

PROSECUTION v. NIYOMURAGIJE

[Rwanda COURT OF APPEAL– RPAA 00475/2018/CA
(Kaliwabo, P.J.) May 17, 2019]

Evidence law – Evidence in criminal matters – Contradiction of the party to the case – Conflicts between the accused and the victim – Contradiction of the party to the case is not sufficient incriminating evidence when it is not corroborating with other reliable elements of evidence because he/she is not required to accuse himself/herself – Conflicts between the accused and the victim cannot be solely considered as incriminating evidence.

Evidence law – Evidence in criminal matters – Circumstantial evidence – Conclusion of guilty can be inferred from circumstantial evidence if it is the only reasonable conclusion available on the evidence.

Facts: This case started before the Intermediate Court of Ngoma whereby the Prosecution accused Niyomuragije murder of his parent Uzamukunda basing on the fact that he admitted for having taken her from home to buy beer for her, and later, she was found dead. The Prosecution also relied on the statements of Niyomuragije’s siblings, who affirmed that he had conflicts with the victim because of Niyomuragije’s habit of theft, it also based its claim on the fact that there was blood found at the clothes and body of the accused. That Court convicted the accused for the murder of his parent and sentenced him to life imprisonment.

The accused was not contented with the ruling of that judgment and appealed before the High Court, chamber of Rwamagana

stating that he had no role in the death of his parent, that he had no conflict with her because even before that incident, that day they had been together boozing, that his siblings allege false accusations against him because they want to appropriate the family property.

The High Court sustained the ruling of the appealed judgment basing on the fact that the accused failed to prove wrong the elements of evidence considered in rendering the judgment of the Intermediate Court, and that his witness had accused him instead of discharging him, his testimony was mainly based on demonstrating conflicts between the accused and his parent.

Niyomuragije again appealed before the Supreme Court, after judicial reform, his claim was transferred to the Court of Appeal. In his appeal, he stated that the High Court disregarded that he returned home earlier than his parent because of epilepsy illness, that he had no conflict with her because before that incident, that day they had been together boozing, he also reacted on the issue of blood alleged to have been found at him, he states that this was confused with dirt caused by bananas which were on his pair of shorts, he adds that his short was seized before the burial of the body, that those blood should have been examined in the laboratory to link them with Uzamukunda's death.

The Prosecution states that testimonies of the accused's siblings demonstrate the conflicts he had with their parent Uzamukunda, that they also demonstrate that he returned home with blood at his clothes. It also contends that a witness testified to have seen Niyomuragije preparing the stick which was nearly found with the body and the stick was also bloody, the Prosecution further states, the fact that the blood was not examined does not mean that other elements of evidence are not relevant.

Held: 1. Conflicts between the accused and the victim cannot be solely considered as incriminating evidence. Therefore, The High Court should not have relied on the statement of animosity as incriminating evidence, whereas that statement does not reveal any act of the murder.

2. The contradiction of the party to the case is not sufficient incriminating evidence when it is not corroborating with other reliable elements of evidence because he/she is not required to accuse himself/herself, thus, the contradiction in Niyomuragije's statements regarding the blood alleged to have been found at his clothes and body, cannot be incriminating elements of evidence for the murder.

3. The conclusion of guilty can be inferred from circumstantial evidence if it is the only reasonable conclusion available on the evidence.

**The appeal has merit;
The ruling of the appealed judgment is overruled;
Court fees to the public treasury.**

Statute and statutory instruments referred to:

Law N° 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 165.

Case laws referred to:

Prosecutor v Ntagerura, ICTR-99-46-A' Judgment, 7 July 2006, par.306

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 01/01/2016, Niyomuragije Xavier who resides in Rubona Sector, went with his parent Uzamukunda Vestine at Musabimana Eliane whereby he brought her for boozing, during the night of 01/01/2016 at around 22h00, along the way, Uzamukunda's dead body was found with wounds, Niyomuragije was suspiciously arrested for having murdered her using a stick of grevillea robusta.

