

PROSECUTION v. UWIZEYE

[Rwanda SUPREME COURT – RPA 0255/13/CS (Mutashya, P.J., Rugabirwa and Karimunda, J.) April 21, 2017]

Criminal Law – Penalty reduction – The gravity of the offence – The fact of not considering the gravity of the offence committed and the fact of not being remorseful must be considered in determination of the penalty – Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, article 76.

Criminal Law – Domestic violence – In determination of the penalty violence exercised against women need to be considered.

Criminal Law – Penalty reduction – The wickedness of high level used in commission of the offence – The wickedness of high level used in commission of the offense prevent the penalty to be reduced.

Facts: The accused was prosecuted, charged with the murder, where the prosecution accused him of having murdered his wife not legally married and he pleaded guilty. The High Court, Rwamagana chamber found that he confessed that he planned to kill his wife and sentenced him to life imprisonment and ordered him to pay court fees. He appealed to the Supreme Court submitting that the previous court misinterpreted the facts because he never intended for killing his wife, that he was rather under provocation due to her adultery behaviors and he killed her because of anger. He seeks for pardon, sentence reduction and sentence suspension so that it enables him to return home and take care of his mother and his children left abandoned.

The prosecution states that the accused had conflicts with his wife because he suspected her to be in adultery, for that reason the prosecutor requests this court not to consider his arguments with regard to the sentence reduction so that he can return home to take care of his mother and his children left exposed and prosecutor requests to sustain the rulings of the appealed judgment as the accused could not pretend the consequences of his/her offence to be the cause of the penalty reduction.

Held: 1. The fact of not considering the gravity of the offence committed and being not remorseful, should be considered in determination of the penalty.

2. The fact that the offence committed is qualified as domestic violence, the accused who pretends to convince that the victim had wrongdoings as a motive of being killed, he/she should face serious penalty because the violence exercised against women need to be considered in sentencing.

3. The wickedness of high level used in the commission of an offence prevents the penalty reduction.

**Appeal without merit.
The appealed judgment upheld.
Court fees to the public treasury.**

Statute and statutory instruments referred to:

Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 76.

Case laws referred to:

Angelique Lyn Lavalle v. Prosecution (Angelique Lyn Lavalle her majesty the queen), Supreme Court of Canada, 1990, 1 SCR 852. P.872

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case began in the High Court chamber of Rwamagana where Uwizeye was accused of having murdered his wife Uwizeye Médiatrice with whom he was not legally married on 27 November 2012 using a machete. He hit her on the head and on the arm using a machete. After committing the murder, he told his neighbors that he killed her because of her beauty, so that it shall be useless to her. Uwizeye Eustache pleaded guilty.

[2] In the judgment RP 0100/12/HC/RWG rendered on 21/12/2012, the court found that Uwizeye Eustache confessed that he planned on killing Uwizeye Médiatrice, hitting her three times on the neck with intention to separate it from the body. The court sentenced him to life imprisonment and ordered him to pay court fees.

[3] Not pleased with the judgment, Uwizeye Eustache appealed to the Supreme Court submitting that the previous court misinterpreted the facts because he never intended for killing his wife, that he was rather under provocation due to her adultery, he also added that he killed her because of anger, he therefore requested for sentence reduction as he pleads guilty and asks for pardon, he further requested for suspended penalty in the interests of his children and in order to avoid that he continues to be the burden for the State.

[4] The public hearing was held on 20 March 2013, Uwizeye Eustache being assisted by Counsel Mberabagabo Balinda Richard while the prosecution was represented by Habineza Jean Damascène, The National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the penalty sentenced to Uwizeye Eustache can be reduced due to the fact that he pleads guilty and seeks forgiveness

[5] Uwizeye Eustache says, he had issues with his wife Uwizeye Médiatrice when the latter asked him why he did not cook beans and from that, they had quarrels. He explained, he had no

good relationship with his wife because she had indulged into adultery and that he even once caught her, having sexual intercourse with other person but the latter fled. He concluded that he admits for having committed an atrocious offence with high cruelty and seeks forgiveness, reason why he requests to this court to change life imprisonment inflicted to him by the High Court, Rwamagana chamber so that he can return home to take care of his mother and his children abandoned.

[6] His counsel Mberabagabo Balinda Richard states that even if Uwizeye Eustache failed to catch his wife's partner in adultery, the behaviors of his wife induced him to commit the offence he pleads guilty for, as he explains and seeks forgiveness since he was arrested till he appeared before the court. He concludes by requesting the court to consider his client's behaviors and protects the interests of his children and reduces sentence up to ten years of imprisonment basing on article 77 paragraph 3 and article 78 paragraph 1 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code.

[7] The Prosecutor states that Uwizeye Eustache had conflicts with his wife because he suspected her to be in adultery, immediately after murdering his wife, full of blood, he went to Ugiriwabo Eugénie and told her that Uwizeye Eustache's beauty shall not be useful to her because he comes from killing her. He requests this court not to consider Uwizeye Eustache's arguments with regard to the sentence reduction so that he can return home to take care of his mother and his children abandoned, because there is the court's precedence highlighted in the judgment between prosecution and Mpitabakana¹, stating that an accused would not benefit from the consequences of the offence s/he committed in order to be granted the penalty reduction. Therefore, he requests to the court that the appealed judgment be sustained.

THE OPINION OF THE COURT

[8] Article 76 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. The decision to accept mitigating circumstances must be justified.

[9] The file demonstrates statements made by Uwizeye Eustache in judicial police and in prosecution, that since they started cohabitation in 2006, they had no peaceful household as she used to wander and return home late in the night, that he cooked for the children and the wife used to insult him that he is a dog. He explained that he only caught her in sexual intercourse in 2007, but he still suspected her. He admitted for having killed his wife on 27 November 2012 using a machete, that he surprised her when she was sitting on a chair and hither three times on the neck and she fell down and suddenly died. He added that after killing her, he fled to Ugiriwabo Eugénie informing her that he had just killed his wife and Ugiriwabo Eugénie called the neighbors and the police (identification mark 5-7 and 22-24).

