

## PROSECUTION v. GATARE

[Rwanda SUPREME COURT – RPA0317/08/CS (Nyirinkwaya, P.J., Hatangimbabazi and Munyangeli, J.) October 24, 2014]

*Criminal Law – Murder – Circumstantial evidence – In criminal cases, evidence is based on all grounds – The accused can be convicted based on facts assessed in the discretion of the court – Law N°15/2004 of 12/6/2004 relating to evidence and its production, article 119.*

**Facts:** The accused was tried for murder committed against his wife and child before the High Court of Republic, who were set on fire in the car at Nieuwerkerken in Belgium. The Prosecution produced evidence against him including the fact that his jacket was picked close to the place where the vehicle was set on fire without being burnt and that the sniffing police dog detected the smell of the wearer to the road where it lost his trace, the fact that the keys of their house were picked at the crime scene, the fact that the following day the deceased were murdered, the fact that burns caused by the flame were noticed on him, the fact that few hours before they were killed, he telephoned via Nieuwerkerken's telecommunication antenna and that three months later after they were killed, he was arrested and found in possession of identification documents of the deceased, the fact that once he arrived in Rwanda, he filed a divorce action and revoked the adoption of the children of Liberatha and did not declare their missing, rather he told people different versions about their whereabouts.

The accused pleaded not guilty, stating that the jacket picked at the crime scene was worn by the deceased, that the burns noticed at him were due to the exhaust pipe of the car that burnt him while repairing it. With regard to the keys of their house found in the jacket picked at the crime scene, he states that they belonged to the deceased as he had his own which he even used to open the door. With regard to the fact that he telephoned via the antenna of the crime scene at the day the deceased were killed, he argued that it may be possible that he used it while passing through that area.

With regard to the fact that he was in a bad relationship with the deceased, he stated that like in any other household, they also had some disagreement. Concerning the fact that he was found in possession of their identification documents, he stated that they were all kept in the same bag when they were preparing to travel to Rwanda and they forgot to remove them. As to the fact that he filed for divorce and revocation of the children once he arrived in Rwanda and told people in Belgium that the deceased are in Rwanda while he told those in Rwanda that they were in Belgium, he explained that he filed for divorce out of anger due to the fact that they refused to travel with him at the last minute, something that caused him to incur lots of expenses.

The court relying on the evidence produced, convicted him and sentenced him to life imprisonment with special provisions and ordered him to pay damages to the civil party. He lodged an appeal before the Supreme Court, alleging that he was convicted of the offence basing on the evidence which do not prove beyond reasonable doubt that he committed it and the court sentenced him to the lengthy penalty than the one requested by the prosecution. As for the prosecutor, he contends there exists sufficient incriminating evidence against him. With regard to the penalty, he states that the fact that he was sentenced to the lengthy penalty than the one

requested by the Prosecution cannot be a ground for appeal especially that he was sentenced for the offence he committed.

The deceased's young sister who filed a civil action within criminal proceedings lodged an appeal, stating that she was granted few damages. The accused argues that he cannot pay damages while he is innocent.

**Held:** 1. The fact that the accused's jacket was picked outside the car in which the deceased were burnt is evidence against him.

2. The fact that the burns were noticed on the accused few hours after the deceased were burnt in the car is an incriminating evidence in addition to the jacket picked at the crime scene.

3. The deceased could not have been burnt in the car and her keys be found in the jacket picked outside the car. Therefore, the fact that the keys for their residential house were picked at the crime scene is another incriminating evidence.

4. The window crank was ejected from the car by the person who burnt the deceased purposely to prevent them get out the vehicle.

5. The fact that the accused telephoned via the antenna located to the area where the deceased were burnt few hours before their murder must be analysed along with other evidence.

6. The fact that the accused informed no one that the deceased were missing, rather he told people in Belgium that they were in Rwanda while he told those in Rwanda that they were in Belgium is also an incriminating evidence.

7. The fact that there is a witness not summoned to appear before the court to repeat the statements he made before the Prosecution, confirming that the accused told him that his wife had intolerably changed at the extent that he preferred her death cannot be considered as a ground to annul his statements because the court is not obliged to summon all the witnesses interrogated in course of investigation more particularly that the subject of the examination in his statements was the relationship with his wife and that there are sufficient evidence to support it, including his own statements proving that it was unpleasant.

8. The fact that the accused purchased one way air tickets for the deceased proves the reason why they refused to come with him in Rwanda, as they had discovered that he had plotted to abandon them there.

9. The divorce proceedings would be perceived as means of concealing the evidence. Therefore, the fact that the accused initiated an action for divorce as soon as he arrived in Rwanda and the action for revocation of the adoption must be taken into consideration as further evidence

10. The fact that the accused bought to Rwanda identification documents of the deceased on his arrest three months later they were still in his possession, should not be considered as forgetting or a mistake, but it emphasizes that he was aware that they did not shift from the household to their own accommodation because in that case, they would at least take with them some personal belongings needed in daily life.

11. The fact that the accused made contradictory statements with regard to his schedule of the day the deceased were killed, till he declared that he spent the day with the kid till night renders his statements doubtful.

12. The fact that the buyer and the seller of the vehicle did not enter into a written contract and its number plate having been deregistered demonstrate that the buyer had planned to distort the evidence that might incriminate him. Thus, the fact that the investigation did not reveal the identification of the buyer of the vehicle should not invalidate other evidence produced in this case.

13. Although the accused is a first offender, he should not benefit from mitigating circumstances as requested by his counsel, taking into account the manner in which he plotted and killed the deceased with cruelty, and in consideration of all he has done to conceal the evidence of the crime, and that the orphans have lost the only surviving parent and their eldest sister, killed by their adoptive parenting.

14. The civil party does not prove in what she criticizes moral damages granted previously. Therefore, they must be sustained.

15. Damages relating to an eventual act cannot be awarded. Therefore, the transportation of the bodies from Belgium to Rwanda and the funeral expenses requested by the civil party are not granted.

**Appeal lacks merit.**  
**Cross appeal without merit.**  
**The accused found guilty and sentenced to life imprisonment.**  
**Accused ordered to pay different damages.**  
**Court fees 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, 82, 140 and 145.

Law N°15/2004 of 12/6/2004 relating to evidence and its production, article 119.

Decree - Law N°21/77 of 18 August 1977 instituting the penal code, article 312.

**No case referred to.**

## **Judgment**

### **I.BRIEF BACKGROUND OF THE CASE**

[1] On Sunday 02 July 2006 at 11:45p.m, in Nieuwerkerken (Limburg), the firemen were alerted by an individual who saw the flame of fire in a small forest located in 300 kilometers from the N716 road. On arrival, they found that it was a burning vehicle in which there were two human bodies severely consumed by the fire to the extent that they could not be identified.

