UBUSHINJACYAHA v. NTEZIRYAYO

[Rwanda URUKIKO RW'IKIRENGA – RPA0249/13/CS (Mukamulisa, P.J., Munyangeri na Hitiyaremye, J.) 25 Ugushyingo 2016]

Amategeko Mpanabyaha – Kwitabara – Ugomba kugaragaza ibimenyetso – Uburanisha ko yakoze icyaha yitabara niwe ubitangira ibimenyetso – Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 105.

Amategeko Mpanabyaha – Igabanyagihano – Gusaba kongera kugabanyirizwa igihano – Ntawasaba kongera kugabanyirizwa igihano mugihe mu Rukiko rubanza yagabanyirijwe bihagije ndetse agahabwa igihano gikwiranye n'icyaha yakoze.

Incamake y'ikibazo: Uwajuriye yakurikiranywe ku cyaha cy'ubwinjiracyaha bw'ubwicanyi bwakorewe Ndayambaje Emmanuel n'ubwicanyi bwakorewe Nkurunziza Emmanuel. Urukiko Rukuru urugereko rwa Musanze rwamuhamije ibyo byaha rumuhanisha igifungo cy'imyaka cumi n'ibiri (12) rumugabanyirije, rushingiye ku kuba yaremeye icyaha mu nzego zose. Ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ikirenga asaba imbabazi no kugabanyirizwa igihano, avugako akomeje kwemera ibyaha kandi agasaba n'imbabazi asobanurako atari yagambiriye kubikora, ko ahubwo yabikoze yitabara.

Ubushinjacyaha bwo bwaburanye busaba ko igihano yahanishijwe gihamaho, buvuga ko mu gukora ibyo byaha atitabaraga, ko ahubwo yashakaga kuburizamo umugambi wo kumuta muri yombi kuko yakekwagaho kwiba ibirayi, kandi ko iyo aza kubona abo bantu bafite umugambiwo kumugirira nabi yagombaga kwitabaza ubutabera aho kwihanira abyita kwitabara.

Incamake y'icyemezo: 1. Ntawaburanisha kwitabara asaba kutaryozwa ibyaha mu gihe atabashije kubigaragaza. Bityo, imvugo z'uregwa kuriyo ngingo, nta shingiro zifite.

2. Ntawasaba kongera kugabanyirizwa igihano mu gihe mu Rukiko rubanza yagabanyirijwe bihagije ndetse agahabwa igihano gikwiranye n'icyaha yakoze. Bityo, uwajuriye ntakwiye kongera kugabanyirizwa igihano.

Ubujurire nta shingiro bufite.
Amagarama aherereye ku isanduku ya Leta

Amategeko yashingiweho:
Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 105 na 78(1º).

Inyandiko z'abahanga zifashishijwe
Bernard Bouloc, Droit penal General, 24ème Edition, Dalloz, Paris, 2015, p.351.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 19/11/2012 mu ma saa kumi n'ebyiri n'igice za mu gitondo (06h30), Nteziryayo Emmanuel yaketsweho ko ari we wibye ibirayi byabonetse ku mbuga yo kwa Twizerimana Jean de Dieu byari kumwe n'itoroshi, igitenge n'umuhoro, kubera ko yari asanzwe azwiho ingeso yo kwiba.

[2] Nteziryayo Emmanuel nawe wari uri aho, yumvise batangiye kumushyira mu majwi yahise ahunga ariruka, abaturage bari aho baramukurikira ngo agaruke barangize ikibazo. Yafashe umwe mu bari bamukurikiye witwa Ndayambaje Emmanuel amutemesha umuhoro yari afite mu mutwe, uwitwa Nkurunziza Emmanuel aje atabaye agize ngo aramufashe nawe amutema ukuboko, amutera n'ibuye mu gatuza ahita apfa. Akigezwa mu Bugenzacyaha nyuma yo gufatwa, Nteziryayo Emmanuel yahise yemera icyaha, asobanura ko impamvu yabikoze ari uko yabonaga abari bamukurikiye bari bumute mu manga.