[10] The case file also contains Ugiriwabo Eugénie's statement in the judicial police stating that Uwizeye Eustache came at her home holding a blooded machete in his hands, saying that he had just killed his wife and she has immediately called Sibomana Théophile who took the machete off

¹ See judgment N° RPA 0129/10/CS rendered by Supreme Court on 07/03/2014.

him. As for Sibomana Théophile, he stated that he found Uwineza Médiatrice lying down, the blood flowing around and when he asked Uwizeye Eustache the motive of such act, he replied that he could no longer bear the matter of being harassed by her wife, that no man will seduce her any more and she will no longer benefit from her beauty, that even the twin children she left, may either live or die (identification mark 14-15).

[11] The case file also contains the statements of Iragena Jeannette when she was interviewed in the judicial police that Uwizeye Eustache told her that one month elapsed without copulating since she started working in terracing farmland, that she has a man who come to his home, she cooks for him and share the meal, that he preferred killing her so that she will not be benefiting from her beauty any more. As for Ndagijimana Jean Bosco, he stated that he heard ascream for help at Uwizeye Eustache and he went for rescue but in reaching the place he found Uwizeye Eustache's wife lying down and dead with injuries on her head and on arm and that Uwizeye Eustache said that his wife had become out of control as a reason of murdering her because there is a man with whom they work together who used to visit her and she cooked for him.(identification mark 10-12)

[12] The court finds that the statement of Uwizeye Eustache before this court that he planned to kill Uwineza Médiatrice and that he hit her with a blow of machete on neck, this statement as well as the ones made in judicial police, prosecution and before the High Court, Rwamagana chamber are the same. His statement is also as the same as ones made by witnesses interrogated in the case file with regard to the motive of killing his wife, that it is the jealousy he had against her, the file also contains a picture on identification mark 18 showing the deceased lying down in blood in the sitting room with a machete full of blood on her side, that machete was seized by the judicial police as demonstrated by the statement of seizure of 28 November 2012, all these proving that Uwizeye Eustache admits the offence with no doubt as it was confirmed by the High Court, Rwamagana chamber, in the appealed judgment, page three.

[13] The court however finds that after he killed Uwineza Médiatrice, Uwizeye Eustache said that he killed her because of her beauty, before this court he mentioned again that he suspected that his wife was involved in adultery even though he did not catch her in the act and that his wife used to insult him that he is a dog, that she also used to wander and leave children at home, he intends to convince that Uwineza Médiatrice was wrong as motive to kill her. These understandings reveal that Uwizeye Eustache does not still consider the gravity of the offence he committed and he is not remorseful even if he says that he seeks forgiveness, this should be considered in determination of the penalty convenient to the offence he committed.

[14] The court finds, Uwizeye Eustache committed domestic violence, but he still intends to convince that Uwineza Médiatrice had wrongdoings which pushed him to kill her, this is itself sufficient ground to punish him seriously so that men with such kind of understanding be aware that woman is not to be manipulated but rather a human being with the same rights, value and capacity as her partner.

[15] The court finds, with regard the violence exercised against women in determination of the penalty, it was also mentioned by the Supreme Court of Canada in the judgment *Angélique Lyn Lavallee versus prosecution*, the court reminded that the notion that a man has the right to discipline his wife is deeply founded in the history of our society. The wife's obligation was to

serve her husband, to remain married at all costs until death separated them, and to be punished for failing to please her husband. One of the consequences of this attitude was that violence against women was rarely mentioned, rarely reported, rarely prosecuted and even more rarely punished. Although the society had stopped to approve the domestic violence officially, we continued and we continue up today, to tolerate it in some areas. It is well that we notice since few years, a great consciousness that no man has, under any circumstances, the right to brutalize a wife.¹

[16] Basing on the above grounds, the court finds that even if Uwizeye Eustache admits for having committed offence saying that he seeks forgiveness and reduction of sentence so that he can return home to take care of his mother and his children, the fact that he did not seek remedy from the family, friends, administrative or justice organs to handle the matter with his wife that he suspected to be involved in adultery but surprised her when she was sitting on a chair, hit her three times on the neck using the machete with intention to immediately kill her as he states himself, by doing so, he did not consider interests of looking after children as well as his mother, the grounds he uses before this court, while those interests would have prevented him to commit the offence. These demonstrate the wickedness of high level he used in commission of the offence, thus, the life imprisonment sentenced by the High Court, Rwamagana chamber, cannot be reduced as it reflects the gravity of the offence committed.

III. DECISION OF THE COURT

[17] Decides that Uwizeye Eustache's appeal intending penalty reduction is without merit.

[18] Rules that the appealed judgment N°RP 0100/12/HC/RWG rendered by the High court, Rwamagana chamber on 21 December 2012 is upheld.

[19] Orders that the Court fees are charged to the public treasury.

¹ «The the notion that a man has the right to discipline his wife is deeply founded in the history of our society. The wife's obligation was to serve her husband, to remain married at all costs until death separated them, and to be punished for failing to please her husband. One of the consequences of this attitude was that violence against women was rarely mentioned, rarely reported, rarely prosecuted and even more rarely punished. Although the society had stopped to officially approve the domestic violence, we continued and we continue up today, to tolerate it in some areas. It is well that we notice since few years, a great consciousness that no man has, under any circumstances, the right to brutalize a wife», Supreme Court of Canada, Angelique Lyn Lavallee v. Her Majesty the Queen, [1990] 1 SCR 852, at 872.