UBUSHINJACYAHA v. MANIRIHO N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RPA0082/11/CS (Mukamulisa, P.J., Munyangeri na Hitiyaremye, J.) 22 Mata 2016]

Amategeko Mpanabyaha – Ubwinjiracyaha buhanirwa – Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora – Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 21.

Incamake y'ikibazo: Abaregwa bakurikiranywe ku cyaha cy'ubwinjiracyaha bw'ubuhotozi, aho Ubushinjacyaha bwavugaga ko bacuze umugambi wo guhitana uwitwa Nsabimana Isaac ariko ntibabigeraho, bagafatwa kubera "tract" banditse bamutera ubwoba ko natabaha amafaranga ibihumbi magana atatu (300.000Frw) bamwica. Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza rwemeza ko bahamwa n'ubwinjiracyaha bw'ubuhotozi, maze ruhanisha buri wese igifungo cya burundu.

Ntibishimiye imikirize y'urwo rubanza, bajuririra Urukiko rw'Ikirenga, bavuga ko uwo mugambi ntawabayeho, ko ahubwo ibyo bintu byateguwe na Nsabimana Isaac kubera amakimbirane yari afitanye na Niyonsenga Léonard agira ngo amufungishe we na bagenzi be asigarane isoko ryo gucuruza wenyine, ko kandi umucamanza yashingiye kuri "tract" nyamara avuga ko uwayanditse atazwi.

Uhagarariye Ubushinjacyaha avuga ko nta gushidikanya guhari kuko abaregwa bashinjanya. Avuga kandi ko ubwinjiracyaha bw'icyaha cy'ubugome buhanwa nk'icyaha ubwacyo, ko habayeho umugambi wo guhitana Nsabimana Isaac, abaregwa bakabuzwa kugera ku mugambi bitabaturutseho.

Incamake y'icyemezo: Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora. Kubirebana n'uru rubanza, nta kigaragaza ko umugambi wo kwica Nsabimana wari wagatangira gushyirwa mu bikorwa ku buryo byakwitwa ubwinjiracyaha buhanirwa.

Ubujurire bufite ishingiro.
Imikirize y'urubanza rwajuririwe ihindutse kuri byose.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko-Ngenga N°01/2012/OL ryo kuwa 2/5/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 25.

Itegeko-Teka N°21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 21.

Nta manza zifashishijwe.

Inyandiko z'abahanga:

Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p.223, para. 194 in fine.
Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005-2006, p.126 in fine.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Musanze, Ubushinjacyaha bukurikiranyeho abitwa Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani, icyaha cy'ubwinjiracyaha bw'ubuhotozi buvuga ko bakoze ku itariki ya 05/08/2010, ubwo bacuraga umugambi wo guhitana uwitwa Nsabimana Isaac ariko ntibabigeraho, bagafatwa kubera "tract" banditse bamutera ubwoba ko natabaha amafaranga ibihumbi magana atatu (300.000) bamwica.

[2] Ku itariki ya 3/2/2011, Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza rwemeza ko Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani bahamwa n'ubwinjiracyaha bw'ubuhotozi, rushingiye ku kuba abaregwa bose baremeye ko bari bazi uwo mugambi ndetse no kuba harabonetse "tract" yaka Nsabimana Isaac amafaranga ibihumbi magana atatu (300.000) ngo atazicwa, maze ruhanisha buri wese igifungo cya burundu.

[3] Uwamahoro Jean d'Amour na bagenzi be ntibishimiye imikirize y'urwo rubanza, bajuririra Urukiko rw'Ikirenga, bavuga ko uwo mugambi ntawabayeho, ko ahubwo ibyo bintu byateguwe na Nsabimana Isaac kubera amakimbirane yari afitanye na Niyonsenga Léonard agira ngo amufungishe we na bagenzi be asigarane isoko ryo gucuruza wenyine, ko kandi umucamanza yashingiye kuri "tract" nyamara avuga ko uwayanditse atazwi.

[4] Urubanza rwaburanishijwe mu ruhame ku itariki ya 18/01/2016 Maniriho Eric atitabye nyuma yo guhamagazwa ahatazwi, Niyonsenga Léonard yunganiwe na Me Uwimana Channy, Uwamahoro Jean d'Amour yunganiwe na Me Umulisa Paola, Nzamuye Selemani yunganiwe na Me Kabagambe Joëlle, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'Igihugu, kuri uwo munsi ariko iburanisha ntiryasozwa, ryimurirwa ku itariki ya 7/03/2016.