[2] Investigators realized that the burnt vehicle was a MAZDA 121 with N°CFI 204 number plate, in which they found the burnt wallet containing burnt pieces of paper and in four meters away, the crank, the burnt black scarf containing pieces of broken lighter as well as the vehicle identification documents, including that relating to its acquisition from the Bierset automobile

company. Within 6 meters, they also found the black burnt jacket in which was the bunch of keys and the white envelope on which was handwritten the telephone number of the garagelocated in Lambermont.

[3] The jacket was subjected to the olfaction of the police dog and this one followed the smell of the one who wore it up to 100 meters behind the vehicle until the end of the trail.

[4] The subsequent investigation revealed the following information:

The documents burnt in the vehicle and the voter's card issued in Rwanda as well as the card of the *Centre Public d'Action Sociale* (CPAS) de Liège;

Those burnt individuals were identified as Uwimana Liberatha and her daughter Ingabire Cléscence who were burnt alive because their lungs contained smoke;

Liberatha had four children namely Umulisa Clémence, Uwase Clementine, Ingabire Cléscence and Urwibutso Emmanuella, whom she had with her first husband murdered in the genocide perpetrated against the Tutsi in 1994 and another called Pierre Alexandre that she had with Gatare Edouard with whom she got married in Rwanda on 23 November 2002 and who adopted all these children from the first husband;

Before getting married to Uwimana, Gatare was in cohabitation with the Belgian Jacquet Fabienne, with whom he had two children, namely Charlie and Estelle before separating. He was also naturalized Belgian;

In 2004, Liberatha and her children Ingabire Cléscence Urwibutso Emmanuella and Pierre Alexandre joined Gatare in Belgium;

The keys found in the pocket of the jacket picked up at the place where the vehicle was burnt are compatible to open their house located in Liège 4020, Lairesse 134 Street;

Gatare requested the spare keys from the landlord, advancing that he had lost the original;

The vehicle in which Liberatha and Cléscence were burnt had been sold to a black individual in the car dealer company of Bierset (Liège) on Sunday 25 June 2006;

A few hours before the murder of Liberatha and Cléscence, Gatare used the telephone antenna of Nieuwerkerken and the following day he was seen with burns;

On 18 July 2006, Gatare left Belgium towards Rwanda with his youngest child Pierre Alexandre, while he had already sent Emmanuella on 11 July 2006.

One way tickets from Belgium to Rwanda were booked for Libératha and Cléscence.

The co-worker of Gatare Edouard testified that he had told him that he will abandon Liberatha and the children she had with her first husband in Rwanda because they were in conflict.

[5] Gatare was arrested in Rwanda on 17 October 2006 after 3 months of stay. The investigation continued until the prosecution filed the case to the High Court of the Republic, accusing him of the murder of Uwimana Liberatha and Ingabire Cléscence.

[6] Gatare pleaded not guilty before that court, which rendered the verdict RP0303/06/HC/KIG on 12 November 2008, whereby it convicted and sentenced him to life

imprisonment. The court also ordered him to pay 8,000,000Frw in moral damages, 300,000Frw of counsel fees to the civil party called Uwanyirigira Sylvie.

[7] The main grounds on which the court relied to convict Gatare are as follows:

The fact that his own jacket and keys of the house in which they lived were found near the site where the vehicle was set on fire;

The fact that the police dog detected and followed the smell of the person wearing the jacket from the place where the vehicle was burnt down to the road, which implies that its wearer had moved from the crime scene towards the road;

The fact that the day after Liberatha and Cléscence were burnt in the vehicle, burns were found on him;

The fact that few hours before the commission of the crime, he used the telephone antenna of Nieuwerkerken;

The fact that from 02 July 2006 to 18 July 2006, two weeks and a half, he remained in Belgium without informing the police about the disappearance of Liberatha and Cléscence to search for them and the fact that since he arrived in Rwanda, he spent three months without informing any administrative authority;

The fact that he was in conflict with Liberatha to the extent that he intended to abandon her in Rwanda during the holidays and the latter discovered the plot and therefore refused to accompany him;

The fact that on his arrival in Rwanda he rushed to initiate an action for divorce and the revocation of the adoption of the children of Liberatha;

The fact that in the divorce trial he summoned Liberatha to their residence in Liège while he declares that he left Belgium two weeks after his wife went to find an accommodation elsewhere;

The fact that at the time of his arrest, he was found in possession of identification documents of Liberatha and Cléscence including passports and identity cards as well as Liberatha's wedding ring; therefore, it is incomprehensible how he held these documents while he admitted himself that they had refused to travel with him to Rwanda.

[8] Gatare appealed to the Supreme Court on 08 December 2008 alleging that the High Court of the Republic convicted him on the basis of evidence which did not prove that he is the one who burnt Liberatha and Cléscence to death in the vehicle.

[9] The public hearing was held on 25 January 2010 and 15 March 2010, in the presence of Gatare Edouard assisted by Counsel Hakundanabahari Théotime, the Public Prosecution being represented by Ruberwa Bonaventure, while Uwanyirigira Sylvie, the civil party was represented by Counsel Nsengiyumva Viator.

[10] After the hearing of 15 March 2010, the hearing was postponed on request of Gatare so that some documents of the investigation carried out in Belgium in french language be translated into one of other languages used in Rwanda and Urwibutso Emmanuella and Uwase Clémentine be summoned to testify about the relationship between Gatare and their mother.

[11] The hearing in public resumed on 16 June 2014 and was closed on the same day. Gatare Edouard was present and assisted by Counsel Gashema Felicien, the Public Prosecution represented by Mutayoba Alphonse and Uwanyirigira Sylvie, the civil party was represented by Counsel Habineza Gasore Gilbert. During the same hearing, Urwibutso Emmanuella and Uwase Clementine were heard as it had been requested by Gatare Edouard.

## II. ANALYSIS OF LEGAL ISSUES

**A. Whether the evidence on which the High Court of the Republic relied does not incriminate Gatare for having burnt Liberatha and Cléscence to death in the vehicle.**

**(a) Concerning the fact that his jacket was picked near the place where the vehicle was burnt and that the police dog sniffed the smell of the person who wore it and tracked him up to the road where it lost his trace.**

[12] Gatare states that he explained to the Court that even though the jacket that was picked near the place where the vehicle was set on fire belonged to him, but it was worn by Liberatha on 2 July 2006 as they used to exchange clothes.

[13] He states that the evidence in support of his statements is that they last met the morning of the same day when he was going to trim the tree fence of the elderly woman who lived close to her ex-wife Fabienne Jacquet. At that moment Liberatha told him that she was going to pick Cléscence from the place where she had spent the night, without disclosing it and that they did not meet again because he returned home at 8:00 PM while the investigators had demonstrated that she and her daughter were burnt in the vehicle at 11:45 PM far from 40 or 50 kilometers from Liège to their residence.

