UBUSHINJACYAHA v KANANI

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00001/2019/CA (Gakwaya, P.J.) 6 Gicurasi 2020]

Amategeko mpanabyaha – Icyaha cyo kwica – Ubwinjiracyaha – Ubushake bwo kwica – Ikintu cyakoreshejwe gishobora kwica, aho cyakoreshejwe ku mubiri w'umuntu (mu cyico) ndetse nihohoterwa rikabije ryakoreshejwe, bigaragaza ubushake bwo kwica

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Kanani aregwa icyaha cy'ubwinjiracyaha mu cyaha cyo kwica uwo bashyingiranywe yakoze ubwo yaravuye ku mucyura iwabo, aho yamukubise inyundo mu mutwe inshuro eshatu, ariko we akabayaraburanye ahakana icyaha aregwa avuga ko icyaha yemera yakozi aricyo gukubita no gukomeretsa. Urukiko rw'Isumbuye rwafashe icyemezo rumuhamya icyaha yarezwe rumuhanisha igifungo cy'imyaka 15.

Uregwa yajuririye Urukiko Rukuru urugereko rwa Nyanza asba ko rwahindura inyito y'icyaha kukoatigeze agambirira kwica umugore we ndetse rukamugabanyiriza igihano kuko yamukubisa kubera ariwe warumusembuye. nUrukiko Rukuru rwafashe icyemezo ko ubujurire bwe ntashingiro ko imikirize y'urubanza yajuririye idahindutse.

Uregwa ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ubujurire avuga ko icyaha yarezwe atari icyo yakoze ahubwo ko icyaha yemera yakoze ari ugukubita no gukomeretsa, asaba ko Urukiko rwamugabaniriza igihano ndetse rukagisubika. Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro bufite kuko atemera icyaha muburyo bwuzuye kandi ko kumuhamya icyaha yarezwe hashingiwe ku bukana bwakoreshejwe ndetse naho yakubise umugore we, bityo inyito yicyaha yakoze ikaba itahinduka ndetse atanagabanirizwa ibihano.

Incamake y'Icyemezo: 1. Ikintu cyakoreshejwe gishobora kwica, aho cyakoreshejwe ku mubiri w'umuntu(mu cyico) ndetse nihohoterwa rikabije ryakoreshejwe, bigaragaza ubushake bwo kwica. Kuba Kanani yarakubisa umugore we icupa kandi arikubita mu mutwe bituma icyaha aregwa kimuhama

2. Ubugome bukabije Kanani yakoranye icyaha bituma atagabanyirizwa igihano kuko nubundi Urukiko Rukuru rwari rwamugabanirije igahano.

Ubujurire nta shingiro bufite.
Imikirize y'urubanza rwajuririwe ntihindutse,
Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashyingiweho:
Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha ni ibihano muri rusange , ingingo ya 107
Itegeko Ngenga n°1/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 30 n'iya 142

Imanza zifashishijwe
Ubushinjacyaha vs Nyawera Céléstin, RPA 0033/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/9/2012.

Inyandiko z'abahanga zifashishijwe:
Général Likulia Bolongo, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P. 52.
Jean Larguier et Anne-Marie Larguier, Droit pénal spécial, 10e édition, Dalloz, Paris, 1998, P. 10

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Kanani Eugène aregwa ubwinjiracyaha mu cyaha cyo kwica uwo bashyingiranywe witwa Mukandungutse Lenatha, agashinjwa kuba yaragikoze ubwo yari avuye kumucyura iwabo kuko bari bamaze amezi atatu batabana, bageze mu rugo rwabo afata inyundo ayimukubita mu mutwe inshuro eshatu, aramukomeretsa bikomeye, nawe ahita yishyikiriza Ubugenzacyaha.

[2] Imbere y'Urukiko Rwisumbuye, Kanani Eugène yavuze ko nta bwinjiracyaha mu cyaha cy'ubwicanyi bwabayeho, ko icyabaye ari ugukubita no gukomeretsa gusa kuko yakubise umugore we icupa yari amwatse ashaka kurimukubita, kandi ko nta cyahagaritse ubwo bwicanyi, ko ahubwo nta mugambi wo kwica yari afite.

[3] Mu rubanza RP 00026/2018/TGI/MHG rwaciwe ku wa 22/3/2018, Urukiko Rwisumbuye rwa Muhanga rwemeje ko Kanani Eugène ahamwa n'ubwinjiracyaha mu cyaha cyo kwica uwo bashyingiranywe, rumuhanisha igifungo cy'imyaka cumi n'itanu (15).

