

PROSECUTION v. GATABAZI

[Rwanda SUPREME COURT – RPA 0263/12/CS
(Hatangimbabazi, P.J., Gakwaya and Karimunda) May 20,
2016]

Evidence law – Evidence in criminal matters – Murder – In murder cases, "to cause the death" means to cause the death at the time when, and the place where, the deceased died – No one should be convicted of murder based on the suspicion that he was the one with the interest in the death of the victim without proving that the accused committed the murder.– The accused can be not be convicted on the basis that it was possible for her/him to commit the offence, instead that should serve as a benefit of the doubt.

Facts: The prosecution prosecuted Gatabazi et. al in the High Court for the murder of his wife Mukakabera, the defendants pleaded not guilty. The court found Gatabazi guilty and sentenced him to life imprisonment, while his co-accused, the Court found doubt in the evidence brought against him, and thus he was acquitted.

Gatabazi was not contented with the decision and appealed to the Supreme Court claiming that he was convicted of the offence of murder of his wife based on the fact that he requested her to go home earlier which is not proof that he killed her but instead which proves that he did not want anything bad to happen to her and that the accusation of his siblings that he requested them to track her and investigate the adultery of his wife and his co-defendant and also that he buried the deceased immediately

without a post-mortem are all lies, he concludes that there is no causal link between him and his wife's death.

The prosecution argues that the deceased was killed by her jealous husband when his former co-accused gave her a drink of his alcohol and that he does not deny that he was jealous of his wife because he told his elder brothers that he had asked them to put an eye on his wife to ensure that she does not commit adultery with that man and that for the doctor failing to reveal the cause of the death it is not a surprise since the dead body was measured six days after burial. It concludes that although no one saw him kill her, the fact that the deceased was given a drink by a man he was suspected to be committing adultery with and she died the following day is enough to suspect him because he was the one who had the interest in her death.

Held: 1. No one should be convicted of murder based on the suspicion that he was the one with the interest in the death of the victim without proving that the accused committed the murder.

2. In murder cases, "to cause the death" means to cause the death at the time when, and the place where, the deceased died. Although the appellant manifested disgraceful conduct after the death of the deceased by refusing to know the information of the last caller or claiming that he has no money to carry out the post-mortem, itself is not a piece of evidence to prove guilt because it does not establish his involvement in the death of the deceased.

3. The accused can be not be convicted on the basis that it might have been possible for the accused to commit the offence, rather that should serve as a benefit of the doubt, therefore the Appellant cannot be convicted on the ground that he might have committed the offence.

The appellant is not guilty of the murder of his wife.

Statutes and statutory instruments referred to:

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

Law N° 30/2013 of 24/5/2013 relating to the criminal procedure (repealed), article 165

Authors cited:

CR Snyman, Criminal Law, Durban, Lexis-Nexis, 2002, P. 75.

Nyabirungu mwene Songa, Traité de droit pénal Congolais, Kinshasa, Editions Universitaires, 2007, P. 321.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started before the High Court, chamber of Rusizi where Gatabazi Félicien and Kanyarukiga Jean-Pierre were prosecuted for the facts that on 26/05/2011 in the evening they abused Mukakabera Donata Gatabazi Félicien's wife with whom they were sharing in a bar but she left earlier, and was found next morning on 27/07/2011 murdered, her head upside down in Kadasomwa river. Gatabazi Félicien and Kanyarukiga Jean-Pierre pleaded not guilty.

[2] In the case RP0015/12/HC/RSZK rendered on 31/05/2012, the Court found enough evidence for incriminating Gatabazi Félicien for the offence he was prosecuted for, it decided that the latter murdered his wife because he suspected

her of adultery, and sentenced him for life, and ordered him to pay Court fee. Concerning Kanyarukiga Jean-Pierre, the Court found doubtful the evidence produced by the prosecution and acquitted him.

[3] Gatabazi Félicien was not contained with that decision and appealed before the Supreme Court.

[4] The hearing in public was scheduled for 07/03/2016, that day Gatabazi Félicien appeared assisted by Counsels Hakizimana Martin and Rwigema Vincent whereas the prosecution was represented by Munyaneza Nkwaya Eric, a National prosecutor. The counsels for Gatabazi Félicien notified the Court that they lacked the time to read through the file and to consult with their client, they requested to postpone the hearing so that they can prepare themselves consequently. The hearing was postponed to 18/04/2016.

[5] That day, the hearing was conducted in public, Gatabazi Félicien assisted by Counsel Hakizimana Martin whereas the prosecution was represented by Munyaneza Nkwaya Eric, a National prosecutor.