[14] He states that another element proving that the jacket was worn by Liberatha is that she called her young sister Uwanyirigira Sylvie who resides in Rwanda at 1:00PM and this implies that she was not at home since they did not own the telephone at their residence in Liège except for the cellphone she had with her; therefore, it is up to Uwanyirigira to report the place where her elder sister was, if she communicated to her.

[15] Concerning the fact that the jacket was picked outside the vehicle on which Liberatha and Cléscence were burnt, he declares that Liberatha would have held it in hand and threw it out as a manifestation of crying for help.

[16] With regard to the examination of the jacket by the sniffing police dog which followed the smell of the person who wore it from the crime scene to the road, he declares that this is not a sufficient evidence to indicate him as the one who wore it since the sniffing police dog could not link the smell to him.

[17] The Public Prosecutor replied that if the jacket picked near the place where the vehicle was burnt were worn by Liberatha, it would also have been altered by the fire inside the vehicle as supported by the judge of the first instance court.

[18] He further states that from the smell of the jacket, the sniffing police dog was able to follow the smell of the person who wore it until the end of the trail, implying that its wearer had

come out of the vehicle, hence the statements of Gatare that the pursuit by the sniffing police dog does not link the smell to him constitutes dilatory tactics.

## OPINION OF THE COURT

[19] The defence of Gatare aims at demonstrating that his jacket was worn by Liberatha when she was set on fire in the vehicle since he was at home at the time of their assassination. He claims in addition that the victims did not spend the day at the residence because Cléscence did not pass the night at home the day before their assassination, whereas Liberatha had informed him in the morning before he went to help Fabienne's neighbor to trim her tree fence, that she was about to pick up Cléscence from the place where she had spent the night without disclosing it to him.

[20] However, the court finds that there is no evidence that Gatare was at his residence at the time when Liberatha and Cléscence were murdered, such as the phone call made through the telecommunication antenna of his residence or the neighbor who would have seen him coming back home.

[21] Furthermore, the Court rejects his arguments concerning the last time he saw Liberatha and Cléscence because he does not indicate the place they went, one the previous day and another, the morning of the day they were murdered, in order to carry out the investigation. Thus, it is inconceivable for Liberatha to have taken the initiative to inform him that she would pick Cléscence from the place where she had spent the night without informing him about the location.

[22] In addition, the Court finds groundless the statements that Liberatha made a phone call to Rwanda around 1h00PM, which implies that she spent the day out of home on the day of her assassination, especially that they did not have the landline telephone at their residence; because it is possible for a person to leave home for a certain act and come back after its completion.

[23] The court finds also that Liberatha could not have held Gatare's jacket at the time of her assassination and be picked outside the vehicle while she was burnt inside. In addition, the sniffing police dog followed the smell of its wearer up to 100 meters where it lost the trace, which implies he was at the scene of the crime until he left.

[24] The court therefore considers that the jacket belonging to Gatare being picked outside the vehicle in which Liberatha and Cléscence were burnt is a proof against him as it was held by the High Court of the Republic.

[25] Concerning the fact that the next day after Liberatha and Cléscence were burnt in the vehicle, he was found with burns Gatare declares that the burns observed on him the day after Liberatha and Cléscence were set on fire in the vehicle have nothing to do with the tragedy.

[26] Gatare alleges that he explained that he was burnt on Monday, 03 July 2006 between 11:00 and 1:00 PM when he was repairing the heated exhaust pipe of the vehicle when he was coming from checking in their luggage at Zaventem airport, while it is stated that the deceased were burnt in the vehicle at 11:45PM of the night of 2 July 2006 dawning to 3 July 2006.

[27] He further alleges that the court was very biased in declaring that he was burnt by the flame of fire on the basis of the witnesses declarations who did not appear in the court, who affirm the facts which they are unaware of, and each having his/her own version of the facts; but the court considered them and held that he was not burnt by the heated exhaust pipe of the vehicle because if it was the case, he should have been burnt on the hand palms instead of the abdomen and the chest, whereas he himself had never stated that he was burnt on his abdomen and chest, and it was not even declared by Emmanuella who saw him on the day he was burnt.

[28] He adds that he demonstrated how he was burnt by the heated exhaust pipe of his vehicle during his interrogation by the Public Prosecutor in February 2007 and that the journalists photographed him, but none of them noticed wounds on his belly and chest as it is pretended.

[29] With regard to the medical report on which the court relied, he states that it was also established with bias given that it states that the cause of the burns is difficult to be established as the scars have disappeared, but later the doctor stated that he was burnt by the flame of fire which leads him to wonder the evidence on which the doctor relied especially that he was not in possession of medical records of the doctor who treated him in Belgium.

[30] During her interrogation by the Court, Urwibutso Emmanuella testified that she saw Gatare with wounds on his arm, hand palms and mouth, and when she asked him what happened, he replied that he was burnt by the vehicle exhaust pipe.

[31] The Prosecutor submits that Gatare's assertion that he was burnt by the vehicle's exhaust pipe is contradicted by the way he was burnt on the face, the neck, the belly and the chest as testified by several persons who saw him, and who do not have any reason to lie and who have no conflict with him, and moreover there exists a medical report which proves that he was burnt by the flames of fire.

## **OPINION OF THE COURT**

[32] Gatare's arguments intend to show that the burns found on him the day after Liberatha and Clésence were set on fire in the vehicle were not caused by the flames of fire as stated in the medical report but by the vehicle exhaust pipe.

[33] However, the Court finds that it cannot rely on his statements that he was burnt by the vehicle exhaust pipe because he does not produce supporting evidence.

[34] The court finds furthermore that even though Gatare states that the medical report is biased, it cannot take it into consideration because the fact that he stated that most of traces have disappeared, does not exclude the fact that the scars of burns on the arms, forehead, neck and ear noticed on him could not have been caused by a solid object or liquid, rather from the flame of fire coming from the right side of the front.

[35] The court finds therefore the fact that Gatare manifested the burns soon after Liberatha and Clésence were burnt in the car, constitutes incriminating evidence in addition to his jacket which was picked at the scene of the crime as held by the High Court of the Republic.

**The fact that in his jacket picked near the place where the vehicle was burnt were the keys of the house where Gatare and his family resided, and that he had requested the landlord for the spare keys.**

[36] Gatare asserts that the court was so biased in confirming that the keys that were found at the place where Liberatha and Clésence were burnt belonged to him on the basis that none else kept them, while he had proved that both Liberatha and him had their own keys.

[37] He explains that it would not be possible for them to have a single key because he used to go to work at 6:00am and return at 6:00PM, while his wife took the children to school and Clésence went to study, therefore, they could not all leave the house unlocked.

[38] He further submits that another proof that the judge was so biased is that he declared that on Monday 03 July 2006 around 2:00PM, he went to pick Emmanuella and Alexander from Fabienne's and back home, he opened the house with his own keys, which was also confirmed by Emmanuella and no one was at home.

