

THE PROSECUTION v. MUKARUSAGARA

[Rwanda SUPREME COURT – RPA0241/09/CS (Rugege, P.J, Rugabirwa and Mukanyundo) 19 September 2014]

Criminal Law – Battery or body injuries resulting in death– It is not considered as such when the intent was to kill – Decree – Law n° 21/77 of 18/08/1977 instituting the penal code, article 311.

Criminal Law – Penalty reduction – It may apply when the accused is the first offender – Decree Law n° 21/77 of 18/08/1977 instituting the penal code, article 82 and 83.

Obligation Law – Civil liability – Any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it.–Civil code, article 258.

Facts: The accused was prosecuted for having murdered her husband Kalinda Nicolas. The children of the deceased represented by their elder sister Nyirandungutse Françoise filed the civil case requesting the court to order damages from the accused. The accused was found guilty of murder and sentenced to life imprisonment. The court also ordered her to pay damages to the children of the deceased.

The accused appealed against the decision in the Supreme Court stating that she did not commit the offence claiming that the High Court sentenced her to life imprisonment disregarding the statements she made and the ones made by witnesses who knew that she did not kill her husband and helped her to carry his body. However, when the hearing begun, she pleaded guilty and sought forgiveness and prayed to court to reduce her penalty, but kept on stating that she killed her husband by accident.

The prosecution stated that the court was not wrong when it decided that the accused was guilty of murder committed to her husband Kalinda Nicolas based on the conflict they had before, and that the intention is seen through the fact that she got anger and beat him a piece of wood on a delicate part of the head and he died. He added that if they were in harmony, then Mukarusagara Immaculée would have run away from her husband when he was going to slap her. He kept on stating that it was even impossible because the husband was very old, that Mukarusagara would have slapped him instead of kill him with a piece of wood .

The civil party stated that the accused must be convicted for murder, because she had intention of killing the deceased because they normally had conflicts, and she used to starve him and she had mentioned of killing him so that he would not enjoy profit alone, from the money got from the sold coffee plantation .

Held: 1. Given the fact that the accused hit the deceased with a piece of wood (weapon) which cut through his head (the delicate part) and he died as proven by the medical report mentioned above, proves that she had the intention to kill him. Therefore, she is guilty for murder instead of battery or body injuries resulting into death, as decided by the High Court and provided for by article 311 of the aforementioned penal code.

2. Based on the accused being a first offender, she can benefit the penalty reduction and be sentenced to twenty years of imprisonment instead of life imprisonment inflicted to her.

3. The accused must give damages to the civil parties.

**Appeal has merit.
Cross appeal has merit in part.
Accused sentenced to twenty years of imprisonment.
Accused ordered to grant damages to the civil party.
Appealed judgment is changed in part.
Court fees to the public treasury.**

Statutes and statutory instruments referred to:

Decree Law n° 21/77 of 18/08/1977 instituting the penal code, articles 82, 83 and 311.
Civil code, article 258.

No case referred to.

Doctrines :

Général Likulia Bolongo, Droit Pénal Spécial Zaïrois, LGDJ, T1, 1985, P.52.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started in the High Court Chamber of Nyanza,, where the prosecution was accusing Mukarusagara Immaculée of having murdered her husband Kalinda Nicolas. The children of the deceased mentioned above represented by their elder brother Nyirandungutse Françoise filed a civil claim requesting the Court to order Mukarusagara Immaculée to give them damages amounting to 32.027.500Frw.

[2] The court rendered the verdict and found Mukarusagara Immaculée guilty of murder and sentenced her to life imprisonment. The court also ordered her to pay damages amounting to 2.000.000Frw to the children of Kalinda Nicolas which themselves would share equally.

[3] Mukarusagara Immaculée appealed against the decision in the Supreme Court stating that she did not commit the offence but she also states that the High Court sentenced her to life imprisonment disregarding the statements she made and the ones made by witnesses who helped her to carry the body of her husband knowing that she did not kill him.

At the start of the hearing, Mukarusagara Immaculée pleaded guilty and sought forgiveness for the Court to reduce her penalty.

The hearing was held public on 21 July 2014, with Mukarusagara Immaculée present and assisted by Counsel Munyansanga Amina Gisèle, Nyirandungutse Françoise on behalf of the civil party was represented by Counsel Yves Habinshuti, while the prosecution was represented by Mutayoba Alphonse.

II. ANALYSIS OF THE LEGAL ISSUES IN THE CASE

Regarding the classification of the offence committed by Mukarusagara Immaculée

[4] Mukarusagara Immaculée and her legal Counsel state that the High Court should have not convicted her of murder because when she hit the forehead of her husband with a piece

of wood and he died, the intent was not to kill him, that it was by accident, that she is to be convicted of battery and bodily injuries resulting to death as provided for by article 151 of the Organic Law n° 01/2012/OL of 2 May 2012 instituting the penal code.

[5] Mukarusagara Immaculée explains that the statements made by the children of Kalinda Nicolas, stating that she was in bad relationship with their father should not be considered because the testimony given by Mukagahutu who is not related to them state that she lived in harmony with her husband.

