

THE PROSECUTION v. NARAMABUYE

[Rwanda SUPREME COURT – RPA 0071/10/CS (Mutashya, P.J, Hitiyaremye and Kanyange, J.) 10 January, 2014]

Criminal law – Punishable attempt – An attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender’s control – Decree Law n° 21/77 of 18/8/1977 instituting the penal code, art. 21.

Criminal Law – Penalty reduction – Penalty reduction while the one requesting it served and completed the term of his/her sentences.

Facts: The appellant was charged with an attempt to murder committed when he disputed his wife, strangled her and caused wounds on her neck. The High Court, Chamber of Rusizi sentenced him to 20 years of imprisonment and he lost his civil rights. The court motivated that he was given the penalty reduction, as nothing proves that he had intentions to kill and that he pleaded guilty without any reservations. He appealed to the Supreme Court, arguing that the classification of the offence to which he was convicted by the High Court did not match to the acts committed. He states that he should have been condemned to the assault and battery and granted the penalty reduction as he pleaded guilty and sought forgiveness.

Held: 1. An attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender’s control. However, with regards to the appellant, nothing is demonstrated proving what stopped him from achieving his plot, namely a person or any other force. Moreover, it was not proved that after the fightings, his wife took refuge to another place but the appellant states that they stayed together in the house. This proves that in case he was intending to kill her, he would have made it happen.

2. Thought the appellant pleaded guilty since the time he was arrested, arguing that he fought with his wife and strangled her cannot be considered as a beginning of an offence provided for by the Law. The fact that they fought and he strangled her, does not prove that it was all intended to kill her, especially that no any other thing that was used to prove that the fight was uncommon.

3. The offence committed by the appellant was assault and battery prescribed by art.318 of the penal code in force at the time when the crime was committed, which stipulated that “Any person who intentionally causes injuries to another, or beats or commits any serious acts of violence against another person shall be liable to a term of imprisonment of one month to one year and a fine of five hundred to two thousand or one of these penalties.

2. Penalty reduction is groundless while the one requesting it served and completed the term of his/her sentences.

**Appeal with merit in part.
Appellant convicted to the assault and battery.
Appellant sentenced to one year of imprisonment and the fine.
Court fees be charged to the public treasury.**

Statutes and statutory instruments referred to:

Organic Law n° 01/2012 of 02/05/2012 instituting the penal code, article 8 and 148.

Decree Law n° 21/77 of 18/8/1977 instituting the penal code, art 21 and 318.

No case law is referred to.

Judgment

BRIEF BACKGROUND OF THE CASE

[1] In the night of 4 Decembre 2008, Naramabuye quarrelled with his wife Ushizimpumu, he strangled her and caused wounds around her neck, the latter filed a claim with the police judiciary stating that he intended to kill her. When the investigations were over, the prosecution filed a case in the High Court chamber of Rusizi prosecuting him for attempt to murder. Naramabuye defended himself saying that he never intended to kill his wife, but they only fought and stopped it themselves, and that if he wanted to kill her he would have done so because they passed all night together.

[2] The Court passed the verdict, ruled that Naramabuye was guilty of the crime he was accused of and sentenced him to 20 years of imprisonment and lost all his civic rights. The Court took the decision based on the fact that Naramabuye strangled his wife until he caused wounds on her neck and the reason against her death was not his cause. The Court also finds nothing to prove his intention to kill her, being at home alone, he would have achieved it. He strangled her resulting from the fights between them caused by the disagreement caused by the concubine Naramabuye had. The Court also considered Naramabuye's guilty plea and based on that, to award him the penalty reduction.

[3] Naramabuye appealed to the Supreme Court claiming that the classification of the offence he was convicted by the High Court was not matching the acts committed, he states that he should be punished of the assault and battery and be given the penalty reduction as he pleads guilty and seeks forgiveness.

[4] The hearing was held in public on 09/12/2013, Naramabuye was present assisted by Counsel Sibo Gahizi, and the Prosecution was represented by Ntawangundi Béatrice.

ANALYSIS OF THE LEGAL ISSUES IN THE CASE.

Whether it was an error in classification of the offence convicted to Naramabuye and if he should be granted the penalty reduction.

[5] Naramabuye argues that the classification of the offence to which he is convicted does not match to its execution because the prosecution has not demonstrated the intent and the acts he made constituting the crime of attempt to murder. He added that they did not even demonstrate any circumstance beyond his control or any person who stopped or interrupted him . He further explained that before his arrest, he spent two days together after the fight, therefore he argues that the offence was considered as attempt to murder in order to make the offence more serious.

[6] He keeps stating that the offence he committed is assault and battery with no intention to kill and that is what he pleaded guilty of and sought forgiveness, pleading to court not to convict him on attempt to murder but allow him to benefit the penalty reduction pursuant to art. 35 of the Law on criminal procedure and art. 82 and 83 of the penal code that was in force at the time when the offence was committed.

