UBUSHINJACYAHA v NIYONSABA

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RP 00003/2019/SC (Cyanzayire, P.J, Nyirinkwaya, Hitiyaremye, Muhumuza na Karimunda) 28 Mutarama 2022]

Amategeko agenga imanza nshinjabyaha – Icyaha cya gusambanya umwana – Bishoboka ko akarangabusugi kaba kazima ariko ntibikureho kuba hari ibikorwa umwana yakorewe hagamijwe kwishimisha.

Amategeko agenga imiburanishize y'imanza nshinjabyaha – Impamvu nyoroshya cyaha – Kuba nta bindi byaha uwahamwe n'icyaha yakurikiranyweho mbere (les bons antécédents du coupable), imyaka y'uwakoze icyaha by'umwihariko ukigera mu myaka y'ubukure kuva kuri 18 kugeza kuri 21(jeune adulte de 18 à 21 ans), bishobora gufatwa nk'impamvu nyoroshyacyaha.

Incamake y'ikibazo: Urubanza rwatangiriye mu Urukiko Rwisumbuye rwa Ngoma ubushinjacyaha bukurikiranye ho Niyonsaba icyaha cyo gusambanya umwana busobanura ko abana batatu aribo U.A w'imyaka 10, B.S w'imyaka 12 na U.H w'imyaka 14 bagiye gutashya inkwi ahantu mu rwuri, nyuma basubira mu rugo bakabwira iwabo ko Niyonsaba yasanze batashya akababaza impamvu barimo gutashya inkwi muri urwo rwuri, akabakangisha imbwa, maze akabasambanya umwe ku wundi. Niyonsaba yaburanye ahakana icyaha, Urukiko rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu. Niyonsaba ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha hashingiwe ku mvugo z'abatangabuhamya batagaragara muri dosiye kandi akaba yarahaniwe gusambanya abana batatu ariko hagaragazwa umwe. Urukiko rukuru rwaciye urubanza rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

Niyonsaba Eric yongeye kujuririra urubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana nta bimenyetso rwashingiyeho rumuhamya icyaha, ko abamureze bashakaga kumwambura amafaranga 45.000 yakoreye. Nyuma y'ivugururwa ry'inzego z'inkiko, ubujurire bwe bwimuriwe mu Rukiko rw'Ubujurire bwandikwa kuri N° RPAA 00182/2018/CA. Ku wa 10/10/2018, Urukiko rw'Ubujurire rwaciye urubanza maze rwemeza ko ubujurire bwa Niyonsaba nta shingiro bufite, ko icyaha ashinjwa kimuhama, ko igifungo cya burundu yahawe kigumyeho.

Niyonsaba Eric yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza No RPAA 00182/2018/CA rusubirwamo ku mpamvu z'akarengane maze nyuma yo gusuzuma iyo baruwa, Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Mu iburanisha, Niyonsaba yaburanye anenga ibimenyetso byashingiweho mu kumuhamya icyaha, akavuga ko ibyo abana bamushinja ari ibyo babwiwe n'ababyeyi kuko hari uwo bafite icyo bapfa, ko raporo ya Muganga igaragaza ko abana batasambanyijwe. Akomeza avuga ko abakobwa bose bari mu kigero kimwe, ku buryo atashoboraga kubifasha wenyine ngo abasambanye ndetse ko n'ahitwa ko hakorewe icyaha ari nko muri metero 150 uvuye ku Mudugudu, bikaba bitumvikana uburyo yari gusambanya abakobwa 3 hakabura n'umwe utabaza ngo abaturage bumve kandi akaba ari n'ahantu nyabagendwa ku buryo nta munota washiraga hatanyuze umuntu cyangwa ikinyabiziga, bikaba bitumvikana uburyo hatabayeho kuvuza induru asoza asaba Urukiko kumugira umwere kuko nta bimenyetso bidashidikanywaho Ubushinjacyaha bugaragaza.

