UBUSHINJACYAHA v. NTAWICUMURAME

[Rwanda URUKIKO RW' IKIRENGA– 2014SC– RPAA0149/10/CS (Nyirinkwaya, P.J., Hatangimbabazi na Hitiyaremye, J.) 14 Werurwe, 2014]

Amategeko mpanabyaha – Gusambanya umwana – Ibura ry'ibimenyetso bidashidikanywaho bihamya ko ushinjwa yakoze icyaha rituma agirwa umwere – Itegeko n°13/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165

Incamake y'ikibazo*: Uwajuriye yarezwe ko yasambanyije umwana w'umukobwa w'imyaka itanu hashingiwe ku cyemezo cya muganga, no kuba umwana wasambanyijwe ari we ashinja, ariko we agahakana icyaha avuga ko bamubeshyera kubera ko icyo cyaha cyakozwe amaze ibyumweru bibiri avuye muri urwo rugo. Urukiko Rwisumbuye rwa Nyarugenge,rwamuhamije icyaha rumuhanisha igifungo cy'imyaka cumi n'itanu. Yajuririye mu Rukiko Rukuru rwemeza ko urubanza rujuririrwa rudahindutse maze ajurira mu Rukiko rw' Ikirenga avuga ko yahamijwe icyaha kandi ntacyo yakoze, ko urukiko rwashingiye ku bimenyetso bishidikanywaho, ko kandi rutahaye agaciro ibimenyetso yarugaragarije. Mu iburanisha yakomeje avuga ko icyaha aregwa gikekeranywa kuko kitagira itariki cyakoreweho, ko n'icyemezo cya muganga giteye gushidikanya kuko cyakozwe nyuma y' ibyumweru bibiri avuye muri urwo rugo asimbuwe n' undi mukozi w' umuhungu, ndetse kikaba kivuga ko umwana yasambanyijwe n'umukozi wo mu rugo nk'aho yari ahari.*

Uhagarariye Ubushinjacyaha we avuga ko ku birebana n'igihe icyaha cyabereyeho nta rujijo rurimo kuko inyandiko ziri muri dosiye zigaragaza ko icyaha cyakozwe mu kwezi kwa 11/2001, ko umunsi icyaha cyamenyekaniyeho ari na wo ikirego cyatangiweho, uwo munsi akaba ari itariki ya 2/11/2001, akaba ari na wo munsi uregwa yabarijweho ndetse na raporo ya muganga igakorwa kuri uwo munsi. Kuri raporo ya muganga, uhagarariye Ubushinjacyaha na we avuga ko yemera ko habayeho agakosa ko kuvuga uwasambanyije umwana kandi atari byo yari yasabwe, ko bishoboka ko umuganga wayikoze yari uwimenyereza umwuga, ariko ko bitagomba gutesha agaciro iyo raporo kuko muganga yabonye ko umwana yangiritse.

Incamake y'icyemezo: Ubushinjacyaha ntibwashoboye kuvuguruza imyiregurire y'uwajuriye ngo bugaragarize urukiko aho uwo munsi yaba yarahuriye n'umwana ngo rwemeze ko ibimenyetso muganga yasanze ku gitsina cy'umwana byatewe nawe. Hashingiwe ku myiregurire y'uwajuriye, ibimenyetso byose byatanzwe muri uru rubanza bitera gushidikanya, bityo akaba agomba kugirwa umwere kuko gushidikanya birengera ushinjwa.

Ubujurire bufite ishingiro.
Ushinjwa ahanaguweho icyaha kubera gushidikanya.
Imikirize y' urubanza rwajuririwe ihindutse kuri byose,
Agomba kurekurwa urubanza rukimara gusomwa.
Amagarama ahererereye ku isanduku ya Leta .

Amategeko yashingiweho:

Itegeko n°13/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165

Nta rubanza rwifashishijwe.

Inyandiko z'abahanga *zifashishijwe*:

Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4^{e} édition, p. 1316, § 5

Urubanza

I.IMITERERE Y'URUBANZA.