[7] Counsel Sibó Gahizi also argues that Naramabuye fought with his wife and themselves stopped the fightings. On the following day, his wife went to file a case stating that Naramabuye had intention to kill her and the Court confirmed it without any observable and unequivocal acts committed constituting the intention to murder. He states also that nothing was demonstrated as circumstance beyond his control that served to suspend, fail or prevent the offence from happening so that the attempt to murder can be proven. He added that in case he would have intended to kill her wife nothing could have stopped him as because he is more stronger than her. He says that having wounds is not enough to prove that he was intending to kill her.

[8] The Prosecutor also argues that by analysing the contents of article 21 of the penal code that was in force at the time, there was no attempt to murder even if Naramabuye fought with her wife, they stopped it themselves ,and that the offence committed was provided for by art. 318 of the above mentioned code because Ushizimpumu does not prove what stopped his husband to kill her, if he had the intention he would have accomplished it.

[9] He continues to argue that to charge him the attempt to murder was based on the testimonies from the witnesses who stated that they saw Ushizimpumu with wounds around the neck. Moreover, the fact that Naramabuye pleaded guilty, justifies that he pleaded guilty for fighting with his wife and causing her wounds and that even the Court found that there was no intent to kill his wife, therefore, it should have not convicted him to attempt to murder on ground that he pleaded guilty. In Concluding, he requested the Court to reclassify the offence to which Naramabuye was convicted, and confirm that he is guilty of petty assault and battery as there was no medical report proving the rate of her injury, and sentence him to one year of imprisonment.

THE VIEW OF THE COURT

[10] The appealed judgment shows that in convicting Naramabuye to attempt to murder , the High Court was based on the fact that he strangled his wife until he cause the wounds around her neck and on the fact that he pleaded guilty in unequivocal way and the motivation given by the

Court where it explained that he had no intent to kill his wife, but regardless of that, it convicted him to the attempt to murder.

[11] Regarding the attempt, article 21 of the penal code that was in force at the time when the crime was committed stipulates that, “An attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender’s control”.

[12] Even if Naramabuye pleaded guilty since his arrest, admitting that he fought with his wife and strangled her, the Court finds it not enough to say that the act itself is considered as an offence demonstration as provided for by the above mentioned article. basing on the fact that they fought and he strangled her does not prove that it was intended to kill her, especially that no other thing was used to prove that the fight was strange . On this issue, the law scholars refer to decided cases where Court have confirmed that it should be considered as the beginning of the offence, when there is an act committed meant to enable the commission of the offence itself, and when there is an intent to commit an offence; that those courts confirm that the beginning occurs when the person is in action and the acts he/she committed can lead one to believe that he should achieve his intent. (*Dans de nombreuses affaires, la Cour de Cassation a affirmé que “constitue un commencement d’exécution tout acte qui tend directement au délit, lorsqu’il a été accompli avec l’intention de le commettre”. Ainsi, elle admet qu’il y a commencement d’exécution, dans l’hypothèse où l’auteur est déjà “en action du crime tenté et les faits d’ores et déjà accomplis permettent de penser que l’agent serait allé jusqu’au bout de son entreprise criminelle”*)¹.

[13] In addition, art.21 mentioned above stipulates that the attempt is punishable when the acts constituting the beginning of the offence meant to enable the commission were suspended or failed in their purpose only because of circumstances beyond the offender’s control. With regards to Naramabuye, nothing was demonstrated as the one used to stop him to achieve his plot, any person or other circumstances beyond his control that may have stopped him to achieve it, especially that nothing proved that after the fighting his wife took refuge to another place, but Naramabuye confirms that they stayed together in the house, which explains that in case he had intention to kill her, he would have accomplished it.

[14] As explained by the High Court, there is no act proving that Naramabuye intended to kill his wife, what is clear therefore is that he fought with his wife because of their habitual conflicts which resulted in the fight and she was injured as the latter state it, and as it is testified and confirmed by the witness named Mategeko who said that he saw her with wounds around the neck.

[15] The court finds that the offence committed by Naramabuye is assault and battery as prescribed by art. 318 of the penal code that was in force at the time when the crime was committed, where it stipulates that Any person who intentionally causes injuries to another, or beats or commits any serious acts of violence against another person shall be liable to a term of

¹ Bernard Bouloc, Haritini Matsopoulou, Droit pénal général et procédure pénale, 16e édition, 2006, p.77.

imprisonment of one (1) month to one (1) year and a fine of five hundred (500) to two thousand Rwandan francs (2000,000) or one of these penalties.

[16] Regarding the penalty reduction claimed by Naramabuye basing to his guilty plea, the Court finds that it is no longer necessary because he has served and completed his sentence.

THE DECISION OF THE COURT

[17] Finds that the appeal of Naramabuye Etienne has merit in part.

[18] Finds him guilty of the assault and battery.

[19] Sentences him to one year of imprisonment (1) and a fine of two thousand francs (2000Frw)

[20] The court decides that the appealed judgment is overturned with regards to the classification of the offence and the penalty that was inflicted to Naramabuye.

[21] The court decides that the court fees be paid by the public treasury.