II. ANALYSIS OF THE LEGAL ISSUE.

Whether there is incriminating evidence that GATABAZI Félicien committed the offence for which he is prosecuted.

[6] Gatabazi Félicien, states that he appealed because the High Court convicted him whereas he is innocent, that there were no disputes between him and his wife to the extent that he can abuse her also that, if he did it, he would admit it and apologize for that. He explained that he was living at the bar, and the

deceased died while he had gone to stock up on drinks because that was his overnight plan, they called him and found Mukakabera Donata felled in the river upside down, the alcoholic drinks had come out through her mouth and nose. Which the evidence that she was killed by alcohol because the doctor consulted him and affirmed that she was not beaten by any blunt object. He explained that she was buried in presence of her family, with the authorization of the administrative authorities and the certificate provided by the police, but that certificate was burnt during Muhanga prison's fire.

[7] He states also that; his cousins whose names are Riberakurora and Bavugirije who accuse him of spying on his wife's adultery with Kanyarukiga Jean-Pierre, he asked them to shut their mouth when they came closer to tell him a story of a person that the deceased called on the telephone for the last time or that he hurried to bury the deceased to escape the autopsy all these are lies fabricated aimed at keeping him in prison to appropriate his plots of lands which are usually in litigation. He concludes by requesting the Court to redress the injustice he suffered and be acquitted because he was convicted for the offence he did not commit.

[8] Counsel Hakizimana Martin states that the Court convicted Gatabazi Félicien for killing his wife basing on the fact that he ordered his wife to return home early from the bar, whereas that is not an evidence for killing her rather an evidence for caring for her, it based also on the fact that he went to stock up on drinks whereas his wife was dead, the Court disregarded the fact that the bar was not located at their home reason why he used to return home time to time, that specific day he left early for stock up without him knowing that his wife has died, because

if he had some facts for self-incrimination he would have stayed nearby and intervene firstly for evidence distract, is based also on the fact he buried the deceased without an autopsy test whereas it was done with the authorization of the administrative authorities and the certificate provided by the police, but that certificate was burnt during Muhanga prison's fire, this would not have been done if there was a suspicion that the death was caused by an offence.

[9] Counsel Hakizimana Martin states also that the Court based on the fact that Riberakurora and Bavugirije tried to tell Gatabazi Félicien about a person who called his wife lastly but he asked them to shut their mouth and that he was the one who called them during the night of his wife's death however these are just words without any further evidence mostly that, there was no reason to ask them to shut their mouth while administrative authorities and were present, all this indicates that Gatabazi Félicien was convicted basing on the lies of Kanyarukiga Jean-Pierre who would not be a witness in this case because he was also a suspect, and he was interrogated he could not explain where he left the deceased whereas he is the one who met her lastly, and on conspiracy of his cousins who want to dispossess him his land which is the reason why the body was exhumed for its examination whereas it was buried in their presence, however the doctor could not indicate the cause of the death after examination.

[10] He concludes by stating that there is no link between the death of Mukakabera Donata and Gatabazi Félicien also that if the latter committed the offence nothing would prevent him from admitting it because seven years he has spent in prison is enough for deterrence, however, he has no blood on his hands, he prays

the Court, to decide that there is no evidence to convict Gatabazi Félicien for the offence he is prosecuted for, thus declare him innocent.

[11] The representative of the prosecution states that Mukakabera Donata was killed by her husband Gatabazi Félicien who felt jealous when Kanyarukiga Jean Pierre shared with her a drink. He explains that Gatabazi Félicien does not deny that he felt jealous against his wife because he talked about it with his old brothers who accused him of requesting them to spy on his wife to know whether she does not have sex with Kanyarukiga Jean-Pierre and up to now he can't evidence for the dispute he pretends to have with them, this indicates that though Kanyarukiga Jean-Pierre is the cause of the death of the deceased he is not the killer, even the argument of Gatabazi Félicien that he was given the authorization to bury the deceased in hurry but the certificate got burnt in Muhanga prison it has no merit because it is usual for prisoners when they fail to get evidence of their statement, with regarding the fact that the doctor did not indicate the cause of the death of Mukakabera Donata, that is not a problem because the body was examined six days after the burial.

[12] He concludes by stating that though none witnessed Gatabazi Félicien killing Mukakabera Donata, the fact that she shared a drink with a man whom Gatabazi Félicien was suspecting to have sex with him, and died the following day, is enough to suspect him because he was the one to benefit from that death, that factual evidence and the statement of the witnesses were and still enough to convict Gatabazi Félicien for the offence he is prosecuted for, thus he prays the Court to sustain the decision of the appealed judgment.

