UBUSHINJACYAHA v. HABYARIMANA ET.AL

[Rwanda URUKIKO RW'IKIRENGA – RPA0154/13/CS (Mugenzi, P.J., Muhumuza na Mukamulisa, J.) 08 Ukuboza 2017]

Amategeko Mpanabyaha – Impurirane y'ibyaha – Uburyozwe bw'ibyaha – Igihe icyaha kimwe cyabaye intandaro y'ibindi – Mu gihe Icyaha kimwe cyabaye intandaro y'ibindi bituma abaregwa baryozwa ibyo byaha byose kabone nubwo umwe muribo atamenyesha abandi ko agiye kugikora – Itegeko Ngenga N^{o}01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, Ingingo ya 98.

Amategeko Mpanabyaha – Impurirane y'ibyaha – Ibihano – Mu gihe hakozwe ibyaha binyuranye bifitanye isano bigomba guhanwa mu buryo bw'impurirane mbonezamugambi maze abahamwa n'ibyaha bagahanishwa igihano giteganyirizwa icyaha kirushije ikindi uburemere – Itegeko Ngenga N^{o}01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, Ingingo ya 84.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Nyanza abajuriye bakurikiranwe n'Ubushinjacyaha ku cyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, hamwe n'icyaha cy'ubwicanyi, ibi byaha bikaba byarakozwe ubwo Habyarimana wari umunyamabanga Nshingwabikorwa w'Umurenge, atwaye mu modoka abandi bakurikiranywe hamwe, mu gikorwa abajuriye bavugaga ko ari irondo, bakajya kwa Sebera mu ma saa sita z'ijoro, bakamukomangira, akanga gukingura ahubwo agatabaza, aho asohokeye akaza kuraswa numwe muribo witwa Uwiragiye, wanarashe Mutuyimana wari utabaye, akabica bombi. Mukambanda na Nkurirehe bisunze Ubushinjacyaha baregera indishyi ariko ikirego cya Nkurirehe nticyakirwa kuko atagaragaje ububasha bwo kurega.

Urwo rukiko rwasanze ibyaha baregwaga bibahama rubahanisha igifungo cy'imyaka 25 buri wese rubagabanyirije kuko ari ubwa mbere bari bakurikiranywe mu nkiko, runabategeka kwishyura Mukambanda indishyi zingana na 10.000.000Frw. Abaregwa ntibishimiye imikirize y'urubanza maze barujuririra mu Rukiko rw'Ikirenga bavuga ko ubushinjacyaha butari kubakurikirana ku cyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko bidasabwe n'abagikorewe bakaba kandi bataranemeraga ko hari ibikorwa bigize icyo cyaha bakoze, bakaba barasobanuraga ko byari mu nshingano zo gucunga umutekano bagenzura irondo. Ubushinjacyaha bwo bukaba bwaragaragazaga ko abaregwa binjiye mu rugo rwa Sebera kuko bitari gushoboka ko bavugana nawe ari mu nzu bo bari hanze y'urugo bakaba kandi batari bafite inyandiko zo gusaka ubwo bageragayo nka saa sita z'ijoro.

Ku byerekeye icyaha cy'ubwicanyi uretse Uwiragiye waburanye yemera ko ariwe warashe Sebera na Mutuyimana ariko akavuga ko yarashe arengera ubuzima bwe kuko nabo bari bamutemye ndetse akomeza agaragaza ko habaye ubusembure, abandi bajuriye basobanura ko bahamijwe ibyaha batakoze, kubera ko hari uwagikoze kandi ucyemera, Habyarimana we akaba yarahakanaga ko atariwe wahaga abapolisi amabwiriza.

Ubushinjacyaha bwo bwaburanye bugaragazagako uruhare rwa Habyarimana rushingiye ku kuba ariwe wari ukuriye kiriya gikorwa akanabatwara mu modoka ye, akaba yaranafitanye amakimbirane na Sebera wishwe nkuko byanavuzwe n'ababajijwe mu gihe cy'iperereza.

Uwaregeye indishyi yatanze ubujurire bwuririye ku bundi avuga ko yagenewe indishyi nke asaba urukiko ko rwagena indishyi zikwiye. Habyarimana, Rugamba na Karemera bakavugako badakwiye kwishyura indishyi kuko ataribo bakoze icyaha ahubwo bakwiye kugirwa abere, naho Uwiragiye we

akagaragazako yaciwe indishyi zidakwiranye n'icyaha yakoze kandi ko hagobokeshwa Leta kuko icyaha cyakozwe ari mu kazi.

Incamake y'icyemezo: 1. Kuba Mukambanda nyir'urugo abaregwa bavogereye yaragiye asobanura ko umugabo we yishwe nyuma yuko abaregwa bavogereye urwo urugo mu gicuku ndetse akaregera n'indishyi bigaragazako yari afite ubushake bwo gukomeza gukurikirana ikirego cye, bityo rero abaregwa bagomba gukurikiranwa ku cyaha cyo kwinjira mu rugo rw'umuntu mu buryo bunyuranyije n'amategeko.

2. Kuba abaregwa baragiye kwa Sebera nijoro bakamukinguza badafite uruhushya rwo gusaka bituma bahamwa n'icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko.

3. Kuba icyaha cyo kwinjira mu rugo rw'umuntu binyuranyije n'amategeko cyarabaye intandaro y'icyaha cy'ubwicanyi, isano iri hagati yibyo byaha ituma abaregwa baryozwa ibyo byaha byombi nubwo uwakoze icyaha cy'ubwicanyi yaba ataramenyesheje abandi ko agiye kugikora.

4. Igenwa ry'igihano mu gihe habaye ibyaha binyuranye bifitanye isano bigomba guhanwa mu buryo bw'impurirane mbonezamugambi maze abahamwa n'ibyaha bagahanishwa igihano giteganyirizwa icyaha kirushije ikindi uburemere.

5. Kuberako urugero rw'indishyi zisabwa rukabije kandi nta bisobanuro byumvikana uzisaba atanga bituma avugako izagenwe ku rwego rwa mbere ari nke, hagomba kwemezwa ko izagenwe mbere ziri ku rugero rukwiye.

Ubujurire bufite ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi nta shingiro bufite;
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 291, 280, 98, 99, 105, 106, 74, 140, 84, 76, 78 na 45.

Itegeko teka ryo kuwa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 118.

Imanza zifashishijwe:

Ubushinjacyaha v. Sezikeye, RPAA038/15/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 15/09/2015.

Inyandiko z'abahanga zifashishijwe:

Isabelle Rolive & D.Bosquet, " La renonciation au meurtre: une limite au système de l'imputation automatique du meurtre à tous les participants au vol", Revue de Droit Penal et de Criminologie, Avril 2002, p.371.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu Rukiko Rukuru Urugereko rwa Nyanza, Ubushinjacyaha bwakurikiranye Habyarimana Festus, Uwiragiye Fabiola, Rugamba Frank, Karemera Steven Alias Maridadi na Ngezahayo David, ku cyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, hamwe n'icyaha cy'ubwicanyi cyakorewe Sebera Laurent na Mutuyimana Innocent wari uje atabaye, mu ijoro ryo kuwa 02/07/2012, ubwo Habyarimana wari umunyamabanga Nshingwabikorwa w'Umurenge, atwaye mu modoka abo bandi baregwa hamwe, bajyaga kwa Sebera mu ma saa sita z'ijoro, bakamukomangira, akanga gukingura ahubwo agatabaza, aho asohokeye akaza kuraswa na Uwiragiye, wanarashe Mutuyimana Innocent wari utabaye, akabica bombi.