[2] Before the Intermediate Court of Ngoma in the case RP 0069/16/TGI/NGOMA, the Prosecution sued Niyomuragije Xavier basing on the fact that he admitted for having taken her from home to buy beer for her, and later, she was found dead. The Prosecution also relied on statements of Niyomuragije's siblings, these are Nzeyimana Samuel, Umwali Anitha and Niyibizi Kevin who affirmed that he had conflicts with the victim because of Niyomuragije's habit of theft, that the stick of grevillea robusta nearly found with Uzamukunda's body was plucked by Niyomuragije, that there was also blood found at Niyomuragije's clothes and body, the Prosecution also relied on Musabimana Eliane's statement that when Uzamukunda and Niyomuragije left her place, the latter came back wearing a new t-shirt.

[3] After hearing of the case, the Intermediate Court of Ngoma found relevant the elements of evidence produced by the Prosecution, on 12/05/2016, that Court rendered the judgment convicting Niyomuragije Xavier, the murder of his parent Uzamukunda Vestine and sentenced him to life imprisonment.

[4] Niyomuragije Xavier appealed before the High Court, chamber of Rwamagana stating that he had no role in the death of his parent, that he had no conflict with her because even the day of the incident, they had been together boozing, that he left her still boozing because of epilepsy illness, that he went with his siblings for rescue when they were informed of the death of their parent. The accused appealed stating that no blood was found at him, that his siblings allege false accusations against him because they want to appropriate the family property.

[5] In the judgment RPA 00174/2017/HC/RWG rendered on 27/02/2018, the High Court sustained the ruling of the appealed judgment basing on the fact that Niyomuragije Xavier failed to prove wrong the elements of evidence considered in rendering the judgment of the Intermediate Court, and that the witness of Niyomuragije, Nzeyimana Samuel had accused him instead of discharging him (his testimony was mainly based on demonstrating conflicts between Niyomuragije and Uzamukunda).

[6] Niyomuragije Xavier appealed against that judgment before the Supreme Court, after judicial reform, his claim was transferred to the Court of Appeal pursuant to article 52 and 105 of the Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts.

[7] In his submissions of the appeal, Niyomuragije Xavier stated that the High Court disregarded that he went home earlier than his parent because of epilepsy illness, that he had no conflict with her because before that incident, that day they had been together boozing, that he was considered to have used the stick used in murdering Uzamukunda whilst no one found him with it. In his pleading, Niyomuragije Xavier assisted by

Counsel Nyirabasinga Helene has again reacted on the issue of blood alleged to have found at him, he states that this is confused with bananas stains which were on his short, he adds that there was no investigation so that those blood be examined and link them to those of Uzamukunda, the victim.

[8] The Prosecution states that testimonies of Niyomuragije Xavier's siblings demonstrate conflicts he had with Uzamukunda Vestine, they also demonstrate that he came home with blood on his clothes and also, Musabimana testified that Niyomuragije and Uzamukunda went home being together, but the former came back later to the bar wearing a new t-shirt, the Prosecution adds that Niyibizi Kevin testified to have seen Niyomuragije preparing the stick which was nearly found with the body and the stick was also bloody, the Prosecution further states, the fact that the blood was not examined does not mean that other elements of evidence are not relevant, It adds that the illness of epilepsy does not exempt Niyomuragije from criminal liability.

[9] The Court needed to hear from the witnesses Nzeyimana Samuel, Niyibizi Kevin, Umwali Anitha and Musabimana Eliane but they all failed to appear.

[10] In this case, the Court examines the relevance of the elements of evidence of conflicts between Niyomuragije and Uzamukunda, evidence of blood found at Niyomuragije, the origin of the stick used in murdering Uzamukunda and to know about the illness of epilepsy that Niyomuragije states as the reason of going home earlier than Uzamukunda.