[39] Concerning the reasons why he requested for the spare keys from the landlord, Jacques Lebrun, as the latter confirmed it during his interrogation by the investigators in Belgium, he said that it was for Clésence to have her own key as in few days ago, their bicycle was stolen and he thought that the thief found the keys where they used to keep them and that the landlord gave them to him before the date Liberatha and Clésence were killed and before being burnt by the exhaust pipe.

[40] Regarding the reason why during his interrogation before the prosecution he stated that he had the burns at the time he requested for the spare keys with, he first responded that it was an error (see the minute of the hearing of 15 March 2010), but later he stated that he requested for them from the landlord before he being burnt so that they could be given to Clésence, who sometimes used to return home during their absence, but the landlord brought them after he was injured (see the minutes of 16 June 2004). He added that even if the landlord brought him the keys when he was already injured, he found the door of the house in good condition and unlocked because he still had his own.

[41] When Urwibutso Emmanuella was also interrogated about this case in this court, she asserted that no one else held the keys except Gatare, statements she also made in the course of her interrogation by the prosecution.

[42] The prosecutor alleges that the keys found in the Gatare's jacket belonged to him because Emmanuella stated that there was only one key and that her mother had none.

[43] He states that another supporting evidence that these keys belonged to him is that they were on a key holder offered to him by his daughter Estelle, as he also testified when interrogated by the prosecution.

[44] He further states that Liberatha could not have been burning and subsequently throws the keys and jacket out of the vehicle.

[45] He further adds that the fact that Emmanuella saw Gatare opening their house was something normal because the landlord had given him the spare keys

## OPINION OF THE COURT

[46] Gatare's arguments intend to explain that the keys that were picked at the crime scene belonged to Liberatha because each of them had his/her own, and he was in possession of his the day after they were burnt in the vehicle because he used them to open the door after bringing Emanuella and Pierre Alexandre from Fabienne's, his ex-wife.

[47] The court finds however that since Gatare stated that his bicycle was stolen sometime ago and that he thought the thief found their keys at the place where they used to keep them, persuading that they were using a single key they kept to an agreed place; corroborates with the statements made by Emmanuella declaring that they had a single key.

[48] The court notices in addition that the fact that Gatare confesses, though he first denied that when the landlord gave him the spare keys he had the burns, the landlord also in his statement to the investigation services of Belgium admitted that Gatare made a phone call asking for other keys because he had lost his, which implies that the spare was used to open the door when he came from Fabienne's to take Emmanuella and Pierre Alexandre.

[49] The court notices in addition that Liberatha could not have been burnt in the car and the keys be found outside the vehicle in the jacket worn by a person who came from the place of the crime towards elsewhere as previously explained.

[50] Considering these grounds, the court finds the fact that the keys of their house were picked at the crime scene constitutes another incriminating evidence against Gatare.

### **d) The fact that an unburnt crank was picked near the place where the car was burnt**

[51] Gatare asserts that because the judge was biased, held that the crank was removed from the vehicle so that Liberatha and Cléscence could not get out while this object could not prevent them from getting off the vehicle because it is not meant to unlock the doors. .

[52] In addition, Gatare argues that the fact that this crank was not burnt may imply that the victims threw it out looking for the way out by lowering the window while it was not securely fastened.

[53] He further submits that the prosecution did not provide any evidence that the window of the vehicle was locked and it is not even mentioned in the correspondence from Belgium.

[54] The Prosecutor submits that the fact that the crank of the vehicle was found intact near the burnt vehicle implies that it was removed before the car was set on fire to prevent those who were inside to escape, especially that the vehicle in question did not have rear doors.

## OPINION OF THE COURT

[55] The court finds that Gatare's arguments that the crank which was picked near the crime scene unburnt, could have been thrown out by the victim trying to unlock doors, as it was not fastened, should not be considered accurate because the investigations in Belgium indicated that the crank was found near a burnt black scarf containing pieces of the broken lighter, which implies that the crank was removed by the one who burnt them in the vehicle because if it was thrown by the victims who were being burnt, it could have been found next to tools including the lighter used by the perpetrator.

[56] The court also finds that the one who burnt Liberatha and Cléscence in the vehicle had a nasty intention in removing the crank, as he did so in order to achieve his goal of preventing them from getting out the vehicle. Therefore, it is not understandable why Gatare does not admit that they were blocked in the vehicle by the person who burnt them by alleging that the judge was biased because he believes the author would have no reason to do so given that the doors of the vehicle could be unlocked from inside.

**(e) The fact that he made a phone call at 4:47 and 4:48 pm through the antenna of Nieuwerkerken on the day when Uwimana Liberatha and Ingabire Cléscence were burnt in the vehicle.**

[57] Gatare asserts that on Saturday morning of 01 July 2006, he went to trim the tree fence of the elder woman who lived close to Fabienne's, and returned there the following day Sunday of 02 July 2006 and finished between 2h00PM and 3h00 PM with the help of his children Emmanuella and Estelle who removed the weeds. He rested a little at Fabienne's, before he went to St Trond at 40 or 50 kilometers to look for a car to buy that he had to bring to Rwanda, but he did not find any of his choice. At around 5:00 pm he went back to Liege where he resides, and arriving there, he found the house closed and he went to sleep before Liberatha and Cléscence were back.

[58] He states furthermore that the fact that he made a phone call at 4:47 pm and 4:48 pm through the Nieuwerkerken antenna does not constitute evidence on which the court could rely to convict him because between Liège where he resides and St Trond, there is no place called Nieuwerkerken, so the judge fabricated it in order to convict him because not only he does not know this place, but also he never went there, and no one saw him there.

[59] He states in addition that at around 8 to 8:00 a.m he was at home and that he did not spend Sunday with Liberatha. He went on stating that she would not accept to be improvised and leave home at 8:00 a.m, because normally when you have to make a visit, you would inform your wife for her to prepare in advance.

[60] The Prosecution submits that the fact that Gatare used the antenna of the crime scene at around 4:47p.m and 4:48p.m demonstrates that he had already visited the place for the execution of his plot, especially that he admitted before the High Court that he has perhaps passed through that place to get to St Trond in the afternoon to buy the car.

[61] He goes on to state that the statements of Gatare that the purpose of the journey he made on 2 July 2006 in the afternoon was to buy the car he wanted to send to Rwanda are inaccurate because he had already planned to fly to Rwanda the next day, on 4 July 2006 which would not

be possible for him to complete all the formalities to ship the car. This implies that he went there for a different purpose.

## OPINION OF THE COURT

[62] The arguments advanced by Gatera are meant to prove that he did not go to Nieuwerkerken the day Liberatha and Cléscence were set on fire in the car.