Ubushinjacyaha buvuga ko impamvu uregwa atanga avuga ko yagiriwe akarengane nta shingiro zifite, kuko kuko raporo ya Muganga yagaragaje ko umwana witwa B.S ashobora kuba yarasambanyijwe, ibyo bigahuza n'ibisobanuro abana batanze, byerekana ko icyaha cyakozwe kandi ko kugira ngo icyaha cyo gusambanya umwana kibeho, si kamara ko habaho guhuza ibitsina.

Incamake y'icyemezo: 1. Bishoboka ko akarangabusugi kaba kazima ariko ntibikureho kuba hari ibikorwa umwana yakorewe hagamijwe kwishimisha.

2. Kuba uwahamwe n'icyaha nta bindi byaha yakurikiranyweho mbere (les bons antécédents du coupable) ndetse n'imyaka ye y'ubukure ikaba igaragaza ko aribwo ari kuva mukigero cy'ubwana, by'umwihariko ukigera mu myaka y'ubukure kuva kuri 18 kugeza kuri 21(jeune adulte de 18 à 21 ans) byafatwa nk'impamvu nyoroshya cyaha ituma agabanyirizwa ibihano.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite, Urubanza ruhindutse kubijyanye n'igihano gusa.

Amategeko yakoreshejwe:

Itegeko Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 71, 77, 78 n'iya191.

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 108.

Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 133.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119.

Imanza zifashishijwe:

Urubanza N° RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2021

Ubushinjacyaha v. NIYITEGEKA Sony Samson, RPA 0239/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 08/11/2013,

Ubushinjacyaha v. MUREKAKURE Espérance, RPA 0119/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2012,

Inyandiko z'abahanga:

J-P DOUCET, Les circonstances atténuantes : nature juridique et exemples, https://ledroitcriminel.fr/la_science_criminelle/penalistes/le_proces_penal/le_jugement/sanction/doucet_circ_attenuantes.htm, consulté le 12/01/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Dosiye y'urubanza igaragaza ko abana batatu aribo U.A w'imyaka 10, B.S w'imyaka 12 na U.H w'imyaka 14 bagiye gutashya inkwi ahantu mu rwuri, nyuma basubira mu rugo bakabwira iwabo ko Niyonsaba Eric yasanze batashya akababaza impamvu barimo gutashya inkwi muri urwo rwuri, akabakangisha imbwa, maze akabasambanya umwe ku wundi.

[2] Ababyeyi b'abo bana bashyikirije Ubugenzacyaha ikirego, nabwo butangira iperereza. Dosiye yashyikirijwe Ubushinjacyaha, nabwo buyiregera Urukiko Rwisumbuye rwa Ngoma, yandikwa kuri Nº RP 0409/15/TGI/NGOMA. Niyonsaba Eric yaburanye ahakana icyaha, urubanza rucibwa ku wa 29/10/2015. Urukiko rwemeje ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu.

[3] Niyonsaba Eric ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko:

i. Urukiko Rwisumbuye rwamuhamije icyaha hashingiwe ku bimenyetso byatanzwe mu buryo butagezweho;

ii. Hashingiwe ku mvugo z'abatangabuhamya batagaragara muri dosiye;

iii. Yahaniwe gusambanya abana batatu ariko hagaragazwa umwe.

[4] Ubujurire bwe bwanditswe kuri Nº RPA 0509/15/HC/RWG, urubanza rucibwa ku wa 27/04/2016, Urukiko rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[5] Niyonsaba Eric yongeye kujuririra urubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana nta bimenyetso rwashingiyeho rumuhamya icyaha, ko abamureze bashakaga kumwambura amafaranga 45.000 yakoreye. Nyuma y'ivugururwa ry'inzego z'inkiko, ubujurire bwe bwimuriwe mu Rukiko rw'Ubujurire bwandikwa kuri Nº RPAA 00182/2018/CA.