DETERMINATION OF THE COURT.

[13] Article 119 of evidence Law N° 15/2004 of 12/06/2004 provides that "In criminal cases, the evidence is based on all grounds, factual or legal provided that parties have been given a chance to be present for cross-examination. The courts rule on the validity of the prosecution or defense evidence".

[14] Article 165 of the Law N° 30/2013 of 24/5/2013 relating to criminal procedure provides that "The benefit of the doubt shall be given in favour of the accused. If the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond a reasonable doubt that the accused committed the offence, the judges shall order his/her acquittal".

[15] The case file indicates that Gatabazi Félicien stated before the judicial police and before the prosecution that Mukakabera Donata was not too drunk when she left with Kanyarukiga Jean-Pierre, and children who went to fetch water the next morning found her in the water her neck stuck in the mud, her legs downside up, the father of those children named Busenyi Jean-Pierre called the relatives of the deceased, after her burial, he knew that she kept in touch through a telephone with Kanyarukiga Jean-Pierre before her death. He explains that he buried her without an autopsy because he had no means, however, her brother named Gahima was present and he signed on the document made for her burial kept by the police and at the sector office (identification number 22-25 and 67-70). A person named Busenyi Jean-Pierre stated that he is among the persons who withdrawn the body of the deceased from the water, they recognized her when the children around saw her and started

crying stating that she is their mother but he doesn't know the killers (identification number 52).

[16] The case file indicates also that Kanyarukiga Jean-Pierre stated before the judicial police and before the prosecution that he was in the bar of Gatabazi Félicien, the latter had disputes with his wife asking what she is still doing in the bar with other men, when he heard this, whereas that woman was the one who was sharing with him her drink, he left, then that woman came after him, they walked together, that woman asked him a help to look for her grand child who was has gone missing, but in their way Mukakabera Donata passed by Riberakurora's home, while he kept on going and when he noticed that he delays whereas they have a plan to look for her grandchild, he called her on phone but she did not come, and went away, the next morning he heard that Mukakabera Donata was dead but he does not know the person who escorted and killed her though he heard information that Gatabazi Félicien had requested Riberakurora and Bavugirije to escort them to check whether they don't have sex, also he has suspicion about Riberakurora because perforated the genocide against the Tutsi memorial for stealing blankets. (cotes 12-15, 62 and 63).

[17] Riberakurora Théodor told the judicial police that Mukakabera Donata was living in harmony with her husband, on the of her death she passed by his home, Kanyarukiga Jean-Pierre kept on calling her stating that she is delaying, for the third time he told her that he has gone, that she will find him at the river, that specific river is where they found Mukakabera Donata, her head stuck in the mud, they removed her but before burring her, they made a document, when he told Gatabazi Félicien that

someone was calling his wife before her death, he asked him to keep quiet so that they can bury her.

[18] The case file indicates also that, Bavugirije Vedaste stated before the judicial police that, Gatabazi Félicien requested him to monitor his wife because she was drunk, but he replied that he cannot monitor a woman with whom they did not share a drink, the next day, he heard the information that, Mukakabera Donata was dead (identification mark 34-38). Whereas Ngarukiye Damien and Ntawugayumugabo Phénias who were at night watch state that Kanyarukiga Jean-Pierre together with a woman unknown to them, passed near to them and were had not yet reached RIBERAKURORA, but during that night they did not see GATABAZI Félicien (identification mark 46 and 49).

[19] Mujawamaliya Donatella, the sister of Kakabera Donata, stated before the judicial police that she suspects Kanyarukiga Jean-Pierre and Gatabazi Félicien for killing Mukakabera Donata because Riberakurora told her that before her death Kanyarukiga Jean Pierre called her on phone, asking her to join him at Fidèle for the first time and asked her to join him at Kadasobwa for the second, the river in which they found her dead body, Gatabazi Félicien found his wife dead instead of asking for her examination to know the cause of her death, he lied to police that it is an accident, consequently was buried without knowing the cause of her death, however at the time of her burial, her brother named Munyandamutsa and other family relatives were present and she heard that before the burial, a document was made though she did not see it (identification mark 8-9). Whereas Ntawiragira Théogène stated before the judicial police that Gatabazi Félicien was not in a good relationship with his wife because he broke her arm, but she knew about the document made by family relatives

for the burial of the deceased, however, she did not know why she was buried without conducting an autopsy and why Gatabazi Félicien first went to buy beverages while he lost his wife. (identification mark 41-42).

