

PROSECUTION v. NSHUTIRAKIZA

[Rwanda SUPREME COURT – RPA0047/11/CS (Mutashya, P.J., Gakwaya and Hitiyaremye, J.) March 27, 2015]

Criminal Law – Penalty reduction – The judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence – When the offence was committed with serious cruelty, it may be the ground for non-reduction of the penalty – Decree-Law N°21/77 of 18 August 1977 instituting the penal code, articles 82, 83 and 84.

Facts: The accused was prosecuted for assassination before the High Court, chamber of Rusizi, where he was charged with stabbing his wife Bayavuge Francine’s head to death. The Court convicted him of murder and sentenced him to twenty years of imprisonment (20) on ground that it has reduced his penalty because he was the first offender and that he pleaded guilty and sought forgiveness. He lodged an appeal to the Supreme Court claiming that the High Court sentenced him as if he had pleaded not guilty while he did. He kept on arguing that he admits the charges and seeks forgiveness, and that he repented to his family in law as well as the Rwandan society, and he thus requests for a further penalty reduction.

The Prosecution contends that the appeal ground of Nshutirakiza Narcisse lacks merit as his penalty was reduced by the High Court considering the fact that he had been co-operative with justice entities, pleaded guilty and repented from the Judicial Police to the court. Thus, it finds that his prayers were already granted by the High Court.

Held: The penalty reduction the accused requested cannot be granted as this Court is of the same view with the High Court that considering the circumstances in which the offence was committed and its gravity, there is no other ground that could lead to further reduction of the penalty imposed on him by the previous court. Therefore, the penalty inflicted on him by the High Court corresponds to the offence he committed.

**Appeal lacks merit.
Appealed judgment sustained.
Court fees charged to the public treasury.**

Statutes and statutory instruments referred to:

Decree-Law N°21/77 of 18 August 1977 instituting the penal code, articles 82, 83 and 84.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case started in the High Court, Rusizi Chamber where the Prosecution charged Nshutirakiza Narcisse of assassination. They explained that on 9 February 2008, around 5:00AM, Nshutirakiza Narcisse, hit his wife Bayavuge Francine’s head to death with the

machete and knife, allegedly because they had conflicts due to the fact that he had abandoned her for a concubine, therefore he killed her so that he could live peacefully with his concubine called Nzayisaba Patricia.

[2] On 30 November 2010, The High Court, the Chamber of Rusizi, rendered the verdict RP0027/08/HC/RSZ convicting Nshutirakiza Narcisse for assassination and sentencing him to twenty (20) years of imprisonment. The Court explained that his penalty was reduced due to the fact that he was the first offender and that he pleaded guilty and sought forgiveness.

[3] Not pleased with the decision, on 13 December 2010, Nshutirakiza Narcisse lodged an appeal to the Supreme Court requesting for a further penalty reduction.

[4] The case was heard in public on 23 February 2015, where Nshutirakiza Narcisse was assisted by Counsel Mujawamariya Immaculée while the Prosecution was represented by the National Prosecutor Ntawangundi Béatrice.

II. ANALYSIS OF THE LEGAL ISSUE

Whether Nshutirakiza Narcisse could be granted a further penalty reduction.

[5] Nshutirakiza Narcisse argues that he pleaded guilty before the High Court but he was sentenced as if he had never done so. He kept on arguing that he pleads guilty of the crime he is charged with and seeks forgiveness. He explains in addition that he asked for pardon from his family in law as well as the Rwandan society and he therefore, requests for further penalty reduction.

[6] Nshutirakiza Narcisse states that he did not plan to kill his wife, but they rather quarreled around 5:00AM and it was then that he hit her with the machete on the neck and she died. He keeps explaining that after he cut her neck, it did not fall off as it remained tied with a small back part. He explained that their conflict resulted from their property of banana plantation, because his wife used to sell the harvest without his consent. He concluded stating that when he killed his wife, he had already left his concubine.