[6] The prosecution states that the court did a rightful thing when deciding that Mukarusagara Immaculée was guilty of murder committed to her husband Kalinda Nicolas because they were in conflict with him, and that her intent is seen through the fact that she got anger and hit him a piece of wood on the head and he died. He added that if they were in harmony, Mukarusagara Immaculée would have run away from her husband when he intended to slap her, something that was difficult for him because he was very old. He also states that Mukarusagara would have slapped him instead hitting him with a piece of wood on the head that resulted into death.

[7] Nyirandungutse Françoise representing the siblings and the counsel for the civil party states that Mukarusagara Immaculée must be convicted of murder because she intended to kill their father due to conflicts they had, because Mukarusagara Immaculée was starving him and passed most of her time drinking alcohol in a bar known as Tuyamarize. She added that she always kept near them trying to settle their conflicts because the deceased had told her that Mukarusagara Immaculée had intentions to kill him so that he would not eat the money he got from the sold coffee.

[8] She kept on explaining that another thing proving that Mukarusagara Immaculée intended to kill the deceased is that she had stated on Thursday that she would kill him and she did it on a Monday of the following week when she hit him with the small hoe on the head. She added that Nyirandungutse Françoise tried to lift him up but found the brain and bones falling out of her father's head yet Mukarusagara Immaculée did not want people to know that she was the one who killed him, that is why she hide the hoe and the bloodstained clothes under her bed which were later discovered after her arrest though not communicated to the police to serve as incriminating evidence in this case.

THE VIEW OF THE COURT

[9] Article 311 of the penal code that was into force at the time the crime was committed provides "Murder is intentional killing of a person and shall be punishable by life imprisonment".

[10] In his book entitled "Droit Pénal Spécial Zaïrois", Général Likulia Bolongo, the criminal Law scholar explains that the intent to kill can be determined by the weapon used in killings such as a gun of the type of "revolver", arrow, a big wood, a sharp metal or machete. He adds that the intent can also be proved by the part of body targeted by the weapon such as the stomach, chest, head, lungs or heart. The intent, he keeps on explaining that it can also be taken from the force applied in the offence commission¹.

¹ « L'intention homicide peut résulter, soit de l'arme employée (...) telle qu'une arme à feu, comme un revolver (...), une flèche, un gros morceau de bois, un couteau pointu, une machette, soit de l'endroit où le coup a été

[11] With regards to the case, there is in the case file the medical report of 1 November 2007 (C15-16), proving that Kalinda Nicolas died after a cranial-brain trauma caused by a blunt object (Le nommé Kalinda Nikola est décédé à la suite d'un traumatisme crânio-encéphalique provoqué par un objet contondant).

[12] Furthermore, Mukarusagara Immaculée pleaded guilty before this Court for having killed her husband Kalinda Nicolas by hitting him a wooden stick on the forehead.

[13] Basing on the laws and explanations given above, the Court finds that the fact that Mukarusagara Immaculée hit Kalinda Nicolas with a wooden stick (weapon) which cut through his head (the deadly part) and he died as proven by the medical report mentioned above, proves that she had the intention to kill him. Therefore, she is guilty of murder instead of battery or bodily injuries resulting in death, as decided before by the High Court and punishable by article 311 of the aforementioned penal code.

Wether Mukarusagara Immaculée can benefit a penalty reduction due to her guilty plea and forgiveness seeking

[14] Mukarusagara Immaculée and her Counsel prayed to the Supreme Court to reduce the life imprisonment penalty inflicted to her because she pleaded guilty for battery or bodily injuries resulting in death, and that she is seeking forgiveness from all Rwandan people, judges, families and the relatives to the deceased.

[15] Mukarusagara Immaculée admitted to have killed her husband by hitting him a piece of wood on the forehead while he was standing before her as a result of the extreme anger she was caused by him after abusing and slapping her, accusing her to have left him home sick and she delayed to come back, yet she believed she committed no mistake because she had spent the day harvesting beans in the cooperative.

[16] The counsel for Mukarusagara Immaculée requests that the accused be given the penalty reduction and punish her with less than ten years as provided for by article 151 of the Organic Law n° 01/2012/OL above mentioned basing on the mitigating circumstances relating to her guilty plea and forgiveness she pleaded for as explained above.

[17] The Prosecution states that Mukarusagara should not benefit the penalty reduction because she was not sincere when pleading guilty and by explaining the way the offence was committed. The prosecution states also that she stated that she hit the husband with a piece of wood on the forehead and he died yet the medical report reveals that the deceased died due to the sharp object hit at the back opening of the head, something that was impossible for her since she was standing in front of him even as she stated that she was short than the deceased.