[2] Mukambanda Dorothée na Nkurirehe Eugénie, baregeye indishyi, bisunze Ubushinjacyaha, ariko ikirego cya Nkurirehe nticyakirwa kubera ko atagaragaje ububasha afite bwo kurega, ntiyanajuririra icyo cyemezo.

[3] Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko abaregwa bahamwa n'ubufatanyacyaha mu kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, n'icyaha cyo kwica Sebera Laurent na Mutuyimana Innocent ku bushake, bahanishwa igifungo cy'imyaka 25 buri wese, bagabanyirijwe ibihano kuko ari ku nshuro ya mbere bari bakurikiranywe mu nkiko, runabategeka guha Mukambanda, umupfakazi wa Sebera, indishyi zingana na 10.000.000Frw.

[4] Mu guhamya abaregwa icyaha, Urukiko Rukuru rwasobanuye ko bari bahuriye ku mugambi wo kwica Sebera, ukaba ugaragazwa n'ibikorwa byabanjirije icyaha, babyumvikanaho, bohereza Karemera Steven na Rugamba Frank baza kwa Sebera, bamubwira ko Habyarimana, Umunyamabanga Nshingwabikorwa amushaka, bikurikirwa no kumurasa nijoro, banarasa Mutuyimana Innocent wari uje kumutabara, bakaba bahamwa n'impurirane mbonezamugambi.

[5] Urukiko Rukuru rwashingiye ku kuba abaregwa bemera ko bagiye kwa Sebera nijoro, badafite uruhushya rwo gusaka, kandi urusaku bitwaza ko rwumvikanagayo, nk'impamvu yatumye bajyayo, rutaragaragarijwe ibimenyetso, akaba atarigeze yihanangirizwa nk'usakuriza abantu, kuko n'abatangabuhamya Mukamana Jeanne na Muhawenimana Josephine bahakanye urwo rusaku.

[6] Ku bijyanye n'uruhare rwa Habyarimana ku cyaha cy'ubwicanyi, Urukiko rwashingiye ku kuba yarabaye nyirabayazana wo kuvogera urugo rwa Sebera, akaba kandi yari afite uwo mugambi, kuko na mbere y'uko Sebera araswa, Habyarimana yari yohereje Karemera Steven n'inkeragutabara kumubwira ko agomba kumwitaba ku Murenge (kote 94), hanyuma araswa uwo munsi, Habyarimana ahagarikiye uwarashe, Mutuyimana Innocent we agwa mu bwicanyi aje gutabara.

[7] Ku byerekeye Uwiragiye Fabiola, Urukiko rwasobanuye ko nta cyemeza ko yishe abantu 2 yitabara, kuko nta kigaragaza ko bari bafite imihoro bakanamutema mu mutwe, nk'uko abiburanisha, kuko na muganga wemewe na Leta yavuze ko Uwiragiye yari afite udusebe duto 3, dukira nta ngorane, kandi hatagaragara icyaduteye, rwongeraho ko n'iyo yari kuba yatemwe, bitari gufatwa nko kwitabara kuko atari gukoresha imbunda ku bantu bafite umuhoro ikaba kandi itaragaragajwe, kandi ntiyerekana ko nta bundi buryo yari afite bwo gukoresha.

[8] Ku birebana na Karemera Steven alias Maridadi, Urukiko rwasobanuye ko ahamwa n'icyaha kubera ko nawe yemera ko yajyanye n'abo baregwa hamwe kwa Sebera, igikorwa cyo kuvogera urugo

nawe akaba yaragikoze, Sebera akaraswa nawe ahari, kandi abatangabuhamya Uwanzuwe (kote ya 64-65) na Barame Samuel (71-72) bakemeza ko yanaje mbere kwa SEBERA ari kumwe n'abandi mu gikorwa cy'ubutasi, yashaka kumwambika amapingu, undi akabyanga.

[9] Ku birebana na Rugamba Frank, Urukiko rwasobanuye ko mu iburanisha yemeye ko yarashe hejuru, ahagarika ubwicanyi, ariko akaba yari yanaje mu gikorwa cyabanjirije ubwicanyi, cy'ubutasi, nk'uko byemejwe n'umumotari Nsanzimana JMV wabatwaye (kote ya 64-65).

[10] Ku byerekeye Ngezahayo David waburanishjijwe adahari ariko yarahamagajwe mu buryo buteganyijwe n'amategeko, Urukiko rwasobanuye ko yagaragaye mu mugambi wo gukora icyaha kimwe n'abo baregwa hamwe.

[11] Habyarimana, Uwiragiye, Rugamba na Karemera[1], bajuririye Urukiko rw'Ikirenga, bavuga ko bakurikiranywe ho icyaha cyo kwinjira mu rugo rw'umuntu bidakurikije amategeko kandi batarakiregewe n'uwagikorewe, ko bahamijwe ibyaha nta bimenyetso bishingiweho, hirengagizwa imvugo zabo, Uwiragiye akanavuga ko hirengangijwe ko yarashe Sebera yitabara kuko bamurwanyije bashaka kumwicisha imipanga. Abandi baregwa bavuga ko nta ruhare bagize mu bwicanyi.

[12] Mu bujurire bwuririye ku bundi, Mukambanda uregera indishyi avuga ko izo yagenewe ari nke, agasaba ko zakongerwa.

[13] Urubanza rwaburanishijwe mu ruhame kuwa 03/04/2017, kuwa 24/07/2017, no kuwa 09/10/2017, Habyarimana Festus yunganiwe na Me Nsengiyumva Viateur na Me Nsengiyumva Enos, Karemera Steven yunganiwe na Me Habyarimana Flavienne na Me Gatabazi Nuru Claudine, Rugamba Frank yunganiwe na Me Hakizimana Martin na Me Habiyambere Aphrodis na Me Gatabazi Nuru Claudine, Uwiragiye Fabiola yunganiwe na Me Kabasenga Berthilde na Me Gatabazi Nuru Claudine na Me Hakizimana Martin, naho Mukambanda Dorothée uregera indishyi yunganiwe na Me Karamira Jacques.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

[14] Muri uru rubanza, harasuzumwa niba abaregwa bataragombaga gukurikiranwa ku cyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, hasuzumwe niba hari ibimenyetso bishyitse bibahamya icyo cyaha, kimwe n'icy'ubwicanyi baregwa, hanasuzumwe ibyerekeranye n'indishyi.

Kumenya niba icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko kitaragombaga gukurikiranwa kuko kitaregewe n'uwagikorewe.

[15] Habyarimana Festus, Uwiragiye Fabiola, Rugamba Frank, Karemera Steven n'ababunganira bavuga ko, usibye ko batanemera ko hari ibikorwa byo kuvogera urugo rwa Sebera bakoze, banasanga Ubushinjacyaha butari kubakurikirana kuri icyo cyaha bidasabwe n'abagikorewe, nk'uko biteganywa mu ngingo ya 291 y'Itegeko-Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, bakaba bemeza ko kitaregewe.

[1] Utarajuriye ni Ngezahayo David waburanishijwe adahari.

