

PROSECUTION v. NIYONSABA

[Rwanda SUPREME COURT – RPAA0126/11/CS (Mutashya, P.J, Gakwaya and Hitiyaremye, J.) May 8, 2015]

Criminal Law – Murder accompanied by inhuman and degrading treatment – Shall be punished by the same penalty as the one who killed with intent, anyone, in whatever circumstances, kills a person by inhuman and degrading treatment – Decree-Law N°21/77 of 18/08/1977 instituting the penal code, article 316.

Criminal Law – Guilty plea which is not sincere – Offence committed with cruelty – It is a ground for not reducing the penalty – Decree-Law N°21/77 of 18/08/1977 instituting the penal code, article 82.

Facts: The accused appeared before the High Court, Chamber of Musanze for murder committed against Nzabanita Nsangiranabo. The Prosecution was alleging that they had quarrels and his corpse was found in the cave nearby their home. The accused was suspected, he immediately admitted the offence and explained how he committed it but he had denied it before the Prosecution. The High Court convicted him of murder and sentenced him to life imprisonment.

The accused appealed to the Supreme Court, stating that the High Court had convicted him basing on false testimony given by the mother of the deceased, and disregarding his discharging facts including the statements made by Dusabimana. However, at the beginning of the hearing, he informed the court that the written statements he had communicated to it before were to be disregarded, as he was then pleading guilty for the offence he was charged with; assassination. He added that he was even rejecting his pleading before the High Court, as he was then seeking forgiveness and penalty reduction. The Prosecutor contends that the way the accused pleads guilty is not accurate because he states that he pushed the deceased and fell down on the chest, and after he cut his tongue and removed his eye, while the medical report reveals that the corpse was covered with wounds in the face and the head, something that was the cause of his death as the medical practitioner could not find anything on the rest of the body. He ended requesting for the guilty plea Niyonsaba Boniface made to be disregarded and to hear the medical practitioner who had issued the medical report before the court.

Held: The fact that the accused does not sincerely plead guilty and the offence he is charged with was accompanied by a lot of atrocity, imply that the forgiveness he is seeking should not be granted. Therefore, life imprisonment inflicted to him in the appealed judgment must be sustained.

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

Statutes and statutory instruments referred to:

Decree-Law N°21/77 of 18/08/1977 instituting the penal code, articles 82, 312 and 316.

No case referred to.

Judgment

I. BRIEF BACKGROUND TO THE CASE

[1] The prosecution states that Nzabanita Nsangiranabo went to the pub of Niyonsaba Boniface, sat on the table, and blew his nose. Niyonsaba approached and slapped and kicked him and threw him out. His mother Mukayezu Vérédiana called the person who was lodging them and who was the pub owner called Niyibizi Jean Damascène for help. When he came, he asked them to go home and two days later, the corpse of Nzabanita was found near their home.

[2] Niyonsaba Boniface was suspected to be involved in the killing of Nzabanita, and when he was interrogated before the Judicial Police, he admitted the offence and explained how he committed it but denied it before the Prosecution. After the investigation was completed, the case N°RP0115/09/HC/MUS was filed before the High Court, Chamber of Musanze, and the verdict was rendered on 23 September 2010, where Niyonsaba Boniface was convicted of murder and sentenced to life imprisonment.

[3] Not satisfied with the decision, Niyonsaba Boniface appealed to the Supreme Court on 18 October 2010, stating that the High Court had convicted him basing on false testimony given by the mother of the deceased, and disregarding his discharging facts including the statements made by Dusabimana.

[4] The public hearing took place on 30 March 2015, where Niyonsaba Boniface was assisted by Counsel Musabwa Frédéric, while the prosecution was represented by Mukurarinda Alain, a National Prosecutor.

[5] At the beginning of the hearing, Niyonsaba Boniface informed the court that the written statements he had communicated to it before were to be disregarded, as he was then pleading guilty for the offence he was charged with; assassination. He added that he was even rejecting his pleading before the High Court, as he was then seeking forgiveness and penalty reduction.

II. ANALYSIS OF LEGAL ISSUE

➤ **Whether the guilty plea made by Niyonsaba Boniface could serve as mitigating circumstance.**

[6] Niyonsaba Boniface explains that Nzabanita Nsangiranabo met him in the bar where he used to work and they quarrelled until they fought due to his bad manners but people stopped them. He states that after the fight, Nzabanita got out intending to go home but he kept insulting him even involving himself in his private life. Niyonsaba kept stating that as he was drunk, he became angry and took the knife he used to cut onions with and followed him home where he stayed and took him, and when they reached the cave, he hit him against the stones which were there and he fell on his chest. He kept stating that before he died, he cut his tongue and removed his eye using the knife in order to make conceal evidence. Concerning whether none saw him doing so, Niyonsaba Boniface replied that when he took the deceased from home, his mother was around and when she asked her where he was taking his son, he ordered her to keep her mouth shut otherwise he would beat her.