[5] Kuri iyo tariki iburanisha ryarasubukuwe, abaregwa bitabye bunganiwe nka mbere, uretse Maniriho Eric nanone wongeye kutitaba nyuma yo guhamagazwa ahatazwi, Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kureba niba hari icyaha gihama Uwamahoro Jean d'Amour na bagenzi be hashingiwe ku byo bakurikiranweho.

[6] Uwamahoro Jean d'Amour avuga ko yahamijwe icyaha nyamara ntacyo yakoze. Asobanura ko mu mwaka wa 2010 ku munsi atibuka neza, yagiye muri centre y'ubucuruzi ya Busoro, asabye Niyonsenga Léonard kugura ibirayi bye, amubwira ko atari bubigure kuko nta mafaranga afite. Akomeza avuga ko yagiye kubibunza kwa Nsabimana Isaac, amubajije

impamvu Niyonsenga Léonard atabiguze, amusubiza ko ari uko yasanze nta mafaranga afite. Avuga ko Nsabimana Isaac yahise amubaza impamvu Twishime Fabien ashaka kumwicisha, undi amusubiza ko ntabyo azi. Avuga ko yamanutse agahura na Maniriho Eric, mu kanya umupolisi aramuhamagara, amwitabye asanga ari kumwe na Twishime Fabien na Niyonsenga Léonard, amubajije amubwira ko yumvise Nsabimana Isaac avuga ko Twishime Fabien yamubwiye ko Niyonsenga Léonard ashaka kumwicisha.

[7] Uwamahoro Jean d'Amour abajijwe ku byo yavugiye mu Bugenzacyaha ko yari azi umugambi wo kuzica Nsabimana Isaac, yasubije ko ibyinshi yavuze batabyanditse, ko Nsabimana Isaac yiyemerera ko ari Twishime Fabien wamubwiye ko Niyonsenga Léonard ashaka kumwicisha, ko ndetse hafashwe amajwi. Ahakana ko tract ivugwa ari we wayanditse.

[8] Me Umulisa Paola umwunganira avuga ko Uwamahoro Jean d'Amour yari azi uyu mugambi kandi akaba ari we wagiye kuwumenyesha kuri Polisi. Avuga ariko ko nta bwinjiracyaha bw'ubuhotozi bwabayeho, kuko nta buryo bwari kuzakoreshwa bwerekanywe bugaragaza uko umugambi wari gushyirwa mu bikorwa (exécution). Ku byerekeranye na tract itangwaho ikimenyetso, avuga ko itashingirwaho mu guhamya abaregwa icyaha, mu gihe nta mpuguke (expert) yemeje ko aribo bayanditse kuko bo batayemera.

[9] Mu myanzuro ye yanditse, Me Umulisa Paola avuga ko uretse ibihuha byagiye bikwirakwizwa n'abarega ko hari umugambi wo kuzica Nsabimana Isaac, nta gikorwa na kimwe kiboneka cyakozwe mu rwego rwo gutangira gushyira mu bikorwa uwo mugambi, ngo abaregwa babe barabujijwe kuwugeraho n'impamvu zitabaturutseho nk'uko biteganywa n'ingingo ya 21 y'Itegeko-Teka N°21/77 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe. Akavuga rero amagambo gusa bagiye bakwirakwiza adahagije kugira ngo habe harabayeho icyaha cyangwa se ubwinjiracyaha bwacyo.

[10] Nzamuye Selemani avuga ko nta bimenyetso Urukiko Rukuru rwashingiyeho rwemeza ko yari mu mugambi w'ubwicanyi. Ku byerekeranye n'ibyavuzwe na Twishime Fabien ko yamuterefonnye amubwira ko hari umugambi wo kumugirira nabi, asobanura ko yahuye na Maniriho Eric aje iwe mu Gasiza akamubwira ko yumvise abantu bagambanira Twishime Fabien, ko kubera ko uyu yari inshuti ye, yamuhamagaye akamuhuza na Maniriho Eric amubwira ko Niyonsenga Léonard ategura umugambi wo kuzamugirira nabi amuhora ko ari we watumye ahomba.