[16] Uhagarariye Ubushinjacyaha avuga ko n'ubwo uwakorewe icyaha atiregeye, Ubushinjacyaha buharanira inyungu rusange z'abaturage butarebera icyaha gikorwa, ngo bureke gukurikirana.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 291 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana iteganya ko, ku byaha bibangamira imibereho bwite y'abantu, ikurikirana ry'icyaha rikorwa n'Ubushinjacyaha bisabwe n'uwahemukiwe, umuhagarariye mu buryo bwemewe n'amategeko cyangwa umufiteho uburenganzira, naho ingingo ya 280 y'iryo Tegeko-Ngenga, ikaba iteganya muri ibyo byaha, icyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko.

[18] Urukiko rurasanga imiburanire y'abaregwa bemeza ko ikirego kitatanzwe n'uwakorewe icyaha nta shingiro yahabwa, kuko nk'uko dosiye ibigaragaza, mu nzego zose yabarijwemo, haba mu bugenzacyaha, mu bushinjacyaha ndetse n'imbere y'inkiko, Mukambanda nyir'urugo abaregwa bajemo akaba n'umupfakazi wa Sebera waharasiwe agapfa, yagiye asobanura ko umugabo we yishwe nyuma y'uko abaregwa bateye urugo rwe mu gicuku, ndetse yaranaregeye indishyi kubera ibyo bikorwa, abaregwa bakaba baterekana ko Mukambanda yaba yarigeze agaragaza ubushake bwo kudakomeza gukurikirana ikirego cye.

Kumenya niba hari ibimenyetso bihagije byashingiweho mu guhamya abaregwa icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko.

[19] Abajuriye bose bavuga ko batakoze icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, kuko bari mu nshingano zo gucunga umutekano w'abantu n'ibintu byabo bagenzura irondo nk'uko bagiye n'ahandi, bakajya kwa Sebera kubera urusaku bari bahumvise.

[20] Uwiragiye, Rugamba na Karemera n'ababunganira bemera ko bageze kwa Sebera, ariko ko nta cyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko bakoze, kuko bose bari mu nshingano zo gucunga umutekano w'abantu n'ibintu byabo, bakaba barahageze bagenzura irondo, nk'uko bagiye n'ahandi, kujya iwe bikaba byaratewe n'urusaku rwahumvikaniraga.

[21] Basobanura ko, bari kumwe na Ngezahayo bagiye kwa Sebera mu rwego rwo kugenzura irondo ryakorerwaga hafi y'iwe, babura abarikoraga ariko bumva abantu bavugira kwa Sebera, bajyayo maze Ngezahayo na Rugamba barakomanga, babonye Sebera asohokanye umuhoro basubira inyuma.

[22] Rugamba na Me Hakizimana, Me Habiyambere na Gatabazi Nuru, bavuga ko yahamijwe icyaha cyo kuvogera urugo kandi atari byo kuko binjiye mu rugo bakomanze, bene urugo banga ko binjira, bivuze ko batageze ahateganywa n'ingingo ya 280 y'Itegeko Nº01/2012/OL ryo kuwa 05/02/2012 rishyiraho Igitabo cy'amategeko ahana kuko bari inyuma y'urugi, mu Bugenzacyaha akaba yaranasobanuye ko bakomanze babwira Sebera ko bari kumwe n'Umuyobozi w'Umurenge.

[23] Karemera na Me Habyarimana na Me Gatabazi Nuru bamwunganira, basobanura ko adahamwa n'icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko kuko we yagiye kwa Sebera yategetswe n'abamuyobora kujya kugenzura irondo, ajyana n'abapolisi babiri aribo Uwiragiye na Rugamba, bagira ngo bamubaze impamvu acuruza ari nijoro.

[24] Habyarimana na Me Nsengiyumva Viateur na Me Nsengiyumva Enos bamwunganira, bavuga ko we atagiye mu rugo rwa Sebera, ko yasigaye ku modoka, ndetse ko na Mukambanda yabwiye Urukiko mu iperereza ko atageze mu rugo, akaba rero atahanirwa icyaha atigeze akora.

[25] Uhagarariye Ubushinjacyaha avuga ko abaregwa binjiye mu rugo rwa Sebera kuko bitari gushoboka ko bavuganira hanze nawe ari mu nzu, bo bari inyuma y'urugo, bakaba kandi bagerayo nka saa sita z'ijoro, batari bafite inyandiko zo gusaka. Avuga ko Habyarimana atabasha guhunga icyo cyaha kandi ari we wabohereje, yanabazanye mu modoka.

[26] Mukambanda uregera indishyi, na Me Karamira umwunganira basobanura ko Uwiragiye, Rugamba na Karemera na Ngezahayo, baje mu rugo mu gicuku, binjira iwe mu rugo, nta burenganzira bafite, bakoresheje ibikangisho kugira ngo Sebera asohoke, kandi ko bahaje babisabwe n'Umunyamabanga Nshingwabikorwa Habyarimana.

UKO URUKIKO RUBIBONA

[27] Ku byerekeyeye Uwiragiye, Rugamba na Karemera bagiye mu rugo kwa Sebera, Urukiko rurasanga, nk'uko n'Urukiko Rukuru, Urugereko rwa Nyanza rwabisobanuye, abaregwa bahamwa n'icyaha cyo kwinjira mu rugo rw'umuntu mu buryo budakurikije amategeko, kuko nabo bemera ko bagiye kwa Sebera nijoro bakajya kumukinguza, badafite uruhushya rwo gusaka, kandi ingingo ya 280 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ibuza kwinjira mu rugo rw'umuntu utabifitiye inyandiko zibitangira uburenganzira, uretse igihe amategeko abiteganya ukundi.

[28] Urukiko rurasanga, n'urusaku abajuriye bitwaza nk'impamvu yatumye bajya kwa Sebera bemeza ko rwari urw'abahanyweraga inzoga, nta bimenyetso barutangiye, cyane ko nta n'undi muntu bavuga utari uwo muri urwo rugo baba barasanze yo, na nyuma y'uko Sebera asohotse, usibye Mutuyimana nawe waharasiwe aturutse iwe atabaye, ndetse no mu ibazwa rye mu Bugenzacyaha, Habyarimana yavuze ko Sebera yasohotse wenyine mu nzu (kote ya 117)[2].

[29] Ku byerekeye Habyarimana utarageze mu rugo rwa Sebera nk'uko na Mukambanda abyivugira, kimwe na Uwiragiye na Rugamba na Karemera, Urukiko rusanga, n'ubwo yaba atarageze muri urwo rugo, yasigaye ku muhanda, abo baregwa hamwe bose bemeza ko ariwe wabohereje ngo bagende bajye kuzana Sebera, kandi ko ari we wari ubazanye mu modoka, anakuriye igikorwa cy'iryo rondo nk'Umuyobozi w'Umurenge.

[30] Ingingo ya 98 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, iteganya ko, mu rwego rw'ubufatanyacyaha, uwoshya undi gukora icyaha aba ari icyitso cye, iya 99 y'iryo Tegeko Ngenga igateganya ko umucamanza ahana icyitso akurikije ko uruhare rw'icyitso mu gukora icyaha rungana cyangwa ruruta urwa gatozi.

