

## PROSECUTION v. MUNYAZOGEYE

[Rwanda SUPREME COURT – RPA0036/10/CS (Nyirinkwaya, P.J., Hatangimbabazi and Hitiyaremye, J.) March 28, 2014]

*Criminal Law – Assassination – Testimony offered by a person who is in agony – It cannot be considered as important, precise and consistent in case they are not corroborated by other evidences – Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 108*

**Facts:** Munyazogeye Alias Kiyonga and Kanyabugoyi Adrien were suspected of assassinating Habarurema Theophile basing on the statements of the witnesses who reached the scene of crime when the deceased was still alive and told them that he was killed by Kiyonga and Adrien. The suspected pleaded not guilty of that offense before Judicial Police, Prosecution and in Courts.

The case commenced in the Court of First Instance of Ruhengeri but after the reform, it was transferred in the High Court, Musanze Chamber which ruled that Kanyabugoyi is acquitted while Munyazogeye is guilty and sentenced him to life imprisonment and fined him with one million and five hundred thousand (1.500.000 frw) basing on the witnesses, investigation that confirmed that there are no other persons bearing those names in that area and the fact that the accused and the deceased had been together in one commercial center and was killed when he was going home. Munyazogeye appealed to the Supreme Court stating that he was convicted of the offense he had not committed.

**Held:** 1. The statements of the witnesses that Habarurema told them, when he was about to die, that he was killed by Kiyonga and Adrien cannot be solely considered in confirming that the said Kiyonga is Munyazogeye while the investigation carried out does not prove the reason of killing him and where they may have met.

2. Concerning the way the investigation was carried out, the Court finds that, apart from arresting Munyazogeye and prosecuting him suspecting that he is the one called Kiyonga as mentioned by Habarurema when he was about to die, the Prosecution does not prove his destination when he left their home, what he did, people who saw him, people who had been with him or if there is money stolen by the killers.

3. The High Court convicted Munyazogeye of the offense without basing on important, precise and consistent evidences. Therefore, he must be acquitted.

**The appeal is granted.**

**The appealed judgment is quashed, the appellant is acquitted.  
The appellant must be released immediately after the issuance of the verdict.**

**With costs to the Public Treasury**

**Statutes and statutory instruments referred to:**

Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 108

**No Case referred to.**

## **Judgment**

### **I.BRIEF BACKGROUND OF THE CASE**

[1] In the morning of 26 September, 2003, at 6 am in a place called Gicankoni in the river dividing three areas namely Nyarutovu, Bukonya and Bugaragara; people who were passing saw a young man who was about to die. There was an identity card torn in two parts and a tie having knots but torn in two parts nearby him. When they read his identity card, they found that his name is Habarurema Theophile resident of Nyarutovu district, Bwishya sector.

[2] The walkers who found Habarurema Theophile before his death are Mukamuganga Liberata, Nyiarababirigi Consolata and Kabengera Jean Damascene. They stated that they asked him about the people who strangled him and responded that it is Diriyani and Kiyonga and many others. They added that he had probably passed a night in that marsh since he had goose bumps.

[3] Munyanzogeye Felicien *alias* Kiyonga and Kanyabugoyi Adrien are the persons who have been suspected for having been named by Habarurema Theophile when he was about to die since they were the ones famously known by the names of Kiyonga and Adrien, but all of them, during interrogations before Judicial Police and the Prosecution as well as in the Court, they pleaded not guilty of that offence stating that they are not the only people who have those names and that they even do not know the assassinated person. As for Adrien, he adds that he died when he was in Kigali at work.

[4] The case started in the Court of First Instance of Ruhengeri, but after the reform of Judicial Organs, it was transferred to the High Court, Musanze Chamber that delivered the judgment on the October 29, 2009 whereby it ruled that Kanyabugoyi Adrien was acquitted while Munyanzogeye Felicien was found guilty and sentenced to life imprisonment and ordered him to pay the damages equating 1, 500,000 Frw to Kampayana Daphrose, mother of Habarurema Theophile, a civil action.

