

PROSECUTION v. NTEZIRYAYO

[Rwanda SUPREME COURT – RPA0249/13/CS (Mukamulisa, P.J., Munyangeri and Hitiyaremye, J.) November 25, 2016]

Criminal Law – Excuse of self defence – Onus probandi – The onus probandi lies with the defendant who invokes the excuse of self defence – Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 105.

Criminal Law – Penalty reduction – Requesting further penalty reduction – None should claim for further penalty reduction when the penalty imposed to him/her in previous court was considerably reduced and reflects the gravity of the offence committed.

Facts: The appellant was prosecuted for attempt of murder against Ndayambaje Emmanuel and murder against Nkurunziza Emmanuel. The High Court, Musanze chamber convicted and sentenced him to twelve years of imprisonment reducing the penalty basing on the fact that he confessed in all organs. Not pleased with the decision, he lodged an appeal before the Supreme Court seeking for pardon and penalty reduction stating that he continues to confess, he explains, he did not plot to commit such offences, it was rather a self defence.

The Prosecution requests that the sentence be sustained, because he did not commit offences in self defence, instead, he wanted to prevent his arrest as he was suspicious for having stolen potatoes. In addition, if he saw that those people had planned to mistreat him, he would have resorted to justice instead of punishing for himself and qualifying his acts the self - defense.

Held: 1. It would not be considered as a self-defence when nothing reflects the provision of the Law in this regard. Therefore, the statements of the accused are irrelevant.

2. None should claim for further penalty reduction when the penalty sentenced to him/her in previous court was considerably reduced and reflects the gravity of the offence committed. Hence, the appellant cannot be granted further penalty reduction.

**Appeal has no merit.
Court fees to the public treasury**

Statute and statutory instruments referred to:

Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 105 and 78(1°).

Authors cited:

Bernard Bouloc, Droit penal General, 24^{ème} Edition, Dalloz, Paris, 2015, p. 351.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 19 November 2012 around 6h30AM; Nteziryayo Emmanuel was suspected for having stolen the potatoes found at Twizerimana Jean de Dieu's ground, because he was known for robbery. The potatoes were together with a flashlight, gitenge cloth and a machete.

[2] Nteziryayo Emmanuel was present and when they started invoke his name, he ran away to escape, people who were on ground went behind him so that he returns back to resolve the matter. He took one of them named Ndayambaje Emmanuel and hit him on the head using the machete he possessed. Nkurunziza Emmanuel came for rescue and when he tried to catch Nteziryayo Emmanuel, the latter hit him on the arm using the machete, threw on his chest a stone and suddenly died. After his arrest, at the judicial police, Nteziryayo Emmanuel confessed, explaining that the reason behind his acts is that he saw those people behind him as they were going to throw him in a steep slope.

[3] After investigation, the prosecution sued Nteziryayo Emmanuel in High Court, Musanze chamber. Before the court, he continued to confess the acts he was being accused, on 20/06/2013 that court rendered the judgment deciding that he committed the offence of attempt of murder against Ndayambaje Emmanuel, and murder against Nkurunziza Emmanuel, and sentenced him to 12 years of imprisonment reducing the penalty basing on the fact that he confessed in all organs.

[4] Not pleased with the ruling, Nteziryayo Emmanuel appealed to the Supreme Court stating that he committed the offences he is accused of in the circumstances of self-defense, and that he continues to seek pardon and penalties reduction.

[5] The trial was conducted in public on 17 October, 2016, Nteziryayo Emmanuel being assisted by Counsel Busogi Cikoma Emmanuel and the prosecution by Munyaneza Nkwaya Eric, The National Prosecutor.

II. ANALYSIS OF LEGAL ISSUES

Whether Nteziryayo Emmanuel committed the offences he is being accused in self defense and whether the penalty would be reduced.

[6] Nteziryayo Emmanuel states that he again admits the offences he is accused of and also requests for pardon. He explains that he had not premeditated to commit such offences, but rather, it was in self defense. He further argues that the day of the commission of the offence he is accused of, he was called by Masengesho, and when he reached the place, he found the stolen objects at Nzayisenga Emmanuel, and the wife of Nzayisenga Emmanuel declared that she bought them from him (Nteziryayo Emmanuel) when asked from whom she bought them, all people who were there started hitting him, brought him to the Kabuhanga river to throw him into that river and in self defense, he took a machete and hit one of them named Nkurunziza Emmanuel on the arm and he died, after he hit the one named Ndayambaje Emmanuel on the head but he survived. He concludes requesting for pardon and penalty reduction from the Supreme Court.

