offence he was charged with was committed in 2007, therefore, she was adult, aged 18 years old. He added that the sexual intercourse with N.A was consented, and denied to be the one who made her pregnant as pretended by the concerned girl.

[20] Concerning whether N.A. was adult, the Court notices that there are complementing evidence in the case file proving that N.A. was born in the year 1990, including:

Her Identity card proving that she was born on 3 March 1990;

N.A.’s identity form issued by the Executive Secretary of Mugunga sector, on 7 May 2008, proving that she was born in the year 1990;

Birth certificate issued on 27 May 2015, by the Executive Secretary of Mugunga sector, presented by the prosecution as requested by the court, proving that N.A was born on 3 March 1990.

N.A.' baptism card and medical insurance known as "mutuelle de santé" both proving that she was born in the year 1990.

[21] Article 86 of Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure and article 119 of Law N°15/2004 of 12/06/2004 relating to evidence and its production entitle the judge to analyse every single evidence that is communicated to him/her in a criminal case, where they state that evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments. The court shall decide at its sole discretion on the veracity and admissibility of incriminating or exculpatory evidence¹.

[22] Considering the provisions of the above mentioned articles, the Court finds baseless; the pleadings of Maniragaba Eugène, in respect of which he denies all documents as mentioned in the previous paragraphs, pretending that an individual form that he himself collected mentioning that N.A. was born on 1988 be solely taken into consideration, because he does not prove how that individual form can discard all documents as mentioned in the previous paragraph. Furthermore, he does not prove that those documents were issued in order to mislead about the time when N.A. was born. Therefore, they must be taken into consideration to prove that N.A. was born in 1990.

[23] Considering the explanations as given above, the Court finds that N.A. was defiled by Maniragaba Eugène when she was under 18 years. Therefore, alleging that they consented to have sexual intercourse cannot be given any consideration, because it is obvious that Maniragaba Eugène used ruse to defile the child who was younger than him, and this should be qualified as child defilement.

[24] The above mentioned qualification coincide with the provisions of article 33 of the Law N°27/2001 of 28/04/2001 relating to the rights and protection of the child against violence which states that "Any sexual relations with a child, whatever the means or methods used, are considered as rape".

III. THE DECISION OF THE COURT

[25] Finds the appeal lodged by Maniragaba Eugène without merit;

[26] Upholds the appealed judgment N°RPA0241/09/HC/MUS rendered by the High Court, chamber of Musanze;

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

¹ Article 86 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure provides: "Evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments. The court shall decide at its sole discretion on the veracity and admissibility of incriminating or exculpatory evidence".

Article 119 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production provides the following: "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".