[31] Urukiko rurasanga, n'ubwo Habyarimana ashaka guhunga uruhare rwe mu cyaha cyo kwinjira mu rugo rw'umuntu mu buryo butemewe n'amategeko, asobanura ko we atagiye mu rugo rwa Sebera kuko yasigaye ku muhanda mu modoka, yirengagiza ko ariwe, nk'umuyobozi w'Umurenge, wazanye mu modoka abagiye mu rugo rwa Sebera mu masaha y'igicuku kandi nta nyandiko zibibahera

[2] Uwo twabonye wasohotse ni Sebera niba abandi barasohotse nyuma simbizi kuko twari twirutse twatatanye.

uburenganzira, akaba ari we wabatumye kumuzana, ayo mabwiriza yatanze akaba amugira icyitso, hakurikijwe ibiteganywa n'ingingo ya 98 yibukijwe haruguru.

[32] Ku bijyanye n'imiburanire ya Habyarimana y'uko nta bubasha afite ku bapolisi kuko atabayobora, Urukiko rurasanga ibyo bisobanuro nta shingiro bifite, kuko, nk'Umuyobozi w'Umurenge, ari we wari uyoboye igikorwa cy'irondo ahibereye, abapolisi yari yitwaje akaba ari abakimufashagamo, ari nayo mpamvu yabashije kubaha amabwiriza yo kujya kwa Sebera bakajyayo, nk'uko nawe yivugiye mu iburanisha ryo kuwa 03/04/2017, ati: "Nasigaye ku modoka mboherezayo", akaba rero atavuga ko atabahaye amabwiriza nk'umuyobozi.

[33] Urukiko rurasanga rero, hashingiwe ku bisobanuro bitanzwe haruguru, Habyarimana, Uwiragiye, Rugamba na Karemera, bahamwa n'icyaha cyo kwinjira aho umuntu atuye mu buryo butemewe, giteganywa kandi kigahanishwa ingingo ya 280 y'Itegeko Nº01/2012/OL ryo kuwa 02/05/2012 ryavuzwe huruguru, bityo ubujurire bwabo kuri iyi ngingo bukaba nta shingiro bufite.

Kumenya niba hari ibimenyetso bihagije bihamya abaregwa icyaha cy'ubwicanyi

a. Ku byerekeye Uwiragiye Fabiola warashe Sebera na Mutuyimana

[34] Uwiragiye avuga ko yahamijwe ubufatanyacyaha mu bwicanyi kandi ari gatozi, kuko ari we warashe Sebera na Mutuyimana Innocent, akaba kandi atahamwa n'impurirane y'ibyaha kuko nta kindi cyaha yakoze, ko nta wamutumye kugira uwo yica, ahubwo yabarashe arengera ubuzima bwe kuko nabo bari bamutemye, nk'uko bigaragara muri raporo ya muganga wamwakiriye, akamukingira, akanamwohereza kuvurirwa ahandi, kandi akaba yaragiye aburana apfutse, bigaragaza ko yari yakomerekejwe.

[35] Asobanura ko nta mugambi wo kwica yari afite ahubwo yabyukijwe mu buriri na "commandant" wa Polisi, amubwira kujyana n'Umuyobozi w'Umurenge n'inkeragutabara, kugenzura amarondo, asanga abandi mu modoka, bambukiranya utugari twinshi bareba irondo, bageze imbere yo kwa Sebera, ahakorerwa irondo, bumva basakuza, banywa, Rugamba na Ngezahayo bakomanga kwa Sebera ngo asohoke, nawe yumvise ari abapolisi, ababwira ko abara kabiri bagiye, Mutuyimana nawe aza afite umuhoro, bo bahita biruka.

[36] Avuga ko abo bari kwa Sebera bamwirukankanye bafite intwaro z'imihoro, umwe akamukubita umuhoro, ashatse kongera kumukubita ubwa kabiri, aragwa, abandi bashatse kumutema, arasa amasasu atatu, umwe arapfa, umugore wa Sebera ashatse kumukubita umuhini aramuhirika, bakomeje kumwirukaho yongera kurasa Sebera ku kaboko, nyuma irindi sasu rinyura mu nda, akaba yararashe kuko atari afite ikindi yakora nyuma y'uko ahunze, bakamusanga mu masaka, aho Sebera yaguye, kandi yari yabanje kurasa mu kirere bakanga kugenda.

[37] Avuga ko imvugo za Mukambanda Dorothée na Nyiramatama bemeje ko yagundaguranye na Sebera zigaragaza ko bamurwanyije, kandi ko mu iperereza Urukiko rwakoze, rwagaragarijwe aho imirwano yabereye, n'aho Sebera yarasiwe, bigaragaza ko yari amukurikiye, bikanagaragazwa n'uko yarashwe ku gice cy'imbere, mu mutima, na Mutuyimana araswa mu rubavu.

[38] Avuga ko atigeze ategekwa na Habyarimana kurasa kuko atamutegeka, kandi ko hatagaragajwe ishingiro ry'inzangano zivugwa ko Sebera yari afitanye na Habyarimana, ko kandi atigeze ajya gutata ku manywa nk'uko byavuzwe, ko ndetse Nyiramatama, Nsanzimana na Uwanzuwe batigeze bemeza ko bamubonye kwa Sebera.

[39] Me Kabasenga, wunganira Uwiragiye avuga ko habayeho ubusembure, kuko Uwiragiye yarashe ari uko atemwe, n'agapira yari yambaye kakaba kabonekaho amaraso (kote ya 59), hakaba harirengagijwe ibikomere bitoya byagaragaye ku mubiri we byari mu kico, hakaba hanibazwa impamvu imihoro itafatiriwe kandi abatanguhamya bemeza ko yari ihari. Asaba ko Uwiragiye yahanwa hashingiwe ku busembure yakorewe.

[40] Ku bijyanye n'imvugo z'abatangabuhamya babajijwe mu iperereza bakavuga ko Sebera yarashwe ahunga, Me Kabasenga avuga ko Mukambanda anyuranya n'umwana we Nyiramatama, kandi ko iyo Sebera araswa ahunga yari kuraswa mu mugongo.

[41] Me Hakizimana nawe wunganira Uwiragiye, avuga ko nta mugambi wo kwica yari afite, kuko yafashe imbunda agiye mu kazi, ari kumwe n'Umuyobozi, akaba ntacyo yapfaga na Sebera, ahubwo ari impanuka yatewe n'uko yatemwe, nk'uko raporo yakozwe na muganga wa mbere ibigaragaza, nawe bimuviramo kurasa. Avuga ko imvugo z'abatangabuhamya zitahabwa agaciro kuko ababajijwe ari abari bateguwe, uwo yunganira nawe akaba yaragombaga kuhaba igihe cy'iperereza, imvugo ya Mukambanda wabajijwe icyo gihe akavuga ko Sebera yarashwe yirukankanwa ikaba idakwiye gufatwaho ukuri, kuko mbere yari yavuze ko bagundaguranye, barwana. Nawe asaba ko Uwiragiye yahanwa hashingiwe ku ngingo za 105-106 z'Itegeko Ngenga Nº01/2012/OL ryo kuwa 01/05/2012 rishyiraho Igitabo cy'amategeko ahana, zerekeranye n'ubusembure, kuko yarashe yitabara.

[42] Me Karamira wunganira Mukambanda uregera indishyi avuga ko Uwiragiye abeshya, kuko nta raporo ya muganga wemewe na Leta igaragaza ko yatemwe, kuko iyabyemeje yakozwe n'umugore wa Habyarimana wakoraga ku ivuriro. Anavuga ko nta nenge igaragara mu iperereza Urukiko rwakoze.

