UBUSHINJACYAHA v. NDIKUBWAYO

[Rwanda URUKIKO RW'IKIRENGA – RPAA0057/15/CS (Mukanyundo, P.J., Munyangeri na Hitiyaremye, J.) 11 Gicurasi 2018]

Amategeko agenga ibimenyetso – Ibimenyetso – Kwemera icyaha – Kuba uregwa yemera icyaha byonyine si ikimenyetso kihagije kugirango byemezwe ko ukuri kwabonetse ahubwo kigomba guherekezwa n'ibindi bimenyetso bihuje n'ikiburanwa.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ndikubwayo akurikiranyweho n'Ubushinjacyaha kuba yarasambanyije umwana w'umukobwa w'imyaka umunani (8), wo mu muryango yari amaze amezi abiri akorera nk'umukozi wo mu rugo. Se w'umwana, avuga ko yaje gufata Ndikubwayo arimo kumusambanyiriza umwana, amubajije ahita amubwira ko yari agiye kubikora ariko ko umwana yanze, ko ahubwo yaraye amusambanyije.

Uregwa yaburanye ahakana icyaha avuga ko ntacyo yakoze, ko ibyo bavuga ko yacyemeye, yabitewe n'inkoni yakubiswe na se w'umwana afatanyije n'inkeragutabara, nuko agahitamo kucyemera kugira ngo akize ubuzima bwe, ariko ko mu by'ukuri icyo yaziraga ari amafaranga ye y'umushahara yabishyuzaga. Urwo rukiko rwamuhamije icyaha hashingiwe ku kuba yaracyiyemereye rugikubita imbere y'inzego z'ubuyobozi bw'umudugudu ndetse n'imbere y'ubugenzacyaha maze urwo rukiko rumuhanisha igihano cy'igifungo cya burundu.

Uregwa yajuririye Urukiko Rukuru akomeza guhakana icyaha maze urwo rukiko ruca urubanza rwemeza ko ubujurire bwe nta shingiro bufite.

Yaje kongera kujuririra Urukiko rw'Ikirenga agaragaza ko ukwemera kwe inkiko zibanza zashingiyeho kwatewe n'inkoni yakubitwaga na se w'umwana afatanyije n'inkeragutabara kandi ko se w'umwana yamuhimbiye kiriya cyaha agamije kumwambura amafaranga ye y'umushahara w'amezi abiri atamuhembye.Yakomeje avuga Urukiko rwashingiye ku buhamya bwa U.A bwonyine kandi ari umwana utarageza ku myaka y'ubukure ndetse ko raporo ya muganga nta cyaha igaragaza cyakorewe umwana, anongeraho ko Urukiko Rukuru rwagendeye ku byo Urukiko Rwisumbuye rwemeje maze rurabishimangira aho gusaba Ubushinjacyaha ibindi bimenyetso bikomeye bivanaho urujijo urwo ari rwo rwose.

Ubushinjacyaha bwo bugaragaza ko ibikubiye muri dosiye ndetse n'imikirize y'urubanza rwaciwe n'Urukiko Rukuru nta hagaragara inyandikomvugo y'ibazwa ry'umwana, ko imvugo y'umwana itigeze ishingirwaho ko ahubwo icyashingiweho aruko se w'umwana yisangiye ubwe arimo gusambanywa, kandi n'uregwa yabyemereye se w'umwana, anabyemera mu buyobozi bw'umudugudu no mu bugenzacyaha. Ku bijyanye na raporo ya muganga Ubushinjacyaha buvuga ko uregwa yakoze icyaha mu buryo buhisha ibimenyetso kuko mu ibazwa rye yiyemereye ko yasambanyije umwana ariko yirinda kumwangiza.

Incamake y'icyemezo: 1. Kuba uregwa yemera icyaha byonyine si ikimenyetso kihagije kugirango byemezwe ko ukuri kwabonetse ahubwo kigomba guherekezwa n'ibindi bimenyetso bihuje n'ikiburanwa. Bityo uwajuriye ntahamwa n'icyaha nubwo yakemereye imbere

y'ubuyobozi bw'umudugudu n'imbere y'ubugenzacyaha, kubera ko nta kigaragariza urukiko mu buryo budashishikanywaho ko koko icyaha aregwa cyabayeho.