II. ANALYSIS OF LEGAL ISSUE

With regard to the conflicts between Niyomuragije Xavier and Uzamukunda Vestine

[11] Niyomuragije Xavier assisted by Counsel Nyirabasinga Helene pleads stating that his siblings plotted for accusing him conflicts with Uzamukunda because of their interests of keeping him in prison and appropriate the family property while he had no conflicts with his parent to the extend of murdering her, he adds that he used to booze together with his parent and the day she passed on, before that, they had been together boozing at Musabimana Eliane, thus this should not be considered as an incriminating element of evidence for the murder of Uzamukunda.

[12] The Prosecution being represented by Niyonzima Vincent, the National Prosecutor, states that the conflicts between Uzamukunda and Niyomuragije, are affirmed by his brother Nzeyimana Samuel who came as discharging witness on request of the accused, that witness testified that the conflicts with his parent were based on Niyomuragije's habit of theft and that this was also what revealed by the report of local authorities.

DETERMINATION OF THE COURT

[13] The Court finds, the main ground for which the High Court relied on rendering the judgment RPA 00174/2017/HC/RWG, is Nzeyimana Samuel's statement, that Uzamukunda used to blame Niyomuragije because of his habit of theft, that the latter murdered her because he wanted her not to continue stopping him, that the witness(Nzeyimana) added that he has no conflicts with his siblings, that he cannot wrongly

accuse his young brother, that he sold the family property of land but he used money received to buy another which he also registered to the family, the previous court considered it as an incriminating testimony against Niyomuragije while the latter brought that witness as discharging witness.

[14] The Court finds that the High Court, chamber of Rwamagana failed to explain the most important issue regarding the elements of evidence charging Niyomuragije the murder of Uzamukunda Vestine, rather, the court emphasized on the conflicts between Uzamukunda and Niyomuragije. The Court finds Nzeyimana Samuel who does not even reside in the same sector with that of Uzamukunda, and he was not in the place, the day their parent was murdered, his testimony focuses on the enmity between Niyomuragije and Uzamukunda, for himself, he demonstrates that he has no issues with the family. This statement about animosity (which is not proven) should not itself be an incriminating element of evidence against Niyomuragije for the murder of Uzamukunda. Being friendly or not to someone may be a ground of committing an offence or not, but it cannot be considered as a proof to find someone's guilty. The High Court should not have relied on the statement of animosity as incriminating evidence, whereas there is no act of the murder that Nzeyimana accuses Niyomuragije especially that the former admits himself that he does not reside in the area where the offence was committed.

[15] The Court also finds, the High Court rendered the judgment without motivating it whereby on paragraph 12 of the judgment RPA 00174/2017/HC/RWG, the Court states that Niyomuragije failed to prove wrong the elements of evidence which were based on in rendering the appealed judgment

whereas the accused criticizes testimonies produced against him and denies that he was found with blood at him. The Court should have demonstrated the relevance of elements of evidence criticized by the accused.

Regarding the blood allegedly to have been found on Niyomuragije and the stick found near the body.

[16] Niyomuragije assisted by Counsel Nyirabasinga appealed stating that the blood allegedly to have been found at his clothes, was confused with dirt caused by bananas because of his work which includes what he did in butcher, that no blood was found at him. Niyomuragije states that he returned home and found Umwali after having cooked and that they had a meal together, that nobody asked him about the blood, he adds that he did not put clothes in water. Counsel Nyirabasinga assisting him states that the Investigation bureau argues that It seized his short alleged to be bloody, that it was seized before burial, she adds that those blood should have been examined in the laboratory, to link them with Uzamukunda's death.

[17] Counsel Nyirabasinga further states that it is not reasonable for Musabimana who had been selling beer, to have realised that Niyomuragije came back in the bar wearing new clothes, that examining those blood was only irrefutable proof, she adds that failure to do so creates a doubt which is in favour of the accused.

[18] The Prosecution pleaded that the fact that the blood was not examined does not replace other elements of evidence which include Niyomuragije's statements for having admitted that the blood was found on him because he is among those who came first for the rescue and that he used his short to wipe the legs,

whereas all these are wrong because he reached the place where the body laid when it was no longer bleeding.