[7] Counsel Busogi Cikoma Emmanuel states that considering how Ndayambaje Emmanuel explained that Nteziryayo Emmanuel hit him when he was running, and which was witnessed by Nyirabikari Bellancilla who said that the people who ran after Nteziryayo Emmanuel were several and in such circumstances, he threw a stone at Nkurunziza Emmanuel and killed him, he finds, Nteziryayo Emmanuel committed these offences for the purpose of self defense, hence he should not be held responsible as provided for by articles 105 and 106 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code.

[8] The prosecutor states that when Nteziryayo Emmanuel killed Nkurunziza Emmanuel and attempted to kill Ndayambaje Emmanuel, it was not self defense because he committed

those offences with the intention to prevent him from arrest because he was suspicious for having stolen potatoes found at Twizerimana Jean de Dieu'ground. He further states that if he saw that those people had plotted to mistreat him, he would have resorted to justice instead of punishing for himself and qualifying his acts as self defense. He concludes by requesting that the penalty of twelve years of imprisonment sentenced to Nteziryayo Emmanuel be sustained as it complies with the offence he committed.

THE VIEW OF THE COURT

[9] Article 105 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code provides that a person shall be considered to act in self-defense when he/she commits an act to:

Repel, during night, a person who breaks into an occupied place, enters it by force or trickery;

Defends him/herself against perpetrators of theft or other criminals.

[10] Law scholar Bernard Boulac states that with regard to the imminent danger to the person, which could only be avoided by committing an offense, that imminent danger must be real and not exist only in the agent's imagination, (...la condition d'actualité de l'agression consiste dans la menace d'un mal imminent qui n'a pu être écarté qu'en commettant le délit. Ce mal imminent doit être objectivement vraisemblable et ne pas exister seulement dans l'imagination de l'agent)¹.

[11] With regard to this case, Nteziryayo Emmanuel and his counsel state that he injured Ndayambaje Emmanuel and killed Nkurunziza Emmanuel in self defense because they were among the people who were running after him with intention to throw him into the river, hence he should not be held responsible of this acts.

[12] Basing on what is demonstrated above in relation to the circumstances by which the self defense happens as the penal code states, and according to the doctrines , the Supreme Court finds Nteziryayo Emmanuel and his counsel's statements to be irrelevant, because his acts are not justified anywhere in article 105 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, cited above, to qualify his acts as self defense as he did not commit the offences he is accused of, to repel, during night, a person entering his house and he failed to prove to the court that the people walking behind him were the thieves or the perpetrators. They were rather his fellow who intended to bring him back as he was escaping, so that he resolves the matter of the theft he was suspected of. His statements that they were going to throw him into the river are therefore lacks merit as he does not also produce evidence to prove it, it is rather only his personal imagination.

[13] With regard to penalty reduction that Nteziryayo Emmanuel seeks, the Supreme Court finds, it would not be reduced once more since the High Court, Musanze Chamber reduced it pursuant to article 78, 1° of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code because he pleaded guilty, whereby the penalty was reduced from life imprisonment to twelve years (12) of imprisonment, which complies with the gravity of the offence committed.

¹ Bernard Boulac, Droit Pénal Général, 24^{ème} Edition, Dalloz, Paris, 2015, p. 351.

[14] The supreme Court finds, considering the aforementioned motivation, that the self defense that counsel for Nteziryayo Emmanuel alleges in his pleadings, seeking that his client be not held responsible is without merit, since he failed to prove it, and the penalty reduction requested by Nteziryayo Emmanuel would not be granted as the penalty sentenced to him in the appealed judgment complies with the gravity of the offences he committed, his appeal is therefore without merit.

III. THE DECISION OF THE COURT

[15] Finds Nteziryayo Emmanuel's appeal without merit,

[16] Decides that the penalty of twelve years (12) sentenced to Nteziryayo Emmanuel in judgment RP0077/12/HC/MUS rendered by the High Court, Musanze chamber on 20/06/2013 be sustained

[17] Orders the court fees to be charged to the public treasury