

## PROSECUTION v. SINDIKUBWABO ET AL

[Rwanda SUPREME COURT – RPA 0372/10/CS (Mutashya, P.J., Gakwaya and Hitiyaremye, J.) April 24, 2015]

*Criminal Law – Poisoning – In case there is no incriminating evidence, the accused are declared innocent – Law n° 30/2013 of 24/5/2013 regulating the Criminal procedure, article 165.*

**Facts:** The appellants were accused of the offense of poisoning members of the family of Nyirarukundo and the offense of denial of genocide. The Prosecution explained that they conspired to commit this offence when they were back from Gacaca Court hearing session and were not happy with testimony of Nyiramugisha charging them of having killed her husband in genocide. It was explained that they added poison in the food and after eating the entire family of Nyiramugisha got sick and one child among them died.

The High Court, Rusizi Chamber ruled that the appellants are guilty of the offense of poisoning but declared them innocent of the offense of genocide denial and sentenced Sindikubwabo Antoine to life imprisonment with special provisions while Nyiramihanda was sentenced to life imprisonment.

The accused appealed to the Supreme Court, Sindikubwabo Antoine stating that the High Court combined the offense of genocide and other offences of which he was accused and punished him for them. He adds that he was convicted of the offense of poisoning without medical certificate and that the Court disregarded the statements of witnesses. Nyiramihanda Florence states that the Court ruled the case basing on testimony of the adverse party and other unreliable witnesses.

**Held:** In the absence of medical certificate proving that the family whose members allege they were poisoned had actually eaten poisoned food and given that statements of the witnesses are doubtful, there are no convincing evidences to convict the accused of the offense. Therefore, the accused must be acquitted.

**Appeal has merit.  
The appellant are not guilty of poisoning  
They must be released immediately after the verdict delivery.  
With court fees to the public treasury.**

### **Statutes and statutory instruments referred to:**

Organic Law n° 01/2012/OL of 02/05/2015 instituting the Penal Code, article 144.

Law n° 30/2013 of 24/5/2013 regulating the Criminal procedure, article 165.

### **Cases referred to:**

*Prosecution v. Musabyimana*, RPA 0244/08/CS rendered by the Supreme Court on 30 September 2012

*Prosecution v. Nyirakamana*, RPA 0262/09/CS rendered by the Supreme Court on 26 April 2013.

# Judgment

## I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced in the High Court, Rusizi Chamber where Sindikubwabo Antoine and Nyiramihanda Florence were charged of the attempt to poison members of the family of Nyirarukundo Godelive and the offense of genocide denial. The Prosecution stated that when they were back from Gacaca Court hearing unhappy with the testimony given by Nyirarukundo that they killed her husband in genocide, they planned to exterminate her entire family using the poison that they added in the food. The Prosecution added that after eating that poisoned food, Nyirarukundo and her family members felt bad and allegedly one child in that family died.

[2] This Court rendered the judgment RP 0121/08/HC/RSZ on 18 August 2010 and confirmed that Sindikubwabo Antoine and Nyiramihanda Florence are guilty of the offence of poisoning but not guilty of genocide denial. The Court sentenced Sindikubwabo Antoine to life imprisonment with special provisions while Nyiramihanda Florence was sentenced to life imprisonment. The Court also ordered them to pay jointly the court fees equal to 67,050Frw.

[3] Sindikubwabo Antoine and Nyiramihanda Florence were not satisfied with that decision and appealed to the Supreme Court where Sindikubwabo Antoine stated that the High Court combined the offences of genocide and other offences he was charged with and sentenced him for them; that he was convicted of the offence of poisoning while there was no medical certificate and that the Court ignored the testimonies of witnesses. Nyiramihanda Florence stated that the Court delivered the ruling and convicted her of the offence basing on the testimonies of the adverse party and other unreliable witnesses.

[4] The case was publicly heard on 9 March 2015, Sindikubwabo Antoine appeared being assisted by Counsel Akimanizanye Beatrice, Nyiramihanda Florence was assisted by Counsel Mutabaruka Jean while the Prosecution was represented by National Public Prosecutor Bunyoye Grace.

## II. ANALYSIS OF THE LEGAL ISSUE

**Whether there is evidence incriminating Sindikubwabo Antoine and Nyiramihanda for the offence of poisoning.**

[5] Sindikubwabo Antoine states that he has never conspired with Nyiramihanda Florence to exterminate the family of Nyirarukundo Godelive using poison. He stated that his ground of appeal is injustice inflicted on him by the High Court, Rusizi Chamber that combined the offence of genocide and the offence of poisoning and sentenced him for it. He added that the Court took the decision without carrying out the investigations and based on the testimonies of Sebahire and Turikumwe with whom he has conflicts.