[19] The Prosecution further states, Niyomuragije who denied having returned in the bar, there is where he confessed that he came back getting beer to be boozed from home, thus Musabimana Eliane's statement is relevant because she saw him. The Prosecution adds that there is no interest in Niyomuragije's siblings to falsely accuse him. It contends that Niyomuragije's statement is wrong that blood found on his short was pork's oil, this statement was proven wrong by Umwali Anitha, his sister, who explained that he brought pork's oil in a sachet, that the oil was not poured on his clothes.

DETERMINATION OF THE COURT

[20] The Court finds, evidence of blood which is alleged to have been found on Niyomuragije, it would have been reliable evidence, in this case, unfortunately, the way it was prepared, does not convince the Court that those blood were poured on Niyomuragije at the moment of murdering Uzamukunda. When Niyomuragije was interrogated about the blood found at his cheek and his ear as well as those found on his clothes, he explained that he was told by others that there was blood dried at his cheek and ear, that those blood may have been from the place where Uzamukunda's body laid because he approached it (image is found at identification mark 35 which shows much blood in the bush where Uzamukunda's head was broken).In his further explanations, Niyomuragije stated that his short was dirt because of bananas and pork's oil poured on him, whilst his sister Umwali Anitha stated that Niyomuragije brought pork's oil in a sachet, that it was not poured on him. On the other hand,

Niyomuragije stated that his clothes had blood after using it to wipe his leg after washing himself after coming from the place where the body was put in the car.

[21] The Court finds, the statement of Niyomuragije who had been contradicting himself with regard to the blood allegedly to have been found on his clothes and his body, those statements should not serve as an incriminating element of evidence of the murder basing solely on that ground of contradiction of the accused. The statement of confession can be incriminating evidence when the court assesses it and find it to be corroborating with other elements of evidence, it also has to be relevant to the facts of the case, its veracity is not found in contradiction of the accused because he/she is not required to accuse himself/herself.

[22] The Court finds, the Prosecution was satisfied with indirect evidence whereas there was a possibility of getting direct evidence which should have been found in the test of blood that the Prosecution alleged to have been found at Niyomuragije's clothes and to link them to the dead body. The Prosecution pleads that Niyomuragije reached home and his siblings saw blood on him, that he immediately dived clothes into the water before he went back to the bar (this implies that he was not wearing those clothes when he went for the rescue), in addition, since the Prosecution reveals that those clothes were seized before burial, this was the most important element of evidence because the result of the test would have been irrefutable evidence regarding the issue of blood which might have been poured to Niyomuragije the moment of the rescue, there was also a possibility of differentiating it with pork oil or dirt from bananas, due to failure to do so, one cannot affirm

beyond any doubt that the seized clothes were bloody in relation with Uzamukunda's body. Circumstantial evidence is considered when it can prove a reasonable conclusion of guilty. "It is settled jurisprudence that the conclusion of guilty can be inferred from circumstantial evidence if it is the only reasonable conclusion available on the evidence. If there is also reasonably open from that evidence and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.¹

With regard to the stick used in the murder of Uzamukunda.

[23] Niyomuragije assisted by Counsel Nyirabasinga criticizes an element of evidence of the stick of *grevillea robusta* which he is charged to use it in murdering Uzamukunda whereby he states that no one saw him searching for that stick, the fact that the stick was plucked from the trees which were around their home does not imply that he is the one who picked it off, that it is not explained how the accused came from the bar to search for the stick that they allege that it was well prepared.

[24] The Prosecution contends that Niyibizi Kevin (young brother for Niyomuragije) saw him in the morning preparing that stick and he hid it later, that the investigators went at the place where the stick was plucked and found that it was picked off from the trees which were around Uzamukunda's home, also, Umwali affirmed to have accompanied Niyomuragije on the request of the latter when he wanted to go to the toilet located near the trees stated in this case file and that stick was found bloody near Uzamukunda's body, thus no one else might

¹ Prosecutor vs Ntagerura, ICTR-99-46-A' Judgment, 7 July 2006, par.306

have used that stick rather than Niyomuragije who searched for it.

