

PROSECUTION v. DUSENGIMANA

[Rwanda SUPREME COURT– RPAA 0001/14/CS (Mukanyundo, P.J., Munyangeri and Hitiyaremye, J.) 17 November 2017]

Criminal Procedure – Evidence in Criminal matters – Proof beyond a reasonable doubt – A person can only be convicted if the Prosecution has proved beyond any reasonable doubt that the accused is guilty.

Facts: This case started before the Intermediate Court of Musanze, whereby the accused were charged with child defilement, The Prosecution states that on 17/06/2012 at around 9 AM, the accused went to Nshizirungu’s home, and when his wife Uwamahoro was cleaning the house, the accused defiled their child of ten months old called I.B., when the mother heard her baby crying, she went out to see what happened to her and found the accused had just defiled the baby, she made an alarm and the accused ran, people came running after him but he escaped. That Court found the accused guilty basing on testimonies and sentenced him to life imprisonment with special provisions.

The accused appealed before the High Court, chamber of Musanze, arguing that the Intermediate Court wrongly convicted him for the offence he did not commit, and based on the statements of the witnesses which contradict themselves with regard the alleged time of defiling the baby as well as the place where he was arrested instead of considering the testimony of the nurse who affirmed not found signs of defilement on the baby, that Court rendered the judgment sustaining the appealed judgment.

The accused appealed again before the Supreme Court, arguing that the court disregarded his defence which proved his innocence, that he faced false accusations from the baby’s parents because of money for tuition he got from the donor, and the baby’s parents wanted to appropriate themselves some of them, he adds that the court based on the testimonies of those accusing him falsely, who testified that he ran after having committed the offence whereas he is visually impaired and cannot run faster than those with perfect eye vision, he concludes stating that the Court disregarded the testimony of the nurse who first treated the baby affirming not found signs of defilement on the baby.

The Prosecution contends that the accused’s grounds of appeal lack merit because in his interrogation before the Prosecution, had stated that he went to the home of baby’s parents and he had no conflict with the parents, It adds that the witness called Mukarusanga had testified that she saw the sperms on baby's genitals and thighs, The Prosecution also states that all these elements of evidence are supported by the report issued by the Physician which indicates that the baby was defiled, which caused some injuries. Concerning the statement of the nurse who treated the baby first and asserted that there was no sign of defilement, the Prosecution contests that the statements of that nurse should not be considered because she did not want to accuse the culprit. Concerning the issue that the accused was blind, and how he managed to run, the Prosecution states that it should not be considered as if it would not be possible since the accused stated himself that the way was easily accessible.

Held:1. A person can only be convicted if the Prosecution has proved beyond any reasonable doubt that the accused is guilty, therefore, the Court finds no reliable and conclusive elements of evidence to be based on to convict the accused.

**The appeal has merit;
The ruling of the appealed judgment is overruled;
Court fees are charged to the public treasury.**

Statute and statutory instruments referred to:

The Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 3,65 and 119.

No case laws referred to.

Author cited :

Henry Bosly & Damien Vandermeersch, *Droit de la procédure pénale*, 4e édition, P. 1316, 5.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The Prosecution sued Dusengimana Ferdinand before Musanze Intermediate Court of, charging him with child defilement, It states that on 17/06/2012 around 9 AM, the accused went to Nshizirungu Emmanuel's home, and when his wife called Uwamahoro Solange was busy cleaning the house, whereas the husband had gone to look for cow's grasses, the accused took their baby girl aged ten months called I.B. and defiled her when the mother heard her baby crying, she went out to see what happened and found Dusengimana Ferdinand putting back his penis in his pant, she immediately took the baby and found sperms on her sex, on thighs and on the dress she was wearing, then she screamed, Dusengimana Ferdinand ran and people came running after him but he escaped.

[2] The Intermediate Court of Musanze rendered the judgment RP0322/012/TGI/MUS on 21/03/2013 finding Dusengimana Ferdinand guilty of child defilement basing on testimonies of prosecution witnesses, the Court sentenced him to life imprisonment with special provisions.

[3] Dusengimana Ferdinand appealed before the High Court, chamber of Musanze stating that the court found him guilty basing on the testimonies of the witnesses which contradict themselves on the time on which they allege that the offence was committed as well as the place where he was arrested instead of considering the testimony of the nurse who affirmed the lack of signs of child defilement on the baby, that Court rendered the judgment RPA0077/13/HC/MUS on 21/10/2013, holding that his appeal lacks merit.

[4] Dusengimana Ferdinand appealed before the Supreme Court, stating that the court disregarded his pleadings, that he is innocent, that he was falsely accused by the baby's parents because of conspiracy, he adds that the Court based on the testimonies of those accusing him lies, who testified that he ran after having committed the offence whereas he is blind, he also

states that the court disregarded the testimony of the nurse who first treated the baby which affirms not found signs of child defilement.

