

PROSECUTION v. MINANI ET AL

[Rwanda SUPREME COURT – RPA0299/12/CS (Hatangimbabazi, P.J., Karimunda and Gakwaya, J.) March 18, 2016]

Criminal Law – Aggravating circumstance – Consuming drugs in order to commit the offence constitutes an aggravating circumstance instead of being a mitigating circumstance or a ground for escaping criminal responsibility.

Facts: The appellants were prosecuted before the High Court, Rwamagana chamber, for having broken into Nsabimana Didace alias Kanuma household during the night, holding traditional weapons and killed three people. Minani pleaded guilty while Ntaganira pleaded not guilty. The court found that the guilty plea entered by Minani was enough to convict him of the offence he is charged with, while with regard to Ntaganira, the court considered witnesses and the fact that both accused were found with wounds. The court convicted them of the offence they were charged with and sentenced each to life imprisonment.

They were not satisfied with the decision and lodged an appeal before the Supreme Court. In his appeal, Minani states that he aims at telling the truth in order to benefit the penalty reduction. As for Ntaganira Vincent, he contended that the murder was plotted by Minani Alexandre without his consent because he induced him to consume drugs and made him commit an offence. He stated that if the High Court had considered his grounds, it would have sentenced them to the different penalties.

The prosecutor contends that though Minani Alexandre and Ntaganira Vincent accuse each other, none of them is sincere because Minani Alexandre states that the knives were from Kanuma's while the case file proves that they went there holding them. As for Ntaganira Vincent, he tries to escape the hemp responsibility and states it is Minani Alexandre who used to trade it while even though he does not prove that he was induced in the offence commission by him, the fact that he consumed drugs cannot serve as a mitigating circumstance as it constitutes an offence itself. He kept on explaining that all of this proves that none of both pleads guilty in a sincere way, and then he requests to this court to consider their plea as not sincere, and maintain the appealed judgment considering that they committed an atrocious offence with high cruelty.

Held: Consuming drugs with the purpose to commit the offence constitutes aggravating circumstance instead of being mitigating circumstance nor a ground for escaping criminal responsibility. Therefore, the fact that the accused consumed the hemp before committing the offence, besides it being an offence, it indicates that they had the plot before consuming the hemp and they did so to stimulate themselves in order to achieve their plot. Therefore, these emphasize that the life imprisonment sentenced to them must be sustained.

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

Statutes and statutory instruments referred to:

Organic - Law N^o31/2007 of 25/07/2007 repealing the death penalty.

Decree - Law N^o21/77 of 18/08/1977 instituting the penal code, articles 82 and 312.

Case Laws referred to:

State versus Chretien 1981 (1) SA 1097 (A).

Authors cited:

Nyabirungu mwene Songa, *Traité de droit pénal Congolais*, Kinshasa: Editions Universitaires, 2007, p.288.

CR Snyman, *Criminal Law*, Durban: Lexis-Nexis, 2008, at p.222.

Judgment

I. THE BRIEF BACKGROUND OF THE CASE

[1] The case started in the High Court, Rwamagana chamber, where Minani Alexandre and Ntaganira Vincent were accused of having broken into Nsabimana Didace alias Kanuma household on 21 December 2010 during the night, holding traditional weapons including machetes, knives and bludgeons. They broke the door and got into the house, where they deadly hit three people with machete and left corpses in the blood. Minani Alexandre pleaded guilty while Ntaganira Vincent pleaded not guilty.

[2] In the judgment N^oRP0009/11/HC/RWG rendered on 10 November 2011, the court found that the guilty plea made by Minani Alexandre that he murdered Nsabimana Didace and his two children Mukamuvunyi Joselyne and Nyiraminani Xavérine is enough to convict him of the offence he is charged with, while with regard to Ntaganira Vincent, the court considered witness declarations made by Mukarushema Christine, Ntiyamira and Twagirayezu Vianney who attest that Minani Alexandre told them that he went to murder the family of Nsabimana Didace alias Kanuma accompanied by Ntaganira Vincent, and this being confirmed by the fact that both Ntaganira Vincent and Minani Alexandre were found with wounds. The court convicted them of the offence they were charged with and sentenced each to life imprisonment.

[3] Minani Alexandre and Ntaganira Vincent were not satisfied with the decision and lodged an appeal before the Supreme Court. In his appeal, Minani Alexandre pleaded guilty in order to get the penalty reduction. As for Ntaganira Vincent, he contended that the murder was plotted by Minani Alexandre without his consent because he induced him to consume drugs which made him commit an offence. He stated that those grounds were disregarded by the High Court while they would be sentenced to different penalties.

[4] The public hearing was held on 13 July 2015, but as Ntaganira Vincent did not yet get a counsel, it was postponed until 15 February 2016. The same day, Ntaganira Vincent was present and assisted by counsel Habyarimana Christine, Minani Alexandre was assisted by Counsel Uwanyirigira Delphine while the Prosecution was represented by Niyonkuru Françoise, a National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE

Whether there are grounds for reducing the penalty in favor of Minani Alexandre and Ntaganira Vincent.