[63] However, the Court notes that the fact that the file initiated in Belgium include the statements made by various persons testifying that Gatere used to travel annually to St Trond to collect fruits and the fact that this place is located at no more than 20 km from Nieuwerkerken, this casts doubt with regard to his statements according to which he does not know Nieuwerkerken.

[64] Regarding the purpose of his trip to St. Trond on the day Liberatha and Cléscence were murdered, the Court finds that Gatere provided no evidence to support his statements that he was going to meet Milants, his employer, or that he was going for the purchase of the car to be sent to Rwanda as he declared both to the Public Prosecutor and the Court. Therefore, it must be confirmed that it was for another purpose

[65] The Court finds therefore that the fact that Gatere made a phone call through the Nieuwerkerken antenna shortly before Liberatha and Cléscence were murdered must be examined together with other evidence which have been demonstrated including the jacket and keys that were picked at the crime scene as well as the burns that were noticed on him the day after the commission of the crime.

### **Regarding the fact that he did not declare the missing of Liberatha and Cléscence in order to search for them.**

[66] Gatere argues that he had no reason to declare the missing of Liberatha and Cléscence to the administrative authorities because he was not aware of what had happened to them, instead, after realizing that they did not come back home since 2 July 2006, he wondered his wife had executed her idea of seeking her own accommodation.

[67] Regarding the reason why he thought that Liberatha would have gone to seek for her own accommodation, he explains that he married her while he resided in Belgium and her in Rwanda, that he took her to Belgium with three children including the one they had together and other two remained in Rwanda while they were still arranging for their travel to join them after becoming financially stable. He added that two years later Liberatha had already become familiar and consequently began to disobey him and told him she could look for her own accommodation.

[68] The Prosecutor contends that Gatera's arguments that he spent two and a half weeks in Belgium and three months in Rwanda without seeking to know the whereabouts of Liberatha and Cléscence pretending that he thought they had moved to their own accommodation should not be taken into consideration since Liberatha, as a mother, could not spend such a long time without asking about her children, including the one who was only four years old.

## OPINION OF THE COURT

[69] The Court finds wrong Gatara's defense that since 2 July 2006 he no longer had any news from Liberatha and Cléscence but that he thought they had moved to their own accommodation, because none of the persons interviewed in course of investigations declared to have been informed by him that his wife had abandoned the marital home. Rather, he informed the owner of the house in Belgium that Liberatha and Cléscence had already gone as mentioned in the interrogation minutes, while he informed his brothers, Muhirwa Frédéric and Munigantama Cyriaque in Rwanda that they had refused to travel with him at the last minute as highlighted in their interrogation minutes before the Prosecution.

[70] The court also finds that during the divorce proceedings when he presented evidence that their cohabitation was no longer possible, Gatara stated that his wife rejected his proposal to travel together in Rwanda at the very last minute and this resulted in loss of a lot of money. He added that she used to insult him in presence of children, but has never mentioned the issue of the abandonment of the marital home as well as of two children, including one with 4 years old, while it would serve him as evidence about his wife's misbehavior on which he prayed the court to rely for granting him divorce.

[71] Furthermore, the Court finds that the arguments of Gatara that he thought Liberatha had left for her own accommodation, is impossible since he himself was convinced that this could not be possible especially that she could not leave without taking her administrative documents and those of Cléscence, including their foreign identity cards, clothes and personal belongings. This is refuted by his own statements to the Prosecutor when he was questioned whether he still lives with Uwimana Liberatha as spouses and replied that they had never separated despite their discontents.

[72] Therefore, the Court finds that considering all his statements made in the different periods, Gatara had no reason to believe that Liberatha and Cléscence had shifted to their own accommodation, hence, the fact that he did not notify anyone of their disappearance, rather, he told people in Belgium that they had left for Rwanda and told those in Rwanda that they were in Belgium, constitute an incriminating evidence against him in addition to other previously detailed, because his statements were meant to mislead acquaintances who would spend a long time without realizing their disappearance to avoid their search.

### **(f) Concerning the Court's decision that he was in discontentment with Liberatha.**

[73] Gatara argues that the basis on which the Court relied to decide that he had discontent with his wife should not be considered because if that was the case, he would not have taken her with her children to Belgium, take charge of them on his own account and would not have given a cow to Tegibanze Joseph in recognition of having hidden her during genocide, as well as paying for electricity installation of her parent's and brother's houses, which cost him approximately 700,000Frw and 1,000,000Frw.

[74] Moreover, he states that they experienced little problems in their relationship as it happens elsewhere but that they managed to solve them. He adds that this can be affirmed by Uwanyirigira Sylvie with whom they used to talk on phone although she changed her version for her personal and unknown reasons.

[75] He further states that the court mistakenly analyzed the statements in his correspondence because one letter was addressed to Liberatha before she came to Belgium, whereby he was telling her confidential information between them, that if it contained wicked statements, she would not have accepted to join him in Belgium. He adds that another letter was addressed to his mother-in-law two years after Liberatha lived in Belgium, informing her that her daughter's behavior had changed too much in such a way that she did no longer respect him after being accustomed to the country. He states that he wrote this letter so that they attempt to discipline her because he sometimes told them and they blamed her on the phone in such way that he noticed an improvement.

[76] He adds that if there was a serious discontentment between him and Liberatha, it would not have been the motive to kill her and her child Ingabire Cléscence.

[77] Regarding Murangwa Anthere statements that they met in Belgium in October 2005 and he told him that Liberatha's behavior had intolerably changed in such a way that he would prefer her death as he had enough with her, he explained that this is not true and that the court erred in law by rejecting his request to summon him to appear and testify before the court despite being relative to the deceased as her mother was her godmother.

[78] Regarding his statement during the divorce proceedings that his wife subjected him to excessive abuse by insults, he replied that he stated it as a ground for divorce. As for the statements made by Emmanuella in the same proceeding, he stated that he had invited her to testify about the way he used to insult her mother "stupid, ignorant" and her mother replied that he was "stupid, shit" and that to call someone "stupid" is a normal thing.

[79] Uwanyirigira Sylvie, the civil party and Liberatha's younger sister, testified that her sister told her that her husband used to harass her to the extent that she could no longer telephone her from inside the house.

[80] She explained that another cause of discontentment between them was that he was poor and used to secure some money from his ex-wife, Fabienne.

[81] The Prosecutor submits that the fact that Gatare might have assisted Liberatha's family does not exclude the possibility for him to plot her death and that the critical relationship between him and his wife are justified by his letter to his mother-in-law informing her that the behavior of her daughter had changed too much, which is also supported by the various witness statements. Therefore, it is not sufficient to merely allege that Murangwa Anthere falsely incriminated him whereas he is not the sole witness.

