

PROSECUTION v. TURATSINZE

[Rwanda SUPREME COURT – RPAA0021/12/CS (Nyirinkwaya, P.J., Rugabirwa and Ngagi, J.) February 19, 2016]

Evidence law – Presumptions – They are inferences that the law or a court makes from a known fact to discern an unknown fact. They must be significant, precise and consistent – Law N°15/2004 of 12/06/2004 relating to evidence and its production, articles 104 and 108.

Criminal law – Minimization of Genocide – It shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and downplaying the methods through which Genocide was committed – Law N°84/2013 of 11/09/2013 on Genocide ideology and other related crimes, article 6.

Criminal Procedure – Consequences of the absence of appeal by Prosecution against the penalty imposed – The penalty cannot be increased on the appellate level when the Prosecution did not appeal against it.

Facts: The accused was brought before the Intermediate Court of Ngoma, accused of minimization of genocide against the Tutsi, basing on the words he told Nyirabashumba Françoise when they met that as they commemorate the Genocide against the Tutsi on 07/04 they should also commemorate the fifth of the same month on which he got married. He was convicted and sentenced to ten (10) years of imprisonment. He appealed to the High Court, Chamber of Rwamagana, which held that his appeal lacks merit.

The accused appealed to the Supreme Court, claiming that he did not commit the offence and that the previous courts convicted him without examining the witnesses he called as he had requested. The prosecution contends that there is a witness who was at the scene of the offence who narrated in the Judicial Police how the offence was committed, thus his testimony should be valued, especially that even the accused stated that there is no conflict between them.

Held: 1. Presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact. They must be significant, precise and consistent.

2. Minimization of Genocide shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and down playing the methods through which Genocide was committed.

3. The penalty imposed on Turatsinze cannot be increased in the appeal on the ground of recidivism, because even though he deserved it, the previous courts did not rely on it in determining the penalty and the Prosecution did not appeal against the penalty. Therefore, he must be sentenced to nine (9) years of imprisonment which is the maximum penalty provided for by the law.

**Appeal lacks merit.
The appealed judgment is reversed in regard to the penalty.
The court fees are to be charged from the public treasury.**

Statutes and statutory instruments referred to:

Organic Law N°01/2012 of 02/05/2012 instituting the penal code, articles 79 and 116.

Law N°84/2013 of 11/09/2013 on Genocide ideology and other related crimes, articles 6 and 12.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, articles 104 and 108.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case begun in the Intermediate Court of Ngoma, where Turatsinze Pierre was accused of the offence of minimizing the genocide against the Tutsi, he allegedly committed on 19 April 2008 when he told Nyirabashumba Françoise whom he met on the way, that when they go for genocide commemoration on 7 April 04, they should also commemorate the 5th of April on which he got married.

[2] The court rendered the judgment RP0287/08/TGI/Ngoma on 22 May 2009, in which it convicted and sentenced him to ten (10) years of imprisonment.

[3] Turatsinze appealed to the High Court, chamber of Rwamagana, in the judgment RPA0110/09/HC/RWG rendered on 11 March 2011 that Court held that his appeal lacks merit.

[4] Immediately after the pronouncement, Turatsinze Pierre declared that he has lodged an appeal though he did not submit his appeal submissions to the court. The public hearing was held on 29 December 2015, Turatsinze Pierre being assisted by Counsel Umulisa Paola, while the prosecution was represented by Ntawangundi Béatrice, the National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE

Whether Turatsinze Pierre is not guilty of minimization of genocide.

[5] Turatsinze Pierre claims that he did not commit the offence he is accused of, he admits to have met Nyirabashumba on 19 April 2008, when she was coming from Hitamungu's home accompanied by the latter's wife Mukandayisenga, while he was also going to that home with Karegeya Claver and Innocent. Nyirabashumba greeted him and Mukandayisenga went back home, the old men he was with entered into the house and both of them stayed at Hitamungu's courtyard. He proceeds that they did not quarrel, apart from Nyirabashumba greeted him, and she told him that he resented her, as he no longer visit her and he replied that it was due to the lack of time when he get time he will visit her He states that after not more than five minutes, Nyirabashumba left and he entered into Hitamungu's house.

[6] He further states that Hitamungu took them to Viateur's pub to buy for them alcohol, after 30 minutes Nyirabashumba came and told people who were there as follow "I am saddened of what Pierre have just told me". When they asked her to repeat what he had told her, she only repeated that it had saddened her and immediately left. He adds that she just came back and said "You can ask Twamugize, he heard what Turatsinze told me". They asked him but he affirmed to have passed near them when going to buy flour for his kids but

he did not hear those words that had saddened her. Then they asked him to tell them what happened, he said that they greeted each other and Nyirabashumba told him that he resented her as he no longer visit her and he replied that it was not like that and after a short time Nyirabashumba went home, they did not proceed further.