[4] Kanani Eugène yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, avuga ko ikimuteye kujurira ari ugusaba Urukiko guhindura inyito y'icyaha kuko atigeze agira umugambi wo kwica umugore we, kurugaragariza ko imvugo z'umwana wabo Niyibizi Gilbert ari izo bamwitiriye kuko atigeze abazwa no kurugaragariza koigikorwa cyo gukubita icupa mu mutwe cyatewe n'ubusembure, akaba ari impamvu yagombaga gutuma agabanyirizwa igihano.

[5] Mu rubanza RPA 00277/2018/HC/NYZ rwaciwe ku wa 31/10/2018, Urukiko Rukuru, Urugereko rwa Nyanza rwemeje ko ubujurire bwa Kanani Eugène nta shingiro bufite, ko urubanza rujuririrwa rudahindutse.

[6] Kanani Eugène ntiyishimiye icyo cyemezo, ajuririra Urukiko rw'Ubujurire, avuga ko impamvu yajuririye, ari ugukomeza kwemera icyaha yakoreye umugore we bitamuturutseho kuko nawe yahoraga amugirira nabi, ko yigeze no gushaka kumwica akoresheje umuhoro n'ishoka akamuhunga, agatabarwa n'abaturanyi, arusaba kwakira ubujurire bwe no guca inkoni izamba rukamugabanyiriza igihano, rukanagisubika.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 3/3/2020, Kanani Eugène yunganiwe na Me Mujawamariya Dative, Ubushinjacyaha buhagarariwe na Ruberwa Bonaventure, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba ibikorwa Kanani Eugène aregwa bigize icyaha cyo gukubita no gukomeretsa, aho kuba ubwinjiracyaha mu cyaha cyo kwica uwo bashyingiranywe

[8] Kanani Eugène avuga ko yemera ko yakubise umugore we icupa mu mutwe, ariko ko atari agambiriye kumwica, ko ari nayo impamvu icyaha yemera ari gukubita no gukomeretsa. Avuga kandi ko nyuma yo kumukubita icupa no kubona ko yababaye, yagiye guhamagara Abayobozi.

[9] Kanani Eugène avuga nanone ko atari igitanza ko inzu ifungwa mu ma saa sita z'ijoro, kandi ko ibivugwa ko umwana we yagiye gutabaza aciye mu idirishya, bitari byo kuko ku amadirishya

yarimo *grillage*. Yongeraho kandi ko ibivugwa ko hari abantu baje gutabara, bakica ingufuri, atari ukuri kuko inzu yabo ifite umuryango umwe, ko nta kuntu bari kwica ingufuri kandi iri imbere, ahubwo ko ariwe wagiye kuzana Abayobozi, ari kumwe n'umwana we Gilbert. Asoza asaba Urukiko kumugabanyiriza igihano yakatiwe.

[10] Me Mujawamariya Dative, umwunganira, avuga ko batemeranya n'Inkiko zabanje ku birebana n'inyito y'icyaha kuko zashingiye ku cyakoreshejwe mu gukubita uwakorewe icyaha n'aho cyakubiswe, nyamara icyabaye ari uko kuko Kanani Eugène yakoresheje icupa akarimukubita mu mutwe, bakaba basanga ari icyaha cyo gukubita no gukomeretsa. Asobanura ko Kanani Eugène n'umugore we bari bamaze iminsi biyunze kuko umugore yari yarahukanye, ko umunsi ibikorwa aregwa byabaye, bari bagiye gusangira, bageze mu rugo basanga hari inzoga yazanywe n'umuturanyi wabo, umugore arayimena kuko yavugaga ko ari indaya ya Kanani Eugène, ndetse n'ibiryo arabimena, ko ibyo byateye Kanani Eugène umujinya, amukubita icupa ryari hafi aho mu mutwe, abonye yikubise hasi, ajya guhuruza, nyuma aza no kumujyana kwa muganga.

[11] Me Mujawamariya Dative avuga kandi ko iyo Kanani Eugène aba yateguye kwica umugore we, aba yaramurangije, ndetse akamuhamba aho yari yateguye. Asoza asaba Urukiko gusuzuma ibiteganywa n'ingingo ya 30 y'Itegeko Ngenga N˚ 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, kandi ko rubibonye ukundi, rwareba uko ubwinjiracyaha mu cyaha cyo kwica bwakozwe, rukamugabanyiza igihano yakatiwe kugeza ku imyaka icumi (10), hashingiwe ku ngingo ya 78 y'iryo Tegeko Ngenga, cyane cyane hakitabwa inyungu z'abana kubera ko Abayobozi banditse bagaragaza ko abana ba Kanani Eugène bandagaye kuko nyina yabasize akajya gushaka undi mugabo.