[5] The first ground considered by the Court to convict Munyanzogeye Felicien of the offense is that when Habarurema Theophile was about to die he said that Kiyonga was among the people who killed him as testified by the witnesses who heard that; the investigations carried out in their locality which indicated that there is no one else residing in that locality known under that name apart from Munyanzogeye. Another ground the Court based on is that Munyanzogeye Felicien and Habarurema Theophile had passed the whole day in the trading center of Busengo and thereafter Habarurema Theophile was killed while going home at Bwishya; and he was killed at a distance of about thirty minutes on foot walk from that center. This distance cannot prevent someone from accomplishing the plan he may have.

[6] Munyanzogeye Felicien appealed to the Supreme Court invoking that he was convicted for the offense he hadn't committed. The case was publicly tried on 24 February, 2014, Munyanzogeye assisted by Counsel Muhisoni Stella Matutina, the Prosecution represented by

Mutayoba Alphonse, National Public Prosecutor while Mukampayana Daphrose who filed a civil action was represented by e Counsel Karega Blaise Pascal.

## **II. ANALYSIS OF THE LEGAL ISSUE**

### **Whether there is evidence beyond reasonable doubt incriminating Munyanzogeye Felicien of the offense of assassination**

[7] Munyanzogeye Felicien stated that the High Court convicted him of the offense alleging that him and Habarurema Theophile had been together at that small trading center while it was not true since there are two small centers: the one called Busengo and another Rwungo. He had been at Busengo while Habarurema Theophile had been at Rwungo.

[8] He explained that the High Court carried out the investigations where it should nothave been carried out since it was carried out at the residence of the victim, instead of starting from Rwungo the place at which the victim passed the day, especially that his family stated that he left home going to buy a cow but the person who would show him the cow had not been interrogated.

[9] He stated that he cannot confirm what the Court said that there is no other person called Kiyonga who resides in that locality since he heard that there is another person who bears that name who lives nearby the crime scene.

[10] Munyanzogeye Felicien states that he also criticises the High Court for the fact that it convicted him basing on the contradictory statements since some witnesses stated that when he was dying the deceased said that he died because of Kiyonga while others stated that he said that he died because of Adrien.

[11] He added that the High Court disregarded exculpatory evidence including the statements of Ntamukunzi Viateur alias Rutanga, Mukantwari Dansila, Mukeshimana and Mukaruhmya, the letter dated July 18, 2004 written by the Executive Secretary of Mwumba Cell indicating where he passed the day and the letter of the April 22, 2005 written by eleven (11) members of his family stating that they carried out investigations and found out that he had no link with that offence.

[12] His Counsel Muhisoni stated that the witness accepted by the law is the eyewitness while no one of those considered by the Prosecution saw the commission of the offense, but all of them state that it is what they were told by the deceased.

[13] He also stated that the statements of the witnesses considered by the High Court are doubtful on what they heard since some of them state that the deceased said that the killers cut him down while they checked on his body and found no wound.

[14] He continued stating that there are many doubtful things even in the file of the Prosecution, such as where witnesses assert that the deceased was killed by strangled with a tie while the doctor, in his medical report, confirmed that he does not find the cause of death.

[15] The representative of the Prosecution contends that the fact that the Court based on the testimonies of those witnesses who saw Habarurema when he was about to die and interrogated others during investigations carried out is consistent with provisions of article 119 of Law relating to the evidence and its production that provides that “in criminal cases, evidence is based on all grounds, factual or legal provided that parties have been given a chance to be present for cross-examination. The courts rule on the validity of the prosecution or defence evidence »

[16] He added that people who saw Habarurema while he was still alive testified what they heard and saw and that their testimonies are consistent with that of Safari Theogene and Tugirabategetsi Vestine who were interrogated in the High Court since they testified that there is no one called Kiyonga in that locality apart from Munyanzogeye.