[20] The court finds that, as indicated in paragraphs 11 and 12 of appealed judgment, Gatabazi Félicien was convicted based on the fact that he ordered Mukakabera Donata to leave the bar earlier, and asked Bavugirije Vedaste and Riberakurora Théodore to monitor that his wife does not have sex with Kanyarukiga Jean-Pierre, which wife was found dead next morning, this led the court to decide that he was the murderer because he had jealous against her, thus was the one to benefit from her death, whereas all witnesses questioned including those who were at night watch during the night of death of Mukakabera Donata even Kanyarukiga Jean-Pierre who left together with the deceased and had a plan to look for her grand child who gone missing, none states that he/she saw Gatabazi Félicien going after Mukakabera Donata and Kanyarukiga Jean-Pierre or states that after they left, he/she saw her passing through the way they passed through in their way back home, this indicates that on this ground, Gatabazi Félicien was convicted based only on suspicions, that he was the one to benefit from the death but there is no proof that he is the one who murdered her.

[21] The Court finds also that, in absence of further incriminating evidence for Gatabazi Félicien regarding the death of Mukakabera Donata, his behavior after the death of the deceased that he rejected the informations regarding the person who called her for the last time or that he stated that he had no means to conduct an autopsy before the burial, this cannot be considered as the evidence to convict Gatabazi Félicien the

offence he is prosecuted for, because that behavior, though it is unworthy, it does not indicate that he took part in the death of the deceased. This precedent is the same as the findings of the Law scholar named Snyman who states that causing death means to cause it at the time and place where the deceased died.¹

[22] The Court finds also that, the witnesses questioned affirmed that the dead body was withdrawn from the water by the police, their testimonies are emphasized by a document titled “P.V. de descente” made by a judicial police officer named Nzaramba Remy and approved by the chief of the village of kazizi named Ahishakiye Célestin and other citizens namely Mbarubukeye Théogène na Nyabyenda Boniface (identification mark 58), also the family members of the deceased which includes the brothers of the deceased named Gahima and Munyandamutsa agreed with Gatabazi Félicien’s family that Mukakabera Donata should be buried, they even made a document which they submitted to Sector officers, she was buried in presence of citizens and local authorities namely Kanyarukiga Jean-Pierre who is in charge of security in the village of kazizi, this means that if there was a suspicion that Makakabera Donata was killed, all those official organs, her brothers and other citizens who were present would not agree to burry Mukakabera Donata without an autopsy to know the cause of her death, thus, it finds without merit, the argument of the prosecution that Gatabazi Félicien buried in hurry the deceased and in secret with the purpose of destroying the incriminating evidence.

¹« ... in cases of murder or culpable homicide, it must be remembered that « to cause the death » actually means to cause the death at the time when, and the place where, Y died. » CR Snyman, Criminal Law, Durban, Lexis-Nexis, 2002, P. 75.

[23] The Court finds that based on the motivations and the Law recalled above, there was no incriminating evidence produced before the Court, to convict Gatabazi Félicien for the offence of murdering Mukakabera Donata, thus, the errors committed by the High Court, chamber of Rusizi based at Karongi have to be corrected as it convicted Gatabazi Félicien for the offence basing only on the fact that he could commit it, thus he has to be acquitted. This is the same reasoning as for Law scholars that, the Court could not convict the accused, basing only on probability for committing it, rather he/she has to benefit from that doubt and be acquitted,² this also emphasizes the fact that Gatabazi Félicien has to be acquitted for the offence is prosecuted for, murdering M Mukakabera Donata.

III. DECISION OF THE COURT

[24] Decides that the appeal of Gatabazi Félicien has merit

[25] Decides that Gatabazi Félicien is acquitted from the offence of murdering Mukakabera Donata for which he was prosecuted ;

[26] Decides that the ruling of the case RP0015/11/HC/RSZK rendered by the High Court, chamber of Rusizi working from Karongi is reversed on all grounds ;

² “Le juge ne saurait se contenter d’un lien probable ou possible. Il s’abstient de déduire la causalité de la simple succession des faits, et le moindre doute devra bénéficier au prévenu. Le lien de causalité manque si la possibilité d’autres causes n’est pas exclue. » Nyabirungu mwene Songa, Traité de droit pénal Congolais, Kinshasa, Editions Universitaires, 2007, P. 321.

[27] Orders that Court fees are to be borne by the public treasury.