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

Amategeko yashingiweho:
Itegeko N°30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.
Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ingingo ya 4 na 119.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Jean Larguier, La procédure pénale, 5ème édition mise à jour, 4ème trimestre 1981, p.45
Henri-D-Bosly & Damien Vandermeersch, Droit de la Procédure Pénale, 2ème édition, 2001, p.9

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha bukurikiranyeho Ndikubwayo Emmanuel, kuba kuwa 02/04/2014, yarasambanyije umwana w'umukobwa w'imyaka umunani (8) witwa U. A., wo mu muryango yari amaze amezi abiri akorera nk'umukozi wo mu rugo. Se w'umwana witwa Gasirikare Gaspard, avuga ko yaje gufata Ndikubwayo Emmanuel arimo kumusambanyiriza umwana, amubajije ahita amubwira ko yari agiye kubikora ariko ko umwana yanze, ko ahubwo yaraye amusambanyije.

[2] Ndikubwayo Emmanuel yaburanye ahakana icyaha avuga ko ntacyo yakoze, ko ibyo bavuga ko yacyemeye, yabitewe n'inkoni yakubiswe na se w'umwana afatanyije n'inkeragutabara, nuko agahitamo kucyemera kugira ngo akize ubuzima bwe, ariko ko mu by'ukuri icyo yaziraga ari amafaranga ye y'umushahara yabishyuzaga. Kuwa 20/06/2014, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RP0241/14/TGI/NYGE, rwemeza ko Ndikubwayo Emmanuel ahamwa n'icyaha aregwa, rumuhanisha igifungo cya burundu.

[3] Ndikubwayo Emmanuel yajuriye mu Rukiko Rukuru akomeza guhakana icyaha, ku wa 03/03/2015, ruca urubanza RPA0454/14/HC/KIG, rwemeza ko ubujurire bwe nta shingiro bufite.

[4] Ndikubwayo Emmanuel yajuririye Urukiko rw'Ikirenga, we na Me Mugabo Fidèle umwunganira bavuga ko Urukiko rwamuhamije icyaha cyo gusambanya umwana rushingiye ku buhamya bw'uwo mwana utarageza ku myaka 18 y'amavuko kandi binyuranyije n'amategeko, ntirwita ku bimenyetso bimushinjura yarugaragarije birimo raporo ya muganga yerekana ko umwana atasambanyijwe.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 09/04/2018, Ndikubwayo Emmanuel yunganiwe na Me Mugabo Fidèle naho Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'Igihugu.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba hari ibimenyetso bidashidikanywaho bihamya Ndikubwayo Emmanuel icyaha aregwa

[6] Ndikubwayo Emmanuel avuga ko impamvu ya mbere y'ubujurire irebana no kuba Inkiko zabanje zamuhamije icyaha zishingiye ko yemera icyaha kandi yaragiye asobanura ko yacyemereye mu Mudugudu abitewe n'inkoni yakubiswe na se w'umwana afatanyije n'inkeragutabara, ariyo mpamvu yageze mu Rukiko akaburana agihakana kuko ntacyo yakoze. Avuga ko ibyo Inkiko zivuga ko umwana yabwiye se ahubwo ari ibyo se yamwoheje kuvuga mu rwego rwo kumuhimbira icyaha agamije kumwambura amafaranga y'amezi abiri yari amaze kumukorera ariko barananiranywe kumvikana ku mushahara.

[7] Me Mugabo Fidèle avuga ko kuba Urukiko rwarashingiye ku buhamya bwa U.A. bwonyine kandi ari umwana muto utarageza ku myaka 18 y'ubukure binyuranyije n'ibiteganywa n'ingingo ya 63 y'Itegeko ry'ibimenyetso, ivuga ko abantu batarengeje imyaka 14 kimwe n'abantu bakuru badafite ubushobozi bwemewe, bashobora gutanga ubuhamya mu nkiko ariko ubwo buhamya bukunganirwa n'ibindi bimenyetso, ko rero Urukiko rutagombaga kugendera gusa ku buhamya bwa Gasirikare, Se w'umwana kuko imvugo ze zishingiye ku byo umwana we yamubwiye ko Ndikubwayo Emmanuel yamusambanyije.