[6] Urukiko rw'Ubujurire rwaciye urubanza ku wa 10/10/2018, rwemeza ko ubujurire bwa Niyonsaba Eric nta shingiro bufite, ko icyaha ashinjwa kimuhama, ko igifungo cya burundu yahawe kigumyeho. Urukiko rwatanze ibisobanuro bikurikira:

a. Mu myiregurire ya Niyonsaba Eric hagaragaramo ukwivuguruza cyane, ku buryo nta bimenyetso bifatika ashingiraho byavuguruza ibyashingiweho n'Urukiko rumuhamya icyaha aregwa. Urukiko rusobanura ko uko kwivuruza kugaragazwa n'ibi bikurikira:

    i. Ku byerekeranye n'ubuhamya bw'abana, Niyonsaba Eric avuga ko batamushinje, ariko akongera akavuga ko ibyo abo bana bamushinja ari ibinyoma;

    ii. Avuga ko ibyo abana bavuga babitekewemo n'ababyeyi babo yaragiriraga inka, kubera ko bamubereyemo amafaranga 45.000, ibyo bikavuguruzwa n'ibyo yavuze ko yakoreraga Ndayambaje, kandi mu myirondoro y'abo bana nta n'umwe ufite umubyeyi witwa Ndayambaje;

    iii. Abazwa mu Bugenzacyaha, yivugiye ko ntacyo apfa n'ababyeyi b'abo bana baje kumurega;

    iv. Yivuguruje na none ku bijyanye n'uko yari afite icumu afite n'imbwa, kuko mu mabazwa ye mu Bugenzacyaha yivugiye ko yari kumwe n'imbwa, akaba yarabihakanye ageze imbere y'Urukiko.

b. Ku bijyanye na Raporo ya Muganga, Urukiko rwasanze kuba haragaragajwe ko ku mwana witwa B.S mu gitsina cye hashobora kwinjiramo urutoki rumwe, ariko akarangabusugi ari kazima, naho kuri U.A na U.Hikavuga ko nta rutoki rwashobora kwinjiramo ko n'akarangabusugi ari kazima, bitavuga ko atabasambanyije kuko gusambanya umwana bitavuze ko byanze bikunze hagomba kuba habayeho guhura kw' ibitsina;

c. Ibyo Niyonsaba Eric avuga ko gukoresha urutoki bidakwiye gufatwa nko gusambanya, binyuranye n'ibiteganywa n'amategeko kuko gusambanya umwana bidasaba byanze bikunze guhura kw'ibitsina;

d. Ubuhamya bwa Abaganwa Joyce buhura n'ubwatanzwe n'abana akurikiranyweho kuba yarasambanyije, kandi Niyonsaba Eric ntiyashoboye kugaragaza inyungu abo bana bari bafite zo kumubeshyera;

e. Niyonsaba Eric ntiyashoboye gutanga ibimenyetso bivuguruza ku buryo budashidikanywaho ibyo Urukiko Rukuru, Urugereko rwa Rwamagana rwashingiyeho rumuhamya icyaha cyo gusambanya abana.

[7] Niyonsaba Eric yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 08/11/2018, abinyujije ku buyobozi bwa Gereza ya Rwamagana, ibaruwa yakirwa mu Rukiko rw'Ikirenga ku wa 04/12/2018, asaba ko urubanza No RPAA 00182/2018/CA rusubirwamo ku mpamvu z'akarengane.

[8] Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. Mu cyemezo Nº 0116/CJ/2019 cyo ku wa 31/05/2019, yemeje ko dosiye yoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga, ihabwa No RS/INJUST/RP 00003/2019/CS, iburanisha ry'urubanza rishyirwa ku wa 27/04/2020.