[5] The hearing of the case was conducted in public on 16/10/2017, Dusengimana Ferdinand assisted by Counsel Umupfasoni Blandine, whilst the Prosecution was represented by Munyaneza Nkwaya Eric, the National Prosecutor.

II. ANALYSIS OF LEGAL ISSUE

Whether there are reliable elements of evidence proving Dusengimana's guilt.

[6] Dusengimana Ferdinand argues that his grounds of appeal are based on the fact that the Court disregarded his defense which proves that he is not guilty of the offence he is accused, rather, Nshizirungu Emmanuel and his wife Uwamahoro Solange conspired for false accusations against him due to the conflicts they had with his family when they knew about the money he got from the German donor called Thomas, purposely for pursuing his studies at Rwamagana in the school of people living with blindness disability, that they tried to appropriate his money, they even once deliberately charged his parents unjustified damages, then they made false accusation with the intention to take that money.

[7] He further states that the High Court relied on the testimonies witnesses who affirmed that he was arrested on the river while washing the clothes which he wore and kept wearing them when they are wet, whereas, the nurse whom they found at the health center, affirmed that he was not wearing wet clothes when she saw him. He keeps stating that what also proves that the Court relied on false testimonies, is that those witnesses testified to have seen him running towards the river whereas he is known to be living with blindness disability, that he uses a white cane, in addition, they testify as eye-witnesses whereas it is hearsay told by the baby's parents. He gives an example such as the statement that they saw sperms on baby's clothes, but one can ask which material they used to test those sperms whereas the nurse who first treated the baby, did not notice them.

[8] Counsel Umupfasoni Blandine assisting Dusengimana Ferdinand, states that her client was falsely accused because of tuition he got from the donor, which he used to walk with it, hence, Nshizirungu Emmanuel who knew it, asked him to give him some of that money when he was passing by his home but he refused, consequently, Nshizirungu plotted to take it off from him. She explained that what proves that the money was the motive of false accusations, is that when they reached at the Health Center, for the child to be examined in order to collect elements of evidence, the nurse who treated the baby, revealed to lack signs of defilement, she advised them to negotiate for the other possible issues they might have, then when they went home in the village, they asked Dusengimana Ferdinand for money, he refused, then they filed a claim to the Police, she adds, that the mother of the baby, would have rubbed the baby's sexual organs (*frottement*) with intention of getting proofs that Dusengimana Ferdinand is the one who rubbed his sex organs to that one of the baby.

[9] She further argues that what also proves that the testimonies of the witnesses contain false accusations, is where they stated that the baby's mother called them for rescue stating that Dusengimana Ferdinand ran after having defiled the baby, this implies that the witnesses did not

see him. She adds that witness Harerimana Adrien had stated that he heard a woman making a scream for help that her child was defiled, that when he reached the place he found sperms on the baby, that Dusengimana Ferdinand ran instantly, this is not reasonable, because a person visually impaired cannot run faster than those with perfect eye vision. Counsel Umupfasoni Blandine also adds that another argument to prove that his client is falsely accused is that the statements of baby's parents contain a contradiction, whereby in their interrogation, one of them stated that they did not wash the baby whereas the other stated that they did.

[10] She also argues, the fact that the nurse who first treated the child, did not notice any sign of defilement, is another element of evidence proving that Dusengimana Ferdinand is not guilty, and the physician who conducted the second consultation stated that he did not also notice sperms, whereas the baby's mother did not reveal that she washed the baby before she took her to the Health Center, the physician who conducted the second consultation, had recommended to also examine the alleged author, unfortunately, it was not done. She adds the fact that Dr. Nteziryayo Ezéchiel, authorized government medical Doctor, stated that the baby had inflammation and various little wounds in her genital organs, this should not be considered as a piece of incriminating evidence against her client, because those wounds might have been caused by many reasons as she motivated above (rubbing the baby's organs(*frottement*) with intention of getting proofs)

[11] The Prosecution contends that Dusengimana Ferdinand's grounds of appeal lack merit because in his interrogation before the Prosecution, had stated that he went to Nshizirungu Emmanuel and that he had no conflict with the baby's parents, in addition, the witness called Mukarusanga Marie Josée had said that she saw the sperms on baby's sex and thighs, It adds that all these elements of evidence are supported by the report issued by Dr. Nteziryayo Ezéchiel which indicates that the baby was defiled and caused her some wounds.

[12] With regard to the statement of the nurse who first treated the baby, who affirmed that there was no any sign of defilement, the Prosecution contends that the statements of that nurse should not be considered because she refused to be against the accused, that she only let him go and be accused by others. Concerning the issue whereby the baby's mother found Dusengimana Ferdinand lifting up the zipper of his pant after having defiled, this should be considered as he was caught red-handed and this should not be subject of doubt about it. with regard to the issue of the blindness of the accused and be able to run to the extent of reaching the river to wash his clothes, the Prosecution states that it should not be considered as if it would not be possible since the accused had himself stated that the way was easily accessible.