## **OPINION OF THE COURT**

[82] The Court finds that, although Gatare alleges that the previous Court improperly analyzed his correspondences and relied on them to confirm that the relationship between him and his wife was critical as well as the false testimony given by Murangwa Anthère, which was not even given before the Court, they are not the sole evidence proving the bad relationship between them because himself also affirmed during his interrogation before the Prosecution that they lived in disharmony and furthermore he confessed before this Court that two years his wife living in

Belgium, she started disobeying him and instead she told him that she was about to look for her own accommodation and handed over her wedding ring, the reason why he was found in possession of it at the time of his arrest.

[83] The Court finds that this disagreement is also proved by his paternal cousin, Muhirwa Frédéric, who testified at the Public Prosecutor's Office that in May 2005, when he was on the professional training course in Belgium, Gatare told him that the relationship with his wife was bad, that she disrespect him even before the children he adopted, that she was influenced by her family members who lived in Belgium and that she constantly abused him by reminding him that he depends on money given by his ex-wife and her children. He also stated that Gatare telephoned him the day after he got back to Rwanda and told him that they intended to travel together but that Liberatha had started influencing the children telling them that he plotted to abandon them in Rwanda.

[84] Furthermore, the Court finds the fact that Murangwa Anthère was not summoned to appear before the Court to repeat the statements he made before the Prosecution, confirming that he told him that Liberatha had intolerably changed at the extent he preferred her death cannot be considered as a ground to annul his statements because the Court is not obliged to summon all the witnesses interrogated in course of investigation more particularly that the subject of the examination in his statements was the relationship with his wife and there are sufficient evidence, including his own statements proving that it was unpleasant.

**h. Concerning the allegations that he wanted to abandon Liberatha and her children in Rwanda during the holidays and his wife discovered it and refused to travel with him to Rwanda.**

[85] Gatare argues that the Court's motivation that Liberatha rejected his proposal to travel with him to Rwanda because she had already known that he was going to abandon her is not true given that this is contradicted by the reservation he had already made demonstrating that they were supposed to take the flight from Belgium on 4 July 2006 and return on 29 August 2006, except for Estelle who was supposed to return before for personal reasons. He adds that it is also contradicted by the documents issued by the Belgian Embassy in Rwanda which show that they also planned to take along with them other children who had remained in Rwanda in order to avoid being scattered.

[86] Furthermore, he states that Liberatha refused to travel for her personal reasons that she did not want to reveal neither to him, her sister-in-law nor to her daughter at the time they spoke on the phone on 2 July 2007 because if she had a problem, she would have told them about it.

[87] He argues that the fact that Liberatha changed her mind and refused to travel with him to Rwanda should not be perceived as if he were planning to abandon or kill her.

[88] Regarding the statements made by Nsa Emoli, his co-employee at Milants where they were harvesting fruits, that he revealed to him his wife is not kind and that he was going to abandon her in Rwanda, Gatare replied that it was a lie because they were not friends to the extent that he could reveal secrets to him and that he did not have the power to prevent people from returning to Belgium.

[89] Regarding the reason why he booked the one-way tickets for Liberatha, Cléscence and Emmanuella, he replied that he wanted to take advantage of the 25% discount offered by the International Organization of Migration (IOM), therefore he only deposited 75% on its bank account.

[90] Regarding the reasons why he and Pierre Alexandre did not take advantage of this price reduction, he replied that IOM applies it only to foreigners, whereas they are Belgians.

[91] Regarding the testimony of Anne Christine Ghysens, an IOM employee, which was translated into french indicates that he told her that Liberatha could no longer support life in Europe and would like to return to Rwanda for good, he said that he lied to her with the concert of Liberatha, in order to benefit from the price reduction.

[92] The Prosecutor submits that the evidence that Gatare intended to abandon Liberatha and the children she had with her first husband in Rwanda is that he bought them a one-way air ticket, with assistance of OIM which help immigrants to return to their mother countries after lying that Liberatha could no longer bear life in Europe, and this was confirmed by his co-workers at Milants, who were in charge of harvesting fruits in St-Trond.

[93] He further declares that Gatare's statements that he and Liberatha had concerted to lie to IOM that they will not return, because Liberatha could no longer support life in Europe are not true because as soon as Liberatha knew that Gatare had bought a one-way air ticket, she immediately informed her children that she would not leave, on the grounds that Gatare plans to abandon her in Rwanda.

## **OPINION OF THE COURT**

[94] The Court notes that the fact of booking the tickets itself is not sufficient evidence that Gatare would purchase return tickets once in Rwanda.

[95] The Court finds that the statements made by Kassi Bilé, the co-worker of Gatare, that he told him that his wife is not kind and that he will abandon her in Rwanda with the children she had with her first husband corroborate with those of N'sa Emoli, his other co-worker, affirming that he learnt from Kassi Bilé that Gatare intended to abandon his wife and two children in Rwanda. Therefore, these statements must be taken into consideration because they could not have any reason to lie against Gatare.

[96] The Court finds that the fact that Gatare bought the air tickets for Liberatha and her two daughters through IOM constitutes proof that he did not intend to return them to Belgium, because according to his own statements, IOM does not assist immigrants to go on vacation, rather to return permanently to their mother countries; the reason why his statement that they concerted to lie to IOM is not true, for as soon as Liberatha learnt that he had purchased one way tickets she informed the children that she will not travel. This was confirmed by Emmanuella in her statement to the public prosecution and also affirmed by Muhirwa Frédérick that Gatare telephoned him the day before his departure to Rwanda, telling him that Liberatha started to negatively influence the children that he intended to abandon them in Rwanda.

[97] Therefore, the Court considers that the previous Court made no mistake in confirming that Liberatha refused to come with him to Rwanda after knowing that Gatare had planned to abandon them there.

**(i) Concerning the fact that once he arrived in Rwanda, he instituted a divorce action.**

[98] Gatare alleges that he came to Rwanda without a plan to file a divorce action, rather, he decided to do so because he was outraged by the lack of family complementarity, given that they had planned to go on vacation as a family in Rwanda, with his two children whom he had with his ex-Belgian wife, but despite all the effort he made to get means for their travel, after tickets were paid, she told him she would not leave just 3 days before the departure, without even advancing any reason, and forbidding Cléscence who wanted to go with him. He explains that this caused him to incur a loss of 2,716Euro, equivalent to more than 2,700,000Frw. He added that she had even abandoned their home without informing him about her destination.

[99] He continues to explain that he decided to seek for divorce because Liberatha made him angry, but that if he left after killing her, he would not have filed for divorce while he hastened to do so due to the short time he had to stay in Rwanda.

[100] Regarding the reasons that led him to file a divorce action in Rwanda while he and his wife were residing in Belgium, he argues that they solemnised their marriage in Rwanda and that the procedure is cheaper than in Belgium, therefore he wanted this to be brief and less costly.

[101] The Prosecutor states that Gatare rushed to file a divorce action once in Rwanda, to conceal the death of Liberatha, as he could not find how to reveal her death.