[3] Nyuma y'iperereza, Ubushinjacyaha bwareze Nteziryayo Emmanuel mu Rukiko Rukuru, Urugereko rwa Musanze, imbere y'Urukiko akomeza kwemera ibikorwa yaregwaga, ku itariki ya 20/06/2013 urwo Rukiko ruca urubanza rwemeza ko yakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi kuri Ndayambaje Emmanuel n'ubwicanyi kuri Nkurunziza Emmanuel, rumuhanisha igifungo cy'imyaka cumi n'ibiri (12) rumugabanyirije kubera ko yemeye icyaha mu nzego zose.

[4] Nteziryayo Emmanuel ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko rw'Ikirenga avuga ko ibyaha aregwa yabikoze mu rwego rwo kwitabara, ko kandi akomeje gusaba imbabazi no kugabanyirizwa ibihano.

[5] Urubanza rwaburanishijwe mu ruhame ku itariki ya 17/10/2016, Nteziryayo Emmanuel yunganiwe na Me Busogi Cikoma Emmanuel, Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba Nteziryayo Emmanuel yarakoze ibyaha aregwa yitabara no kuba yagabanyirizwa igihano.

[6] Nteziryayo Emmanuel avuga ko akomeje kwemera ibyaha aregwa kandi agasaba n'imbabazi. Asobanura ko ajya kubikora atari yabigambiriye, ko ahubwo byari mu rwego rwo kwitabara. Akomeza avuga ko umunsi ibyaha aregwa biba yahamagawe na Masengesho, agezeyo asanga hari ibintu byari byibwe biri kwa Nzayisenga Emmanuel, umugore we abajijwe uwo babiguze avuga ko ari we (Nteziryayo Emmanuel), nibwo abari muri urwo rugo bose batangiye kumukubita, bamujyana ku mugezi wa Kabuhanga ngo bamurohemo, na we afata umuhoro atema umwe mu bari bamukurikiye witwa Nkurunziza Emmanuel ku kaboko mu rwego rwo kwitabara arapfa, uwitwa Ndayambaje Emmanuel we amutema mu mutwe ariko ntiyapfa. Arangiza asaba Urukiko rw'Ikirenga imbabazi no kugabanyirizwa igihano.

[7] Me Busogi Cikoma Emmanuel avuga ko akurikije uko Ndayambaje Emmanuel yasobanuye ko Nteziryayo Emmanuel yamutemye arimo yiruka, ibi bikaba byemezwa n'umutangabuhamya Nyirabikari Bellancilla wavuze ko abantu birutse kuri Nteziryayo Emmanuel bari benshi ari nabwo yateraga ibuye Nkurunziza Emmanuel akamwica, asanga ibi byaha Nteziryayo Emmanuel yarabikoze mu rwego rwo kwitabara (légitime défense),

bityo akaba adakwiye kubiryozwa nk'uko biteganywa mu ngingo za 105 na 106 z'Itegeko - Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

[8] Uhagarariye Ubushinjacyaha avuga ko Nteziryayo Emmanuel yica Nkurunziza Emmanuel akanagerageza kwica Ndayambaje Emmanuel atitabaraga, kuko yakoze ibyo byaha ashaka kuburizamo umugambi wo kumuta muri yombi kubera ko yakekwagaho kuba ari we wibye ibirayi byabonetse ku mbuga yo kwa Twizerimana Jean de Dieu. Avuga kandi ko, iyo aza kubona abo bantu bari bafite umugambi wo kumugirira nabi, yagombaga kwitabaza ubutabera aho kwihanira abyita kwitabara. Arangiza asaba ko igihano cy'igifungo cy'imyaka cumi n'ibiri (12) Nteziryayo Emmanuel yahanishijwe gihamaho kuko gikwiranye n'ibyo yakoze.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 105 y'Itegeko-Ngenga N°01/2012 ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana iteganya ko "umuntu afatwa ko yitabara igihe:

1. yirukana nijoro uwinjiye ahantu hatuwe aciye urugi, yakoresheje ingufu cyangwa uburiganya;
2. ahanganye n'abajura cyangwa abandi bagizi ba nabi".

