

PROSECUTION v. NSANZINTWALI

[Rwanda SUPREME COURT – RPAA0048/12/CS (Hatangimbabazi, P.J., Karimunda and Gakwaya, J.) May 6, 2016]

Criminal Procedure Law – Benefit of doubt – When there exist grounds of doubt, it favors the accused – Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

Facts: The appellant was accused for having defiled a child of 5 years of age called I.P. He pleaded not guilty and explained that he had admitted it before the Judge of provisional detention and release because of the pain he was undergoing. The Intermediate Court of Muhanga rendered the judgment and convicted him basing on the fact that he has pleaded guilty before the Judge of provisional detention and release and on the medical report proving that the child was defiled. The court sentenced him to twenty years (20) of imprisonment and the fine of twenty thousand (20,000) Rwandan francs, reducing his penalty because he was the first offender and had pleaded guilty. He was not satisfied and lodged an appeal before the High Court, Nyanza chamber, requesting the penalty reduction based on the fact that he pleaded guilty and sought forgiveness. The court reduced his penalty and sentenced him to fifteen (15) years of imprisonment.

The accused appealed before the Supreme Court, requesting the penalty reduction because he pleads guilty and seeks forgiveness but at the beginning of the hearing, he stated that though his appeal intended the reduction of his penalty, he does not plead guilty for the offence of the child defilement committed against I.P., especially that he does not even know how it was committed notwithstanding the effort put in. He explained that he pleaded guilty before the court so that his penalty be reduced, but he was innocently convicted.

The Prosecutor states that the appeal lodged by Nsanzintwali Pascal lacks merit because he pleaded guilty at every instance and he finds therefore that the fact that he pleaded guilty in the lower courts is not enough for him to benefit the penalty reduction, but rather, this constitutes incriminating evidence. He argues that the non-guilty plea made by Nsanzintwali Pascal before the Supreme Court should not be considered, because there are other evidence supporting his guilty plea. He added that his statements that he pleaded guilty due to the fear of strong penalties are wrong because at that time, he had not yet know about the penalty to be inflicted on him.

Held: Doubt favours the accused. Therefore, the fact that there exist grounds of doubt, the accused must be acquitted from the offence he was charged of.

**Appeal has merit.
The accused acquitted.
Court fees to the public treasury.**

Statutes and statutory instrument referred to:

Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started in the Intermediate Court of Muhanga, where the Prosecution was alleging against Nsanzintwali Pascal for having defiled a child of 5 years of age called I.P. Nsanzintwali Pascal pleads not guilty and explains that he has admitted it before the Judge of provisional detention and provisional release due to the pain he was undergoing.

[2] The Intermediate Court of Muhanga rendered the judgment and convicted him basing on the fact that he pleaded guilty before the Judge of provisional detention and release and on the medical report proving that the child was defiled. The court sentenced him to twenty years (20) of imprisonment and the fine of twenty thousand (20,000) Rwandan francs, reducing his penalty because he was the first offender and had pleaded guilty.

[3] Nsanzintwali Pascal was not satisfied and lodged an appeal before the High Court, Nyanza chamber, requesting the penalty reduction based on the fact that he pleaded guilty and sought forgiveness.

[4] The court rendered the verdict and reduced the penalty for Nsanzintwali Pascal whereby it sentenced him to fifteen years of imprisonment.

[5] Nsanzintwali Pascal was not satisfied with the judgment and appealed before the Supreme Court, requesting the penalty reduction because he pleads guilty and seeks forgiveness.

[6] The hearing was conducted on 4 April 2016, whereby Nsanzintwali Pascal was represented by the Counsel Girayo Eric, and the Prosecution was represented by Dushimimana Claudine, the National Prosecutor.

[7] At the beginning of the hearing, Nsanzintwali Pascal stated that though the objective of his appeal was the benefit of the penalty reduction, he does not plead guilty for the offence of the child defilement committed against I.P. and he does not even know how it was committed. He explained that he pleaded guilty before the court so that his penalty be reduced, but that he was convicted to the offence he did not commit.

II. ANALYSIS OF THE LEGAL ISSUE

➤ Whether there exist evidence convicting Nsanzintwali Pascal.

[8] Nsanzintwali Pascal argues that the objective of his appeal was the benefit of the penalty reduction, whereby he requests to the court to sentence him at least to five years imprisonment because he finds the sentence of ten years of imprisonment inflicted to him too heavy.

[9] With regard to the reason why he requests for the penalty reduction while he have already benefited, Nsanzintwali Pascal states that it is up to the court to exercise its discretion over his request, because his appeal aims at reducing his penalty especially that he was convicted of the offence he did not commit. He explains that he has previously pleaded guilty to benefit the penalty reduction, but that he did not really commit it. He kept on explaining

that he did so because he suffered injustice, especially that once he denied the offence it was disregarded and in addition to that he endured the pain while in the custody.

[10] With regard to whether he intends requesting the penalty reduction or the acquittal from the prison, Nsanzintwali Pascal replied that he requests for the penalty reduction but emphasized that he was convicted to the offence he did not commit; because he believes that it might have been committed by other kids of the same age as the victim. He kept on arguing that the victim's mother assumed that it was committed by him because he went to their home, whereas he had gone there to steal the tyre.