[8] Ndikubwayo Emmanuel n'umwunganira bavuga ko Inkiko zamuhamije icyaha cyo gusambanya U.A. zirengagije ko raporo yakozwe na muganga Jules Mukeshimana ku wa 08/04/2014, nyuma yo gupima uwo mwana, nyamara iyi raporo yivuguruza kuko muganga avuga ko umwana atasambanyijwe, ariko yageraho akavuga ko yamuhaye imiti ya "infection", mu gihe ubusanzwe iyo miti itangwa iyo habaye gukeka ko umwana yafashwe ku ngufu, kugira ngo imurinde (prévention).

[9] Me Mugabo Fidèle avuga ko kuba ubuhamya bwatanzwe ari ibyo umwana yavuze, kandi raporo ya muganga ikaba nta cyaha igaragaza cyakorewe umwana, Urukiko Rukuru rwagombaga gusaba Ubushinjacyaha ibindi bimenyetso simusiga, kuko nta kimenyetso cya kamarampaka gihamya Ndikubwayo Emmanuel icyaha bwatanze, ariyo mpamvu basaba Urukiko rw'Ikirenga gushingira ku ngingo ya 87 n'iya 165 z'Itegeko N°30/2013 ryo kuwa 24/5/2013, ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rukagira umwere Ndikubwayo Emmanuel kubera gushidikanya.

[10] Ndikubwayo Emmanuel na Me Mugabo umwunganira bavuga ko Urukiko Rukuru rwagendeye ku byo Urukiko Rwisumbuye rwemeje maze rurabishimangira aho gusaba Ubushinjacyaha ibindi bimenyetso bikomeye bivanaho urujijo urwo ari rwo rwose hashingiwe ku biteganywa n'ingingo ya 85 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kuko inyandikomvugo ya Se w'umwana igaragaza ko Ndikubwayo Emmanuel yumvise aje nuko akitwikira ikiringiti nyuma akoze ku gitsina cye asanga gifite umurego. Bavuga rero ko kuba raporo ya muganga imushinjura ndetse no kuba we ubwe atarapimwe, nta kimenyetso na kimwe

kiri muri dosiye kimuhamya icyaha ku buryo butavuguruzwa, bityo Urukiko rukaba rwakwima agaciro ibimenyetso by'Ubushinjacyaha ahubwo rugashingira ku ngingo ya 87 ryerekeye imiburanishirize y'imanza z'inshinjabyaha rukabona ko nta kimenyetso cya kamarampaka Ubushinjacyaha bwatanze cyerekana ko Ndikubwayo Emmanuel yakoze kiriya cyaha maze rukamugira umwere.

[11] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire Ndikubwayo Emmanuel atanga nta shingiro zifite, ko ibikubiye muri dosiye ndetse n'imikirize y'urubanza rwaciwe n'Urukiko Rukuru nta hagaragara inyandikomvugo y'ibazwa ry'umwana, ko imvugo y'umwana itigeze ishingirwaho, ko ahubwo icyashingiweho ari uko Gasirikare yisangiye ubwe Ndikubwayo Emmanuel ari gusambanya umwana we, bikubitiraho ibyo umwana yamubwiye n'ibyo Ndikubwayo Emmanuel yemeye.

[12] Avuga ko ku birebana na raporo ya muganga, ntaho yavuze ko umwana afite infection yatewe no kumusambanya, ndetse ko n'iyo urebye mu myanzuro ye, usanga nta ndwara zandurira mu mibonano mpuzabitsina yasanganye U. Akomeza asobanura ko raporo ya muganga ahubwo yerekana ko Ndikubwayo Emmanuel atinjije igitsina cye mu cy'umwana (pénetration), ibi bikaba bihura n'ibyo yiyemereye ko yamusambanyirizaga inyuma, ariyo mpamvu banasanze akugara karanga ubusugi k'umwana ntacyo kabaye (hymen encore intact).

[13] Ku birebana n'imvugo ya Ndikubwayo Emmanuel y'uko raporo ya muganga itahabwa agaciro kuko yivuguruza, avuga ko ataribyo kuko hakurikijwe uburyo yakozemo icyaha ntabwo byashobokaga ko muganga avuga ko habayeho gusambanya umwana kuko nkuko amaze kubivuga, Ndikubwayo Emmanuel yivugiye mu ibazwa rye ko yakoreraga inyuma akarangiriza hanze, ko yirindaga kumwangiza, bivuze ko yakoraga ku buryo ahisha ibimenyetso, ibi kandi akaba yarabivuze ku bushake bwe kuko bamubajije niba yemeye abihatiwe, asubiza ko nta gahato ashyizweho.