[7] He refutes what Twamugize stated before the Judicial Police that he found him with Nyirabashumba at Hitamungu's courtyard because it is false because he never saw him. With regard to the reason why Nyirabashumba would falsely accuse him, he replied that they normally lived in harmony, occasionally visiting each other, but in 2007, she requested him, as a person who had pleaded guilty to the crime of genocide against the Tutsi, to accuse Nyirabukeye Clémentine in Gacaca courts that she looted the commune's property, she wanted even to tell him how he could do it but he told her that he cannot falsely accuse her.

[8] He states that previous courts convicted him without examining the witnesses he called who are Karegeya Claver, Mukandayisenga and Hitamungu who were around when he talked with Nyirabashumba on 19 April 2008 and who can testify if there was a quarrel between them, as for others they know that Nyirabashumba requested him to accuse Nyirabukeye and these are Muyango Martin, and Viateur who were in charge of security in the Cell. With regard to know how they got informed about it, he states that he is the one who told them.

[9] Counsel Umulisa Paola, assisting Turatsinze states that apart from the fact that her client pleads not guilty, to say "when you commemorate genocide victims, commemorate also my wedding date" should not be considered as minimizing the Genocide against the Tutsi, as such words do not prevent people from commemorating Genocide nor deny it, but instead, they should be regarded as valuing it.

[10] She further states that to give value to one's wedding date is not downplaying the commemoration of genocide rather those words which Turatsinze is accused of can offend his ex-lover as they are intended to remind him the date on which he got married. It could be in such context that he offended Nyirabashumba who used to be his lovers but he did not marry her since he married another lady.

[11] He also states that in the Intermediate Court of Ngoma, Turatsinze requested the Court to carry out the investigation, but the judge told him that his case was among the backlog cases, therefore it cannot be postponed, that although his request for the investigation is not written anywhere, nothing prevent it to be taken into consideration by the Supreme Court so that it gives him a chance to examine the witnesses he called including Sumba Shabani, Nyiramatabaro Jeanne, Karegeya Claver, Mukandayisenga Claudine and Nyirabukeye Clémentine who know his relationship with Nyirabashumba and they also consider his behaviors and testify whether he can utter such words.

[12] With regard to the fact that he told Nyirabashumba such words, with the intention of offending her as someone who was in love with and broke up and married another one, Turatsinze avers that it is true that they were in relationship but he did not marry her after knowing that she was HIV positive. He further states that just because she wanted to live together with him but it failed, that would not lead him to tell her such words to offend her.

[13] The representative of the Prosecution states that Twamugize Chantal made a statement in the Judicial Police that she found Nyirabashumba crying, quarreling with Turatsinze, and she repeated what Turatsinze had told her, and when she asked him about it,

he repeated what Nyirabashumba had told her, in her view there is nothing which could prevent the Court to value his testimony because Turatsinze also stated himself that there is no conflict between them.

[14] She further argues that Nyirabashumba and Turatsinze are not related that she remembers his wedding day, that considering the severity of Genocide, it would be its revisionism to compare the commemoration of its victims to the wedding date, especially that doing so, Turatsinze was aware that it would offend Nyirabashumba.

[15] Regarding the witnesses he requested to be heard, she argues that it has no significance because he himself stated that there is no conflict between him and Nyirabashumba and no one knew that she requested him to accuse Nyirabukeye apart from those he told about it. She further argues that he also stated that there was no one around when he was talking to Nyirabashumba at Hitamungu's courtyard apart from Twamugize who was passing by and stood there.

[16] She concludes that Turatsinze would have been sentenced to the double of the penalty as provided for by article 75 of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code relating to the penalty in case of recidivism because he was sentenced to ten (10) years when he was convicted for Genocide against the Tutsi, but that she cannot request for it when the prosecution did not appeal. She adds that although the current penal code provides for lesser penalties than the one that was in force at the time Turatsinze committed the offence, she requests that the penalty imposed to him by previous courts be sustained considering that it is recidivism.

THE VIEW OF THE COURT

[17] In this case, the issue to be examined is whether Turatsinze told Nyirabashumba that “when they commemorate the victims of genocide against the Tutsi on 7 April, they should also commemorate the day on which he got married on 5th of the same month” and if he did so, whether such words constitute minimization of Genocide.

[18] Article 104 of the Law relating to evidence and its production mentioned above provides that presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact. As for article 108, it states that the court shall admit only those presumptions if they are important, precise and consistent.

[19] The court finds that although Turatsinze denies having told Nyirabashumba the words he is being charged with, he admits that on 19 April 2008 they met and spent a while with her, and on the same day Nyirabashumba told people she found in Viateur's pub that she was offended by what he had told her.

