

PROSECUTION v. RUZINDANA

[Rwanda SUPREME COURT – RPAA0297/11/CS (Mugenzi, P.J., Mutashya and Gatete, J.)
March 24, 2016]

Criminal procedure – Doubt – It favours the accused – Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165(2°).

Facts: The accused and his fellows not mentioned in this case were prosecuted for murder committed against Rucyahana. With regard to the accused, relying on the statements he made before the prosecution during his interrogation whereby he conceded that he followed the victim while drunk and then killed him, and on the medical report which proves that the late was strangled to death, the Court found him guilty of murder and sentenced him to life imprisonment.

He appealed to the Supreme Court, stating that the judge convicted him without relevant evidence and without taking into consideration his request of further investigation which should have possibly proven his innocence. As for the prosecutor, one could wonder why it took such a long time while the administrative authorities were aware that there were discharging testimonies but which were not given to the concerned authorities.

Held: There is no relevant evidence beyond reasonable doubt convicting the accused of the offence he is charged with. Therefore, he is acquitted.

**Appeal granted.
Accused acquitted and immediate released ordered.
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 165(2°).

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case started in the High Court, Nyanza Chamber, the Prosecution accusing Ruzindana and Serunyange of murder, while Musabyimana was accused of failing to assist a person in danger. On 14 October 2011, the court found Ruzindana guilty of the offence he was charged with and sentenced him to life imprisonment. Musabyimana was found guilty of failing to assist a person in danger hence was ordered to pay 10,000Frw of fine while Serunyange was acquitted.

[2] In its verdict, the Court convicted Ruzindana basing on the statements he made before the prosecution during his interrogation whereby he conceded that he followed the deceased

who was drunk and killed him and on the medical report which demonstrates that the deceased was strangled to death.

[3] Ruzindana appealed to the Supreme Court, stating that the judge convicted him without relevant evidence, without taking into consideration his request for further investigation under which he could have been acquitted.

[4] The public hearing was held on 28 September 2015. Ruzindana was assisted by Counsel Uramije James while the Prosecution was represented by Bunyoye Grâce, the National Prosecutor. After closing the hearing, parties were communicated that the pronouncement will be held on 30 October 2015. However, during deliberation, the Court found that prior to the adjudication of the case on merit it was necessary to hear witnesses suggested by Ruzindana, namely Rutabana Gaspard, Nyiraminani Alphonsine, Muhayimpundu Claudine and Museruka Théoneste so that they could be interrogated about the death of Rucyahana Felisiyani.

[5] The hearing was re-opened on 22 February 2016, Ruzindana being assisted by the Counsel Uramije James while the Prosecution was represented by Dushimimana Claudine, the National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE

Whether there is relevant evidence convicting Ruzindana Emmanuel.

[6] Counsel Uramije argues that his client Ruzindana shared beer with Rucyahana in the pub. He added that after that sharing, Ruzindana accompanied him until he reached his brother Serunyange's home. He insists that when they reached there, Rucyahana started fighting with his elder brother but Ruzindana interposed and went to call the chairman of the village for help.

[7] Ruzindana emphasizes that he went to call the chairman of the village for help and the latter told him that he could do nothing because it was known that, Rucyahana habitually quarrels when drunk. He also affirms that after his call on the chairman of the village for help, he did not return to the scene of fight.

[8] They asserted further that there are pieces of exculpatory evidence which were submitted to the previous Court, but, the latter did not take them into consideration. Furthermore, they added that they requested for interrogation of 17 witnesses enumerated by the Local Authorities in their investigation as specified in the latter written by the Executive Secretary of Bunge cell on 21 May 2010.

[9] More particularly, Ruzindana insisted that those pieces of evidence were sent to him by the family members of the late Rucyahana Felisiyani just after Serunyange¹ who was incarcerated with him was released. He concluded that he requests the Court to conduct further investigation on his charges and at least interrogates Rutabana Gaspard, Nyiraminani Alphonsine, Muhayimpundu Claudine and Museruka Théoneste because they can specify the time when he left the late Rucyahana. Furthermore, Ruzindana states that the decision taken is defective because it relies on the testimonies supposed to be his while they were made by other people.

¹ This is his cousin brother who already served his sentence.

[10] The Prosecutor states that the offence that Ruzindana is charged with was committed on 08 February 2010 while the request to the Court to hear witnesses was written on 21 May 2010 and one can wonder the reason why it took such longtime while the administrative authorities were aware of witness evidence without sharing this information with the concerned authorities.

[11] She explains that Rucyahana brawled with Serunyange, and Ruzindana interposed between them, but that such brawl was not fatal unless Serunyange hit the deceased with instrument, and Ruzindana does not prove it.

[12] With regards to the challenged testimony, she states that it was transcribed such as it was given and none could consider statements made by someone else as if they were made by Ruzindana, the reason why it has to remain valid². Moreover, she adds that testimonies are contradictory on some occasions, because one of them testified that Ruzindana left Rucyahana for home after having begged him in vain to go home and rejected it on one hand, while on the other hand one testified that he walked away to call the Chairman of the Village for help.

THE VIEW OF THE COURT

[13] After analysis of testimonies³ given during the hearing of 22 February 2016, the Court finds that all witnesses coincide on the point that Ruzindana went home with the deceased and when they reached to Serunyange's, Rucyahana refused to keep his way home stating that he has already reached there.

[14] The Court finds further that they all coincide on the point that Rucyahana fought with Serunyange, and Ruzindana interposed himself between them, Serunyange went back inside the house and closed the door, while Ruzindana kept begging the deceased to keep his way home, but the latter refused and stayed at the entrance of his brother's.⁴

[15] Another thing which must not be disregarded is that all of them coincide on the point that after the fight, Ruzindana went to call on the Chairman of Village for help, and as Ruzindana explains, none testified to have seen him at scene of fight between Rucyahana and Serunyange after calling for help.

[16] The Court finds no contradiction in the testimony as pretended by the Prosecutor because, after Rucyahana has rejected Ruzindana's request to go home, it is no surprise that Ruzindana told Rucyahana that he is about to leave him, but it was found that he called on the Chairman of the Village before going home, as testified by Museruka Théoneste, that when he was on his way from Kigali, Ruzindana met him to the center calling for help because of the fights.

[17] Further, the Court cannot disregard the document issued by the local administrative authorities in order to serve as the base of interrogation of witnesses, although it was submitted late, because those authorities are of the place of the commission of the crime, and

²Apparently, the judge convicted Ruzindana of the offence, because Rucyahana said "Ayirwanda's son (Ruzindana), what do u want to me?"

³Were interrogated: Rutabana Gaspard, Nyiraminani Alphonsine, Muhayimpundu Claudine and Museruka Théoneste.

⁴ Serunyange's brother

the interrogated witnesses reached the crime scene due to the fight between Rucyahana and Serunyange. Therefore there is no cause as to why their testimonies would not be duly considered.

[18] In the light of the above explanations, the Court finds that there is no relevant evidence beyond any reasonable doubt to convict Ruzindana. Therefore, he must be acquitted pursuant to the provisions of article 165(2^o) of Law N°30/2013 of 24/05/2013 relating to the code of criminal procedure which provides that 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.

[19] Finds appeal lodged by Ruzindana Emmanuel with merit;

[20] Finds him not guilty;

[21] Orders his immediate release;

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