[43] Mukambanda avuga ko ku manywa, Karemera yari yazanye n'umupolisi baje gushaka Sebera, we ababwira ko adahari ariko binjira mu rugo ku gahato, bamubonye bashaka kumwambika amapingu, arabyanga hanyuma bagenda bijujuta, bagaruka mu ma saa sita z'ijoro, bakomanze ababwira ko Sebera atarimo, bakomeza gukubita imigeri ku rugi, yanga gusohoka ahubwo aratabaza, hatabara Mutuyimana maze agwa mu gico cy'abasigaye ku irembo, baramukubita, atatse bituma Sebera asohoka, baramufata ariko arabacika, bamwirukaho kugeza ubwo bamurasiye mu masaka.

[44] Avuga ko ubwo abapolisi birukaga ku mugabo we nawe yirutse abakurikiye asaba imbabazi ariko asanga bamaze kwica umugabo we, hanyuma Umuyobozi w'Umurenge Habyarimana, ahita ajyana umupolisi ku ivuriro riyoborwa n'umugore we.

[45] Uhagarariye Ubushinjacyaha avuga ko Uwiragiye atitabaraga, kuko raporo ya muganga wemewe na Leta yemeje ko yari afite udusebe duto tutagaragaza icyaduteye, kandi ko iyo biba umuhoro hari kuba igikomere kinini cyane, usibye ko nta n'imihoro yagaragajwe, kandi nta n'impamvu umupolisi wakoraga iperereza yari kuyihisha. avuga ko kuba Sebera yararashwe mu bitugu byerekana ko Uwiragiye yamurashe ahunga, bikaba binyuranye no kwitabara, kuko nta kigaragaza ko abo yarashe bamurwanyije ngo byitwe ubusembure.

[46] Ku byerekeye imvugo z'abatangabuhamya babajijwe mu iperereza ryakozwe n'Urukiko, avuga ko zirebewe hamwe, zigaragaza ko umunsi Sebera yicwa, ku manywa iwe hari haje inkeragutabara Karemera, azanye n'abapolisi, bagaruka nijoro bazanywe no kumwica, kandi ko abatangabuhamya bahuriza ku kuba Habyarimana na Sebera bari bafitanye amakimbirane ashingiye ku birombe

by'umucanga, naho iby'abantu bari bahuriye iwe ku manywa bikaba ari ibijyanye n'ikimina kandi ko saa kumi z'amanywa bari batashye, aterwa nijoro nta muntu ugihari.

[47] Uhagarariye Ubushinjacyaha avuga kandi ko Habyarimana yari kumwe n'abari mu gitero, abishwe baraswa amasasu arenze rimwe, bigaragaza ko bari bagambiriye kwica, akaba asanga ibyavugiwe mu iperereza bihuye n'ibyo abatangabuhamya bavuze mbere.

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[48] Ingingo ya 105 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cyamategeko ahana, ari nayo Uwiragiye aburanisha, iteganya, mu gace kayo ka kabiri, ko "umuntu afatwa ko yitabara igihe[...] ahanganye n'abajura cyangwa abandi bagizi ba nabi", naho iya 106 y'iryo Tegeko Ngenga igateganya ko "umuntu usagariwe ubwe cyangwa hasagariwe undi muntu, akitabara, cyangwa akamutabara atabiryozwa, uretse iyo uburyo bwakoreshejwe mu kwitabara cyangwa mu gutabara undi busumbye kure uburemere bw'amakuba".

[49] Urukiko rurasanga, mu bisobanuro Uwiragiye atanga ashaka kugaragaza ko yarashe Sebera na Mutuyimana ari uko bamutemye bitafatwaho ukuri, kuko, nk'uko byagaragajwe na muganga wemewe na Leta wasuzumye Uwiragiye, udusebe yamusanganye twari duto, anavuga ko icyaduteye kitamenyekana, bikaba byumvikana ko iyo biba ibikomere bitewe n'imihoro yatemeshejwe gatatu mu mutwe n'abantu bashaka kumwica nk'uko abivuga, muganga atari kubura kubibona ngo abyemeze, uretse ko nta n'ikigaragaza ko abarashwe bari bafite imihoro, kuko itafatiriwe kandi n'abatangubahamya babajijwe bakaba bataremeje ko bayibonye. Urukiko rurasanga ahubwo byakumvikana ko utwo dusebe muganga yabonye twanaturuka mu igundagurana Uwiragiye yagiranye na Sebera ubwo uyu yangaga ko bamufata nk'uko Mukambanda yemeje ko mbere y'uko araswa, Sebera yabanje kugundagurana n'abashakaga kumufata.

[50] Urukiko rurasanga kandi, ingingo ya 105 y'Itegeko Ngenga Nº01/2012/OL ryavuzwe haruguru Uwiragiye ashingiraho ashaka kugaragaza ko yarashe abantu arengera ubuzima bwe itanajyana n'ibyabaye kwa Sebera, kuko uyu atafatwa nk'umujura cyangwa undi mugizi wa nabi ku mpamvu yo kuba atemeye ko bamufata ngo bamutware bamuvogereye urugo mu buryo bunyuranyije n'amategeko, kandi kimwe mu bisabwa kugira ngo hemerwe ko uwakoze icyaha yirwanagaho, ari uko icyamuteye kugikora kiba ari igikorwa kimurenganya (injuste) cyangwa kitemewe n'amategeko (illégal), ukwanga gufatwa kwa Sebera muri ubwo buryo kukaba kutafatwa nk'igikorwa kirenganya cyangwa kitemewe n'amategeko.

[51] Urukiko rurasanga, n'ubusembure abunganira Uwiragiye bavuga butagaragazwa, kuko Sebera atafatwa nk'uwabaye nyirabayazana y'ibyamubayeho, mu gihe byagaragajwe haruguru ko yatewe mu gicuku, kuko abaje kumufata babikoze birengagije amategeko, kuba rero atarabibemereye bikaba bitatuma ariwe ufatwa nka nyirabayazana, kandi ingingo ya 74 y'Itegeko Ngenga Nº01/2012/OL ryavuzwe haruguru, iteganya ko habaho ubusembure ari uko uwakorewe icyaha ari we wabaye nyirabayazana wacyo[3].

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[3]Ibisobanuro byo kutemera impamvu y'ubusembure, kubera ko ububuranisha ariwe wakoze ibikorwa bitemewe byabaye intandaro y'ibyakurikiye, byatanzwe no mu rubanza NºRPAA038/15/CS rwo kuwa 15/09/2017, haburana Ubushinjacyaha na Sezikeye Emmanuel.

[52] Urukiko rusanga rero, hashingiwe ku bisobanuro byagaragajwe haruguru, Uwiragiye ahamwa n'icyaha cy'ubwicanyi, giteganywa n'ingingo ya 140 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ubujurire bwe rero bugamije kugaragaza ko yishe umuntu yitabara cyangwa asembuwe, bukaba nta shingiro bufite.

b. Ku byerekeye Habyarimana, Rugamba na Karemera.