[9] Ku wa 27/04/2020, urubanza ntirwaburanishijwe kubera ingamba zo kwirinda no kurwanya Covid 19, rukomeza kugenda rwimurwa kubera impamvu zinyuranye, ruburanishwa mu ruhame ku wa 01/12/2020. Niyonsaba Eric yaburanye hifashishijwe Video Conference ari muri Gereza ya Rwamagana, yunganiwe na Me Bagomora Charles, Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric Umushinjacyaha ku rwego rw'Igihugu. Urukiko rwamenyesheje ababuranyi ko urubanza ruzasomwa ku wa 23/12/2020, ariko mu mwiherero warwo rusanga mbere y'uko rucibwa ari ngombwa:

a. Kubanza kugira ibyo rusobanuza abo Niyonsaba Eric ashinjwa kuba yarakoreye icyaha, aribo U.A, B.S na U.H;
b. Kumva umutangabuhamya Abaganwa Joyce;
c. Guhamagaza Muganga wasuzumye abana bivugwa ko aribo Niyonsaba Eric yasambanyije witwa Dr Bimenyimana Emmanuel.

[10] Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 12/04/2021 hahamagajwe abatangabuhamya bifujwe n'Urukiko, ariko rugenda rwimurirwa ku yandi matariki kubera impamvu zinyuranye, ruburanishwa mu muhezo ku wa 21/12/2021, humvwa umutangabuhamya wahamagajwe n'Urukiko, bamwe mu bana bivugwa ko basambanyijwe, hamwe n'umuganga wabasuzumye.

[11] Niyonsaba Eric yaburanye anenga ibimenyetso byashingiweho mu kumuhamya icyaha, akavuga ko ibyo abana bamushinja ari ibyo babwiwe n'ababyeyi kuko hari uwo bafite icyo bapfa, ko raporo ya Muganga igaragaza ko abana batasambanyijwe. Ubushinjacyaha buvuga ko ibimenyetso bihari bihagije mu kugaragaza ko icyaha Niyonsaba Eric ashinjwa yagikoze.

[12] Nyuma yo kumva abahamagajwe, no kumva icyo uregwa n'Ubushinjacyaha babivugaho, Urukiko rwapfundikiye iburanisha rushyira isomwa ry'urubanza ku wa 28/01/2022. Muri uru rubanza, ikibazo cyasuzumwe ni ukumenya niba hari ibimenyetso bihagije bihamya ko Niyonsaba Eric yasambanyije abana Umuhuza Aline, B.S na Umuhoza Happy.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba hari ibimenyetso bihagije bihamya ko Niyonsaba Eric yasambanyije abana U.A, B.S na U.H.

[13] Niyonsaba Eric n'umwunganira bavuga ko ibyo bashingiraho bagaragaza ko yarenganye ari ibi bikurikira:

a. Raporo ya Muganga yagaragaje ko abana batigeze basambanywa;
b. Raporo y'ubuyobozi bw'Umugudugu wa Nyamiyaga ivuga ko uwakoze icyaha yitwa Claude kandi we bari basanzwe bamuzi neza ku buryo batari kuyoberwa izina rye;
c. Kuba ababyeyi b'abana baramubeshyeye kubera inyungu bari bafite zirebana n' amafaranga bari bamufitiye. Asobanura ko umubyeyi wari umurimo amafaranga yitwa Ndayambaje kuko ariwe yakoreraga, naho umubyeyi wa U.A witwa Nziyumvira Bernard akaba yari yaramuragije intama imaze kubyara gatatu, akaba kandi aturanye na Ndayambaje ari n'inshuti. Avuga ko aba aribo bacuze umugambi

wo kumubeshyera, Ndayambaje afite inyungu zo kumwambura amafaranga, naho Nziyumvira Bernard agamije kugumana intama yamuragijе;

d. Kuba abakobwa bose bari mu kigero kimwe, ku buryo atashoboraga kubifasha wenyine ngo abasambanye;

e. Ahitwa ko hakorewe icyaha ni nko muri metero 150 uvuye ku Mudugudu, bikaba bitumvikana uburyo yari gusambanya abakobwa 3 hakabura n'umwe utabaza ngo abaturage bumve;

f. Aho bivugwa ko yasambanyirije abana ni ahantu nyabagendwa ku buryo nta munota washiraga hatanyuze umuntu cyangwa ikinyabiziga, bikaba bitumvikana uburyo hatabayeho kuvuza induru;