[7] Counsel Mujawamariya Immaculée states that Nshutirakiza Narcisse heartily pleaded guilty from the Judicial Police until his appearance before the Court, but that the High Court, Chamber of Rusizi, disregarded to sufficiently reduce his penalty considering that he killed his wife in order to live with his concubine Nzayisaba Patricie while it was false as a year elapsed since they stopped cohabiting.

[8] Counsel Mujawamariya Immaculée keeps on arguing that Nshutirakiza Narcisse has 4 young children who have none else to look after them. She added that seven years he served in prison prove that he has really regretted his act and he thus requests this Court to further reduce his penalty and sentence him to seven years of imprisonment he has already served in prison.

[9] The Prosecution contends that the appeal ground of Nshutirakiza Narcisse lacks merit as his penalty was reduced by the High Court pursuant to articles 83 and 84 of the Decree-Law N^o21/77 of 18/8/1977 instituting the penal code as he had been co-operative with justice entities by pleading guilty and seeking forgiveness from the Judicial Police to the court. Thus, she added, his prayer was already granted by the High Court.

[10] In addition, the Prosecution argues that, considering the cruelty according to which he committed the offence when he cut the neck of his wife, it is clear that he premeditated for it since many days as he was having grudge for her. They added that he was sentenced to twenty years of imprisonment while he should have been sentenced to the life imprisonment. Therefore, the Prosecution concludes that the penalty inflicted on him by the High Court should be sustained.

THE VIEW OF THE COURT

[11] Article 82 of Decree-Law N°21/77 of 18/8/1977 instituting the penal code that was into force at the time the offence was committed states that “The judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence”.

[12] The Supreme Court finds that under paragraphs 5 and 7 of the appealed judgment, and pursuant to articles 82 and 83 of Decree-Law N°21/77 of 18/8/1977 instituting the penal code that was into force at the time the offence was committed, the High Court, at its discretion, reduced the penalty for Nshutirakiza Narcisse from the life imprisonment, the sentence which he would have been sentenced to, to twenty years of imprisonment as he pleaded guilty and that he was the first offender.

[13] Furthermore, the Supreme Court finds that in the appealed judgment, especially under paragraph seven, the High Court explained that Nshutirakiza Narcisse assassinated his wife with cruelty and mockery, when he cut off her neck with the machete, thus, he could not get a large penalty reduction.

[14] With regard to the statements made by his Counsel Mujawamariya Immaculée that the previous Court did not reduce Nshutirakiza Narcisse’s penalty because he allegedly killed his wife in order to cohabit with his concubine Nzayisaba Patricie, the Supreme Court finds it wrong, as explained in the previous paragraphs and he could not get the large penalty reduction due to the cruelty and mockery with which he killed his wife.

[15] Regarding the grounds Nshutirakiza Narcisse submits requesting for further reduction of his penalty, the Supreme Court finds that his continuous guilty plea and his young four children without anyone to care for them are not ample grounds for further reduction of his penalty, considering the circumstances in which he committed the offence and the *mens rea* behind as explained by the High Court. Therefore, those grounds are baseless.

[16] The Supreme Court finds, therefore, that the penalty reduction Nshutirakiza Narcisse requested for cannot be granted as this Court is of the same view as the High Court that considering the circumstances in which the offence was committed and its gravity as explained in paragraphs 6 and 13 of this judgment, there is no other ground that could serve him to get further reduction of his by the previous court. Therefore, the penalty inflicted on him by the High Court corresponds to the offence he committed.

[17] Considering the above, the Supreme Court finds that the appeal lodged by Nshutirakiza Narcisse is baseless, thus the penalty inflicted on him by the High Court is sustained.

III. THE DECISION OF THE COURT

[18] Finds the appeal lodged by Nshutirakiza Narcisse without merit.

[19] Decides that the penalty of twenty (20) years of imprisonment inflicted on Nshutirakiza Narcisse in the judgment RP0027/08/HC/RSZ rendered by the High Court, chamber of Rusizi, on 30 November 2010 is sustained.

[20] Decides that the court fees are to be charged to the public treasury.