

PROSECUTION v. MUJAWAMARIYA ET AL

[Rwanda SUPREME COURT – RPA0198/CS (Kayitesi Z., P.J., Rugabirwa and Mukanyundo, J.) September 12, 2014]

Criminal law – Poisoning – Unlawful evidence – Evidence obtained by torturing the accused is unlawful – Law N°15/2004 of 12/06/2004 regulating evidence and its production, article 6.

Facts: Mujawamariya and Nyirahabimana have been accused of poisoning Bariyanga and Nyiransabimana who both died. Both were accused with Nyiransabimana who was said that she provided the poison to them. Basing on their guilt plea before the Judicial Police and Prosecution, the High Court, Chamber of Musanze ruled that Mujawamariya and Nyirahabimana are convicted of the offence and sentenced them to life imprisonment and the loss of all civil rights while Nyiransabimana was declared innocent.

Mujawamariya and Nyirahabimana appealed to the Supreme Court stating that they deserve to be declared innocent since there is no concrete evidence proving that they committed the alleged offense.

Held: The High Court should not have convicted the appellants of the offence of poisoning basing on the admission that took place before the investigating bodies while their admission was obtained in violation of article 6 of Law N°15/2004 of 12/06/2004 regulating evidence and its production, which prohibits torturing the accused so that she may say what she had refused to say willingly. Therefore, the accused are innocent.

**Appeal has merit.
Appellants are acquitted.
The appealed judgment is reversed.
With costs to the public treasury.**

Statutes and statutory instruments referred to:

Law N°3/2013 of 24 May, 2013 relating to the Code of Criminal Procedure, article 165.

Law N°15/2004 of 12/06/2004 regulating evidence and its production, article 6.

Decree Law N°21/1977 of 18/8/1997 instituting the Penal Code, article 315.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced in the High Court, Musanze Chamber where the Prosecution charged Mujawamariya Venantie with poisoning Nyiransabimana Gertrude who later died. The Prosecution also charged Nyiransabimana Bernadette with poisoning Bariyanga Berchmas who

also died and that both conspired with Nyiransabimana Purukeriya to commit this offence of poisoning since she is the one who gave them the used poison.

[2] That Court ruled that Mujawamariya Venantie and Nyirahabimana Bernadette are convicted of poisoning and sentenced them to life imprisonment with the loss of civil rights while Nyiransabimana Purukeriya was acquitted.

[3] The Court explained that Mujawamariya Venantie and Nyirahabimana Bernadette are convicted of poisoning since they admitted it before the Judicial Police and Prosecution and it also ruled that the fact that they denied the offence in the High Court stating that they admitted because they were beaten and forcefully administered traditional medicine is groundless since they shouldn't be tortured in case they had admitted the offence. The Court added that the argument they were administered traditional medicine to admit the offence cannot be considered as they allege they shared it with Nyiransabimana Purukeriya, but the latter pleaded not guilty in all organs where she was interrogated.

[4] Mujawamariya Vénantie and Nyirahabimana Bernadette appealed to the Supreme Court stating that they should be acquitted since there is no evidence proving that they committed the alleged offence.

[5] The case was publicly tried on 14 July 2014 where Mujawamariya Vénantie and Nyiransabimana Bernadette were present and assisted by Counsel Biraro Fischer while the Prosecution was represented by Higaniro Hermogène.

II. ANALYSIS OF THE LEGAL ISSUE

Whether there is incriminating evidence that Mujawamariya Venantie and Nyiransabimana Bernadette committed the offence they are charged with.

[6] Mujawamariya Vénantie and Nyirahabimana Bernadette state that they should be acquitted since there is no evidence proving that they poisoned Nyiransabimana Gertrude and Bariyanga Berchmas because the allegedly used poison was not seized and that there is no medical certificate proving that the deceased died because of poison while they died at the hospital.

[7] They further explained that the High Court convicted them basing on the argument that they admitted the offence before investigation bodies disregarding that this evidence should not be valid since they did not admit the offence before the court and that they admitted because they were beaten at the Police Station of Nyakiriba and the traditional medicine they were administered by Rukara when carried through ordeal by the citizens which made them lose their consciousness and admitted the offence they have not committed.