g. Ibyo U.A na U.H babwiye Urukiko ko yari afite icumu, umuhoro, inkoni n'imbwa sibyo kuko umuntu uragiye inka adakenera izo ntwaro zose, kandi akaba atari umuhigi ku buryo yari kwitwaza ibyo bikoresho. Kuba hari aho yavuze ko yari afite imbwa, Urukiko rwabisuzuma kuko iyo umuntu afunze hari ibyo ashobora kuvuga bidahura n'ukuri, ariko ko ireme ry'ibyo avuga ariryo rikwiye guhabwa agaciro;

h. Ntiyari gusambanya abakobwa batatu mu gitondo ngo agume aho yakoreye icyaha kugeza aho baziye kumufata.

[14] Niyonsaba Eric n'umwunganira basaba Urukiko kumugira umwere kuko nta bimenyetso bidashidikanywaho Ubushinjacyaha bugaragaza.

[15] Ubushinjacyaha buvuga ko impamvu Niyonsaba Eric atanga avuga ko yagiriwe akarengane nta shingiro zifite, bugatanga ibisobanuro bikurikira:

a. Raporo ya Muganga yagaragaje ko umwana witwa B.S ashobora kuba yarasambanyijwe, ibyo bigahuza n'ibisobanuro abana batanze, byerekana ko icyaha cyakozwe koko;

b. Kugira ngo icyaha cyo gusambanya umwana kibeho, si kamara ko habaho guhuza ibitsina; ibi bikaba bishingiye ku ngingo ya 190 y'Itegeko Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana cyakoreshwaga icyaha gikorwa;[1]

c. Abana basobanuye mu buryo bumwe ibyo Niyonsaba Eric yabakoreye agamije kwishimisha bishingiye ku gitsina, n'ubwo nta kimenyetso cyaba cyaragaragaye ko yinjije igitsina cye cyangwa ngo abangize ku gitsina ku buryo bugaragarira Muganga;

d. Ku birebana na raporo y'Ubuyobozi bw'Umudugudu wa Nyamiyaga, aho bwaba buvuga ko icyaha cyakozwe n'uwitwa Claude, iryo zina ryavuzwe uwakoze icyaha ataramenyekana hamaze kumenyekana gusa umukoresha we, bituma bamubaza ababwira ko azi izina rimwe rya Eric;

e. Niyonsaba Eric yakoresheje iterabwoba ku bana kugirango abashe kubasambanya, ababwira ko nibatemera abagirira nabi, abakangisha imbwa yari afite. Abazwa mu Bugenzacyaha yivugiye ko imbwa yamotse ubwo abana barimo gutashya inkwi bakiruka, byerekana ko yari afite iyo mbwa ikamubera intwaro;

f. Mu mvugo zabo, U.A na U.H hari ibyo bahurizaho, bigaragaza ko ibyo bavuga byabayeho:

   i. Kuba bari bagiye gutashya;

   ii. Kuba barageze ku giti bagasanga kitaruma ariko gifite inkwi nke;

[1] Gusambanya umwana ni imibonano mpuzabitsina yose cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose n'icyaba cyakoreshejwe cyose.

iii. Kuba Abaganwa Joyce yarasigaye asenya kuri icyo giti;

iv. Kuba Niyonsaba Eric yari afite imbwa, icumu n'umuhoro;

v. Kuba Niyonsaba Eric yarababwiraga ko nibatabaza abajugunya mu mwobo;

vi. Kuba uwabaga arimo gusambanywa Atari we wabaga upfutse igitambaro mu maso;

vii. Kuba yarabanzaga gushyira amacandwe ku gitsina mbere yo kubasambanya.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 108 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kimwe n'ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ziteganya ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko (par tous les moyens de fait ou de droit), ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye; Urukiko akaba arirwo ruhamya niba ibyo bimenyetso bishobora kwemerwa.