[11] Gariyo Eric, the Counsel for Nsanzintwali Pascal states that the declarations made by his client before the Court are new, because when he was preparing the case, both agreed that he will plead guilty and seek forgiveness, but that instead, he is pleading not guilty, and consequently, he should abandon the request for the penalty reduction. The counsel requested to the Court to grant him time to consult with Nsanzintwali Pascal, for them to hold the same grounds for their appeal because his client states that he is sometimes lost.

[12] After the private time with his counsel, Nsanzintwali Pascal was given the floor and he stated that he pleads guilty though he cannot explain how the crime was committed notwithstanding any effort he may put in.

[13] The Prosecutor states that the appeal lodged by Nsanzintwali Pascal lacks merit because he pleaded guilty at every instance and he finds therefore that the fact that he pleaded guilty in the lower courts is not enough for him to benefit the penalty reduction, but rather, this constitutes incriminating evidence. He argues that the non-guilty plea made by Nsanzintwali Pascal before the Supreme Court should not be considered, because there are other evidence supporting his guilt-plea. He added that his statements that he pleaded guilty due to the fear of heavy penalties are wrong because at that time, he had not yet known about the penalty to be inflicted on him. He kept on explaining that although Nsanzintwali Pascal pleads not guilty, he does not challenge the incriminating evidence produced by the Prosecution, the reason why he requests that the appealed judgment be maintained.

THE OPINION OF THE COURT

[14] Article 165 of the Law N°30/2013 of 24/05/2013 relating to the code of criminal procedure provides that "The benefit of doubt shall be given in favour of the accused. 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".

[15] The documents in the case file prove that on 19 November 2009, when Nsanzintwali Pascal was interrogated in the Judicial Police and then on 23 November 2009 in the Prosecution, he have never admitted the offence of the child defilement committed against the named I.P.. Furthermore, when he appeared before the Intermediate Court of Muhanga, he pleaded not guilty, whereby he explained that the reason why he confessed during the provisional release and detention process was due to the pain he was undergoing and he wanted to be imprisoned for fifteen days instead of thirty days requested by the Prosecution because it would be too long for an innocent.

[16] The documents in the case file indicate in addition that after being sentenced to twenty years (20) of imprisonment, Nsanzintwali Pascal lodged an appeal before the High Court, Nyanza chamber, whereby he pleaded guilty and sought forgiveness, which served as the basis of his penalty reduction up to fifteen years (15) of imprisonment. Furthermore, he found the penalty too long and came to seek mercy before the Supreme Court, requesting that his penalty be reduced up to five years (5) of imprisonment.

[17] The Court considers that before analysing whether the penalty sentenced to Nsanzintwali Pascal after taking into account his guilt-plea can be reduced, it is worth to analyse whether he is guilty.

[18] As mentioned above, except before the High Court, chamber of Nyanza, where Nsanzintwali Pascal pleaded guilty, he did not confess before other instances and he explained that his prior guilt -plea intended to get justice, as he was innocently imprisoned.

[19] Elements of evidence contained in the case file with regard to the child defilement committed against the called I.P which Nsanzintwali Pascal is accused of, are the following:

1. The statements made by N.C., the victim's father, who explained to the judicial police that he and his wife knew that their child was raped, when they noticed the semen in her sex and on the thigh.
2. The minute established on 20 November 2009 by the Judicial Police found on page 7 in the case file, where he states that he had a conversation with I.P., and the latter told him that she was defiled by Pascal who introduced two fingers into her sex.
3. The medical report made on 19 November 2009, whereby the physician reported inter alia, "Healthy in general, intact hymen, she would have been raped, she would have been raped without sexually transmitted disease."

[20] The court finds that considering elements of evidence highlighted above, there is doubt with regard to the offence charged to Nsanzintwali Pascal of having defiled I.P, while even the medical report does not confirm that she was defiled but rather, it casts doubt as follow (she might have been raped), and this is complemented by the fact that the hymen is still intact and does not suffer from any disease.

[21] Another dubious fact is that the medical report which was immediately elaborated on 19 November 2009, that is to say the next day of the commission of the offence, 18 November 2009 as it is declared, the doctor never mentioned to have observed the semen in the sex of the victim, while the father of the victim informed the judicial police that he and his wife noticed them as previously indicated.

[22] Furthermore, another dubious fact is that N.C., the victim's father declared to have seen semen in the sex, which implies that in case Nsanzintwali Pascal defiled the girl, he would have introduced his sex into hers and leave behind semen seen by her parents. However, the child told the Judicial Police that Nsanzintwali Pascal only introduced two fingers into her sex.

[23] Considering the analysis of the statements mentioned above, the Court finds that there exist grounds casting doubt which imply that pursuant to article 165 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure mentioned above, Nsanzintwali Pascal must be acquitted. Therefore, the judgment Nsanzintwali Pascal appealed against must be quashed.

III. THE DECISION OF THE COURT

- [24] Finds the appeal lodged by Nsanzintwali Pascal with merit;
- [25] Declares Nsanzintwali Pascal not guilty;
- [26] Orders his immediate release;
- [27] Overturns the judgment RPA0263/10/HC/NYA rendered by the High Court, chamber of Nyanza, on 8 April 2011;
- [28] Orders that the court fees be charged to the public treasury.