

PROSECUTION v. NGURINZIRA

[Rwanda SUPREME COURT – RPAA0118/11/CS (Mutashya, P.J., Munyangeri and Hitiyaremye, J.) November 13, 2015]

Evidence Law – Testimony given by the relative of the concerned party – Nothing can prevent the testimony given either by the victim’s mother or the victim to be considered, as it is not prohibited by the Law – Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 63.

Facts: The accused appeared before the former court of Kigali Ngali Province, where he was accused to have committed child defilement against 8 years old child, committed where her mother sent her to bring a hoe from where the accused stayed, and when she arrived there he immediately held her in his hands, took her in the house, removed her clothes and defiled her, leaving serious injuries as indicated by medical report. The accused pleaded not guilty, but the court, relying on evidences, especially testimonies and the medical report, convicted and sentenced him to life imprisonment. He appealed in the High Court at Kigali, which found that it was not competent to hear such case and transferred it to the High Court, chamber of Rwamagana, where the offence was committed. The court convicted and sentenced him to a reduced penalty of fifteen years (15) of imprisonment and the fine worth one hundred thousand Rwandan francs, because he was the first offender.

He appealed against the decision in the Supreme Court, stating that the previous courts innocently convicted him, and that the medical report relied on was issued two weeks later therefore he does not acknowledge it. He added that he normally had conflicts with the mother of the victim. As for the prosecutor, he contended that there are witnesses who saw him getting out of the house, tightening the trousers’ belt.

Held: 1. Nothing can prevent the testimony given either by the victim’s mother or the victim to be considered, as it is not prohibited by the Law.

2. The statements made by the victim, witnesses, contradicting statements made by the accused and the medical report, concur to prove that the accused is guilty of the child defilement committed against an eight (8) years old child, therefore, his appeal lacks merit.

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

Statutes and statutory instruments referred to:

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 63.

Case law referred to:

Prosecution v. Nshimiyimana et al, RPAA0059/08/CS, rendered by the Supreme Court on 19 November 2010.

Judgment

I. THE BRIEF BACKGROUND OF THE CASE

[1] The case started in the former court of Kigali Ngali Province, where Ngurinzira Sylvestre was accused to have committed child defilement against 8 years old child named N.M.L. The prosecution states that on 26 December 2001, Nzitabakuze Providence, N.M.L's mother, sent her to bring a hoe from Nyiransekambabaye's, where he found Ngurinzira Sylvestre. They add that he immediately held her in his hands, took her in the house, removed her clothes and defiled her, leaving serious injuries as reported by the medical practitioner. The accused pleaded not guilty, but the court, relying on evidence, especially testimony and the medical report, convicted and sentenced him to life imprisonment.

[2] Ngurinzira Sylvestre appealed in the High Court, at Kigali, which declared that it was not competent to hear such case and transferred it to the High Court, chamber of Rwamagana, where the offence was committed.

[3] In that court, Ngurinzira Sylvestre kept pleading not guilty, but in the verdict rendered on 7 January 2011, the court convicted and sentenced him to fifteen years (15) of imprisonment and to the fine of one hundred thousand Rwandan francs. The court reduced his penalty because he was the first offender.

[4] Ngurinzira Sylvestre appealed against the decision in the Supreme Court, stating that he was innocently convicted by the previous courts, and that the medical report relied on was issued two weeks later and he does not acknowledge it. He added that he normally had conflicts with the mother of the concerned girl. As for the prosecutor, he contended that there are witnesses who saw him getting out of the house, tightening the trouser's belt.

[5] The public hearing was held on 12 October 2015, Ngurinzira Sylvestre being assisted by counsel Mukamana Elisabeth, while the prosecution was represented by Bunyoye Grâce, the National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE

Whether there are relevant evidence convicting Ngurinzira Sylvestre.

[6] In explanation of his grounds of appeal, Ngurinzira Sylvestre states that immediately after his arrest, the Judicial Police requested for the medical report proving that the girl was defiled and after waiting longtime for it, he released him. He kept on explaining that the medical report was available after two weeks and he was re-arrested. He adds that it is not clear how the medical report was available after such longtime. He proceeds that he had conflict with the victim's mother, whose house he stayed in, because she used to ask him to fetch water to brew banana juice, which he refused and that is why she plotted against him. He concluded that the medical report reveals that the girl was defiled by a finger; therefore, she did it in order to accuse him.

[7] Counsel Mukamana Elizabeth states that he had advised his client to withdraw his appeal because the previous judge had reduced his penalty to imprisonment of 15 years, and he still have to serve only one year in prison. Therefore, she requests the court to consider the medical report and testimonies to maintain the given penalty.

[8] The prosecutor contends that although Ngurinzira Sylvestre states that they falsely incriminated him, he disregards the witnesses who saw him getting out of the house

tightening his trouser. He adds that even his statements contradict each other where he on one side, he states that the conflict with the victim's mother started when he refused to fornicate with her, and another side, he states that it was because he refused to fetch water for her. He proceeds that even though the accused states that he was once released, it does not emphasize that the medical report was forged, and the medical practitioner reported that the girl was defiled at the extent that one can insert the finger, does not mean that she was defiled by a finger as Ngurinzira Sylvestre emphasizes.

THE VIEW OF THE COURT

[9] The court finds Ngurinzira Sylvestre pleaded not guilty in the pre-trial as well as the courts.

[10] The court finds that the previous courts considered the witnesses affirming that N.M.L. went to Nyiransekambabaye where she met Ngurinzira Sylvestre including even those who affirm to have seen him getting out of the house tightening his trousers. There is also a medical report that confirmed that the victim got serious injuries.

