

PROSECUTION v. MPITABAKANA

[Rwanda SUPREME COURT – RPA0129/10/CS (Nyirinkwaya, P.J., Havugiyaremye and Mukamulisa, J.) March 7, 2014]

Criminal Law – Murder – It is considered murder, when proved that a person intentionally killed another – Decree – Law n° 21/77 of 18/08/1977 instituting the penal code, article 311.

Criminal Law – Penalty reduction – None could pretend the consequences of his/her offence to be the cause of the penalty reduction.

Criminal Law – Penalty reduction – Reporting him/herself to the judicial police immediately after committing an offence may apply as a mitigating circumstance – Mitigating circumstances applied by the previous Court are not to be reconsidered.

Facts: The appellant reported himself to the judicial police, confessing the killing of his wife. The Doctor who was requested to perform an autopsy, delivered a report that she got a hit on the head and especially on belly, as the cause of her death because she was pregnant of seven months. The High Court, Rusizi chamber, ruled on the case on the first instance, convicted and sentenced the appellant to 20 years of imprisonment. The Court reduced his penalty because he pleaded guilty and reported himself to the judicial police immediately after the offence.

He appealed to the Supreme Court, alleging that the High Court confirmed that he deliberately killed his wife while it was by accident and it sentenced him to the heavy penalty despite his guilty plea and that he facilitated the justice. The prosecution contends that his allegation that he killed his wife by accident is groundless, because to kick a pregnant woman is enough to kill her. He added that another proof that he intended to kill her is that before hitting her, he closed the door to prevent any rescue for her, and those who came for help tried to demolish the door but in vain. “He used violence against the victim every day, which is even the cause of his separation from his first wife”, the prosecutor added.

Held: 1. The evidences gathered in the case file, such as the fact that he kicked on belly the pregnant of seven months and refused to take her to hospital, the fact that he firstly beat the kid and the latter ran away, and the fact that he closed the door before killing the victim to prevent any rescue, prove that the accused intentionally killed his wife.

2. Though the appellant reported himself to the judicial police and partially explained his role in the death of the diseased, even if he lies on some details, it facilitated the justice, but this was considered by the previous court as he was sentenced to 20 years of imprisonment rather than life imprisonment.

3. With regards to the accused request of the penalty reduction for him to take care of the orphans left by his wife, the Court finds that he is the one who made them orphans, and he cannot rely upon the horrific consequences of the offence he committed to benefit the penalty reduction.

**Appeal without merit.
The appealed judgment is upheld.
The Court fees are charged to the public treasury.**

Statute and statutory instruments referred to:

Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code, article 140 and 142.

Decree - Law n° 21/77 of 18/08/1977 instituting the penal code, article 311.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The High Court, Rusizi chamber, ruled on the case on first instance and on 10 March 2010 convicted and sentenced Mpitabakana to 20 years of imprisonment. The Court reduced his penalty because he pleaded guilty and reported himself to the judicial police immediately after committing the offence.

[2] On 1 September 2008, at 6 AM, Mpitabakana reported himself to the judicial police, confessing the killing of his wife, Yaduhaye Asinati. The Doctor who was requested to perform an autopsy, delivered a report that she got a hit on the head and especially on belly, as a cause of her death because she was pregnant of seven months.

[3] In the judicial police, Mpitabakana explained that he slapped and kicked his wife when they were on their way home, because he found her with another man. He added that she fell down against her tummy, he raised her up and she died later on when they arrived home. In the High Court, he explained that they fought in their house because his wife joined him in a cabaret, without having cooked, she insulted him and spat on his face. He slapped her, she fell down and he kicked her on the back but that she did not immediately die because when they went to bed, she was asking him to take her to hospital, but as he was drunk, he did not pay attention until she died.

[4] Mpitabakana appealed to the Supreme Court alleging that the High Court confirmed that he deliberately killed his wife while it was by accident and that the Court sentenced him to the heavy penalty despite his guilty plea and that he facilitated the justice.

[5] The hearing was held in public on 27 January 2014, Mpitabakana assisted by the Counsels, Mwizerwa Grace and Nsengimana Elie, the prosecution represented by Higaniro Hermogène, the National Prosecutor.