[53] Habyarimana Festus avuga ko yahamijwe icyaha atakoze, nta bimenyetso bifatika, ukwiregura kwe ntikwahabwa agaciro, kandi nyir'ukugikora ucyiyemerera atamushinja, hirengagizwa ko icyaha ari gatozi, kiryozwa nyir'ukugikora. Asobanura ko yajyanye n'abapolisi mu gikorwa cyo kugenzura ko irondo rikorwa no gufungisha utubari, nk'uko byari byemejwe mu nama y'umutekano, bakanyura mu tugari dutandukanye ariko batagambiriye kujya kwa Sebera, bakaba barajyanyweyo n'uko bahageze ntibabone irondo aho risanzwe rikorera, ahubwo bumva urusaku, yoherezayo abantu kureba, we asigara ku modoka, hanyuma haba kutumvikana hagati y'abagiyeyo n'abaturage, Uwiragiye ararasa, naho we asa n'uhungabanye, ntiyabasha kugira icyo yakora, ahubwo Uwiragiye agarutse amubwira ko habayeho amakimbirane n'abaturage, akarasa kandi ko yakomeretse, bamujyana kwa muganga.

[54] Asobanura ko n'ubwo muri icyo gikorwa yari Umuyobozi, ariko bari mu nzego zitandukanye, buri wese akaba yari mukuru ku rwego rwe kandi afite ibyo asabwa n'abamukuriye, we, nk'umusivili, akaba atarashoboraga guha abapolisi cyangwa inkeragutabara amategeko cyangwa amabwiriza, bafite imbunda we ntayo afite, akaba kandi nta kibazo yari afitanye na nyakwigendera, cyaba icy'amabati cyangwa icy'umucanga, cyatuma amwambura ubuzima, akaba kandi nta bantu yigeze yoherezayo mbere.

[55] Me Nsengiyumva Enos na Me Nsengiyumva Viateur bamwunganira, bavuga ko Urukiko Rukuru rwahamije Habyarimana icyaha nta bimenyetso, kuko Ubushinjacyaha butagaragaje ahakorewe umugambi wo kujya kurasa n'uburyo wateguwe, ahubwo nk'Umunyamabanga Nshingwabikorwa, wari ukuriye igikorwa cyo kugenzura imikorere y'irondo, nk'uko byari byemejwe mu nama y'umutekano, Habyarimana yatwaye abandi mu modoka bagiye kureba amarondo, ntibabona aho irondo rikorerwa ahubwo bumva urusaku, ariko Ubushinjacyaha ntibugaragaza niba yaratanze amabwiriza yo kurasa, kandi nta kigaragaza ko abantu bagiyeyo ku manywa batumwe koko na Habyarimana, kuko batamushinja, ntashinjwe na Uwiragiye warashe abantu babiri, akaba ari we ugomba kuryozwa icyaha cye.

[56] Ku byerekeranye n'imvugo z'abatangabuhamya babarijwe mu iperereza ryakozwe n'Urukiko rw'Ikirenga, Habyarimana na Me Nsengiyumva bavuga ko imvugo z'abatangubahamya zitashingirwaho mu kumuhamya icyaha kuko zivuguruzanya, kuko mu Rukiko, Mukambanda, umugore wa Nyakwigendera Sebera, yavuze ko atigeze yumva Umuyobozi w'Umurenge mu rugo, mu iperereza avuga ko yamubonye mu rugo, Uwihanganye na Rutebuka bavuga ko icyaha cyakozwe Habyarimana adahari, Maguru avuga ko imodoka ya Habyarimana yatwaye imirambo kandi yaratwawe n'imbangukiragutabara. Avuga ko ku byerekeye icyo Habyarimana yaba yarapfaga na nyakwigendera, Mukambanda yavuze ko yari afitanye amakimbirane n'abo bafatanyije koperative we arabunga, Mbarushimana Zacharie avuga ko amakimbirane akomoka ku mucanga kandi Umurenge wemeza ko nta birombe by'umucanga byari bihari, ko hahingwaga umuceri, iby'umucanga kandi bikaba ari bishya kuko mbere havugwaga amakimbirane ashingiye ku kibazo cy'amabati.

[57] Rugamba Frank avuga ko yahamijwe icyaha cy'ubwicanyi nta bimenyetso bifatika, kubera ko hari uwagikoze kandi ucyemera akaba atarakimufashije, we ibyo yakoze bikaba byari mu nshingano

z'akazi ke, akaba kandi atigeze ajya gutata nk'uko bivugwa n'Ubushinjacyaha, uretse ko ku manywa banyuze kwa Sebera, kuko ari ku nzira, bagiye mu kandi Kagari gufata abakomeretsanyije, ariko ko atari yatumwe n'Umunyamabanga Nshingwabikorwa, kuko atariwe ubaha ubutumwa, abaturage bakaba barabihuje n'urupfu rwa Sebera, n'Ubushinjacyaha bukabyita ubutasi kandi atarigeze agera kwa Sebera mu rugo cyangwa ngo bavugane, yongeraho ko ntawakora ubutasi yitwaje ibyangombwa.

[58] Avuga ko ku munsi icyaha gikorwa, we yabyukijwe n'umuyobozi we, bajyana n'Umunyamabanga Nshingwabikorwa kugenzura irondo, bageze kwa Sebera basanga abantu basakuza, barabakomangira, baramwibwira, aho gusohoka akoma akaruru, haza umugabo ufite umuhoro, we (Rugamba) na bagenzi be bariruka, yongeye kugaruka yumvise amasasu, asanga Uwiragiye yagoswe, arasa amasasu atatu mu kirere kugira ngo akange abaturage bamuveho.

[59] Ku bijyanye n'ubuhamya bw'ababajijwe mu iperereza, Rugamba avuga ko imvugo zabo zivuguruzanya, zikaba zidakwiye gushingirwaho, kuko Nyiramatama uvuga ko yari kwa Sebera saa munani z'amanywa atabonye umupolisi kandi Mukambanda we avuga ko haje inkeragutabara n'umupolisi Rugamba saa kumi, akaba ari no ku nshuro ya mbere abivuze mu rwego rwo gushakisha, kandi ko bavuze ko nta mupolisi wakomeretse nyamara yaranajyanywe kwa muganga. Avuga ko Urukiko Rukuru rutagaragaje uburyo yaba yaratumwe na Habyarimana kandi ko no mu iperereza Urukiko rutageze aho yakoreraga ngo rubaze niba atari mu kazi.

[60] Me Nuru Gatabazi na Me Habiyambere bunganira Rugamba, bavuga ko Ubushinjacyaha butagaragaza uruhare rwe mu rupfu rw'abarashwe, kuko haterekanwa ko yagiranye n'Umunyamabanga Nshingwabikorwa umugambi wo kwica Sebera, ko ahubwo bahagurutse bagiye kureba uburyo irondo rikorwa, babisabwe n'ubakuriye, ikibazo kikaza kuvuka ari uko Uwiragiye arashe, hagapfa abantu, ariko Rugamba we yahunganye imbunda, yanga kugira ibikorwa bibi yakora, akagaruka ari uko yumvise amasasu, maze akarasa mu kirere agira ngo atabare mugenzi we.

[61] Karemera Steven avuga ko yahamijwe icyaha hiregangijwe ko we, nk'inkeragutabara yari ku irondo, abo baregwa hamwe bose bamukuriye, bakarimukuraho bamusaba kujyana nabo, bagera kwa Sebera bagasanga nta rondo rihari ahubwo iwe hari urusaku, Rugamba agakomanga, abari mu nzu bakamusaba kubibwira, maze Sebera agatabaza, ari bwo munsi y'urugo haturutse Mutuyimana yitwaje umuhoro nk'uwumvise urusaku, we (Karemera) aketse ko n'abari mu nzu bagiye gusohoka, atangira kwiruka, n'umupolisi asubira inyuma, ahita yiruka, yongera kugaruka, asanga Uwiragiye avuga ko umwegera amurasa, kandi imyenda ye yuzuye ho amaraso.