[25] The Court finds no doubt that Uzamukunda was murdered using the stick of *grevillea robusta* as it was found near the body being bloody, the issue is to identify who had used that stick. The Court finds that in holding that Niyomuragije used that stick, the Court based on Niyibizi Kevin's statement, a young boy who stated that he saw him preparing a stick of *grevillea robusta*, that young boy thought that he was making a toy for him, but it is alleged that he hid that stick which was considered as one of those located near Uzamukunda's home in a banana plantation, this is the place in which Umwali Anitha states that she accompanied Niyomuragije, the latter stated that he was going to the toilet.

[26] The Court finds that the statement of Niyibizi Kevin, a young boy, is not reliable in accusing because apart from being the statement of a child with less capacity, the Court is not convinced that Kevin saw Niyomuragije hiding that stick because he could not know that he was hiding an object without being aware of the offence to be committed. The Court further finds, Umwali's statement that she accompanied Niyomuragije to the toilet located near the trees, this statement does not accuse that he was going to get that stick used in murdering Uzamukunda because by analysing the Prosecution's statements, it is revealed that Niyomuragije is charged for having killed his parent on their way from Kangoro (this is indicated in the indictment) and that Niyomuragije returned home to wear new clothes (this is the same moment with that for which Umwali accompanied him to the toilet) before he went back to the bar as testified by Musabimana Eliane, this

proves that Niyomuragije did not go to the toilet with the intent of getting the stick which was used in murdering Uzamukunda because the motivations demonstrated above, would prove that Uzamukunda was already murdered.

With regard to chronic illness of epilepsy that Niyomuragije states that he suffers from.

[27] Niyomuragije appealed stating that he suffers from chronic illness of epilepsy that the prison and his family are aware that he takes medicines, that the day for which he is charged to have killed Uzamukunda, the latter asked him to go home very early, for him to avoid having the illness and be barred from returning home, thus he should not respond to her death because they returned home separately.

[28] The Prosecution contends that epilepsy that Niyomuragije suffers from, cannot prevent him from committing an offence and that it does not depend on hours, hence, he should not invoke it to deny the murder of Uzamukunda, that even if he went back home earlier, he admits for having returned to bar looking for a beer to be boozed from home.

DETERMINATION OF THE COURT

[29] The Court finds that Niyomuragije's statement lacks merit, that he returned home earlier due to the disease of epilepsy, because in his interrogation, he explained that after reaching their home, he went back to Musabimana Eliane looking for the beer to take home, he also explained why he did not take that beer (that it did not test good), this is the same statement with that of Musabimana Eliane. The Court finds that

the disease of epilepsy which Niyomuragije states that he suffers from, does not absolve him from the offence he is charged with because there is no any link between them, rather, he is absolved because of doubt found in elements of evidence of the Prosecution as motivated above.

[30] The Court finds that Niyomuragije Xavier was found guilty of murder of his parent Uzamukunda Vestine without reliable evidence, therefore, doubt found in elements of evidence produced by the Prosecution, it favours the accused as provided by article 165 of the Law N° 30/2013 of 24/05/2013 relating to the code of criminal procedure.

III. THE DECISION OF THE COURT

[31] Finds Niyomuragije Xavier (registered as Xaverine)'s appeal with merit;

[32] Holds that Niyomuragije Xavier (Xaverine) is acquitted for the murder of Uzamukunda Vestine;

[33] Overrules the ruling of the judgment RPA 00174/2017/HC/RWG rendered on 27/02/2018 by the High Court, chamber of Rwamagana;

[34] Orders the release of Niyomuragije Xavier (Xaverine) after the pronouncement of this case;

[35] Orders that the court fees be charged to the public treasury.