[14] Avuga ko muganga yahaye umwana imiti mu rwego rwo kumurinda (prévention) ingaruka mbi zaza nyuma.

[15] Avuga ko imvugo ya Ndikubwayo Emmanuel n'umwunganira ko nta bimenyetso bimuhamya icyaha Ubushinjacyaha bwatanze itahabwa agaciro, kuko ukurikije uko icyaha cyakozwe, nuko Gasirikare Gaspard yasanze Ndikubwayo Emmanuel asambanya umwana we, kandi Ndikubwayo Emmanuel agahita abyemera, ageze imbere y'ubuyobozi bw'Umudugudu naho arabyemera kimwe n'imbere y'Ubugenzacyaha. Byongeye kandi nta kimenyetso atanga kigaragaza ko mbere y'uko afungwa yari afitanye ikibazo n'umukoresha we ngo maze giherweho nk'ikimenyetso kimushinjura cyane cyane ko mu ibazwa rye yavuze ko atazi impamvu bamubeshyera.

[16] Uhagarariye Ubushinjacyaha avuga ko muri rusange ibimenyetso Urukiko rwashingiyeho birimo ukwemera icyaha kwa Ndikubwayo Emmanuel, imvugo ya Gasirikare Gaspard wasanze aryamanye n'umwana, raporo ya muganga yemeza ko umwana yahohotewe ariko hatabaye kwinjiza igitsina mu cye, bityo ikaba itamushinjura kuko yagaragaje uko umwana ahagaze, kandi bihura n'imvugo y'Ubushinjacyaha mu gusobanura uko yakoze icyaha, bigahura n'ibiteganywa n'ingingo ya 190 y'Itegeko Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko

ahana[1]. Avuga ko gupimwa kwa Ndikubwayo Emmanuel ntacyo byari kumarira ubutabera kuko ntacyo bari kubona nkuko no kuri U.A. ntacyo byagaragaje.

[17] Mu gusoza, avuga ko amaze gusoma inyandikomvugo ya se w'umwana aho avuga ko iki cyaha nta ngaruka cyagize ku mwana we maze agasaba ko yanafungurwa, ko asanga nta mpamvu Ndikubwayo Emmanuel atafungwa, ko ariko ashingiye ku ngingo ya 40 y'Igitabo cy'amategeko ahana, ivuga ko igifungo cy'igihe kimara nibura umunsi umwe ariko ntikirenze imyaka 25, asaba ko Urukiko rubibonye ukundi rwamugabanyiriza ibihano rukamuhanisha igifungo cy'imyaka 25 kuko icyaha yakoze nta ngaruka cyagize ku mwana.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 4 y'Itegeko N°15/2004 ryo kuwa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa. Ingingo ya 65 y'Itegeko N°15/2004 ryo kuwa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa...». Naho ingingo ya 119 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 rimaze kuvugwa, iteganya ko "Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi bishobora kwemerwa".

[19] Inyandiko zigize dosiye y'urubanza zigaragaza ko Ndikubwayo Emmanuel yarezwe icyaha cyo gusambanya umwana U.A. ufite imyaka umunani (8) y'amavuko, ibimenyetso Ubushinjacyaha bushingiraho akaba ari uko yemera ko yamusambanyije ariko ko yakoreraga inyuma, agasohorera hanze kuko yangaga kumubabaza, ikindi ni ukuba U.A. yarabwiye Se ko Ndikubwayo Emmanuel yamumennyeho ibintu bishyushye ndetse uyu mubyeyi witwa Gasirikare Gaspard akaba mu ibazwa rye avuga ko yamwifatiye aryamanye n'umwana we, akoze ku gitsina cye yumva gifite umurego ndetse agahita amusaba imbabazi amubwira ko yari atarabikora ariko ko ejo hashize ho yari yabikoze. Imbere y'uru Rukiko, Ubushinjacyaha buvuga ko raporo ya muganga yerekana ko umwana ntacyo yabaye, ibyo bukabihuza n'uburyo Ndikubwayo Emmanuel asobanura yakozemo icyaha ubwo yacyemeraga mu ibazwa rye.