[8] Their Council also stated that the report of October 13, 2007 as found in the dossier (C.23) proves that the accused are innocent since the Executive Secretary of Kavomo Cell wrote a letter to the Executive Secretary of Nyundo Sector indicting that she convened a meeting, but did not find the evidence that the deceased were poisoned by Mujawamariya Vénantie, Nyirahabimana Bernadette and Nyiransabimana Purukeriya.

[9] The representative of the Prosecution states that Mujawamariya and Nyirahabimana should be acquitted since their sole admission does not constitute enough incriminating evidence of the alleged offence.

THE VIEW OF THE COURT

[10] Article 165 of Law N°3/2013 of 24 May, 2013 relating to the Code of Criminal Procedure provides that “The benefit of doubt shall be given in favour 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”.

[11] Article 315 of the Penal Code that was in force when the offence was committed provides that “Poisoning is an attempt to kill a person by administering to him substance which can cause death more or less promptly regardless of the substance used or its mode of administration and consequences”.

[12] Another article 6 of the law N°15/2004 of 12/06/2004 regulating evidence and its production provides that “*It is prohibited to resort to torture or brain washing to extort the admission from the parties or the testimonies of the witnesses*”.

[13] In his book called “Droit Penal Zaïrois”, General Likulia Bolongo criminal law scholar explains that, since poisoning is to kill someone with poison, the offender ought to have had the intent (Volonté) to kill or to have been fully conscious (avoir conscience) that the substance administered to him/her can cause death more or less promptly and that the word “administer” means to give the poison to someone through inhalation, eating it in food or drinking it in water or through injection¹. As for them, Jean PRADEL and Michel DANTI-JUAN, in their book called “Droit Pénal Spécial”, they explain that there is no offence of poisoning in case there has been no act of administering the poison².

[14] Concerning this case, in his report of October 13, 2007 available in the dossier (C23), the Executive Secretary of Kavomo Cell wrote a letter to the Executive Secretary of Nyundo Sector notifying him that in the meeting held on October 13, 2007, the citizens told him themselves that they have no evidence proving that Mujawamariya Venantie, Nyiransabimana Bernadette and Nyiransabimana Purukeriya poisoned Nyiransabimana Gertrude and Bariyanga Berchmas; but that there is a group of people that took them to a traditional healer who carried them through ordeal despite that the administration opposition to that and added that he hear that those three women were administered traditional medicine that rendered them fool and may even kill them.

¹ *L’empoisonnement étant un meurtre par poison, il en résulte que l’agent doit avoir agi avec l’intention de donner la mort ou tout ou moins avec la conscience que la substance administrée peut la provoquer plus ou moins promptement. Par “emploi ou administration”, il faut entendre notamment le fait de faire absorber, faire manger, injecter, faire consommer, ou faire boire des substances mortelles”, par Général Likulia Bolongo, Droit Pénal Spécial Zaïrois, LGDJ, TI, 1985, p.80.*

² “Sans administration, point d’empoisonnement”, par Jean PRADEL na Michel DANTI-JUAN, Droit Pénal Spécial, Editions Cujas, 4e édition, Paris, 2007-2008, p.47.

[15] Basing on these explanations, the Court finds that the High Court should not have convicted Mujawamariya Venantie and Nyirahabimana Bernadette of poisoning basing on the evidence of admitting to the offence before investigation organs while their admission was illegally extorted contrary to article 6 of Law N°15/2004 of 12/06/2004 regulating evidence and its production mentioned above which prohibits torture against the parties to extort from them statements they would not willingly give.

[16] Therefore, the Court finds that Mujawamariya Venantie and Nyirahabimana Bernadette must be acquitted as stated by the Prosecution basing on article 165 of Law N°3/2013 of 24 May 2013 relating to the Code of Criminal Procedure and on the abovementioned explanations of the legal scholars since there is no incriminating evidence proving that they poisoned Nyirahabimana Gertrude and Bariyanga Berchmas because there is no medical evidence proving that the deceased were dead due to poison while died at the hospital and no poison was seized.

III. THE DECISION OF THE COURT

[17] The Court decides that the appeal of Mujawariya Vénatie and Nyirahabimana Bernadette has merit;

[18] The Court decides that Mujawamariya Venantie and Nyirahabimana Bernadette are innocent;

[19] The Court rules that the decision RP0156/07/HC/MUS rendered by the High Court, Musanze Chamber on 27/05/2010 is reversed.

[20] The Court orders that the costs are allocated to the public treasury.