[17] Ibimenyetso byagaragajwe n'Ubushinjacyaha burega Niyonsaba Eric bishingiye ku mvugo z'abana bavugwa ko bakorewe icyaha, ku mvugo z'abatangabuhamya, ku byo uregwa yavuze mu ibazwa rye mu Bugenzacyaha, no kuri raporo yakozwe na Muganga.

[18] Imvugo z'abana bavugwa ko bakorewe icyaha, iza Abaganwa Joyce na Ishimwe Zawadi babajijwe nk'abatangabuhamya, n'iza Niyonsaba Eric zihuriza ku kuba barahuye ku wa 21/07/2015, bagiye gutashya aho Niyonsaba Eric yari aragiye inka, akababaza impamvu bamutahiriza inkwi, bagatandukanira ku byakurikiyeho nyuma y'uko guhura. Imvugo z'abana bavugwa ko bakorewe icyaha zihuriza ku bintu by'ingezi bikurikira:

a. Kuba Niyonsaba Eric yarabajyanye mu gihuru ababwira ko agiye kubereka aho bihisha nyiri urwuri batashyagamo;

b. Kuba hari abandi bana bari kumwe bo bagasigara inyuma, aribo A.J na I.Z;

c. Kuba barahageze akabapfuka mu maso, agatangira kubasambanya umwe umwe;

d. Kuba yari afite imbwa akayibakangisha kugirango batamucika cyangwa bagatabaza; akanabakangisha kubica akabajugunya mu mwobo w'inyaga;

e. kuba yarabanzaga kubashyira amacandwe ku gitsina akoresheje urutoki mbere yo kubasambanya

[19] A.J wabajijwe nk'umutangabuhamya mu Bugenzacyaha ndetse no mu Rukiko, yavuze ko we yasigaye inyuma igihe abandi bakomezaga mu ishyamba hamwe na Niyonsaba Eric, abonye abapolisi agira ubwoba kuko asanzwe abatinya, ahamagara B.S abanza kutamwitaba ariko nyuma amwitaba arira. Yasobanuye ko yagiye kubareba aho bari bari, yahagera umwe muri bagenzi be akabwira Niyonsaba Eric ngo nawe amukorere ibyo yabakoreye, agashaka kwiruka ariko akamushumuriza imbwa yari afite. I.Z nawe yabwiye Umugenzacyaha ko aho yari ari yumvise B.S arira ahamagara A.J, ariko Niyonsaba Eric akamubuza guhamagara. Imvugo z'aba batangabuhamya zishimangira bimwe mu byavuzwe n'abana bavugwa ko bakorewe icyaha.

[20] Mu byo Niyonsaba Eric yireguza, harimo kuba nta mwana n'umwe wavugije induru ngo atabaze. Urukiko rusanga ariko kuba abana bataratabaje, bisobanurwa no kuba yarabakangishaga kubagirira nabi no kubashumuriza imbwa.

[21] Mu Rukiko Niyonsaba Eric yahakanye kuba yari afite imbwa, ariko igihe yabazwaga mu Bugenzacyaha ku wa 23/07/2015 kimwe no mu Bushinjacyaha ku wa 30/07/2015, yavuze ko yahuye n'abana aragiye barimo gusenya inkwi, bakiruka imbwa ikabamokera, akayibuza. Iyi mvugo ye igaragaza ko yari afite imbwa koko nk'uko abana babivuga.