[6] He added that it is not understandable how he was convicted of the offence of poisoning while the file doesn't contain the medical certificate proving that Nyirarukundo Godelive family members ate the poisoned food and that the bottle of acid that was mentioned was not found in the case file. He finally stated that he initially admitted the charges before the Judicial Police only because he was beaten.

[7] His Counsel Akimanizanye Beatrice states that Sindikubwabo Antoine was convicted of the offence by the Court without evidence since he was suspected to have poisoned the family of Nyirarukundo allegedly because the latter had incriminated him before Gacaca Court. However, no clarifications is given about the commission of that offense and there was no other evidence to corroborate the statements, but rather the Court took its decision without production of medical certificate basing on the doubtful statements of witnesses especially that it was said that those people were taken to hospital while no medical report was produced to prove what happened.

[8] She also states that the fact that Sindibwabo Antoine and Nyiramihanda Florence met on the public way does not constitute evidence that they went to poison Nyirarukundo family members especially that he only admitted it before the Judicial Police while he pleaded not guilty at all other levels and provided reasons thereof.

[9] She concludes by stating that, as it can be seen on page 8 of the copy of the appealed judgement where the Prosecution brought Sebahire as a witness who allegedly said that he saw Sindikubwabo Antoine and Nyiramihanda Florence conspiring to poison the family of Nyirarukundo, during investigations carried out by the Court, Sebahire denied all that and said that he cannot confirm that they are the ones who poisoned members of that family and added that he never saw them together in the banana plantation. In addition to that another interrogated witness who was looking after them in hospital called Mukantembera explained that they were not sick due to traditional poison since the latter cannot be healed at the ordinary hospital.

[10] Nyiramihanda Florence states that the Court falsely convicted her of the offence of poison and took a decision without any tangible evidence since it did not prove any conflict that she had with that family especially that, contrary to what is said, she did not appear as defendant before Gacaca Court; but it rather based on the evidences provided by her co-accused. She states that the fact that she met Sindikubwabo in the banana plantation is not enough to convict her since they met and she asked him where the president of Gacaca Courts was and he told her that he was in the tontine meeting and they immediately separated.

[11] He stated that the testimonies of the witnesses that have been interrogated including Haguma and Nyirabuhoro should not be considered since they have had family conflicts.

[12] His Counsel Mutabaruka states that the Court convicted him of the offense basing on the contradictory statements since there is no tangible evidence which has been considered in convicting him. Since the family of Nyirarukundo went to hospital and one child died, the physician should have proved the cause of death of that child and what those people were suffering from. Therefore, he stated that failure to do that proves those people have not been poisoned as it is said, especially that the person who was caring for them stated, in his testimony, that they had diarrhea and took them to hospital and that the materials they used in that night were thrown since they were dirty. He added that when he was asked whether they looked as if they were poisoned, he replied that they were not given traditional poison. Therefore, he requested that his client should be declared innocent since there is no evidence.

[13] The representative of the Prosecution states that Sindikubwabo Antoine and Nyiramihanda Florence conspired to kill the family of Nyirarukundo using the poison since she is the one who accused both of them before Gacaca Court and Sindikubwabo Antoine has admitted this during his interrogations by the Judicial Police.

[14] Concerning the ground of appeal of Sindikubwabo Antoine, he states that the fact that he was initially jailed for genocide and other explanations he has given are not valid since the Court did not base on them to convict him, but it examined his statements before the Judicial Police and related them with those of the witnesses and the evidences from the investigations it carried out.

[15] He also stated that, though there is no medical certificate proving that those people were poisoned it is not the only incriminating evidence especially that there are his personal statements given after his arrest where he admitted this offence and explained how he committed it and how he conspired with Nyiramihanda Florence to commit the same and he also explained that the reason behind is that she incriminated them before Gacaca Court. He added that it is not understandable how all the people who ate the food got sick immediately and there is a person who admitted having poisoned them.

[16] Concerning the argument that the Court did not consider statements of the witnesses, the representative of the Prosecution states that it is not true because their statements were considered especially that they supported his admission before the Judicial Police and that there is no witness who discharged him but rather all of them incriminated him that he poisoned that family because Nyirarukundo incriminated him before Gacaca Court and from the investigations carried out by the Court, none of people interrogated discharged him. Regarding the allegation that he was beaten during his interrogation before the Judicial Police, this is not true since he does not prove it.

[17] As for Nyiramihanda Florence, the representative of the Prosecution states that her allegations have not merit since Sindikubwabo Antoine explained how they committed that offence and he could not, therefore, omit to name her while they conspired to commit the offence. The representative of the Prosecution adds that, as for the testimony of Nyirabuhoro Daphrose she claims it cannot be considered this can't help her since she did not testify that she saw her poisoning anyone.