[20] Raporo ya muganga yo kuwa 08/04/2014, igaragaza ko U.A. uvugwa ko yahohotewe muri uru rubanza yapimwe na Dr Jules Mukeshimana, agasanga nta bimenyetso byo gusambanywa bigaragara ku gitsina cye, haba ku myanya y'inyuma ndetse n'iy'imbere, kandi ko n'akugara karanga ubusugi nako yasanze kagihari.

[21] Urukiko rurasanga Urukiko Rwisumbuye rwarahamije Ndikubwayo Emmanuel icyaha rushingiye ko yacyiyemereye rugikubita imbere y'ubuyobozi bw'Umudugudu bihita binakorerwa raporo, akomeza kucyemera ageze no mu Bugenzacyaha, ko kuba yarageze imbere y'Urukiko akagihakana avuga ko yakemejwe n'inkoni yakubiswe n'inkeragutabara atabigaragariza ibimenyetso, ko rero uko guhindagura imvugo umucamanza ariwe ufite ubushishozi bwo gusesengura imvugo z'uregwa akoresheje umutimanama we. Urukiko Rukuru

[1] Iyi ngingo iteganya ko gusambanya umwana ni imibonano mpuzabitsina yose cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose n'icyahba cyakoreshejwe cyose.

narwo mu gushimangira imikirize yo mu rukiko rwa mbere rwavuze ko Ndikubwayo Emmanuel uretse no kuba yemera icyaha, ko ahubwo asobanura n'imikorere yacyo, kandi ko iyo imvugo ze zihujwe n'ibyo umwana yavuze ko amaze kumusambanya kabiri akamumenaho ibintu bishyushye, rwanzura ruvuga ko uko kwemera kwe nubwo yageze mu Rukiko akaguhindura kugaragaza ukuri ku byabaye cyane ko nta kimenyetso atanga kigaragaza ko yemejwe n'inkoni.

[22] Mu miburanire ye imbere y'uru rukiko Ndikubwayo Emmanuel akomeje guhakana icyaha avuga ko Ubushinjacyaha butigeze butanga ibimenyetso bifatika bikimushinja kuko no kwemera icyaha kwe inkiko zose zagiye zishingiraho yabikoze arengera ubuzima bwe kubera inkoni yakubitwaga n'inkeragutabara.

[23] Urukiko rurasanga na none mu miburanire ye, Ndikubwayo Emmanuel avuga ko se w'umwana yamuhimbiye kiriya cyaha agamije kumwambura amafaranga ye y'amezi abiri y'umushahara atamuhembye.

[24] Isesengura ry'ibimenyetso inkiko zagiye zishingiraho zihamya Ndikubwayo Emmanuel icyaha, rigaragaza ko, nubwo imbere y'Ubugenzacyaha yemeye icyaha akanasobanura uburyo yagikoze, kuba yarageze imbere y'Inkiko akagihakana, kandi na raporo ya muganga ikaba iterekana ko hari igikorwa icyo ari cyo cyose cyaba cyarahungabanyije igitsina cy'umwana, ndetse na se Gasirikare akaba mu ibazwa rye yaravuze ko umwana we ntacyo yabaye, akanavuga ko inzego z'ubutabera zishatse zarekura Ndikubwayo Emmanuel uretse ko ngo atamuhemba amafaranga amurimo kubera ko yatanze amafaranga menshi kuri iyi dosiye, Urukiko rukaba rusanga izi mbabazi Gasirikare Gaspard yagiriye Ndikubwayo Emmanuel ziteye urujijo ko ahubwo kuba yarivugiye nawe ko ataramuhemba bishimangira imiburanire ya Ndikubwayo Emmanuel ko yamuhimbiye icyaha agamije kumwambura amafaranga ye .