## **OPINION OF THE COURT**

[102] Gatare arrived in Rwanda on 18 July 2006 and he immediately filed for divorce in the Primary Court of Busasamana as demonstrated by the written submissions of 26 July 2006 prepared by Counsel Nkurunziza Jean Chrysotome. He also rushed to request that Liberatha be summarily summoned, which was approved by the Court. On the date of the hearing, he informed the Court that he had sent the summons of Liberatha by post and she refused to acknowledge receipt. On 29 September 2006, the judge pronounced the divorce to the detriment of Liberatha, on the basis of excessive abuse towards her husband, which is at the origin of conjugal conflict. The Court also placed Pierre Alexandre to the custody of Gatare and other children to the custody of their mother.

[103] After the adjudication of this case, Gatare filed another action to the Primary Court of Busasamana aiming at revoking the adoption of the children that Liberatha had with his first husband, as mentioned in the written submissions filed by Counsel Niyomugabo Christophe. However, the judge ruled that the birth certificates for these children should not be rectified because they do not contain any substantial irregularity and that they were duly issued.

[104] The Court considers that the divorce action would be perceived as the way to conceal evidence so that no body be surprised by the fact that he is no longer cohabiting with his wife or is not aware of her whereabouts. This assertion is likely to apply on the action initiated for

revocation of adoption with respect to the children of Liberatha, who were not biologically his, therefore, the fact that Gatare initiated an action for divorce as soon as he arrived in Rwanda and the action for revocation of the adoption must be taken into consideration as further evidence in this case.

**(J) With regard to Liberatha and Cléscence identity documents found in Gatare's possession at the time of his arrest, three months after their death.**

[105] Gatare argues that the Court's motivation that he took Liberatha and Cléscence's identity documents to cover up their identity is inaccurate because they had planned the trip together, their documents being collected in a bag they chose until Liberatha refused to travel three days before their departure, the reason why she forgot to take them off him, and he continued his activities without even noticing them.

[106] He further submits that if he had killed them, he would have burnt these documents to distort the facts, instead, he kept them for three months and he was about to return with them if he were not arrested by the security services the day before his departure.

[107] He further alleges that the fact that he was found with the documents of both the deceased and Liberatha's wedding ring does not constitute sufficient proof that he killed them; otherwise he would have concealed them in order to avoid his arrest. He adds that it rather proves that he was unaware of their death, because if he wanted to conceal evidence, he would have taken the voter's card as well as the card for “Centre Public d'Action Sociale (CPAS)” found in the car to better achieve his goals.

[108] The Prosecutor submits that the statements of Gatare that he mistakenly brought the documents should not be taken into consideration, because if it was the case, he would have immediately sent them, something he did not do, as he knew that there was no body, since they were dead.

## **OPINION OF THE COURT**

[109] Among the documents found with Gatare when he was arrested were among others, identity cards for foreigners living in Belgium belonging to Liberatha and Cléscence as well as their Rwandan passports.

[110] The Court considers that the statement of Gatare that if he were the murderer of Liberatha and Cléscence, he would have taken the Rwandan voter's card as well as CPAS's card in order to conceal evidence, is disregarding that these documents were severely altered by fire, and therefore the fact that the investigators resorted to the laboratory to assemble the ashes for them to recognize their origin, was not foreseen by the person who burnt them in the car.

[111] The Court also finds the fact that Gatare brought their identity cards to Rwanda and was arrested three months later still keeping them cannot be considered as a mistake from his part, rather it proves that Gatare was sure that they had not shifted from their home to reside elsewhere, because if this was the case they would have at least taken their identity cards, needed

in the daily life such as the withdrawal of money, working, or any other service. For this reason, it corroborates with other evidence of the case.

**k. Regarding the fact that the court found him guilty without taking into account that there was discharging evidence, proving that he could not burn Liberatha and Cléscence in the car while he was with Pierre Alexandre of 4 years old.**

[112] Gatare argues that the court disregarded the fact that he was with Pierre Alexandre because he could not take out two persons and leave him alone at home; therefore he could not burn them in the vehicle in his presence.

[113] Regarding the reason why he declared before the High Court of the Republic that Pierre Alexandre had gone with Emmanuella to his ex-wife Fabienne, he replied that it was a mistake, because due to the statements made by Emmanuella before the prosecution whereby she affirmed that he came to trim the tree fence along with Pierre Alexandre, he remembered that he was with him on the night of 02/07 dawning to 03/07/2006, and that they left together to St-Trond after trimming the tree fence.

[114] The Prosecutor submits that the burden to prove that he was accompanied by Pierre Alexandre lies to Gatare because he had also the option to leave him elsewhere.

## **OPINION OF THE COURT**

[115] During his interrogation before the public prosecution, Gatare declared that on Sunday of 2 July 2006, he went to St Trond to buy a car, leaving two children, Emmanuella and Pierre Alexandre at Fabienne's where he found them on Monday of 3 July 2006.

[116] In his submissions to the High Court of the Republic, he also stated that on Saturday, 1 July 2006, he took the children to Fabienne's for a visit and farewell and after, takes her children with whom they had to travel to Rwanda. He also repeated it during the hearing before the previous court and before this court before he changed his version of facts.

[117] The Court notices that each time he was questioned about his schedule on 2 July 2006 he never mentioned to have travelled to St Trond along with his child Pierre Alexandre to buy a car, neither the fact that they were together when he returned and found the house locked. Therefore, his statement that they spent the day and returned together, which reversed his previous version, cannot be taken into consideration.

**(l) With regard to his conviction by the Court without indicating how he got the MAZDA 123 in which Liberatha and Cléscence were burnt to death.**

[118] Gatare explains that the Mazda vehicle in which Liberatha and Cléscence were burnt to death was sold in Liège in the automotive firm of Bierset and that it is impossible for the vehicle to be sold without establishing a document indicating the buyer. He added that, apart from the bias in this case, he should not have been convicted without at least identifying the vendor of MAZDA123 in order for him to explain under what circumstances he would have sold or lent it to him to use it for the commission of the crime.

[119] He adds that he requested that the owner of the vehicle who sold it on 25 July 2006 to the automobile firm of Bierset be heard in this case because it was very important, yet the court did not take it into consideration in disregard of the provisions of article 46, paragraph 2, of the Law relating to the Code of Criminal Procedure, which provides that the court is obliged to seek evidence which the Prosecution was unable to find.

[120] He also submits that the testimony of Rauschen who works in that automobile firm demonstrates the difference between him and the buyer of the vehicle because he maintained that the buyer was 35 years old, wearing the bracelet, driving Mitsubishi car, while he is not of that age and never wears a bracelet, and in addition, he never owned a Mitsubishi vehicle.

[121] The Counsel for Gatare states that there are doubtful facts in this judgment such as the link between him and the vehicle in which Liberatha and Cléscence were burnt or the way he left the scene of the crime, therefore he requests the Court to acquit him on the basis of article 71 of Law N°15/2004 relating to evidence and its production, which states that doubt favors the accused.