[7] Musabwa Frédéric, Counsel for Niyonsaba Boniface, argues that when his client was arrested he had admitted the offence till when he pleaded not guilty before the Prosecution and High Court, but that as he was then pleading guilty as witnessed against him and repent, the Court could rely on article 83 of the penal code that was into force at the time the offence was committed to reduce his penalty, because five years and seven months spent in prison led him to heartfelt repentance.

[8] The Prosecutor contends that the way Niyonsaba Boniface pleads guilty is not genuine because he states that he pushed the deceased and fell down on his chest, and after he cut his tongue and removed his eye, while the medical report reveals that the corpse was covered with wounds in the face and the head, which was the cause of his death as the medical practitioner could not find anything on the rest of the body. He ended requesting for the guilty plea Niyonsaba Boniface made to be disregarded and to hear the medical practitioner who had issued the medical report before the court.

OPINION OF THE COURT

[9] Niyonsaba Boniface started denying to have killed Nzabanita Nsangiranabo before the High Court and after the reflection, he pleaded guilty in accurate way, explaining that he became that angry due to drunkenness after being provoked by the deceased. Furthermore, he kept stating that he really regrets what he did and seeks forgiveness.

[10] Article 82 of the Decree-Law N°21/77 of 18/08/1977 instituting the penal code in Rwanda that was into force at the time the offence was committed states: “The judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence”.

[11] Article 316 of the Decree-Law N°21/77 mentioned above provides: “Shall be punished same as the one who killed with intent, anyone in whatever the circumstances, kills a person by inhuman and degrading treatment”.

[12] Article 312 of the mentioned Decree-Law states: “deliberate killing or by ambush is assassination punishable by the death penalty”¹.

[13] With regard to this case, the Court finds that all interrogated people including Niyibizi Jean Damascène, the owner of the pub where the quarrels between Niyonsaba Boniface and the deceased happened, and Dusabimana Jean Baptiste who was in the place at the time of the quarrels, all confirm that Niyonsaba Boniface beat the deceased and the latter ran away from him but he kept involving him in quarrels though people around were advising him to end it. Furthermore, the Court finds that Mukayezu Vérédiana, mother of the deceased, states that she heard the cry and when she went to see what was going on, she found Niyonsaba Boniface beating his son who was on his knees before him begging to be forgiven.

[14] Considering the statements, the Supreme Court finds that the conflicts started with Niyonsaba Boniface as the deceased ran away from him and he pursued him till he threw him out as proved by Mukayezu Vérédiana who stated that he followed them holding a knife, which is contrary to the statements of the accused that the deceased kept on inciting him to fight.

¹ Article 3 of the Organic Law N°31/2007 of 25/07/2007 abolishing the death penalty and replacing it with the life imprisonment and life imprisonment with special provisions.

[15] Furthermore, the Court finds that regarding the circumstances in which the offence was committed, Niyonsaba Boniface admitted before the Judicial Police that after the quarrel was ended, he found the deceased at his home, he took him and reaching the cave, he hit him against a stone, against which he fell on his chest provoking immediate death. He also admitted to have cut his tongue and removed his eye. Before this Court, he affirmed to have killed the deceased, whereby he cut his tongue before he was dead and removed his eye in order to conceal evidence.

[16] With regards to factors that must be considered while determining the penalty, it is necessary to consider how the accused committed the offence, the grounds behind the offence, his behaviour before the offence, circumstances in which the offence was committed and his private life.

[17] The Court finds that Niyonsaba Boniface has atrociously killed Nzabanita Nsangiranabo, as he first of all tortured him by cutting some parts of his body as he admitted.

[18] With regard to the fact that the medical report in the case file does not reveal that some parts of the corpse were cut, which makes the Prosecution to believe that it has not happened, the Court finds that despite the fact that it is not written in the medical report, no doubt that it happened as the accused admitted to have cut those parts, and he would not gain anything to falsely admit such an act.

[19] Considering the aforementioned grounds, the Court finds that Niyonsaba Boniface does not explain well the grounds which led him to commit the offence, because even if he states that he was provoked by the deceased, but people who were around affirm that he started the quarrel as explained above. Furthermore, the offence he is charged with was done with a lot of atrocity as explained above. Therefore, the mitigation relating to admission of the offence he is seeking could not be granted and life imprisonment pronounced against him in the appealed judgment must be sustained.

III. THE DECISION OF THE COURT

[20] Finds appeal of Niyonsaba Boniface without merit;

[21] Sustains the life imprisonment inflicted by the High Court, Musanze Chamber on 23rd September 2010 in the judgment RP0115/09/HC/MUS.

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