

PROSECUTION v. GAHONGAYIRE

[Rwanda SUPREME COURT – RPA 0283/10/CS (Nyirinkwaya, P.J., Mukanyundo and Rugabirwa, J.) December 19, 2014]

Criminal Law – Penalty determination – The judge shall determine a penalty according to the gravity of the offence taking into account offender’s motives, history and background, circumstances surrounding the commission of the offence and individual circumstances – In the event of combination of aggravating, excusable, recidivism and mitigating circumstances, Courts shall apply the penalty taking into account these factors in the order set out under this article – Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code, article 71.

Criminal Law – Penalty reduction – It could not be granted, when its grounds were considered by the previous court – It could not be granted because of the gravity of the offence committed.

Facts: The accused was prosecuted for infanticide, committed when she threw the new-born into the toilet. The High Court convicted her of the offence, basing on the fact that she admitted to have thrown the new-born into the toilet, the fact that she kept secret of her pregnancy till she gets in labour. She was sentenced to ten (10) years of imprisonment.

She appealed before the Supreme Court, stating that her appeal intends to request another penalty reduction because she gave birth without taking note of situation and she thought she was about to die. With regards to the way she committed offence, she explains that she hide the pregnancy to her grandmother with whom they lived together, and when in labor, she went in banana plantation and after giving birth, she became weak and went back to sleep leaving the new-born behind. She added that the next day when she came back, the baby had already died and she decided to throw him into the toilet as none was aware of the situation. The prosecutor states that her penalty could not be reduced, considering how severe the offence she committed was.

Held: In penalty reduction, the High Court considered the mitigating circumstances, basing on the fact that the accused admitted on some acts even though her admission was not sincere, and sentenced her to ten years of imprisonment while the offence she committed is punishable of life imprisonment. Therefore, she could not get another penalty reduction considering how heavy the offence she committed was.

**Appeal without merit.
Appealed judgment is sustained.
Court fees are to be charged to the public treasury.**

Statutes and statutory instruments referred to:

Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code, articles 71 and 83.
Decree-Law n° 21/77 of 18/08/1977 instituting the penal code, article 312.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case started in the High Court, the Prosecutor accusing Gahongayire Jeanne for infanticide, committed when she threw the new-born into the toilet in the night of 23 March 2009. On 20 August 2010, the Court delivered verdict of the case RP 0049/09/HC/KIG and convicted her of the offence, basing on the fact that she admitted to have thrown the newborn into the toilet, the fact that she kept secret of her pregnancy till she gets in labour and sentenced her to ten (10) years of imprisonment.

[2] Gahongayire Jeanne appealed before the Supreme Court on 20 September 2010. The public hearing took place on 24 November 2014, the accused represented by Batware Jean Claude, the counsel, while the prosecution was represented by Bunyoye Grâce, the National Prosecutor.

II. ANALYSIS OF LEGAL ISSUES

a) Whether there is evidence convicting Gahongayire Jeanne of infanticide.

[3] Gahongayire Jeanne states that her appeal intends to request penalty reduction because she gave birth without taking note of situation and she thought she was about to die. With regards to the way she committed offence, she explains that she hide the pregnancy to her grandmother with whom they lived together, and when in labor, she went in banana plantation and after giving birth around 3:00 AM, she became weak and went back to sleep leaving the newborn behind. She added that the next day when she came back, the baby had already died and she decided to throw him into the toilet as none was aware of the situation.

[4] Batware Jean Claude, the counsel, argues that considering explanations of Gahongayire Jeanne, he finds that she could not be convicted of murder, as the baby died due to lack of care, when she was sleeping.

[5] The prosecutor contends that Gahongayire Jeanne does not explain well the way she committed the offence, as she states that she gave birth in toilet and left the baby there.

THE VIEW OF THE COURT

[6] The court finds without merit explanations of Gahongayire Jeanne that she was not intending to kill the new-born because she left her in banana plantation around 3:00 AM and when she came back next day, she found that he was died, because if she had no intent to kill her, she would have not given birth in banana plantation during night without informing her grandmother, and after she would have not returned to sleep as nothing had happened leaving the new-born out.

[7] The court finds also that exposing a hungry new-born to the coldness, when being aware that it could cost its life, while you are the one supposed to take care of it, it is infanticide at the same level as throwing it into the toilet, the offence punishable by article 312 of Decree Law n° 21/77 of 18 August 1977 instituting the penal code that was into force at the time the offence was committed.

b) Whether Gahongayire Jeanne could get another penalty reduction.

[8] Gahongayire Jeanne states that the sentence of 10 years of imprisonment inflicted to her is too heavy, requesting the penalty reduction. As for Batware, the counsel, the accused committed the offence as she was abandoned by the parents till she took refuge to her grandmother, where she gave birth. He requested that her social life could be a mitigating circumstance.

[9] The prosecutor states that her penalty could not be reduced considering the severity of the offence she committed.

THE VIEW OF THE COURT:

[10] Article 71 of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code provides that “The judge shall determine a penalty according to the gravity of the offence taking into account offender’s motives, history and background, circumstances surrounding the commission of the offence and individual circumstances”, as for article 82 of the same law provides that “in the event of combination of aggravating, excusable, recidivism and mitigating circumstances, Courts shall apply the penalty taking into account these factors in the order set out under this article”.

[11] In determining the penalty by the High Court, the court finds that it considered the mitigating circumstances based on the fact that Gahongayire Jeanne had admitted on some accounts though it was not sincere and the fact that she committed the offence due to negligence from the one who made her pregnant while she normally had no means.

[12] The court finds therefore, that the request made by Gahongayire Jeanne was already granted to her, as she was sentenced to ten years of imprisonment while the offence she committed is punishable of life imprisonment. Therefore, she could not get another penalty reduction considering how severe the offence she committed is.

III. THE DECISION OF THE COURT:

[13] Finds Gahongayire’s appeal without merit.

[14] Decides that the judgment RP 0049/09/HC/KIG sentencing her to ten (10) years of imprisonment remains into force.

[15] The court fees are to be charged to the public treasury.