[17] Concerning the place where the investigations were carried out, the Prosecution stated that it was carried out at the scene of crime in the intersection of three sectors namely Bwishya, Busengo and Bugaragara, nearby Busengo center where they had passed the evening.

[18] Concerning the defensive letters, the representative of the Prosecution stated that the relatives of Munyanzogeye did their utmost with the help of their neighbours so that their relative can be acquitted, but that their letters cannot be considered since, apart from the fact they cannot incriminate their relative, they have no competence of carrying out the investigations since they are not judicial police officers.

[19] Karega, counsel for the civil party, argues that in the appealed judgment, it is clear that the investigations were carried out and found that there is no one else called Kiyonga in that locality apart from Munyanzogeye. He added that the authorities of the sector explained that in their report of September 26, 2003 that there is no one else called Kiyonga living in that locality apart from Munyanzogeye. He concluded requesting that his client be awarded the damages equal to 1, 500,000 she was given in the first instance.

## **THE VIEW OF THE COURT**

[20] The High Court convicted Munyanzogeye Felicien because there are people who saw Habarurema Theophile before his death who asserted he told them he had been assassinated by Kiyonga, Adrien and many others; because there are some witnesses who asserted that there is no one else living in the locality where the deceased was killed called Kiyonga apart from Munyanzogeye and because Munyanzogeye and Habarurema Theophile had spent the day together in the small center of Busengo crime scene since it is located at distance of only 30 minutes walk on foot .

[21] However, the Court finds that the High Court does not explain the source of the information that Habarurema Theophile and Munyanzogeye had spent the day together in the center of Busengo since it is shown nowhere in the statements of all the witnesses interrogated and different documents that make the case file that they had spent the day together and no person testified that the deceased had arrived in that center of Busengo.

[22] Rather, the Court finds that the statement of Munyanzogeye that Habarurema Theophile did not arrive in Busengo center on the day he was killed where the former had passed the day is

confirmed by Ntamukunzi Viateur alias Rutanga who is the owner of the bar where he took drinks before since during his interrogations in the Judicial Police, he confirmed that, on that day there is no person from outside Busengo who came there and that Munyanzogege passed the whole day there repairing the radio, sharing drinks with soldiers and went back home at around 6:30 pm; this time was confirmed by his wife Mukaruhanya Leonille, in her testimony before the High Court while it was carrying out investigations.

[23] The Court also finds that the fact that the place where Habarurema Theophile was killed can be reached by a pedestrian within only 30 minutes from Busengo center does not mean that Munyanzogege went there while no person confirmed saw him going there.

[24] The Court once again finds that the statement of the witnesses testifying that when Habarurema was about to die, he said that he was killed by Kiyonga and Adrien cannot be only relied on to confirm that Kiyonga who was mentioned is Munyanzogege while the investigations carried out do not prove the reason why he would have killed him and where they met.

[25] Concerning the way the interrogations were carried out, the Court finds that the Prosecution, apart from arresting Mnyanzogege and charging him suspecting that he is Kiyonga who was named by Habarurema when he was about to die, does not indicate the direction of Habarurema from home, what he did, the persons who saw him or those with whom he had spent the day, or if there is money stolen by those who killed him.

[26] Basing on the abovementioned explanations, the Court finds that the High Court convicted Munyanzogege of the offense without basing on important, precise and consistent evidences (*des présomptions humaines graves, précises et concordant*) as provided in article 108 of Law no15/2004 of 12/06/2004 relating to evidence and its production. Therefore, he must be acquitted of the offence.

### **III. DECISION OF THE COURT**

[27] Rules that the appeal of Munyanzogege Félicien has merit.

[28] Rules that the appealed judgment is quashed, Munyanzogege Félicien is acquitted for the offence he was charged with.

[29] Orders that Munyanzogege Felicien be immediately released after delivery of the verdict.

[30] Rules that the court fees are to the public purse.