

PROSECUTION v. GASORE

[Rwanda SUPREME COURT – RS/REV/PEN 0004/10/CS (Nyirinkwaya, P.J., Munyangeri and Rugabirwa, J.) February 7, 2014]

Criminal Procedure Law – Application for Review – Evidence produced by the accused during the hearing and the Court takes no decision thereon cannot be considered as new evidence entailing case review, it is instead related to the merits of the case – Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure, article 180.

Facts: The High Court, Musanze Chamber convicted Gasore Kagiraneza Emmanuel and Nzabandeba Theophile of rape committed against Nyirabikari Agnes after what they murdered her and sentenced them to life imprisonment each. Dissatisfied by the decision of the Court, they appealed to the Supreme Court which confirmed the ruling of the previous Court. Moreover, the appellants seized the Supreme Court applying for case review. The case screening Judge took a decision stating that they are not entitled to apply for review since the grounds on which they were basing their application were not consistent with those provided for by the law. Gasore Kagiraneza Emmanuel appealed against that order and presented witnesses whom the Court did not summon for interrogation.

The Prosecution responded that the case screening order must be upheld since there is no ground that Gasore Kagiraneza Emmanuel provides as to why the judgment against him would be subjected to review.

Held: Evidence produced by the accused in the course of the hearing and the Court does not take a decision thereon cannot be considered as new evidence which can entail case review. Rather, they concern the case hearing on merits. For those grounds, the Court refuses to quash the order rejecting the application for review.

Appeal against the case screening order is allowed.

Appeal is without merit.

Court fees to public treasury.

Statutes and statutory instruments referred to:

Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure, art. 180.

No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The High Court of the Republic, Musanze Chamber convicted Gasore Emmanuel and Nzabandeba Théophile of the crime of rape and murder committed against Nyirabikari Angès and sentenced them to life imprisonment each.

[2] Gasore and Nzabandeba appealed to the Supreme Court which, in the ruling RPA 0098/07/CS on November 11, 2008, upheld the appealed case.

[3] Gasore and Nzabandeba applied for review and the screening judge, in the order n° RP 0145/09/Pré-ex/CS of May 22, 2009, ruled that they are not allowed to apply for judicial review since the grounds they advance are not in conformity with those provided for by article 180 of Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure applicable at the time.

[4] Gasore was notified of that ruling and appealed against it alleging that the new evidence he bases on to apply for the review of Judgment RPA 0098/07/CS are five exculpatory witnesses he provided to the Court; but the Supreme Court declined to summon and hear them.

[5] The case was heard in public on January 6, 2014 Gasore Kagiraneza Emmanuel assisted by Counsel Rutagengwa Mukiga while the Prosecution was represented by Alphonse Mutayoba.

II. ANALYSIS OF THE LEGAL ISSUE

Whether there is new evidence that Gasore provided which can entail the review of the final judgment against him.

[6] Gasore Kagiraneza Emmanuel and his defence counsel states that the case screening judge ruled that he could not apply for review of the case decided by the Supreme Court as he advanced no ground matching those stipulated by article 180 of Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure which was into force at the time when he filed the appeal disregarding that he requested the Supreme Court to summon Ntamubana, Bujimiri, Hirimiza, Derena and Rusigariye as exculpatory witnesses since they were to clarify that he took no part in the commission of the offence he was charged with because they spent the day together working; but the Court convicted him without summoning them and they request their summon to hear their statements.

[7] The representative of the Prosecution disputes that the above mentioned case screening order should not be quashed because Gasore Kagiraneza Emmanuel produced no new evidence to be relied on to review the judgment against him.

[8] With regard to grounds for admission of the application for review, article 180 of Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure which was into force when the appeal was launched, provides that review of the judgment finally decided is received when :

“After a person convicted of homicide, there is later discovered enough evidence indicating that the person alleged to have been killed is actually not;

After a person convicted of an offence there is discovered another similar judgment which punished a different person for the same offence and the contradiction in the two cases show that one of the convicted persons was innocent;

One of the witnesses to a case is subsequently found to have given false testimony against the accused person and the former has already been convicted for the offence. The person convicted of perjury cannot be called as a witness in the new case;

After judgment, there is discovered new evidence, indicating that the convicted person was innocent.

[9] With regard to grounds that Gasore bases his application for review related to the fact that the Supreme Court disregarded to summon witnesses who would have exculpated him, namely Ntamubana, Bujimiri, Hirimiza, Derena and Rusigariye, the Court finds that it is not a new evidence which may entail the review of judgment RPA 0098/07/CS since it does not match with those provided by article 180 of Law n° 13/2004 above mentioned as it has been ruled by the case screening judge. It is very clear rather that the ground concerns the hearing of the case on merits; therefore, the screening of judgment n° RP 0145/09/Pré-ex/CS of the judgment n° RS/REV/PEN 0079/08/CS delivered on May 22, 2009 is maintained.

III. THE DECISION OF THE COURT

[10] Receive the appeal filed by Gasore Kagiraneza Emmanuel regarding the screening of the case n° RP 0145/09/Pré-ex/CS delivered on May 22, 2009 since it has been filed in conformity with the law;

[11] Rules that the appeal has no merit;

[12] Orders the court fees to be charged to Public treasury.