II. ANALYSIS OF THE LEGAL ISSUES

Whether Mpitabakana involuntarily killed his wife.

[6] Mpitabakana argues that he did not voluntarily kill his wife as confirmed by the High Court; it was by accident because he slightly kicked her on the back due to the fact that she did not cook, she fell down and when asked to bring her to hospital, he denied and went to sleep. He added that his wife also went to sleep and after a moment, when he touched her, she found her

dead and he immediately went to report himself to the police. He also added that because of anger, he slightly slapped a child who was there and the latter ran away.

[7] His counsel states that what proves that Mpitabakatana killed his wife by accident is that he only kicked her without using other material to hit her such as a machete or whatever.

[8] The prosecution contends that the statements made by Mpitabakana and his counsel, alleging that he accidentally killed his wife are groundless because kicking a pregnant woman is likely to kill her. The prosecution also states that another ground which proves that he intended to kill her is that before hitting her, he closed the door to prevent any rescue for her, and those who came for help tried to destroy the door but failed.

[9] The prosecution adds that Mpitabakana used violence to the victim every day that is even the reason why he separated from his first wife as attested by his brother Bariyanga Masomo.

[10] The Court finds that Mpitabakana intended to kill his wife because of the following reasons:

The fact that he firstly beat the kid and the latter ran away, is the proof that he was preventing the child to watch what he was ready to do because he does not explain the reason why he beat the kid.

The fact that he kicked on the belly of a seven months pregnant woman as proven by the doctor.

The fact that he recognises that he denied her request of taking her to hospital.

The fact that the statements made by interrogated witnesses such as Bariyanga Masomo (mark 3) and Nyiraruzindaro Domitile (mark 9) prove that he closed the door before killing the deceased and those who came for rescue failed to enter the house; while Mpitabakana was beating the jercan, yelling that he was attacked.

The fact that during his interrogation he contradicted himself: in the judicial police, he stated that he slapped his wife when they were on their way home, because he found her with another man. She fell down because of the slap, he raised her up and she died later on when they arrived home. In the High Court, he declared that he beat his wife because she did not cook, but that she did not immediately die because when they went to bed, she begged him to take her to hospital, but as he was drunk, he did not pay attention until she died while before this Court, he stated that his wife came to bed and when he touched her later, he found her dead. These contradictions prove that he tries to hide the truth.

[11] The Court finds that as explained above, there is no doubt that Mpitabakana intended to kill his wife Yaduhaye Asinati although he denies it.

Whether Mpitabakana deserves another penalty reduction.

[12] Mpitabakana requests the Court to reduce his penalty, for him to join and take care of two orphans left by his wife. His counsel also requests the Court to reduce his penalty based on article 35 of Law relating to the code of Criminal Procedure that was into force at the time the offence was committed and on article 82 and 83,2° of the penal code in force at the time the offence was committed, because he pleads guilty and seeks forgiveness.

[13] The prosecution contends that every prisoner is prevented from some obligations, if he had pity for his kids, he would have abstained from committing the crime. The prosecution also contends that Mpitabakana sufficiently benefited the penalty reduction.

[14] The murder that Mpitabakana was convicted of, is punishable with life imprisonment as provided for by article 311 of the penal code which was into force when the offence was committed. It is the same penalty provided for by article 140 and 142 of the Law n° 01/2012/OL of 2 May 2012 instituting the penal code.

[15] The Court finds that Mpitabakana reported himself to the judicial police and partially explained his role in the death of the deceased, even if he lies on some details, and it facilitated the justice. However, it was considered by the previous Court as he was sentenced to 20 years of imprisonment rather than life imprisonment.

[16] With regards to his requests of the penalty reduction, for him to join and take care of the orphans left by his wife, the Court finds that he is the one who made them orphans, and he cannot rely upon the horrific consequences of the offence he committed to benefit the penalty reduction.

[17] Based on the above explanations, the Court finds Mpitabakana's appeal without merit, thus, the appealed judgment is to be upheld.

III. DECISION OF THE COURT

[18] Finds Mpitabakana's appeal without merit.

[19] Rules that the appealed judgment n° RP 0087/08/HC/RSZ that sentenced him to twenty years of imprisonment is upheld.

[20] Orders that the Court fees are charged to the public treasury.

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