[10] Umuhanga mu mategeko Bernard Bouloc, avuga ko ku bijyanye n'amakuba yugarije uwitabara udafite ubundi buryo bwo kuyigobotora adakoze icyaha, ayo makuba agomba kuba aboneka koko atari ukwikanga baringa, (…..*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] Ku birebana n'uru rubanza, Nteziryayo Emmanuel n'umwunganizi we bavuga ko yakomerekeje Ndayambaje Emmanuel ndetse akica Nkurunziza Emmanuel mu rwego rwo kwitabara kuko bari mu bantu bamwirukankanaga bashaka kumuroha mu mugezi, akaba adakwiye guhanirwa ibi bikorwa.

[12] Hakurikijwe ibyagaragajwe haruguru ku birebana n'ibihe habaho ukwitabara nk'uko Itegeko rishyiraho Igitabo cy'amategeko ahana ribyerekana, ndetse n'uko abahanga mu mategeko babivuga, Urukiko rw'Ikirenga rurasanga ibivugwa na Nteziryayo Emmanuel n'umwunganizi we nta shingiro bifite, kuko nta kintu na kimwe mu biteganyijwe mu ngingo ya 105 y'Itegeko - Ngenga N°01/2012 ryo ku wa 02/05/2012 ryavuzwe haruguru, ibikorwa bye byashingirwaho ngo habe harabayeho kwitabara, kubera ko atakoze ibyaha aregwa hari umuntu yirukana ninjoro wari winjiye iwe, akaba ataranashoboye kwereka Urukiko ko abari bamukurikiye bari abajura cyangwa abagizi ba nabi. Abo bari bamukurikiye ahubwo baka bari abaturage bagenzi be bari bagamije kumugarura kuko yari ahunze, kugira ngo harangizwe ikibazo cy'ubujura yari yaketsweho. Ibyo avuga rero ko bari bagiye kumuroha mu mugezi bikaba nta shingiro byahabwa kuko nta bimenyetso abitangira, ahubwo ari ibyo we yitekerereje gusa.

[13] Ku birebana no kugabanyirizwa igihano Nteziryayo Emmanuel asaba, Urukiko rw'Ikirenga rurasanga kidakwiye kongera kugabanywa kuko uburyo mu Rukiko Rukuru,

[1] Bernard Bouloc,Droit Pénal Général, 24ème Edition, Dalloz, Paris, 2015, p.351.

Urugereko rwa Musanze, bakigabanyije hashingiwe ku ngingo ya 78,1° y'Itegeko - Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana kubera ko yaburanye yemera icyaha, igihano kikavanwa ku gifungo cya burundu kigashyirwa ku gifungo cy'imyaka cumi n'ibiri (12), bihuye n'uburemere bw'ibyaha yakoze.

[14] Urukiko rw'Ikirenga, rushingiye ku bimaze kuvugwa haruguru, rurasanga ukwitabara umwunganizi wa Nteziryayo Emmanuel aburanisha asaba ko uwo yunganira ataryozwa ibyaha nta shingiro byahabwa, kuko atabashije kubigaragaza, ndetse no kugabanyirizwa igihano bisabwa na Nteziryayo Emmanuel bikaba bidakwiye kwemerwa kubera ko igihano yahawe mu rubanza yajuririye gikwiranye n'uburemere bw'ibyaha yakoze, bityo ubujurire bwe bukaba nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[15] Rwemeje ko ubujurire bwa Nteziryayo Emmanuel nta shingiro bufite,

[16] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'ibiri (12) Nteziryayo Emmanuel yahanishijwe mu rubanza RP0077/12/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 20/06/2013 kidahindutse;

[17] Rutegetse ko amagarama y'ibyakozwe muri uru rubanza aherera ku Isanduku ya Leta