[62] Avuga ko ibyo kuba yari yaje gutata kwa Sebera ku manywa nta byabayeho, ahubwo bahanyuze bavuye gufata abantu, ari kumwe n'umupolisi utari unamaze igihe mu Murenge, kandi ko nta n'amapingu bari bafite.

[63] Avuga ko imvugo z'abatangabuhamya Mukambanda, Nyiramatama na Muhawenimana zivuguruzanya ubwazo kandi zikavuguruzanya n'ibyo buri wese yari yaravuze mu ibazwa rya mbere, kuko Muhawenimana avuga ko yari yagiye kwiga kandi uwo munsi nta shuri ryari rihari, Mukambanda akavuga ko abapolisi bamusanze yicaranye iwe n'abana, ko atazi ibyo bavuganye na Sebera, ariko ubu akaba avuga ko bamubwiye ko Umunyamabanga Nshingwabikorwa w'Umurenge amushaka, naho Nyiramatama akavuga ko saa munani yari yicaye kwa Sebera kandi umugore we yaravuze ko nta wundi muntu wari uriyo.

[64] Me Habyarimana na Me Habiyambere bamwunganira, bavuga ko abo baregwa hamwe bamufashe ngo ajye kubereka aho irondo rikorwa, bamukuye aho yarikoreraga, ko nta kigaragaza uruhare yaba yaragize mu rupfu rwa nyakwigendera, basaba ko yagirwa umwere. Me Gatabazi Nuru avuga ko imvugo z'abatangabuhamya zitera gushidikanya, kuko zidahuza ku byerekeranye n'ubutasi buvugwa ko bwabanje gukorwa, no kuba umurambo waratwawe n'imodoka y'umunyamabanga nshingwabikorwa w'Umurenge, ubundi bakavuga ko yatwawe na "ambulance".

[65] Me Karamira wunganira Mukambanda uregera indishyi avuga ko iperereza ryakozwe neza kandi rigaragaraza ko abazanywe na Habyarimana kwa Sebera baje ari igitero, kandi ko ubuhamya bwagaragaje ko impamvu yari amakimbirane Habyarimana yari afitanye na Sebera, abaje muri icyo gitero bose rero bakaba bakwiye kwemera uruhare rwabo.

[66] Uhagarariye Ubushinjacyaha avuga ko uruhare rwa Habyarimana rushingiye ku kuba ariwe wari ukuriye kiriya gikorwa, n'ubwo yabanje kubihakana, ko atari we wahaga abapolisi amabwiriza, ntagaragaza impamvu ikomeye yatumye bajya kwa Sebera saa sita z'ijoro, kuko mu ibazwa rye mu nzego z'iperereza yemeye ko Sebera yasohotse wenyine mu nzu (kote ya 117), Rugamba nawe abazwa akavuga ko Sebera yari mu gikari aganira n'abandi, ntibavuge urusaku (kote ya 110), ibi bikuzuzwa n'uko ku manywa hari habayeho igikorwa cy'ubutasi kuko Habyarimana yari yatumyeho Sebera ku kibazo cy'amabati, ariko Sebera akanga kumwitaba, nk'uko binavugwa na Uwiragiye na Rugamba (kote za 51-50), akaba rero yaragiyeyo mu rwego rwo kumwihimuraho, bikaba binahuye, ku by'ingenzi, n'ibyavuzwe n'abatangabuhamya mu iperereza, ko habanje kuza abatasi, ko imodoka ya Habyarimana ariyo yazanye abishe, kandi ko Habyarimana yari afitanye amakimbirane na Sebera.

[67] Ku byerekeye Rugamba Frank, Uhagarariye Ubushinjacyaha avuga yemera ko yanyuze kwa Sebera, bigafatwa ko yari agiye gutata kuko mu ibazwa rye yemeye ko yamusabye kwitaba Umunyamabanga Nshingwabikorwa, anemera ko bakomangiye Sebera ngo asohoke bamubwira ko ari abapolisi bari kumwe n'Umunyamabanga Nshingwabikorwa w'Umurenge, Urukiko rukaba rwashingira ku kwivuguruza kwe, kuko mu ibazwa rye yavuze ko yarashe batari babatema, akongera kurasa babatemye (kuri kote ya 110), akanavuga ko yaje gutabara mugenzi we, kandi mbere yaravuze ko buri wese yari yahunze ukwe, bikaba ari uburyo bwo guhunga icyaha.

[68] Ku byerekeye Karemera, avuga ko ku manywa yari yajyanye n'umupolisi kwa Sebera, gutata, anajyana nabo nijoro, ubwicanyi bukorwa ahari, ko rero n'ubwo we atari afite intwaro, abo bari kumwe mu gitero bari bazifite, asaba Urukiko gushingira no ku kwivuguruza kwe agahamwa n'icyaha kuko avuga ko nta rondo babonye mu nzira, nyamara akongera kuvuga ko bamukuye ku irondo.

UKO URUKIKO RUBIBONA

[69] Ingingo ya 98 y'Itegeko Ngenga N^{o}01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana iteganya uburyo butatu umuntu ashobora kugira uruhare ruhanwa mu cyaha cyabaye: uwakoze icyaha, ni ukuvuga uwagikoze ubwe, umufatanyacyaha, ni ukuvuga uwafatanyije ku buryo butaziguye n'uwakoze icyaha, icyitso, ni ukuvuga uwafashije uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinononsoye kandi yarabikoze abizi, cyangwa uwoheje uwakoze icyaha, ubufatanyacyaha mu bwicanyi buregwa Habyarimana, Rugamba na Karemera, bukaba bugomba gusuzumwa hashingiwe kuri iyo ngingo y'Itegeko.

[70] Urukiko rurasanga, ubwicanyi bwakozwe na Uwiragiye ari igikorwa cyagiranye isano n'ukuvogera urugo rwa Sebera, kuko yarashwe nyuma y'amakimbirane yavutse ubwo Sebera yabanzaga kwanga gukingura n'aho afunguriye akanga ko bamufata ngo bamujyane nk'uko bari babitumwe n'Umunyamabanga Nshingwabikorwa w'umurenge Habyarimana, icyo cyaha cy'ubwicanyi kikaba cyaraje mu gihe Sebera yatambamiraga icyaha cy'ibanze cyo kuvogera urugo rwe, kikaba rero gifitanye isano kandi kigaragara nk'icyongera ububi bw'icyo cy'ibanze cyari kizanye Uwiragiye, Rugamba na Karemera, batumwe na Habyarimana.

[71] Ibisobanuro bitanzwe haruguru ni nako bigaragazwa n'abahanga mu mategeko, nka Isabelle Rorive na D.Bosquet bemeza ko n'iyo umuntu yaba atakoze ubwe igikorwa rukana kigize icyaha, ashobora nyamara kukiryozwa, bitewe n'ibyo yakoze byorohereje cyangwa byabaye intandaro y'icyo cyaha[4], bagatanga urugero rw'ubwicanyi bukozwe n'umwe mu bagiye kwiba, bagenzi be nabo bakaba bagomba kuryozwa ubwo bwicanyi[5], kuko bufatwa nk'impamvu nkomezacyaha y'ubwo bujura ireberwa ku cyaha ubwacyo(circonstance aggravante objective) aho kureberwa ku muntu (circonstance aggravante personnelle), bukaba bufitanye isano n'ubujura bahuriyeho, kabone n'iyo uwakoze ubwo bwicanyi wenyine yaba atabanje kubibamenyesha.