[1] Ku itariki ya 2/11/2001 Uwamahoro Jeannette yashyikirije Ubugenzacyaha ikirego avuga ko Ntawicumurame Faustinyamusambanyirije umwana w'umukobwa w'imyaka itanu (5) witwa Mukatuyisenge Justine ibyo bikaba byaramenyekanye ku itariki ya 31/10/2001 ari uko umukozi amwuhagiye yakora ku gitsina umwana agataka avuga ko amutoneka. Ntawicumurame ariko we ahakana icyaha avuga ko bamubeshyera kubera ko icyo cyaha cyakozwe amaze ibyumweru bibiri (2) avuye muri urwo rugo. Ubushinjacyaha bwakoze idosiye buyishyikiriza Urukiko Rwisumbuye rwa Nyarugenge, mazekuitariki ya 10/5/2002 Urukiko ruca urubanza ruvuga ko Ntawicumurame ahamwa n'icyaha,rumuhanisha igifungo cy'imyaka cumi n'itanu (15) .

[2] Ntawicumurame Faustin ntiyishimiye imikirize y'urubanza maze ararujuririra.Ku itariki ya 19/4/2010 Urukiko Rukuru rwemejeko urubanza rujuririrwa rudahindutse kuko impamvu zose zatanzwe na Ntawicumurame nta shingiro zifite, ko hari ibimenyetso bihagije bimuhamya icyaha ashinjwa birimo icyemezo cya muganga, no kuba umwana wasambanyijwe ari we ashinja.

[3] Iki cyemezo na cyo Ntawicumurame Faustin ntiyacyishimiye maze akijuririra mu Rukiko rw'Ikirenga avuga ko yahamijwe icyaha kandi ntacyo yakoze, ko urukiko rwashingiye ku bimenyetso bishidikanywaho, ko kandi rutahaye agaciro ibimenyetso yarugaragarije.

[4] Iburanisha ryabaye ku itariki 3/2/2014 ababuranyi bose bahari, uregwa yunganiwe na Me Uramije James, naho Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku Rwego rw'Igihugu.

II.ISESENGURA CY'IKIBAZO KIGIZE URUBANZA.

Kureba niba nta bimenyetso bidashidikanywaho bishinja Ntawicumurame icyaha.

[5] Mu iburanishaNtawicumurame yahawe ijambo avuga ko impamvu yatumye ajurira ari uko Urukiko rutahaye agaciro imvugo ye n'ibimenyetso yarugaragarije. Akomeza avuga ko icyaha aregwa gikekeranywa kuko kitagira itariki cyakoreweho, ko n'icyemezo cya muganga giteye gushidikanya.Mu gusobanura ubujurire bwe, Ntawicumurame avuga ko Muganga yanditse ko umwana yafashwe n'umukozi wo mu rugo kandi hari hashize ibyumweru bibiri yaravuye muri urwo rugo agasimburwa n'undi mukozi na we w'umuhungu, akaba yarahagarutse ari uko bamutumyeho, yahagera bagatangira kumubwira ko yabasambanyirijeumwana, akibaza impamvu bitagaragaye igihe yari akiri muri urwo rugo, akaba rero asanga ari akagambane yagiriwe n'abamurega biturutse ku kuba yarabakoreraga neza ariko bakamuhemba intica ntikize agahitamo kubasezerera.

[6] Me Uramije James wunganira Ntawicumurame na we avuga ko icyemezo cya muganga giteye urujijo kuko kivuga ko umwana yasambanyijwe n'umukozi wo mu rugo nk'aho yari ahari, akibaza niba ahubwo atari umukozi wo mu rugo wasimbuye Ntawicumurame. Avuga ko iyo raporo yari kugira agaciro iyo muganga aza kugira ibimenyetso akura ku mwana, nyuma ibyo bimenyetso bikagaragara kuri Ntawicumurame. Arangiza anenga iyi raporo ku kuba muganga yaravuze ko azongera gupima uyu mwana izindi ndwara nka sida nyuma y'amezi atatu (3) none akaba atarabikoze, agasaba ko uwo yunganira yagirwa umwere kubera gushidikanya ku bimenyetso byatanzwe.

[7] Uhagarariye Ubushinjacyaha we avuga ko ku birebana n'igihe icyaha cyabereyeho nta rujijo rurimo kuko inyandiko ziri muri dosiye zigaragaza ko icyaha cyakozwe mu kwezi kwa 11/2001, ko umunsi icyaha cyamenyekaniyeho ari na wo ikirego cyatangiweho, uwo munsi akaba ari itariki ya 2/11/2001, akaba ari na wo munsi Ntawicumurame yabarijweho ndetse na raporo ya muganga igakorwa kuri uwo munsi.