[5] Minani Alexandre states that Ntaganira Vincent asked him to accompany him to claim for his money around 10h00PM. When they reached near to Kanuma's, Ntaganira Vincent prepared the hemp and both consumed it; he then easily opened the door as if he was of the household, took Mukamuvunyi and went to kill her in the banana plantation with the bludgeon used to close the door while he was holding Kanuma who has finally injured him in the palm when they were fighting to hold the machete. He kept on stating that when Ntaganira Vincent came back, he killed Kanuma with the other bludgeon and then killed a child who was trying to quit the house. He explained that Ntaganira Vincent ordered him to kill him with the other bludgeon.

[6] He further explains that the statement made that knives were found at his home is false, because only the machete was found in his possession. He declares in addition that when he asked Kanuma the reason why he killed instead of claiming for his money and he promised him to pay him twenty thousand Rwandan francs (20,000Frw) the next day. However he failed to keep the secret and told about it to his elder brother named Ntiyamira Emmanuel and his mother and the next day, to Ntaganira Vincent's young brother. He denies knowing Kabamba who is supposed to be their accomplice; since he has only heard about him through Ntaganira Vincent. He admits to have declared lies to the High Court but states that he is remorseful, pleads guilty and seeks forgiveness for the offence he committed, therefore requesting to the court to be lenient for him to get the penalty reduction.

[7] Uwanyirigira Delphine, the Counsel for Minani Alexandre argues that his client pleaded guilty before the High Court despite he did not explain well how it was committed and how in complicity with Ntaganira Vincent, murdered Kanuma's family, but then he pleads guilty in a sincere way, requesting to the court to take his plea into consideration, so that the life imprisonment inflicted on him be reduced pursuant to article 35 of the Law relating to the code of criminal procedure and article 77, paragraph 3 of the Organic Law instituting the penal code that is into force.

[8] Ntaganira Vincent explains that he started sharing the hemp with Minani Alexandre and then talked how they were facing the poverty while it was during festive season. At that occasion, they plotted to steal money from Kanuma's home, wearing long coats and holding two sharp knives gotten from Minani Alexandre's ceiling. When they reaching there, Minani Alexandre broke the door, got in and found Kanuma where he was sleeping. When he started hitting him, his elder daughter run away from the house and Ntaganira Vincent stabbed her. He kept on explaining that before leaving, they decided to make sure they were dead because they had noticed them and when they finished killing them, another small kid went out the house and they killed him also.

[9] He kept on explaining that when they left, they went to Ntiyamira, Minani's elder brother, and he told him what happened and the same was repeated by Ntiyamira's wife before the Judicial Police but once in prison, when he asked Minani Alexandre the motive of killing, he replied that he had plotted it for a while but that he missed a person called Kabamba who would have helped him in its execution. At the same occasion, they planned for their plea, whereby Minani Alexandre would accuse Kabamba while Ntaganira would plead not guilty.

[10] He concludes that he is the first offender and that he was induced by Minani Alexandre to consume drugs but the time passed in prison helped him to get aware of cruelty of the offence, therefore he regrets and seeks forgiveness, requesting to the court to change the life imprisonment inflicted to him into a fixed term imprisonment.

[11] Habyarimana Christine, Counsel for Ntaganira Vincent states that although the appellants accuse each other regarding their respective role in the plot and the one who produced the drug they consumed before the commission of the offence, Ntaganira Vincent pleads guilty in a sincere way, therefore, requests to the court to consider his plea considering that he is the first offender, as he was young at the age of 24 and that he had consumed drugs. Therefore he requests for the benefit of penalty reduction up to imprisonment not less than one year as provided for by article 82 and 83 of the Decree – Law N°21/77 of 18/08/1977 instituting the penal code that was into force at the time the offence was committed.

[12] The prosecutor contends that though Minani Alexandre and Ntaganira Vincent accuse each other, none of them is sincere because Minani Alexandre states that the knives were from Kanuma's while the case file proves that they went there holding them. As for Ntaganira Vincent, he tries to escape the hemp responsibility and states it is Minani Alexandre who used to trade it while even though he does not prove that he was induced in the offence commission by him, the fact that he consumed drugs cannot serve as a mitigating circumstance as it constitutes an offence itself. He kept on explaining that all of this proves that none of both pleads guilty in a sincere way, and then he requests to this court to consider their plea as not sincere, and maintain the appealed judgment considering that they committed an atrocious offence with high cruelty.

THE OPINION OF THE COURT

[13] Pursuant to the Law N°31/2007 of 25/07/2007 repealing the death penalty, article 312 of the Decree – Law N°21/77 of 18/08/1977 instituting the penal code that was into force at the time the offence was committed provides “the killing committed with premeditation or ambush is assassination and is punished by the life imprisonment.”

[14] Article 82 of the Decree – Law N°21/77 of 18/08/1977 mentioned above provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence.