[11] Me Kabagambe Joëlle wunganira Nzamuye Selemani avuga ko icyo yakoze ari ukuburira Twishime Fabien ko yari yumvise ko hari abateguye umugambi wo kuzamugirira nabi, akaba atumva aho ahuriye n'icyaha kuko Twishime Fabien atanga ikirego atamuvuzemo. Akomeza avuga ko Nzamuye Selemani yanze ko hari uwakwica undi ubwo yatangaga amakuru, agasaba ko hatashingirwa ku byavuzwe na Uwamahoro Jean d'Amour ashinja Nzamuye Selemani mu gihe we abihakana.

[12] Ku byerekeye tract itangwa nk'ikimenyetso muri uru rubanza, Me Kabagambe Joëlle avuga ko nta muhanga wigeze wemeza ko ari Nzamuye Selemani wayanditse cyangwa se ngo habe hari ikindi kimenyetso kigaragaza ko hari uruhare yagize mu kuyandika. Avuga ko muri rusange nta n'icyaha abona cyabayeho, kuko nta gikorwa na kimwe cyagaragajwe ko cyakozwe mu rwego rw'ubwinjiracyaha bw'ubuhotozi arebye ibigize icyo cyaha nk'uko giteganywa n'ingingo ya 312 y'Igitabo cy'amategeko ahana cyakoreshwaga icyo gihe, ko ndetse n'umugambi wo gukora icyaha ntawabayeho, kuko ababivuga batagaragaza intwaro zari gukoreshwa, cyangwa isaha n'ahantu icyaha cyari gukorerwa, agasanga icyabaye ari amagambo gusa.

[13] Arangiza asaba Urukiko rw'Ikirenga kugira Nzamuye Selemani umwere ku cyaha aregwa, kuko Urukiko Rukuru rwakimuhamije rugendeye ku magambo y'abandi baregwa hamwe kandi na bo bagaragaza ko nta cyaha cyabayeho kuko kitigeze gitangira na gato, ko kandi rutagaragaje icyo yapfaga n'abagombaga kwicwa.

[14] Niyonsenga Léonard avuga ko anenga Urukiko Rukuru kuba rwaramuhamije icyaha rukamukatira gufungwa burundu kandi nta cyaha yakoze, ko abamushinje bamubeshyera, ko ahubwo ari abambuzi (escrocs) bazwi. Asobanura ko Twishime Fabien yamuzaniye amabuye y'agaciro ngo ayagure, amaze kumuha amafaranga asanga nta buziranenge afite (atari amabuye y'agaciro ahubwo ari amabuye asanzwe), ajya kumurega kuri Polisi baramufunga. Avuga ko nyuma y'aho uyu Twishime Fabien afunguriwe mu buryo atamenye, yamurwaye inzika akamuhimbira ko ashaka kumwicisha afatanyije na Nsabimana Isaac, ashaka n'abamushinja aribo Nzamuye Selemani na Uwamahoro Jean d'Amour, batangira guhimba ibipapuro (tract).

[15] Me Uwimana Channy avuga ko Urukiko Rukuru rwahamije Niyonsenga Léonard icyaha nta bimenyetso bifatika rushingiyeho, kuko rwashingiye kuri tract, ku mvugo za bagenzi be baregwa hamwe, no kuba yari asanzwe afitanye ibibazo na Nsabimana Isaac gusa. Avuga ko imbere y'uru Rukiko Uwamahoro Jean d'Amour na Nzamuye Selemani nta n'umwe wigeze amushinja ko yamusabye kugira uwo yica, kandi muri dosiye bivugwa ko ari bo yari yaratumye gusohoza uwo mugambi, akanavuga ko aho babarijwe hose bagiye barangwa no kuvuguruzanya. Avuga ko Twishime Fabien ari inshuti ya Nsabimana Isaac, akaba nta kuntu Niyonsenga Léonard yari kumukoresha mu kwica mugenzi we kandi abizi neza ko ari inshuti.

[16] Avuga kandi ko Maniriho Eric abazwa yavuze ko bari bashatse gukura inyandiko kuri Niyonsenga Léonard gusa, Nzamuye Selemani we abajijwe avuga ko atari azi Niyonsenga Léonard, ko iryo zina yaryumvize ubwo yaganiraga na Twishime Fabien, akavuga ko abo bose bari bateguye umugambi wo kumufungisha, agasanga ibikubiye muri dosiye byose ari amatiku, ko ahubwo hari ikindi kintu kitazwi cyari kigambiriwe.