THE DETERMINATION OF THE COURT

[13] The issue to be examined in this case, is to know either the statements of the parents or those of witnesses can be related to the veracity to the extent of holding Dusengimana Ferdinand liable for defiling the child I.B.

[14] Article 4 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that a court decides a case before it in accordance with the rules of evidence applicable to the nature of the case. Article 65 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that only the Court assesses the relevance, pertinence, and

admissibility or rejection of testimonial evidence. It shall not be influenced by the number of witnesses. It shall mainly consider their knowledge of facts and the objectivity and sincerity of their testimonies, whereas article 119 of the Law N° 15/2004 of 12/06/2004 previously mentioned states that the Court rules on the validity of the prosecution or defence evidence.

[15] With regarding the statements of witnesses as queen evidence to convict Dusengimana Ferdinand, the statements of their interrogation demonstrate that no one of them was present when Dusengimana Ferdinand defiled that child except her mother Uwamahoro Solange who stated that she saw him putting back his sex in pant, in addition, the testimonies of those interrogated, are confusing in relation to the conviction of Dusengimana Ferdinand as follows :

- a) Uwamahoro Solange, Harerimana Adrien, and Mukarusanga Marie Josée state that Dusengimana Ferdinand ran and escaped, that they found him on Gaseke river. This testimony is confusing because there is no possibility for a person visually impaired to run faster than those with perfect eye vision, especially, all witnesses testified that in absence of someone to help him, he walks with a white cane.
- b) All those three witnesses state that the child was defiled at 9 AM, and they went to search for Dusengimana Ferdinand at 10:30 AM, it is questionable, to wait such time instead of arresting him immediately as the baby's mother states that she caught him red-handed putting back his sex in pants.
- c) The witnesses listed above, also testified that Dusengimana Ferdinand went to the river for washing clothes he was wearing and cleaned the all stain to destroy elements of evidence, however, none of them can identify clearly which kind of stain.
- d) They further state that the place where they arrested Dusengimana Ferdinand is Gaseke river, where they found him wearing wet clothes, that they took him to the Health Center, but the nurse who treated the case, stated that his clothes were dry, and those witnesses do not state that he might have changed clothes.
- e) That nurse who first treated the child revealed that she did not notice any sign of child defilement, she advised them to return home and negotiate for other possible issues that they might have, which the parents agreed upon. If the parents were not contented with the nurse's advice, one would ask why they didn't immediately refer the matter to the police instead of trying first to negotiate with Dusengimana Ferdinand.
- f) The report issued by the second physician who treated the baby, indicates that there were little wounds on baby's sex (*frottement au niveau des grandes lèvres compte tenu des oedèmes et des ulcérations de ces grandes lèvres*) and that there is no male genital which penetrated the child, on the other hand, the physician recommended to examine the alleged author, but it was not done so, therefore, this report cannot be considered as conclusive evidence that those little wounds were caused by child defilement.

[16] The Court finds, pursuant to article 65 of the Law N° 15/2004 of 12/06/2004 mentioned above, the testimony of the witnesses mentioned above, should not be considered as reliable evidence to referred to by the Court to convict Dusengimana Ferdinand for having defiled I.B, the fact that the mother of the child states that he called people for help and showed them substance she pretends to be sperms, but they were not brought before the physician to confirm that those substances were sperms, and to verify that they belong to Dusengimana Ferdinand

because neither the nurse who treated the baby did not notice them nor the physician who treated her for the second time, he recommended rather examine the accused but it was not done so.

[17] The Court finds that the Prosecution's statement contending that the fact that the nurse who first treated the baby, affirmed that there was no any sign of defilement, does not mean that the signs were absent, that instead, she did not want to be against the accused, this statement has no merit because there is no related element of evidence submitted to the Court. With regarding to the medical report, the Court does not find that those little wounds and inflammation would have been caused by defilement only.

[18] The legal scholars in criminal procedure, Henry Bosly and Damien Vandermeersch state that a person can only be convicted if the Prosecution has proved beyond any reasonable doubt that the accused is guilty. (*Une personne ne peut être déclarée coupable au terme du procès que si l'accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l'accusé*).¹

[19] Pursuant to article 4, article 65, and article 119 of the Law N° 15/2004 of 12/06/2004 mentioned above, the Court finds no reliable elements of evidence to be based on to convict Dusengimana Ferdinand for the offence he is accused, therefore he has to be declared not guilty.

III. THE DECISION OF THE COURT

[20] Holds that Dusengimana Ferdinand's appeal has merit;

[21] Overrules the appealed judgment;

[22] Decides that Dusengimana Ferdinand is not guilty of the offence he is accused;

[23] Orders the release of Dusengimana Ferdinand after the pronouncement of this case;

[24] Orders that the court fees be charged to the public treasury.

¹ Henry Bosly & Damien Vandermeersch, *Droit de la procédure pénale*, 4e édition, p. 1316, 5