[12] Ubushinjacyaha buvuga ko impamvu y'ubujurire ya Kanani Eugène nta shingiro ifite kuko n'ubu atemera icyaha mu buryo budashidikanywaho, kandi ko Urukiko Rukuru, mu gace ka karindwi (7) k'urubanza rujuririrwa, rwagaragaje ko yabanje gukingirana abana kugira ngo badasohoka bagatabaza. Busobanura ko atari we wagiye gutabaza nk'uko ashaka kubyumvikanisha, ahubwo ko ari umwana we wagiye gutabaza, aciye mu idirishya, ko n'Ubuyobozi bwahageze bugasanga KANANI Eugène arimo gukubita umugore we, yakinze inzu, ku buryo byabaye ngombwa ko babanza kwica urugi kugira ngo binjire mu nzu.

[13] Ubushinjacyaha bukomeza buvuga ko harebwe ubukana bwakoreshejwe, ndetse n'aho Kanani Eugène yakubise umugore we, kuba ataritabye Imana, ariyo yakinze ukuboko, kuko yamukubise icupa, kandi arikubita mu mutwe.

[14] Ubushinjacyaha busoza buvuga ko ku birebana no kuba KANANI Eugène ashaka kugaragaza ko umugore we ariwe wamushotoye, nta shingiro bifite kuko ari uburyo bwo guhunga ububi bw'icyaha kuko yakubise umugore we mu buryo bukomeye, kandi yakinze inzu. Busaba Urukiko kwemeza ko ubujurire bwa KANANI Eugène nta shingiro bufite.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 30 y'Itegeko Ngenga N˚ 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana iteganya ko '' Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye bufatwa kimwe nk'icyaha cy'ubugome cyangwa icyaha gikomeye ubwacyo''.

[16] Ingingo ya 142 y'Itegeko Ngenga N˚ 01/2012/OL ryo ku wa 2/5/2012 ryavuzwe haruguru iteganya ko '' Kwica uwo bashyingiranywe ni ubwicanyi umwe mu bashyingiranywe akorera undi. Kwica uwo bashyingiranywe bihanishwa igifungo cya burundu''.

[17] Nk'uko bigaragara mu gace ka gatandatu (6) n'aka karindwi (7) tw'urubanza rujuririrwa, hashingiwe ku ngingo ya 107 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Urukiko Rukuru, Urugereko rwa Nyanza rwasobanuye ko kuba Kanani Eugène yarafashe icupa, akarikubita mu mutwe w'umugore we, nk'uko abyiyemerera, nta kindi yari agamije, uretse kwica, ko gukubita icupa mu mutwe ari igikorwa gishobora gutanga urupfu ku buryo bworoshye cyane, kandi ko nta kintu gifatika Kanani Eugène yagaragaje cyashingirwaho hemezwa ko yari agamije gukubita no gukomeretsa gusa, ahubwo ko atigeze agera kubyo yashakaga ku mpamvu zitamuturutseho kuko yabonye umugore we yituye hasi agakeka ko umugambi we yawugezeho, ndetse akaba ari n'umwana we watabaje, hanyuma abantu bagatabara.

[18] Nk'uko bigaragara mu nyandiko-mvugo yo ku wa 5/1/2018 ya Mukandungutse Lenatha, umugore wa Kanani Eugène, mu Bugenzacyaha, yamureze kuba yaramukubise inyundo y'imisumali y'amabati mu mutwe inshuro eshatu, akanayimukubita ku kaboko, akaboko karavunika.

[19] Dosiye y'urubanza igaragaza ko mu Bugenzacyaha, ku wa 1/1/2018, Kanani Eugène yameye ko yakubise umugore we icupa bapimiramo urwagwa mu mutwe. Nanone ku wa 5/1/2018 mu Bugenzacyaha, Kanani Eugène yemeye ko yakubise umugore we icupa mu mutwe, yitura hasi, akongera kurimukubita akiri hasi. Kanani Eugène yemeye kandi ko ari umwana wabo Niyibizi Gilbert wagiye gutabaza, aciye mu idirishya.

[20] Dosiye y'urubanza igaragaza kandi ko Niyibizi Gilbert, umwana wa Kanani Eugène na Mukandungutse Lenatha, yavuze ko ababyeyi be bageze mu rugo, mu kanya gato batangira gushwana, se abafungirana aho barara, maze asubira mu cyumba aho yari kumwe na mama wabo, ko yumvise nyina atatse cyane avuga ngo arapfuye, yumva na se amukubita, avuga ngo reka nkwice noneho dore igihe wahereye.

[21] Dosiye y'urubanza igaragaza nanone ko Ubuyobozi bw'Akagali ka Kigese bwakoze raporo ku byabaye ku wa 31/12/2017 hagati ya Kanani Eugène n'umugore we, aho bwasobanuye ko Kanani Eugène yamukomerekeje bikomeye mu mutwe, amukubita amaboko kuburyo ashobora kuba yaravunitse, aho umukozeho hose ku mubiri ataka.

