

## PROSECUTION v. BAJYAGAHE

[Rwanda SUPREME COURT – RPAA 0205/ 10/ CS – (Kayitesi R., P.J., Mukandamage and Rugabirwa, J.) February 11, 2014]

*Criminal Law – Child defilement – Contradictory testimonies – Doubt in criminal proceedings – Absence of proof that the child was recently sexually abused creates doubt about the commission of the crime and this doubt favours the accused – Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, art 165.*

**Facts:** The Intermediate Court of Gasabo convicted the appellant of child defilement committed against A, child of 12 years old and sentenced him to life imprisonment stating that the defence he presented that there are other means that a person can resort to appear as if she was sexually abused while it is not the case and that the fact that the medical report does not prove that he is the one who committed the offence were groundless since he produced no evidence thereof. Furthermore, the Court based its ruling on the testimonies of the person named Yves and those of the child and her mother. He appealed to the High Court which upheld the decision of the previous Court. Unsatisfied with the decision, he appealed to the Supreme Court arguing that the previous Courts based on the testimonies made by the child who inculpates him and those of Yves while they were false because it is the child's mother who influenced them badly by telling them what to testify since there were conflicts between him and the latter. He adds that even the medical report was not timely produced and witnesses who would exculpate him were not interrogated. In all Courts he pleaded not guilty. He requested the Supreme Court to conduct further investigation on the alleged offence.

The Prosecution contended that the fact that Mugorewera Julienne reported the crime to the Judicial Police does not constitute any error since it is this organ which is in charge of crime investigation and that a serious crime as this should not really be handled by administrative authorities.

**Held:** Doubt favours the accused. The Court cannot base on the statements made by the child and her mother to confirm that the appellant committed child defilement against the said child because the person who informed the child's mother that her daughter was sexually abused was neither interrogated before the Judicial Police nor before the Prosecution and when the Court summoned him, he refused to appear. In addition, the medical report proved that, even though the child's hymen was perforated, nothing indicated that she was recently sexually abused. Thus, the Court acquits the appellant due to the doubt about the commission the crime

**Appeal granted.  
The appellant is acquitted.  
The appealed judgment is quashed  
Court fees charged to public treasury**

**Statutes and statutory instruments referred to:**

Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, art 165.

No case was referred to.

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

[1] Intermediate Court of Gasabo found Bajyagahe Léonidas guilty of having committed child defilement against a child named N. C. of 12 years old. He was then sentenced to life imprisonment. He appealed to the High Court which upheld the appealed judgment on the ground that it found without merit his statements that there are other means which a person may use to appear as having undergone child defilement while it is not the case and that the medical report does not really indicate whether it is him who committed the offence because he failed to produce evidence thereof.

[2] Furthermore, the Court held that Bajyagahe does not provide evidence underpinning his statements that the child and her mother falsely incriminate him especially that those statements and the medical report were not only the basis for his conviction but also testimonies given by Yves who caught him red handed which he does not challenge.

[3] Bajyagahe appealed again to the Supreme Court disputing that the Court in his conviction based on the statements made by the child who inculpates him and the testimonies given by Yves who falsely incriminates him that he saw him committing child defilement against her while it is not true. He avers that, rather, it is her mother Mugorewera Julienne who requested them to falsely incriminate him because of the conflict between them. In addition, he challenged the medical report which was based on while it had not been elaborated immediately after the incident. Moreover, he disputes that exculpatory witnesses were not interrogated which necessarily requires further investigations.

[4] The hearing of the case took place in public on October 14, 2013 and on January 6, 2014 Bajyagahe assisted by Counsel Nkurunziza Staton while the Prosecution was represented by Mutayoba, National Prosecutor Alphonse.

### II. ANALYSIS OF LEGAL ISSUES

#### **Whether there is evidence beyond reasonable doubt based on by the Court to convict Bajyagahe Léonidas.**

[5] Bajyagahe and his defence Counsel contested that the Court convicted him basing on the eye witnesses' statements while they never attest they saw him committing child defilement against the child, N. C. He adds that he had never met the one called Yves the day on which it is alleged the offence was committed and that child is not conscious of her statement since she has mental defects. He states again that all their statements are made by what her mother requested them to say because of the disputes between them from his refusal to steal for her sake what he was in charge of keeping. This also occurred on people he took over from when she led them into stealing and they were caught and dismissed. In addition, they contend that it is not clear

why the mother refused to report the incident to the administrative authorities after having knowledge of it from neighbors and opts for referring it to the Judicial Police.

[6] They dispute, furthermore, that the Court did not conduct any investigation to interrogate exculpatory witnesses including Cell authorities to whom he referred the issue of people who defamed him alleging he had committed child defilement against the child; the witnesses include Gasongo and Nsengiyumva. Those authorities could have testified that he could not commit the offence and report himself to the administration authorities. Again, he states that the Court did not interrogate Evelyne and Rose who were in the iclosure who would have testified that they did not see him committing child defilement.