[17] Uhagarariye Ubushinjacyaha avuga ko Niyonsenga Léonard ari we watanze ikiraka nk'uko byemezwa n'abo baregwa hamwe, ko bakoraga ibyo abategetse amaze kubaha amafaranga y'u Rwanda ibihumbi mirongo inani (80.000). Ku byerekeranye no kuba umwunganizi we avuga ko nta ntwaro zari gukoreshwa zagaragajwe bityo ko ibigize icyaha bituzuye, uhagarariye Ubushinjacyaha avuga ko intwaro atari zo zonyine zica, kuko bashoboraga no kwica Nsabimana Isaac bamunize, ibi bikaba byarabujijwe n'uko habonetse tract. Avuga ko nta gushidikanya ku cyaha guhari kuko abaregwa bashinjanya.

[18] Uhagarariye Ubushinjacyaha asabwe guhuza ibyo avuga n'Itegeko, yavuze ko ubwinjiracyaha bw'icyaha cy'ubugome buhanwa nk'icyaha ubwacyo, ko habayeho umugambi wo guhitana Nsabimana Isaac, abaregwa bakavuga ko batumwe na Niyonsenga Léonard, babuzwa kugera ku mugambi na tract yabonetse, Nsabimana Isaac akaba yararokotse bitabaturutseho.

UKO URUKIKO RUBIBONA

[19] Inyandiko zikubiye muri dosiye y'urubanza zigaragaza ko imbere y'Ubugenzacyaha, Uwamahoro Jean d'Amour yemeye ko umugambi wose wo guhitana Nsabimana Isaac wacuzwe ahari ari kumwe na Maniriho Eric na Nzamuye Selemani, bakaba bari babisabwe na

Niyonsenga Léonard ku kiguzi cy'amafaranga y'u Rwanda ibihumbi magana ane (400.000), bakaba ariko bari bafite n'umuhuza ari we Twishime Fabien.

[20] Twishime Fabien yarabajijwe ahakana uruhare rwe, avuga ko ahubwo na we yari kwicwa, ko abari bahawe ikiraka ari bo bamubwiye uwo mugambi, na we abimenyesha Nsabimana Isaac, bemeranya ko bazaha abagombaga kubahitana ibihumbi magana atatu (300.000) kugira ngo badashyira mu bikorwa umugambi wabo.

[21] Maniriho Eric na we yemeye ko uyu mugambi yari awurimo, akaba yarawugejejweho na Uwamahoro Jean d'Amour bahuriye ahitwa mu Kadahenda ku wa 5/08/2010 amusaba ko bafatanya, na we abigeza kuri Nzamuye Selemani ngo azabafashe, arabyemera ariko ahita ahamagara Twishime Fabien amusaba ko yabimenyesha Nsabimana Isaac amutera ubwoba ngo abahe amafaranga.

[22] Nzamuye Selemani ariko mu ibazwa rye yahakanye ko uwo mugambi yari awurimo, cyakora yemera ko yawumenye akaburira Twishime Fabien na we wagombaga kwicwa. Asobanura ko Niyonsenga Léonard yamuzizaga amafaranga y'u Rwanda ibihumbi magana atatu na mirongo itanu (350.000) yari yaramwambuye.

[23] Niyonsenga Léonard yahakanye ko hari umugambi wo kwica yigeze ategura, gusa yemera ko yari afitanye ibibazo na Twishime Fabien kubera amafaranga y'u Rwanda ibihumbi magana abiri na mirongo itanu (250.000) ye yamutwaye amubeshya ko amuhaye amabuye y'agaciro nyuma bikaza kugaragara ko atari yo, naho Nsabimana Isaac bakaba bari bahanganye mu kazi kabo k'ubucuruzi, ariko ko nta mutima yagira wo kubicisha.

[24] Nyuma yo gusesengura imvugo z'abaregwa ndetse n'ibindi bimenyetso byatanzwe n'Ubushinjacyaha mu gika cya 20 cy'incarubanza, Urukiko rw'Ikirenga rurasanga Urukiko Rukuru rwarabahamije icyaha cyo kuba baracuze umugambi wo guhotora Nsabimana Isaac, maze rubahana rushingiye ku ngingo ya 21 y'Itegeko-Teka N°21/77 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, ruvuga ko habayeho ubwinjiracyaha bw'ubuhotozi.

