

THE PROSECUTION v. NTAKIYIMANA

[Rwanda SUPREME COURT– RPA 0182/09/CS (Mugenzi PJ., Hatangimbabazi, and Munyangeri J.) September 11, 2013]

Criminal Law – Parricide – Guilty plea – Penalty reduction – The reduction of the penalty is in the Court’s discretion – Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure, Art. 35.

Facts: The appellant was convicted of parricide by the High Court, Chambe of Rusizi and sentenced him to 20 years of imprisonment. He appealed to the Supreme Court denying the allegations against him but during the trial, he declared that he does not base on his submissions any more but rather seeks forgiveness and prays for penalty reduction.

The Prosecution admitted that the explanations provided by Ntakiyimana really prove his guilty plea and hence pleads to Court to may consider it though not mandatory.

Held: In the Court’s discretion, though the accused may unequivocally pleads guilty and the judge may deny him or her penalty reduction in line with the wickedness under which the offence was committed, an inconvenience he caused to administration of Justice before his guilty pleading, and consequently the Court rejects his application for penalty reduction.

**Appeal dismissed.
The appealed judgment remains into force.
The court fees are to be paid by the State.**

Statutes and statutory instruments referred to

Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure, article 35

No case law is referred to.

The judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The High Court, Chamber of Rusizi has convicted Ntakiyimana Jean of parricide and sentenced him to 20 years of imprisonment in a case where he was prosecuted by the prosecution for having gone to the forest with his father Zibonukuri on April 4, 2001 to seek timba and he killed him there, and the corps was found there after.

[2] Ntakiyimana appealed to the Supreme Court and the case was heard on September 25, 2013. Ntakiyimana was assisted by Me Bugingo Kadari Suzane while the Prosecution was represented by Higaniro Hermogène.

[3] Ntakiyimana states that he no longer bases his pleadings on the appeal submissions where he was rejecting the allegations, but rather comes to plead guilty and seeks forgiveness for him to benefit the penalty reduction.

II. ANALYSIS OF LEGAL ISSUES

Whether the guilty plea entered by Ntakiyimana can entail the reduction of the penalty.

[4] Ntakiyimana pleads to court explaining that after he denied killing his father in the High Court now he pleads guilty and seeks forgiveness. He added that the ideal of pleading guilty and seeking forgiveness come as a result of the sensitization done to the prisoners and the lessons got from it which made him commit himself to seeking forgiveness to his family and the community of Rwanda, thus requesting the Court to reduce penalties for him.

[5] With regard to the circumstances surrounding the commission of the offence, he states that he was peacefully living with his father where he came to request him a support about building a house and when they were building, his wife insulted her mother-in-law which made his father to fine him with imposition of the banana juice and in consequence he dispossessed him a plot of land he had given to him and told him that he would repossess it after he pays the imposed fine of banana juice.

[6] He explains that when he was going to the forest with his father to cut timber, they talked about that issue again and he asked his father when he would give him back his piece of land. He states that his father replied that he would recover it after he gives him the banana juice imposed and the answer made him angry and led them into a fight but upon his father's provocation, who wanted to hit him with a blow of a machete unfortunately he was stronger than him then he turned and killed him.

[7] On the issue about whether he did not come from home with the premeditation of killing his father and hence be the cause he denied the child who wanted to go with them in the forest, he replied that he actually came home with it because of the plot of land that his father had dispossessed him.

[8] Kadali, his Counsel argues that Ntakiyimana having explained clearly about what happened to him without any reservation and having served 12 years in prison he says, he has repented enough for the offence he committed and that this would constitute the ground for the Court to have mercy on him and order his release.

[9] The Prosecution disputes that Ntakiyimana's explanations prove that he pleads guilty for the alleged offence and prayed to Court to grant the forgiveness he is seeking though it is not compulsory.

[10] Article 35 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure provides that when the accused candidly pleads guilty to the offence, the provisions of article 34

of that Law shall apply to the prosecution and the judge seized of the case may reduce the penalties down to the half (½) of applicable penalties and in case the accused would be sentenced to life imprisonment, the penalty may be reduced to twenty (20) years of imprisonment.

[11] This provision of the law should be interpreted as not binding the Court to reduce penalties, but what it may mean to the accused who pleads guilty and seeks forgiveness it allows the discretion of a judge to assess different grounds under which he/she may or not reduce penalties.

[12] Regarding Ntakiyimana, apart from having benefited the upper most penalty reduction in the High Court, and the cause of the reduction being that he was the first offender, it is very alarming that it was very difficult for him to plead guilty of the offence he committed since in the previous proceeding he disputed that he killed his father after a long fight with and his father being the one who provoked him like it is highlighted above in the 6th paragraph of this judgment.

[13] All of these come in addition to the wickedness by which Ntakiyimana has committed the offence of killing his real father following a plan he had organised of cutting him in pieces with blows of machete, when they got to the forest. This therefore, makes Ntakiyimana unworthy of penalty reduction even though he pleads guilty now.

III. THE DECISION OF THE COURT

[14] Court rules that the appeal of Ntakiyimana Jean lacks merits.

[15] Court Decides that the judgment that Ntakiyimana Jean appealed against is not changed.

[16] Court orders the court fees to be paid by the state since the the appellant is in jail.