[7] With regard to the medical report, Bajyagahe and his defence counsel dispute that the Court would not have based on it because it had not been submitted on time since it would have been elaborated immediately after the commission of the offence without waiting for the next day. He adds that the report does not prove that it is him who had committed child defilement.

[8] With regard to the issue of knowing whether there was conflict between Bajyagahe and Yves who testifies that he saw him committing child defilement, he replied that there was no conflict since they used to have no relationship but rather was used by the child's mother because of the conflict between them. Counsel Nkurunziza adds that the fact that Bajyagahe was heading to Mugorewera's house to claim payment of 30,000 Frw she owed him can also be the cause to have him jailed so that he cannot come back to recover the debt.

[9] The representative of the Prosecution contended that the fact that Mugorewera Julienne, the mother of the child, complained to the Judicial Police constitutes no mistake since it is the Judicial Police which is in charge of investigation on the crime and that, he added, such a serious offence should not be handled by administrative authorities.

[10] He precised that Bajyagahe had occasion of presenting his defence and he stated, before the Judicial Police, that there was no conflict between him and the child's mother and that she used to mandate him to buy articles for resale. The Prosecutor asserts that no any other investigation is needed since Bajyagahe was at the child's parent house in evening of the commission of the offence.

[11] Regarding evidence, the Prosecutor states that the child, in her interrogation, stated that Bajyagahe had sexually abused her 6 times, that when the physician checked her he noted that the child had no longer hymen and that Yves testified what he saw and some others who were interrogated stated that it was the hearsays. Hence, the evidence relied on by the Court are sufficient.

[12] With regard to exculpatory witnesses, the Prosecutor states that in both Courts Bajyagahe has never requested interrogation of exculpatory witnesses who was disregarded. Hence, his request is to attempt to see if he can be acquitted by any chance.

[13] Concerning the medical report, the Prosecutor contends that nothing could hinder the Court from basing on it since it was promptly elaborated given that the crime was committed on July 7, 2007 and the child was taken to the hospital immediately where the report was issued on July 18, 2007.

## **The view of the Court**

[14] Article 165 of Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure provides that “the benefit of doubt shall be given in favor of the accused. If the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judges shall order his/her acquittal.

[15] In his interrogation before the Judicial Police, Mugorewera Julienne testified that her child, N. who was 12 years old was sexually abused by Bajyagahe who met her at home on 17/07/2007 around 6 h 30 pm. She added that she had that information from a young girl called Rose who also heard it from Yves, the neighbor who caught him red handed. She also stated that her daughter told her that Bajyagahe used to take advantage of their domestic absence to come and they passed the day together having sex. Yves on his side, he told her that he saw the offence being committed when he visited the home and saw N.C. together with Bajyagahe near the sitting room window having sex but did not make any noise because the child begged him to keep silence.

[16] N.C was also interrogated and she testified that Bajyagahe gave her sweets then sexually abused her near the garbage ditch. She attested that he sexually abused her six times. This used to take place in the WC (Water Closet) located within the compound, in the bath room, in the backyard and near the garbage ditch when the domestic was inside the house and she could not scream for help as they used to play the radio too loud to hear the screaming.

[17] The Court finds that there is a witness of paramount importance called Yves who is reported to have seen the offence being committed but was neither interrogated before the Judicial Police nor before the Prosecution and who refused to appear when the Court summoned him. It cannot, therefore, base on the statements of the child and her mother to convict Bajyagahe of child defilement against N.C since they are contradictory with regard to the commission of the offence and the circumstances under which it was committed. In addition, there are unclear points in the testimonies given by the child.

[18] More so, the medical report dated July 18, 2007 elaborated by the physician who tested Ndacyayishima indicates that her hymen was destroyed , but nothing indicates that the child was recently defiled ( l'examen génital montre des signes de déflorations anciens (cote 41), hymen déjà défloré, mais aucune trace de lésions fraîches de violence sexuelle).

[19] Pursuant to the aforementioned article of law and what has been already stated, the Court finds that there is doubt about the offence Bajyagahe is accused of, and therefore should be declared innocent and hence the judgment RPA 0548/08/HC/Kig delivered by the High Court on June 04, 2010 that he appealed against is quashed.

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

[20] Hold that Bajyagahe Léonidas's appeal is valid.

[21] Holds that he is not guilty of the offence of child defilement against a child under 14 years old he is prosecuted for.

[22] Rules that the judgment RPA 0548/08/HC/Kig rendered by the High Court on June 4, 2010 is quashed.

[23] Rules that the court fees should be deducted from the public treasury.