[25] Ingingo ya 21 y'Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, iteganya ko "ubwinjiracyaha buhanirwa iyo imigambi yo gukora icyaha yagaragajwe n'ibikorwa biboneka, bidashidikanywa by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bwende bwa nyiri icyaha".

[26] Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora.

[27] Ibi kandi ni nako abahanga mu mategeko babisobanura, aho bavuga ko, kuba hari ibikorwa byo gukora icyaha byatangiye kandi nyiri ukubikora akaba atigaruye ku bushake bwe, ari byo bituma habaho ubwinjiracyaha (Le commencement d'exécution et l'absence de désistement volontaire constituent les deux éléments certains de la tentative. ...)[1]. Gutangira gukora icyaha, ubwabyo ni icyaha. Haba habayeho ibikorwa bigize icyaha cyangwa se

[1] Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p.223, para. 194 in fine.

ibituma icyaha kirushaho kugira ubukana (Selon la conception objective, le commencement d'exécution révèle par lui-même le délit. Il s'agit donc d'actes qui font partie de l'infraction, soit en tant qu'élément constitutif, soit en tant que circonstance aggravante)[2].

[28] Ku birebana n'uru rubanza, Urukiko rw'Ikirenga rurasanga, hashingiwe ku bikubiye muri dosiye nk'uko byibukijwe haruguru, icyabaye, n'ubwo abaregwa batabivugaho rumwe, kwari ugutegura umugambi wo kuzica Nsabimana Isaac, ariko hakaba nta kigaragaza ko uwo mugambi wari wagatangira gushyirwa mu bikorwa ku buryo byakwitwa ubwinjiracyaha buhanirwa nk'uko byasobanuwe.

[29] Ku byerekeranye na tract yavuzwe n'Urukiko Rukuru ko ishimangira uruhare rwa Uwamahoro Jean d'Amour na bagenzi be mu bwinjiracyaha bw'ubuhotozi baregwa, Urukiko rw'Ikirenga rurasanga, uretse ko nta n'ikigaragaza ko ari bo bayanditse ku buryo budashidikanywaho kubera ko baburanye bayihakana, kandi n'Ubushinjacyaha bukaba nta kindi kimenyetso bwerekanye cyerekana ko ari bo bayanditse koko, ubwayo si igikorwa kigize intangiriro (commencement d'exécution) yo kwica Nsabimana Isaac.

[30] Nyuma y'ibyo bisobanuro byose, Urukiko rw'Ikirenga rurasanga kandi ibyakozwe na Maniriho na bagenzi be ari ugucura umugambi wo gukora icyaha, ibyo rero bikaba bitarahanwaga n'amategeko y'u Rwanda igihe babikoraga, kuko byatangiye guhanwa ubwo hasohokaga Itegeko-Ngenga Nº01/2012/OL ryo ku wa 2/5/2012 rishyiraho igitabo cy'amategeko ahana[3], bityo rero bakaba batagomba kubihanirwa.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko ubujurire bwa Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani bufite ishingiro;

[32] Rwemeje ko Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani ari abere ku cyaha cy'ubwinjiracyaha bw'ubuhotozi bari bakurikiranweho;

[33] Rwemeje ko imikirize y'urubanza N° RP0113/10/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 3/02/2011 ihindutse muri byose;

[34] Rutegetse ko Uwamahoro Jean d'Amour na Nzamuye Selemani baburanaga bafunze bahita barekurwa urubanza rukimara gusomwa;

[35] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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[2] Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005-2006, p.126 in fine.

[3] Ingingo ya 25 iteganya ko "gucura umugambi wo gukora icyaha ari ubwumvikane hagati y'abantu babiri cyangwa benshi bugamije gukora icyaha bikozwe n'umwe cyangwa benshi muri bo, na ho ingingo ya 26 igateganya ko gucura umugambi wo gukora icyaha cy'ubugome cyangwa icyaha gikomeye bifatwa kimwe nk'ubwinjiracyaha ku cyaha cy'ubugome cyangwa icyaha gikomeye cyari kigambiriwe".