[18] The civil party and their Counsel state that Mukarusagara should not benefit the penalty reduction as her guilty plea is not sincere. They state that she did not explain before the court how she committed the crime, she only states that she hit the husband with a piece of wood on the forehead and he died yet the medical report reveals that the deceased died due to the sharp object hit in the back opening the head, thus her guilty plea they said could serve as a proof that she committed murder which she denied from the judicial police up to the High Court.

porté, par exemple l'abdomen, la tête, la poitrine, le poumon ou le cœur », soit du degré de la violence ou de sa gravité », par Général Likulia Bolongo, Droit Pénal Spécial Zaïrois, LGDJ, T1, 1985, P.52.

THE VIEW OF THE COURT

[19] Regarding the penalty reduction prayed for by Mukarusagara Immaculée basing on her guilty plea, article 82 of the penal code provides that “The judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. As for article 83 of the same code provides that if there are mitigating circumstances (...)life imprisonment is replaced by a penalty of imprisonment of not less than two (2) years”

[20] Regarding this case, the medical report in the case file proves that Kalinda Nicolas died due to the sharp object hit at the back opening part of his head (crânio-encéphalique), yet before the court, Mukarusagara Immaculée argued that she killed him with a piece of wood hit at the forehead while he was standing before her, and that she had no intention of killing him as they lived in harmony.

[21] In consideration of the explanations given, the Court finds that the guilty plea made by Mukarusagara Immaculée can not be considered because she does not plead guilty of the murder she is accused of, and she does not demonstrate the way she committed it. She lies for having killed Kalinda Nicolas with a piece of wood hit at the forehead while the medical report proves that the deceased was killed by the sharp object hit at the opening back of the head (crânio-encéphalique).

[22] However, the court finds that Mukarusagara Immaculée can benefit the penalty reduction based on the fact that she is a first time offender, pursuant to the provisions of articles 82 and 83 of the above mentioned code. Therefore, she must be sentenced to twenty years of imprisonment instead of life imprisonment sentenced to her before.

3. Whether the cross appeal filed by the civil party has merit

[23] The civil party and their Counsel state that they filed a cross appeal claiming the following damages from Mukarusagara Immaculée: moral damages of 30.000.000Frw for having lost their father, 200.000Frw for the burial expenses, 100.000Frw for the ceremony ending funeral rightss, 200.000Frw spent in Nibabyare Solange’s wedding, 1.500.000Frw for Mukeshimana Béatrice’s school fees and 27.500Frw procedural fees, all totalling to 32.075.000Frw instead of 2.000.000Frw awarded by the first instance level because it is little.

[24] Mukarusagara Immaculée and her Counsel state that she can not give the civil party damages totalling to 32.075.000Frw because it is excessive, and that all the children of the deceased are mature that no one was still dependant to their father. She states that she would afford 2.000.000Frw of damages ordered by the High Court, because it is reasonable.

THE VIEW OF THE COURT

[25] Article 258 of the Civil Code that was into force at the time the offence was committed states that “Any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it”.

[26] Regarding moral damages, the Court finds the fact that Mukarusagara Immaculée killed Kalinda Nicolas as explained above, it is clear that it brought sorrow to his children mentioned above , thus, pursuant to article 258 of the aforementioned code, she must pay one million for moral damages to each child (1.000.000Frw) set in the court discretion, which

makes 1.000.000Frw x 6 children, totalling to 6.000.000Frw as 30.000.000Frw because what they prayed for is too much.

[27] The Court also finds that Mukarusagara Immaculée must pay the civil party 200.000Frw spent in the burial of their father and a reasonable amount of 100.000Frw used in ending the funeral rights, totalling to 300.000Frw.

[28] Regarding the money spent in Nibabyare Solange's wedding, the Court finds that it cannot be paid back to the civil party because it has no link with the death of the deceased.

[29] Furthermore, the Court finds also that the money used to pay school fees for Mukeshimana Béatrice cannot be paid back to the civil party, because a part from stating it, there is no proof that Mukeshimana attended school.

[30] Regarding the procedural fees, the Court finds that Mukarusagara Immaculée must give 27.500Frw to the civil party as general expenses spent reasonably in this case.

[31] The Court finds that the total damages awarded to the civil party to be paid by Mukarusagara Immaculée from her personal property is 6.000.000Frw of moral damages plus 300.000Frw spent in the burial of their father and in the ceremony ending the mourning of the deceased plus 27.500Frw of procedural fees, all totalling to 6.327.500Frw.

III. THE DECISION OF THE COURT

[32] Finds the appeal of Mukarusagara Immaculée with merit in part.

[33] Finds the cross appeal of the civil party with merit in part.

[34] Sentences Mukarusagara Immaculée to twenty years of imprisonment (20).

[35] Orders Mukarusagara Immaculée to give Nyirandungutse Françoise, Ndungutse Anastase, Uwihoreye François, Nibabyare Solange, Nyirimana Shakira and Mukeshimana Béatrice, children of Kalinda Nicolas 6.327.500Frw as damages.

[36] Orders that the judgment RP 0022/08/HC/NYA rendered by the High Court Nyanza chamber, on 25 September 2009 changes in part.

[37] Orders that the court fees be charged to the public treasury.