[25] Nubwo kwiyemerera icyaha ari kimwe mu bimenyetso Urukiko rushobora gushingiraho ruhamya uregwa icyo cyaha, ndetse bamwe mu banyamategeko mu bihe byashize bakaba barabibonaga nk'ikimenyetso gihatse ibindi, umuhanga mu mategeko Jean Larguier mu gitabo cye La *procédure pénale*[2] avuga ko icyo cyizere cyagiye kiyoyoka kubera ko byagiye bigaragara ko hari abaregwa bemera icyaha kandi bataragikoze bagamije nko gukingira ikibaba umwe wo mu muryango, gushaka kumenyekana, gukiza ubuzima bwe nk'igihe akorerwa ibikorwa by'iyicarubozo, kubona ubuzima bwo muri Gereza buruta ubwo wari urimo iwawe n'ibindi. Nyuma y'ibi, kuba uregwa yemera icyaha byonyine si ikimenyetso kihagije kugira ngo byemezwe ko ukuri kwabonetse, kuko nkuko ziriya ngero zibyerekana, ukwemera icyaha ni ikimenyetso mu bindi, kikaba kigira akamaro iyo giherekejwe n'ibindi bimenyetso bihuje n'ikiburanwa.

[26] Nubwo Ndikubwayo Emmanuel yemereye icyaha imbere y'Inzego z'ibanze ndetse akabikomeza n'imbere y'Ubugenzacyaha, ariko ubu akaba ahakana ko atigeze asambanya uriya mwana, Urukiko rurasanga hari urujijo mu mikorere ya kiriya cyaha kuko yaba imvugo za Se w'umwana ku byo avuga yiboneye, haba ibyo yabwiwe n'umwana ubwe, nta kigaragariza

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[2] Jean Larguier, La procédure pénale, 5ème édition mise à jour, 4ème trimestre 1981, p.45. : " L'aveu longtemps considéré comme " reine des preuves "- et sollicité le cas échéant par la torture-, l'aveu suscite aujourd'hui plus de défiance. Mille et mille, disait Montaigne, se sont chargés de fausses confessions : on peut avouer par vanité---, heureux de voir ainsi sa photographie dans le journal---, par crainte à l'égard du vrai coupable, par amour de l'être cher qui a commis l'infraction, voire par amour du confort pénitentiaire"

Urukiko mu buryo budashidikanywaho ko koko kiriya cyaha cyabayeho ngo rube rwabishingiraho rwemeza ko Ndikubwayo Emmanuel yasambanyije U.A., kuko na raporo ya muganga itagaragaza nibura ko haba hari n'udukomere igitsina cya Ndikubwayo Emmanuel cyaba cyarateye ku gitsina cy'umwana, bityo ngo bigaragare ko koko yajyaga amusambanya. Ibi kandi birahura n'inyandiko z'abahanga mu mategeko aho bavuga ko umucamanza adashobora kwemeza ko umuntu ahamwa n'icyaha atabanje kugaragarizwa ibimenyetso bidashidikanywaho kandi byagiweho impaka mu iburanisha ko icyaha yagikoze, bisesenguwe mu bushishozi bwe[3].

[27] Kuba Ubushinjacyaha butarashoboye kugaragaza ibimenyetso simusiga bihuje n'imikorere y'icyaha ku buryo budashidikanywaho (au-delà de tout doute raisonnable)ko Ndikubwayo Emmanuel yaba yarasambanyije U.A., hagendewe kandi no ku mvugo za Gasirikare Gaspard zitagaragaza nta shiti ko U. yasambanyijwe koko, kuko na raporo ya muganga yerekana ko nta gikorwa cy'ihohoterwa umwana yigeze akorerwa, Urukiko rurasanga hari ugushidikanya ko Ndikubwayo Emmanuel yaba yarakoze icyaha yahamijwe n'Inkiko zabanje, bityo akaba agomba kugihanagurwaho hashingiwe ku ngingo ya 165, 2° y' Itegeko N° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa Ndikubwayo Emmanuel bufite ishingiro.

[29] Rwemeje ko Ndikubwayo Emmanuel adahamwa n'icyaha akurikiranyweho kubera ugushidikanya, akaba agomba kurekurwa.

[30] Rwemeje ko urubanza RPA0454/14/HC/KIG, rwaciwe n'Urukiko Rukuru, kuwa 03/03/2015 ruhindutse kuri byose.

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

[3] Henri-D-Bosly & Damien Vandermeersch, Droit de la Procédure Pénale, 2ème édition, 2001, p.929 : « Le juge ne peut déclarer un prévenu coupable que s'il a acquis l'intime conviction de sa culpabilité au-delà de tout doute raisonnable sur la base d'éléments de preuve qui lui ont été régulièrement produits et soumis à la contradiction et qu'il apprécie souverainement »