[15] During his interrogation before the Judicial Police and the Prosecution, Minani Alexandre declared that after killing Nsabimana Didace alias Kanuma's family, the security officers went to his home for search and found a machete, two knives and hemp but only the machete belonged to him. He added that on 21 December 2010, around 8h00PM, he went to his elder brother Ntiyamira Emmanuel to borrow the torch and when he went to cut off banana, he fell down and the machete he was holding injured him in the palm; he went to put traditional medicine to his mother Mukamurenzi Anne Marie, and went back home. The next day, the police came to arrest him (mark 26-29, 54-56).

[16] The documents in the case file prove further that Ntaganira Vincent declared before the Judicial Police and the Prosecution that there is no conflicts between him and people who accuse him. He added that around 1h00PM of the same day the offence was committed (21 December 2010) he had reached at Giheta to Gatera's home to register his plot of land, he came back with his brother in law Kayumba who was accompanying him, and they went to drink beer to Ruhura's, and when they finished, he accompanied him too. He added that he then went to buy milk with his wife from Mukabugingo Chantal's, and they went home around 6h30 PM, and that is at that occasion that he heard about Nsabimana Didace alias Kanuma's family death through the kid called Pilote, and he went to bemoan their death with his sister named Mujawayezu Vivia. With regard to how he got injured on 21 December

2010, he stated that he have got injured by the reed plant he was cutting for cow (mark 50-52).

[17] When he appeared before the High Court, Rwamagana chamber, Minani Alexandre admitted that in the night of 21 December 2010, he borrowed a bicycle from Ntaganira Vincent, and went with the named Kabamba to Nsabimana Didace alias Kanuma to show him where they could find money, and when they broke the door, his daughter jumped and identified him and Kabamba immediately stabbed her, and when Nsabimana Didace alias Kanuma, came for her rescue, they fought and he injured him but he managed to get him down. He went on explaining that Kabamba took the girl into banana plantation and stayed for a while and when he came back, he told him that he had killed her. He stated that they left there and went to his mother called Mukamurenzi. As for Ntaganira Vincent, he declared that the testimony from people who accuse him were extorted so that they corroborate to the fact that he was found injured and had lent his bicycle to Minani Alexandre, the same day the offence was committed, which indicate that their statements were just a kick of a dying horse, because he could not kill his neighbours (mark 101-105).

[18] The court finds that until now Minani Alexandre and Ntaganira Vincent do not state the truth with regard to the identification of the person who plotted the killing; the owner of the weapons used; the one who prepared the hemp they consumed and how the deceased were murdered. However, even though they would have proved it, the fact that they committed a serious offence, with the greed for money which they were not even sure that Nsabimana Didace alias Kanuma was possessing, killing innocent neighbours, decimating the whole family in barbaric way, using knives and bludgeons, killing young girls, being aware that they did not have money they were searching for and who could not fight them and in addition to that, they dehumanized their corpses by leaving them naked and piling stones on their corpses, it is enough so that the penalty inflicted on them by the High Court be sustained.

[19] The court finds the fact that Minani Alexandre and Ntaganira Vincent state that before murdering Nsabimana Didace alias Kanuma's family, they consumed hemp, though they don't clarify the quantity consumed and its effect on their behaviour, consuming hemp before committing the offence cannot be considered as a mitigating circumstance, besides being an offence, it indicates that they plotted before consuming the hemp and they consumed it to stimulate them to achieve their plot. Courts¹ and law scholars² concur that consuming drugs in order to commit the offence constitutes aggravating circumstance instead of mitigating circumstance or a ground for criminal irresponsibility. These emphasize that the life imprisonment sentenced by the High Court, Rwamagana chamber to Minani Alexandre and Ntaganira Vincent is sustained.

¹“Society has for years been subjected to alcohol abuse by certain of its members. This abuse has continued unabated and today is often accompanied by drug abuse. Because so many assaults and deaths are caused by persons under the influence of alcohol, a section of the community has in the past been skeptical about the soft treatment meted out to intoxicated offenders...” *State versus Chretien* 1981 (1) SA 1097 (A).

² “Il est unanimement admis que lorsque l’auteur d’une infraction a bu et s’est enivré pour se donner le courage de la commettre, étouffer les cris de sa conscience ou s’aménager une excuse, l’ivresse, loin de lui profiter, devient une circonstance aggravante.” Nyabirungu Mwene Songa, *Traité de droit pénal Congolais*, Kinshasa: Editions Universitaires, 2007, p.288. “.. X intends to commit a crime but does not have the courage to do so and takes to drink in order to gain the necessary courage, knowing that he will be able to perpetrate the crime once he is intoxicated. In this instance, intoxication is not a defense whatsoever. It is not even a ground for mitigation of punishment; in fact it would be a ground for imposing a heavier sentence than the normal.” CR Snyman, *Criminal Law*, Durban: Lexis-Nexis, 2008, at p.222.

III. THE DECISION OF THE COURT

[20] Finds the appeal lodged by Minani Alexandre and Ntaganira Vincent alias Rudomoro, Vuduka, Kiwani without merit.

[21] Sustains the judgment N^oRP0009/11/HC/RWG rendered on 10 November 2011 by the High Court, chamber of Rwamagana.

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