[20] The court also finds that even if before this court, Turatsinze states that Twamugize did not pass by where he and Nyirabashumba were, he admitted it before the Prosecution, and what he admitted immediately after his arrest are the one to be considered because it corroborates with the statements of Nyirabashumba and Twamugize, and moreover he stated that there was no conflict between them that could lead him to falsely accuse him.

[21] The court finds also that even if before this court, Turatsinze states that Nyirabashumba falsely accuse him because they were once in a relationship but he married another one cannot be given weight, because he did not mention it neither in pre-judicial

phases nor in the courts, therefore, he contradicts himself because previously, he only stated that she might be avenging because he refused to accuse Nyirabukeye in Gacaca courts.

[22] The court again finds that the arguments that Nyirabashumba falsely accuses him because he refused to accuse Nyirabukeye as she had requested him has no value because it contradicts his statements that they lived in harmony, and that Nyirabashumba is the one who received him when he was released from the prison convicted of Genocide.

[23] With regard to the witnesses he called for examination, the court finds that it alters nothing, because himself before the Judicial Police and Prosecution stated that no one else passed by where he was with Nyirabashumba, apart from Twamugize, that he lived in harmony with Nyirabashumba, and that those who know that she had requested him to accuse Nyirabukeye are those to whom he told it. Therefore, they cannot testify it as they did not hear nor see it themselves.

[24] When analysing the statements made by Twamugize Chantal before the Judicial Police, that she found Nyirabashumba with Turatsinze crying, quarrelling and asking him the reason why he always offend her, that even Turatsinze repeated what he had told to Nyirabashumba, that in April they should also remember the 5th April that is when he married and relates it to the statements Nyirabashumba made before the Judicial Police when she was filing the claim, that Twamugize found her with Turatsinze, and the latter repeated what he just told her and again relates it with the statement Turatsinze made before the Prosecution confirming that Twamugize found him with Nyirabashumba. Considering contradiction and inconsistency that made up his statements, the court finds that there is no doubt that he told Nyirabashumba those words of which he is charged.

[25] With regard to establish whether the words Turatsinze uttered constitute the offence of minimization of Genocide, article 6 of Law N°84/2013 of 11/09/2013 on the Genocide ideology and other related offences stating that minimization of Genocide shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and downplaying the methods through which Genocide was committed.

[26] The court notices that the argument of the counsel for Turatsinze, that such words should not be considered as minimization of Genocide because they do not deny it nor prevent its commemoration is disregarding that the Genocide is the most heinous crime that fatally injured the country and the hearts of numerous Rwandans, therefore, commemorating its victims who were barbarically killed cannot be compared to one's wedding date.

[27] The court also finds that Turatsinze as a person who was an adult during Genocide, who perpetrated it and punished for it, he was well aware that telling Nyirabashumba that when they commemorate the Genocide, they should also commemorate his wedding date is minimizing the Genocide against the Tutsi by comparing the act of commemorating genocide victims that involves the nation and all Rwandans with that of remembering one's wedding date involving only the concerned person. His intention in doing so was to offend Nyirabashumba, demonstrating that he downplays the severity of atrocities committed against the Tutsis and the sorrow of its survivors.

[28] With regard to the penalty, article 4 of the Law N°33bis/2003 of 06/09/2003 punishing the crime of genocide, crimes against humanity and war crimes that provided for the imprisonment of ten (10) years to twenty (20) years to the one convicted of Genocide denial, minimizing or justifying genocide, these penalties were replaced by five (5) years to

nine (9) years considering provisions of article 12 of the Law N°84/2013 of 11/09/2013 relating to Genocide denial and related offences and the provisions of article 116 of Organic Law N°01/2012 of 02/05/2012 instituting the penal code.

[29] With regard to the penalty to be imposed in case of recidivism, article 85 of the Decree Law N°21/77 of 18/08/1977 instituting the penal code that was in force at the time the offence was committed provides that in case of recidivism, the convict shall receive the maximum penalty provided by Law and the penalty may be doubled. The same is provided for by article 79 of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code that is in force.

[30] The court finds that the penalty imposed on Turatsinze cannot be increased in the appeal on the ground of recidivism, because even if he deserves it, the previous courts did not rely on it in determining his penalty and moreover, the Prosecution did not appeal against the penalty imposed on him. Therefore, he must be sentenced to nine (9) years of imprisonment which is the maximum penalty provided for by article 116 of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code which is in force for the one convicted of the offence of minimizing genocide.

III. THE DECISION OF THE COURT

[31] Decides that the appeal of Turatsinze Pierre lacks merit;

[32] Decides that the judgment N° RPA0110/09/HC/RWG rendered on 11 March 2011 by the High Court, chamber of Rwamagana is reversed as with regards to the penalty imposed to Turatsinze Pierre in respect to the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code which is in force;

[33] Sentences Turatsinze Pierre to nine (9) years of imprisonment;

[34] Orders that the court fees be charged from the public treasury.