[11] The court finds that Nzitabakuze Providence, the victim's mother explained that she had sent her daughter to Nyiransekambabaye to bring a hoe and it was there that she met Ngurinzira Sylvestre who immediately defiled her as also explained by the victim.

[12] The court finds that Ngurinzira Sylvestre failed to challenge the statements made by the victim and her mother who was told by her the way she was defiled. He failed also to prove whether there was any kind of conflict with the victim's mother. Therefore, the testimony given by Nzitabakuze Providence, the victim's mother is to be considered, although she is the victim's mother.

[13] The court finds furthermore that as it was decided in the judgment RPAA0059/08/CS, prosecution vs Nshimiyimana Alexis, Twagirumukiza Anastase and Habimana rendered by this court on 19 November 2010, the testimonies cannot be disregarded due to relations between concerned people, nor the fact that they have some interests in the case, because the validity of testimony does not depend on the author, rather, its veracity, which is solely decided by the court following its assessment.

[14] The court finds in addition that considering article 63 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production which provides that "Any person can be allowed to testify as a witness in court, with the exception of those people who have no capacity to be witness in court"; it proceeds that "People who are regarded as having no capacity to act as witnesses in court are people who are not capable of communicating what they witnessed". Therefore, nothing can prevent the testimony given either the victim's mother or the victim to be considered, as it is not prohibited by the Law.

[15] With regard to the testimony given by the witness named Ntamfurayishyari also known as Kanyange, who affirms to have seen Ngurinzira Sylvestre getting out of the house, tightening his trouser; the court finds that she clearly explained the way the girl arrived at her home, sent by parents and that Ngurinzira Sylvestre was also around. She added that she saw him later getting out of the house, putting on the shirt and tightening his belt and in other clothes. She proceeded that shortly, she saw N.Y. getting out of the same house where Ngurinzira Sylvestre stayed, being very shy.

[16] The court finds the statement made by Ntamfurayishyari known as Kanyange must be taken into consideration, because it does prove well that Ngurinzira Sylvestre was with the girl alone in the house and Ngurinzira Sylvestre went out of the house with evidence proving that he was with N.Y. In the house, and he had removed his clothes as he appeared putting on the shirt and tightening the belt.

[17] The court finds that the statements made by Ngurinzira Sylvestre, that Ntamfurayishyari known as Kanyange falsely incriminated him because of two thousand that she owed him cannot be taken into consideration, because such conflict could not make Ntamfurayishyari known as Kanyange to falsely affirm that she saw Ngurinzira Sylvestre coming from the house as he did.

[18] The court finds that the statements made by Ngurinzira Sylvestre, prove that he contradicted himself in every instance he was heard. In the Judicial Police, he stated that the named Ntamfurayishyari known as Kanyange (the one who provided accommodation to him) did not want to pay the money she owed him therefore she accused him, but later, he stated that she owed nothing.

[19] With regard to Nzitabakuze Providence, the victim's mother, when Ngurinzira Sylvestre was interrogated in the Judicial Police, he did not mention that there was conflict between them, but in the judgment rendered by Court of Kigali Ngali province on page 7, he stated that the conflict between them rises from the fact that he refused to fornicate with her but before this court, he contradicted himself and stated that the root cause of their conflict is the refusal to fetch water for her.

[20] The court finds that the contradicting statements made by Ngurinzira Sylvestre solely aim at escaping from criminal responsibility and invalidate the declarations of the eye witnesses. Therefore, they cannot be taken into consideration especially that in his interrogation in the Judicial Police, he admitted that the victim found him to Ntamfurayishyari's also known as Kanyange, where he used to stay and that she came in his house. Thus, the fact that he himself admits to have met the victim, on the day and time when she was defiled, is another supporting evidence indicating that no one else defiled the child rather than him.,

[21] The court finds the statements made by Ngurinzira Sylvestre that immediately after his arrest, he requested that the victim be medically examined and two weeks elapsed without doing so baseless, because the evidence such as the medical report can be taken into consideration to prosecute the accused any time it is available, since the investigation is still pending.

[22] With regard to the statements made by Ngurinzira Sylvestre that the medical report proves that the victim was defiled using the finger, therefore it was committed by the victim's parents in order to falsely incriminate him, the court finds that it cannot also be considered, because the medical practitioner reported that the victim's hymen was broken to the extent that the finger can be introduced in. He did never mention that she was defiled using the finger. It reads as follow: "vulva is hyperemic, perforated and hymen broken, the vaginal allows the passage of a finger" (la vulve est hyperthémiée, l'hymen perforé et déchiqueté, le toucher vaginal permet le passage d'un doigt) and he concluded the defilement was committed "cas de viol consommé".

[23] Considering the explanations above, the court finds that evidence constituted of the statements made by the victim, witnesses, contradicting statements made by Ngurinzira Sylvestre and the medical report, concur to prove that Ngurinzira Sylvestre is guilty of the child defilement committed against an eight (8) years old child; therefore, his appeal lacks merit.

III. THE DECISION OF THE COURT

[24] Finds appeal lodged by Ngurinzira Sylvestre without merit;

[25] Sustains the judgment RPA0168/09/HC/RWG rendered on 7 January 2010 is sustained, which implies that the penalty of 15 years inflicted to Ngurinzira Sylvestre and the fine worth one hundred thousand are maintained.

[26] Orders that the court fees be charged to the public treasury as the accused was tried while in detention.