

THE PROSECUTION v. DUSABEYEZU

[Rwanda SUPREME COURT – RPAA 0014/10/CS (Mugenzi, P.J., Hatangimbabazi and Munyangeri, J.) October 25, 2013]

Criminal Law – Child defilement – Offence committed by a child – The penalty reduction based on minority could not prevent another penalty reduction based on other mitigating circumstances – Law n^o 30/2013 of 24/5/2013 instituting the code of criminal procedure, art. 35.

Facts: The appellant was charged with defilement of a seven years old girl, committed at the bed where she was sleeping. The intermediate Court of Muhanga sentenced him to ten years imprisonment, explaining that he got a penalty reduction because he was a child at the time when he committed the offence. He appealed to the High Court, and his appeal had no merit. He appealed to the Supreme Court claiming that the Court refused to grant him the penalty reduction while he was a child under 18 years old, a first time offender and he pleaded guilty and sought forgiveness.

The Prosecutor contended that the accused should not be granted the penalty reduction, because he had it when he was sentenced to ten years of imprisonment instead of life imprisonment. Regarding the principle of non-sentencing of a child, he said that it is right but it depends on the seriousness of the offence committed. He states that the accused defiled a seven year old child and this has the gravity that deserves him to be imprisoned.

Held: Penalty reduction based on the young age of the offender is different from the one based on the guilty plea. Therefore, when the guilty plea is done without any reservation, the accused should consequently be granted the penalty reduction.

**Appeal has merit.
Appellant sentenced to seven years imprisonment.
Court fees to be paid by the state.**

Statutes and statutory instruments referred to:

Law N^o 54/2011 of 14/12/2011 relating to the rights and the protection of the child, art. 62.

Law N^o 30/2013 of 24/5/2013 relating to the code of criminal procedure, art. 35.

Decree Law N^o 21/77 of 18/8/1977 instituting the penal code, art. 83,3^o

No case referred to.

Judgment

I.BRIEF BACKGROUND OF THE CASE

[1] The Intermediate Court of Muhanga sentenced Dusabeyezu to ten years imprisonment for defiling a child of seven years old named N.D, finding her on the bed where she was sleeping. The Court explained that he benefited the penalty reduction because he was a child at the time when he committed the offence. He appealed to the High Court and it found his appeal without merit.

[2] Dusabeyezu appealed to the Supreme Court claiming that the Court refused to reduce his penalty while in his appeal submissions; he pleaded guilty and was seeking forgiveness. He states that he was under 18 years old and a first offender and prayed to Court to reduce his penalty pursuant to art. 83, paragraph 3 of the penal code.

[3] The hearing was held public on September 18, 2013, where Dusabeyezu was assisted by Council Kayiranga Callixte and the Prosecution was represented by Mutayoba Alphonse

II.ANALYSIS OF LEGAL ISSUES

Whether Dusabeyezu should benefit the penalty reduction based on his guilty plea.

[4] Dusabeyezu and his Counsel state that the High Court denied him to benefit the penalty reduction while in his appeal submissions he was pleading guilty and was seeking forgiveness. He added that he was only 15 years old and first time offender. He prayed to Court for the penalty reduction pursuant to the Art. 83 paragraph 3 of the penal code which was in force at the time when the crime was committed and allow him to benefit the penalty reduction and be sentenced to 2 years imprisonment.

[5] They kept on pleading to Court saying that, six years spent in the prison are enough, requesting for his release based on art. 62 of the Law relating to the rights and protection of the child, which provides that the release on parole of a child is a principle, while full completion of the punishment is an exception.

[6] The Prosecution states that Dusabeyezu should not benefit the penalty reduction because he got it enough when he was sentenced to ten years imprisonment instead of life imprisonment. Regarding the principle of not putting a child in prison, he agrees with the principle but reminds that it should not be isolated from the seriousness of the offence committed. He added that Dusabeyezu defiled a child of seven years old and it has the gravity which allow him to be in prison.

[7] The Court finds the fact that Dusabeyezu was granted the penalty reduction based on his being a minor, which is different from the penalty reduction based on the guilty plea provided by Art. 35 of the Law n^o 30/2013 of 24/5/2013 relating to the code of Criminal Procedure. Therefore, based on his guilty plea that seems to be sincere and on the cited article, he should once again be granted the penalty reduction and be sentenced to seven years imprisonment.

III.THE DECISSION OF THE COURT'S

- [8] Finds the appeal of Dusabeyezu Damascène with merit.
- [9] Sentences him to seven years of imprisonment.
- [10] Decides that the previous judgment changes with regards to the punishment.
- [11] Orders that the Court fees be paid by the State.