[8] Ku birebana n'ibimenyetso uregwa avuga ko bitagaragara muri dosiye, uhagarariye Ubushinjacyaha avuga ko ibi byaha bikorwa mu ibanga, ko Ntawicumurame atari kujya kubikora ngo ashake n'abagabo bo kuzamushinja, ko kuvuga ko byaba byarakozwe n'undi mukozi atari byo kuko atavuga n'amazina y'uwo mukozi. Kuri raporo ya muganga, uhagarariye Ubushinjacyaha na we avuga ko yemera ko habayeho agakosa ko kuvuga uwasambanyije umwana kandi atari byo yari yasabwe, ko bishoboka ko umuganga wayikoze yari uwimenyereza umwuga (médecin stagiaire), ariko ko bitagomba gutesha agaciro iyo raporo kuko muganga yabonye ko umwana yangiritse, ko kuba hatarakozwe „test ya VIH" bitatesha agaciro raporo ya mugenga kuko atari byo yari yasabwe gukora, ahubwo akaba ari inama yatangaga gusa.

UKO URUKIKO RUBIBONA

[9] Inyandiko ziri muri dosiye zirerekana ko ku itariki ya 2/11/2001 Uwamahoro Jeannette yatanze ikirego mu bugenzacyaha avuga ko Ntawicumurame Faustin wari umukozi we wo mu rugo yamusambanyirije umwana w'imyaka itanu (5) nk'uko yabitangarijwe n'uwo mwana.Izo nyandiko kandi zerekana ko kuri uwo munsi umwana yajyanwe kwa muganga, raporo ikaza ivuga ko umwana yahohotewe.Muri dosiye kandi nanone biragaragara ko kuri iyo tariki ya 2/11/2001 Ntawicumurame yabajijwe imbere y'umugenzacyaha akavuga ko bamubeshyera kuko icyo gihe yari atakiba muri urwo rugo, imberey'umushinjacyaha ku itariki ya 6/11/2001 akaba yaravuze ko hari hashize ibyumweru bibiri (2) ahavuye.

[10] Urukiko rurasanga ikimenyetso kiri muri dosiye ku bijyanye n'uwahohoteye umwana ari imvugo ya nyina w'umwana atanga ikirego. Urukiko rurasanga ariko nanone Ubushinjacyaha butarashoboye kuvuguruza imyiregurire ya Ntawicumurame bugaragariza urukiko aho uwo munsi yaba yarahuriye n'umwana ngo rwemeze ko ibimenyetso muganga yasanze ku gitsina cy'umwana byatewe na Ntawicumurame Faustin.

[11] Ingingo ya 165 y'itegeko n°13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya ivuga ko *gushidikanya birengera ushinjwa*, igakomeza igira iti: "*Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze*". Ibi bishimangirwa n'abahanga mu mategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha na bo bavuga ko nta muntu ugomba kwemezwa ko ahamwe n'icyaha nyuma y'urubanza atari uko ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose (*Une personne ne peut être déclarée coupable au terme du procès que si l'accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l'accusé).* [1]

[12] Ku birebana n'uru rubanza, Urukiko rurasanga hashingiwe ku myiregurire ya Ntawicumurame Faustin, ibimenyetso byose byatanzwe muri uru rubanza bitera gushidikanya, bityo uregwa akaba agomba kugirwa umwere.

III.ICYEMEZO CY'URUKIKO.

[13] **Rwemeje** ko ubujurire bwa Ntawicumurame Faustin bufite ishingiro;

[14] **Rwemeje** ko Ntawicumurame Faustin ahanaguweho icyaha kubera gushidikanya;

[15] **Rwemeje** ko imikirize y'urubanza RPA 0574/06/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 19/4/2010 ihindutse kuri byose ;

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[1] Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4^{e} édition, p. 1316, § 5

[16] **Rutegetse** ko Ntawicumurame Faustin ahita arekurwa urubanza rukimara gusomwa;

[17] **Ruvuze** ko amagarama y'urubanza aherera ku isanduku ya Leta.