[122] The public prosecutor submits that it is not necessary for the Court to order further investigation on the vehicle in which Liberatha and Cléscence were burnt, because the one carried out in Belgium showed that the number plate which was found at the place where it was burnt was already deregistered and the seller of the vehicle explained that it was purchased by a black person and that no written contract was concluded. Therefore, the Court considered sufficient the evidence submitted.

## **OPINION OF THE COURT**

[123] The investigation conducted in Belgium showed that the last owner of the MAZDA123 vehicle in which Liberatha and Cléscence were burnt was a German lady in the names of Schwarzer Tamara who sold it to Behrwanger in June 2006, the latter also sold it on Sunday June 25, 2006 in the automobile firm of Bierset. That same day he was bought by a black person but no document was established.

[124] With regard to the plate number CFI 204 that was on this car, the investigation showed that it was for the Peugeot 206 vehicle and in addition it was deregistered on 28 August 2002.

[125] The court considers that the fact that the buyer and the seller of the vehicle did not enter into a written contract and that the vehicle number plate was struck off demonstrates that the buyer had planned to alter the evidence that might facilitate his identification. Thus, the fact that the investigation did not demonstrate the identification of the buyer of the vehicle must not invalidate other evidence produced in this case.

### **(m) Held**

[126] Article 119, litera 1 of the Law N°15/2004 relating to evidence and its production stipulates that “in criminal cases, evidence is based on all grounds, factual or legal provided that parties have been given a chance to be present for cross-examination” while in its *litera 2* states that “the courts rule on the validity of the prosecution or defence evidence”.

[127] On the basis of allevidence presented above, the Court finds that the fact that Gatare's jacket was picked unburnt at the place where Liberatha and Cléscence were burnt and the wearer moved from the crime scene to the road; the fact that the keys used to open the house in which they reside were also found at the crime scene, the fact that he had the burns caused by the flame of fire the day after the death of Liberatha and Cléscence, the fact that a few hours before their assassination he made a call through the telecommunication antenna of Nieuwerkerken and the fact that he was found in possession of identification documents of Liberatha and Cléscence three months after their death, given the way in which Gatare filed a divorce action and the revocation of the adoption of the children immediately after his arrival in Rwanda and the fact that he informed no body about their missing, instead, he told those in Belgium that they are in Rwanda and told those in Rwanda that they were in Belgium; thus the Court finds that there is no doubt with regard to his participation in the killing of Liberatha and Cléscence by burning them in the vehicle and subsequently attempting to conceal the evidence as it was held by the High Court of the Republic, the motive behind their assassination being the anger he experienced when Liberatha refused to come with him to Rwanda for holidays after realizing his plot to abandon them there as well as the disagreements that existed between them.

#### **B. With regard to the penalties**

[128] Counsel for Gatare contends that the judge sentenced him to a penalty which is in contradiction with the law because he was sentenced to life imprisonment with special provision, while the prosecution had requested for lifeimprisonment; implying that he was sentenced to a greater penalty than the one which was requested.

[129] They further argue that in case the Court finds Gatare guilty, he should be sentenced to a term not exceeding 10 years, given that he is a first offender.

[130] The Prosecution submits that the fact that Gatare was sentenced to a lengthy sentence than the one requested for should not be the ground of appeal because no provision of law was violated especially that he was convicted of the crime he was accused of.

### **OPINION OF THE COURT**

[131] Article 312 of Decree-Law N°21/77 of 18 August 1977 establishing the Criminal Code which was in force at the time the offense was committed provided for the death penalty for a person who commits voluntary homicide, but this penalty was abolished by Organic Law N°31/2007 of 25/07/2007 and was replaced by life imprisonment and life imprisonment with special provisions; whichwas also repealed by Organic Law N°01/2012/OL of 02/05/2012 promulgated in the official gazette on 14 June 2012, which provides in its article 140 for the punishment of the life imprisonment for a person who is guilty of murder, and article 145 provides for life imprisonment with special provisions for a person who has killed another person by inflicting degrading acts or having committed a crime against him/her.

[132] Accordingly, the Court considers that Gatare should be sentenced under article 140 which provides for life imprisonment for the person guilty of murder.

[133] Regarding factors taken into consideration in sentencing, article 71 of the new Penal Code stipulates 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” while 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.

[134] The Court finds that, although Gatare is a first offender, he cannot benefit from mitigating circumstances as requested by his counsel, taking into account the manner in which he plotted and killed Liberatha and Cléscence with cruelty and considering all he has done to conceal the evidence of the crime, and the children of Liberatha have lost the only surviving parent and their eldest sister, killed by their adoptive parent.

#### **Whether Uwanyirigira Sylvie was awarded insufficient damages.**

[135] Uwanyirigira Sylvie states that she filed a cross - appeal against Gatare Edouard's appeal, requesting that the Supreme Court awards her the pecuniary damages she had requested at the High Court of the Republic equivalent to 32,560,000Frw, including alimony for the orphans of late Uwimana Liberatha, tuition fees, transporting the corpse and funeral expenses in Rwanda. She also claims moral damages worth 10,000,000Frw; the procedural expenses and counsel fees of 4, 256,000Frw, the total being 46,816,000Frw.

[136] Gatare argues that he should not be charged any damages because he is innocent.

### **OPINION OF THE COURT**

[137] The Court considers that Uwanyirigira Sylvie does not produce proof that she is the guardian of the orphans of the late Liberatha and she is the one who pays their school fees and other necessities for the child. Thus, she should not be granted pecuniary damages she requests for as held by the High Court of the Republic.

[138] As regards to the moral damages she claims for, the Court finds that she does not challenge 8, 000,000Frw granted by the first instance, therefore, they should be maintained.

[139] With regard to the transportation of the bodies from Belgium to Rwanda and the funeral expenses amounting to 10,000,000Frw, the Court considers that as explained by the previous Court, it could not award damages for an eventual act.

[140] With regard to counsel fees, the Court deems 300,000Frw awarded to Uwanyirigira by the first instance court in range, according to precedents set in this regard. This amount should be increased of 500,000Frw of the counsel fees at the appeal level.

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

[141] Finds the appeal lodged by Gatare without merit;

[142] Finds the cross appeal filed by Uwanyirigira Sylvie without merit;

[143] Declares Gatare Edouard guilty of murder committed against Uwimana Liberatha and Ingabire Clésence;

[144] Sentences him to the life imprisonment;

[145] Orders him to pay Uwanyirigira Sylvie 8,000,000Frw of moral damages, 300.000Frw of counsel fees allocated to the first instance and 500,000Frw granted before this court, the total being 8,800,000Frw;

[146] Orders the court fees to be charged to the public treasury since the appellant is detained.