[22] Urukiko rw'Ubujurire rurasanga uretse kuvuga ko atemeranya n'Inkiko zabanje ku birebana n'inyito y'icyaha aregwa, Kanani Eugène atagaragaza ku bw'amategeko impamvu anenga ibisobanuro byatanzwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku byerekeye inyito y'icyaha, kuko mu gace ka gatandatu (6) k'urubanza rujuririrwa, urwo Rukiko rwasobanuye ko n'ubwo ingingo ya 107 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru itagaragaza icyashingirwaho kugirango hemezwe ko umuntu yari agamije kwica, bishobora kugaragazwa n'igikoresho cyakoreshejwe n'aho cyakubiswe, nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza rw'Ubushinjacyaha na Nyawera Célestin, rwaciwe ku wa 14/9/2012, ko rero kuba Kanani Eugène yarakubise umugore we icupa mu mutwe, bigaragaza ko yari agamije kumwica, kuko gukubita umuntu icupa mu mutwe ari igikorwa gishobora kwica ku buryo bworoshye cyane.

[23] Urukiko rw'Ubujurire rurasanga kandi uretse kuvuga ko icyaha yakoze ari icyaha cyo gukubita no gukomeretsa, Kanani Eugène adasobanura ku bw'amategeko impamvu abibona uko, ibivugwa mu ako gace no mu gace kabanziriza aka bikaba bihagije kwemeza ko ubujurire bwe nta shingiro bufite.

[24] Urukiko rw'Ubujurire rurasanga nanone nk'uko ibyemezo byafashwe n'inkiko bibigaragaza, ndetse n'uko abahanga mu mategeko babisobanura, ubushake bwo kwica undi (*volonté ou intention de donner la mort: intention homicide*) bugaragazwa n'ikintu cyakoreshejwe gishobora kwica, aho

cyakoreshejwe ku mubiri w'umuntu, ni ukuvuga mu cyico (*partie vitale du corps humain*), ndetse n'ihohoterwa rikabije ryakoreshejwe[1].

[25] Urukiko rw'Ubujurire rurasanga Kanani Eugène yarakubise umugore we icupa inshuro zirenga eshatu mu mutwe, akoresheje ingufu zikabije (ihohoterwa rikabije), avuga ngo reka amwice, anamukubita hantu hose ku mubiri kugeza ubwo amuvunnye akaboko, abatabaye basanga aryamye mu maraso menshi arembye cyane, bahita bamutwara kwa muganga. Rurasanga n'ubwo Kanani Eugène atashoboye kumwica ku mpamvu zitamuturutseho kuko abaturage baje gutabara, ibikorwa bimaze kugaragazwa yakoze, bigaragaza nta shiti ubushake bwe bwo kwica umugore we.

[26] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rw'Ubujurire rurasanga nta makosa Urukiko Rukuru, Urugereko rwa Nyanza rwakoze rwemeza ko Kanani Eugène ahamwa n'icyaha cy'ubwinjiracyaha bwo kwica uwo bashyingiranywe kuko rwagaragaje mu buryo budashidikanwaho ibikorwa bigize icyaha n'ubushake bwe bwo kwica.

[27] Ku birebana n'igabanya ry'igihano yakatiwe Kanani Eugène asaba, Urukiko rw'Ubujurire rurasanga n'ubwo Inkiko zabanje zitasobanuye impamvu yatumye agabanyirizwa igihano giteganywa n'Itegeko, nta mpamvu yatuma yongera kugabanyirizwa igihano kuko icyo yakatiwe gikwiranye n'uburemere ndetse n'imikorere by'icyaha yakoze. Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga ubujurire bwa KANANI Eugène, nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa KANANI Eugène nta shingiro bufite.

[29] Rwemeje ko urubanza n° RPA 00277/2018/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 31/10/2018 rudahindutse.

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

---

[1] ' L'intention homicide peut résulter: soit de l'arme employée, lorsque celle-ci a une puissance mortelle en elle-même, soit de l'endroit où le coup a été porté lorsque celui-ci est une partie vitale du corps humain, soit du degré de la violence ou de sa gravité'', Général LIKULIA BOLONGO, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P. 52.
''……l'intention sera censée exister lorsque l'agent a frappé sur une partie vitale du corps et avec une arme dangereuse .... ''Jean Pradel et Michel Danti-Juan, Droit pénal spécial, droit commun-Droit des affaires, 4e édition, Cujas, Paris, 2007-2008, P. 35.
''L'intention peut s'induire de la nature de l'arme ou du coup, de la région du corps frappée par l'agent… '', Jean Larguier et Anne-Marie Larguier, Droit pénal spécial, 10e édition, Dalloz, Paris, 1998, P. 10