## **THE VIEW OF THE COURT**

[18] Concerning the offence of poisoning, article 144 of Organic Law n° 01/2012/OL of 02/05/2015 instituting the Penal Code, provides that “Poisoning is defined as administering a substance to another person which can cause death more or less promptly regardless of the substance used or its mode of administration and consequences (...)”.

[19] This article clearly implies that the offense of poisoning exists in case the poison was administered.

[20] The legal scholar called Robert Kint<sup>1</sup> who analyzed this article finds that for the offense of poisoning to exist, there must be “attempt on the life of someone and the use the substances which can kill more or less quickly”. In addition, for this offense to exist, the administration of poison is necessary regardless of the effects it has produced on the person. Another legal scholar called General Likulia Bolongo explained that to know whether the

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<sup>1</sup> Droit pénal spécial, 1993, p.76-77.

substance used is the poison, it is necessary to resort to medical expertise or experts in medicines and chemistry<sup>2</sup>.

[21] After the analysis of documents available in the case file, the Court finds that there is no proof that members of the family of Nyirarukundo Godelive were tested by a medical expert or expert in medicines and chemistry so that it can be ascertained if they truly ate poisoned food basing on the explanations of the legal experts mentioned above.

[22] The Court finds that, even if members of that family were taken to hospital as it is said, the Court has no basis to confirm that they ate poisoned food given to them by Sindikubwabo Antoine and Nyiramihanda Florence in the absence of a medical report proving what actually happened and on top of that the bottle which contained the acid that was put in the food was not availed. This is the decision that was taken in the case RPA0244/08/CS of 30/09/2011, MP c/ Musabyiman Marie and the case RPA 0262/09/CS rendered by this Court on 26/04/2013, MP c/ Nyirakamana Florence. In these cases, the decision was that it is necessary to resort to medical expertise or experts in medicines and chemistry so as to know if the substance used is the poison.

[23] Concerning the statements of the witnesses interrogated by the Judicial police including Sebahire Isidore who stated that when Sindikubwabo Antoine came to see him, he met Nyiramihanda Florence and they conspired to poison Nyirarukundo, the statement of Turikumwe Johnatan (brother of Nyirarukundo ) who said that when they were back from Gacaca court session, Sindikubwabo Antoine met Nyiramihanda Florence in the Cell of Twarizo in the banana plantation located next to the house of Nyirarukundo and that Nyiramihanda is the one who put the poison in the food of Nyirarukundo Florence and it was well known by all citizens that she is a sorceress; as for Uwiragiye Malachie, during his interrogation before the Prosecution, he stated that what he wished to change on his statements before the Judicial Police is that he has nothing to do with matters related to the poison. Therefore, the Court finds that all these statements cannot be considered because, apart from the absence of any medical expert who has approved that members of the family of Nyirarukundo ate poisoned food, no one of them saw them administering the poison and no one asserts that they were given substances which cause death more or less promptly as provided by article 144 of Organic law n° 01/2012/OL of 02/05/2015 instituting the Penal Code mentioned above ; but rather what they affirm is that Sindikubwabo Antoine met with Nyiramihanda Florence.

[24] Concerning the fact that Sindikubwabo Antoine pleaded guilty before the Judicial Police while he pleaded not guilty before other organs, the Court finds that this cannot be considered since the poison is only proven by an expert in order to know if the substance used can cause death more or less promptly.

[25] Basing on the abovementioned explanations, the Court finds that the appeal of Sindikubwabo Antoine and Nyiramihanda Florence must be considered and they should be declared not guilty of that offense of poisoning since the evidence relied on by the previous Court in convicting them are not enough basing on article 165 of Law n° 30/2013 of 24/5/2013 regulating the Code of Criminal Procedure which provides that “The benefit of

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<sup>2</sup> Il a été jugé que nonobstant l'absence d'une preuve rapportée d'une manière spéciale par un rapport toxicologique établi par un homme de l'art ayant une connaissance approfondie de la nature et des effets du poison et affirmant que les matières administrés à la victime étaient de nature à donner la mort, par Général Likulia Bolongo, Droit Pénal Spécial Zairois, L.G.D.J, T1, 1985, p.80.

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”.

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

[26] The Court rules that the appeal of Sindikubwabo Antoine and Nyiramihanda Florence has merit;

[27] The Court rules that they are not guilty of the offence of poisoning;

[28] The Court orders that they must be released immediately after the verdict delivery;

[29] The Court orders that the court fees must be charged to the public treasury.