[22] Niyonsaba Eric avuga kandi ko raporo yakozwe na Muganga igaragaza ko abana bavugwa batasambanyijwe. Iyo raporo igaragaza ko ku bana U.A n'U.H akarangabusugi kari kazima, naho kuri B.S hakaba harashoboraga kwinjira urutoki rumwe. Muganga Bimenyimana Emmanuel wakoze iyo raporo yahamagawe mu Rukiko, asobanura ko ku bireba Bateta Scovia, kuba agatoki gato karashoboraga kwinjira atari ikimenyetso simusiga cyatuma hatangwa umwanzuro w'icyabaye, ko hari imyanzuro abaganga bafata itemeza cyangwa ngo ihakane ijana ku ijana ikintu runaka, akaba aribwo buryo buri muri iyi dosiye. Yanatanze ibisobanuro ku byagaragajwe nanone na raporo ku bireba B.S, by'uko kuri imwe mu myanya y'ibanga hagaragaye gutukura (rougeur sur les petites lèvres), avuga ko guhindura ibara kw'ibice byoroshye bishobora guterwa n'uburwayi ariko ko icyo gihe muganga abubona akabuvura kandi ko atariko byagenze kuri iyi dosiye, cyangwa bigaterwa no kuba hari ikintu cyakubyeho (frottement) bikerekana ikimenyetso cy'uko hababaye (traumatisme).

[23] Harebwe ibisobanuro byatanzwe na Muganga Bimenyimana Emmanuel, bigahuzwa n'imvugo z'abana z'uko Niyonsaba Eric yabasigagaga amacandwe ku gitsina akoresheje urutoki, bakanavuga ko ibyo yabakoreraga yabigiraga gahoro ntababababaze cyane, Urukiko rusanga bishoboka ko akarangabusugi kaba kazima ariko ntibikureho kuba hari ibikorwa abana bakorewe hagamijwe kwishimisha. Ibyo bikorwa bikaba byinjira mu gisobanuro cyo gusambanya umwana hakurikijwe ibiteganywa n'ingingo ya 190 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga ubwo icyaha cyakorwaga, yateganyaga ko gusambanya umwana ari imibonano mpuzabitsina yose cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose n 'icyaba cyakoreshejwe cyose.

[24] Ku bivugwa na Niyonsaba Eric ko ababyeyi b'abana bamushinje ibinyoma kubera uwo yakoreraga wari umurimo 45.000 Frw, Urukiko rusanga mu ibazwa rye ryo ku wa 23/07/2015 imbere y'Umugenzacyaha, yarivugiye ko ari abana, ari n'ababyeyi babo ntacyo bapfaga. Urukiko rusanga kandi Niyonsaba Eric avuga ko uwo yakoreraga yitwa Ndayambaje, uyu akaba atari umwe mu babyeyi b'abana aregwa kuba yarasambanyije.

[25] Ku byo yaburanishije avuga ko muri raporo y'Umuyobozi w'Umudugudu wa Nyamiyaga bavuze ko uwasambanyije abana yitwa Claude, kandi we akaba atariko yitwa, Urukiko rusanga ibyo asobanura atariko bimeze kuko iyo raporo igaragaza ko bari bahawe amakuru ko umusore witwa Claude yafashe abana batatu, ariko babaza uwo yaragiriraga inka akababwira ko azi izina rye rimwe rya Eric.

[26] Hashingiwe ku bisobanuro byatanzwe, Urukiko rurasanga hari ibimenyetso bidashidikanywaho bihamya ko Niyonsaba Eric yasambanyije abana U.A, B.S na Umuhoza Happy, akaba rero agomba guhanirwa icyo cyaha.

[27] Ku bijyanye n'igihano Niyonsaba Eric yahabwa, ingingo ya 191 y'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha cyakorwaga, yateganyaga ko umuntu wese wasambanyije umwana ahanishwa igifungo cya burundu cy'umwihariko. N'ubwo ariko iri Tegeko Ngenga ariryo ryariho igihe icyaha Niyonsaba Eric aregwa cyakorwaga, iryakoreshwa ku bijyanye n'ingano y'igihano ni Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ryarisimbuye nk'uko ryahinduwe n'Itegeko Nº 69/2019 ryo ku wa 08/11/2019, ingingo yaryo ya 133 igika cya gatatu, kuko ryatangajwe urubanza rukiburanishwa kandi rikaba ariryo riteganya igihano cyoroheje, ni ukuvuga igifungo cya burundu.

[28] Urukiko rwakwibutsa ko ingingo ya 133, igika cya 3, y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, yateganyaga ko iyo gusambanya umwana byakorewe ku mwana uri munsi y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, ariko Urubanza N° RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2021, rukaba rwaremeje ko agace k'iyi ngingo kavuga ko igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, nta gaciro gafite kubera ko kanyuranye n'Itegeko Nshinga. Ibi bivuze ko, igihe bigaragara ko hari impamvu nyoroshyacyaha hakurikijwe ibiteganyijwe mu ngingo za 71, 76 na 77 z'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012, igifungo cya burundu kivugwa mu gika cya 3 cy'ingingo ya 133 yavuzwe haruguru gishobora kugabanywa.

[29] Ingingo ya 71 y'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, yateganyaga ko mu gutanga igihano, umucamanza akurikiza uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite, naho ingingo ya 76 y'iryo Tegeko Ngenga igateganya ko umucamanza aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye.

[30] Ingingo ya 77 y'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, igaragaza ingero z'ibishobora gufatwa nk'impamvu nyoroshyacyaha ariko ntibirondore byose. Abahanga mu mategeko bagaragaza izindi ngero z'impamvu zishobora koroshya icyaha, muri zo hakavugwamo kuba nta bindi byaha uwahamwe n'icyaha yakurikiranyweho mbere (les bons antécédents du coupable), imyaka y'uwakoze icyaha by'umwihariko ukigera mu myaka y'ubukure kuva kuri 18 kugeza kuri 21 (jeune adulte de 18 à 21 ans).[2] Ibi bigaragara kandi no muri zimwe mu manza zaciwe n'uru Rukiko.[3]

[31] Ku bijyanye na dosiye y'urubanza Urukiko rwaregewe, bigaragara ko nta bindi byaha Niyonsaba Eric yigeze akurikiranwaho, akaba atafatwa nk'umuntu usanzwe ari umunyarugomo; ndetse akaba yarakoze icyaha afite imyaka 20 y'amavuko ubu akaba afite 27, kuri iyo myaka hakaba hakiri amahirwe y'uko ahawe igifungo kimara igihe kizwi ashobora kugororwa, agasubira mu muryango nyarwanda agifite imbaraga zatuma afatanya n'abandi kubaka igihugu.

[32] Ingingo ya 78 y'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, yateganyaga ko iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cyo gufungwa burundu gisimbuzwa igihano cy'igifungo kitari munsi y'imyaka icumi (10). Hashingiwe ku bisobanuro byatanzwe no ku biteganywa n'iyi ngingo, Urukiko rurasanga Niyonsaba Eric yahanishwa igifungo cy'imyaka 15 gisimbura igifungo cya burundu yari yarahanishijwe n'Urukiko rw'Ubujurire mu rubanza Nº RPAA 00182/2018/CA.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ikirego cyatanzwe na Niyonsaba Eric cyo gusubirishamo, ku mpamvu z'akarengane, urubanza Nº RPAA 00182/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 10/10/2018, nta shingiro gifite;

[34] Rwemeje ko Niyonsaba Eric ahamwa n'icyaha cyo gusambanya umwana;

[2] J-P DOUCET,Les circonstances atténuantes: nature juridique et exemples, https://ledroitcriminel.fr/la_science_criminelle/penalistes/le_proces_penal/le_jugement/sanction/doucet_circ_attenuantes.htm, consulté le 12/01/2022.

[3] Urubanza Nº RPA 0239/09/CS rwaciwe ku wa 08/11/2013, Ubushinjacyaha bwarezemo NIYITEGEKA Sony Samson, para 12. Urubanza Nº RPA 0119/09/CS rwaciwe ku wa 26/10/2012, Ubushinjacyaha bwarezemo MUREKAKUREEspérance, para 15.

[35] Rwemeje ko urubanza Nº RPAA 00182/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 10/10/2018 ruhindutse ku bijyanye n'igihano;

[36] Rumuhanishije igifungo cy'imyaka cumi n'itanu (15).