[72] Uwo kandi ni nawo murongo wafashwe n'Urukiko Rusesa imanza rw'Ububiligi, rwagiye rwemeza mu manza zinyuranye, ko mu gihe hakozwe ubwicanyi kugira ngo ubujura bushoboke, uwagize uruhare muri ubwo bujura nawe azahanirwa n'ubwo bwicanyi, n'ubwo bitagaragara ko yabugizemo uruhare rutaziguye[6], ndetse akaba ari no muri icyo cyerekezo Urukiko Rusesa imanza rw'Ubufaransa, rwagaragaje ko icyitso cyatumye abandi gutera umuntu ubwoba, nacyo kigomba guhanirwa iterwa ry'ibyuka bihuma amaso ku waterwaga ubwoba, n'ubwo uwabatumye atari yamenye ko banatera ibyo byuka, rusobanura ko umufatanyacyaha yirengera ibyajyanye byose n'icyaha yagizemo uruhare, n'iyo yaba atari yabimenyeshejwe[7].

[73] Urukiko rurasanga, harebwe uburyo icyaha cyo kwinjira mu rugo rwa Sebera bitemewe n'amategeko cyabaye intandaro y"ubwicanyi yakorewe ubwo yangaga gusohoka, n'aho asohokeye akanga ko bamufata ngo bamujyane, maze ayo makimbirane akamuviramo kuraswa agapfa, we na Mutuyimana waje atabaye, byumvikana neza ko igikorwa cyo kuvogera urugo rwe cyagiranye isano n'icyo kumwica, bityo, Habyarimana, Rugamba na Karemera bagize uruhare muri uko kuvogera urugo rwa Sebera nk'uko byagaragajwe haruguru, bakaba batabasha guhunga uruhare rwabo muri ubwo bwicanyi, n'ubwo nta kigaragaza ko Uwiragiye yaba yarabamenyesheje ko agiye kurasa abantu.

[74] Ku byerekeye Habyarimana wireguza kuba ataranageze kwa Sebera, aho ibyaha byombi byabereye, Urukiko rurasanga, uretse ko hari n'aho yemera ko yageze kwa Sebera kuko avuga ko yabonye uyu asohoka wenyine (kote ya 117), hashingiwe ku ngingo ya 98 y'Itegeko Ngenga N^{o}01/2012/OL ryavuzwe haruguru, kuba ari we watanze amabwiriza yo kuvogera urugo rwa Sebera

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[4]"Sans avoir physiquement collaboré aux agissement délictueux d'autrui, une personne peut ainsi voir sa responsabilité pénale engagée parce qu'elle a favorisé ces agissements par la création d'un état délictueux latent ou par la commission d'une faute" : Isabelle Rorive, avec la collaboration de D.Bosquet, "La renonciation au meurtre: une limite au système de l'imputation automatique du meurtre à tous les participants au vol", in Revue de Droit Pénal et de Criminologie, Avril 2002, p 371.

[5] Ni byo byiswe "Système de l'imputation automatique des circonstances aggravantes objectives": Ibidem, p. 376.

[6] Cass., 18 Avril 1978

[7] Le complice encourt la responsabilité de toutes les cironstances qui qualifient l'acte poursuivi, sans qu'il soit nécessaire que cellles-ci aient été connues de lui:Cass., 21 mai 1996, Bulletin criminel 1996, Nº 206, p 584.

nk'uko byagaragajwe haruguru, bimugira umufatanyacyaha nk'icyitso cy'abakoze icyo cyaha, maze isano iri hagati yacyo n'ubwicanyi bwahabereye, ikaba ituma nawe agomba kuburyozwa nk'uko byasobanuwe haruguru, cyane ko ari nawe wari uyoboye abateye kwa Sebera, anabaha amabwiriza.

[75] Urukiko rurasanga ariko, ibisobanuro byatanzwe bigamije kugaragaza ko igikorwa cyo kwica Sebera cyaba cyarateguwe mbere, ku buryo hari hanabanje ku manywa icyo kuza gutata iwe, kikaba cyaranateguwe biturutse ku makimbirane Sebera yaba yari afitanye na Habyarimana bapfa ikirombe cy'umucanga Sebera yatambamiyeho Habyarimana, bitagaragaza ko ubwicanyi bwabaye bwaba bwari bwateguwe koko, ikigaragara akaba ari uko Habyarimana yashatse ko Sebera afatwa akamushyikirizwa, nk'uko byemezwa n'abatangabuhamya barimo Mukamana Jeanne[8] ariko ibijyanye n'iryo fatwa n'ubwo bitagaragarijwe impamvu nyakuri, ikaba itafatwa nk'umugambi wateguwe wo kwica Sebera, cyane ko bitumvikana ukuntu Habyarimana yari gushaka kumwica agakoresha abagize inzego z'umutekano barimo abapolisi n'inkeragutabara bitagaragazwa ko baba barabigizemo ubugambanyi n'inyungu bari babifitemo, hakaba hagomba rero kwemezwa ko ari ubwicanyi bwabaye buziyeho, buhanishwa ingingo ya 140 y'Itegeko Ngenga N°01/2012/OL ryavuzwe haruguru, aho kuba ubwagambiriwe.

[76] Urukiko rurasanga kandi, kubera isano iri hagati y'ubwo bwicanyi n'icyaha cyo kwinjira mu rugo rw'umuntu binyuranyije n'amategeko nk'uko byasobanuwe haruguru, ibyo byaha byombi bigomba guhanwa mu buryo bw'impurirane y'imbonezamugambi, buteganywa n'ingingo ya 84 y'Itegeko N° 01/2012/OL ryavuzwe haruguru[9], maze abaregwa bagahanishwa igihano giteganyirizwa icyaha kirushije ikindi uburemere muri byombi, ni ukuvuga icy'ubwicanyi.

[77] Urukiko rurasanga kandi, mu gutanga ibihano, hanitabwa ku kuba ibyaha bikurikiranywe bitaratewe n'ubugome bwihariye, ahubwo harabaye ubushishozi buke, bwatumye abaregwa badatekereza ku ngaruka zashoboraga gukurikira ukuvogera urugo rw'umutu mu gicuku kandi abagaragariza ko atiteguye kwemera ko bamufata, bikaba byababera impamvu nyoroshyacyaha, ituma bakongera kugabanyirizwa ibihano, hashingiwe ku ngingo ya 76 y'Itegeko Ngenga N°01/2012/OL ryavuzwe haruguru, iteganya ko umucamanza areba mu byabanjirije icyaha, mu byagiherekeje cyangwa mu byagikurikiye, impamvu zatuma agabanya igihano, hamwe n'iya 78 y'iryo Tegeko Ngenga, iteganya uburyo ibihano bigabanywa mu gihe hagaragaye impamvu nyoroshya cyaha, ku byerekeye igihano cy'igifungo cya burundu giteganyirizwa icyaha cy'ubwicanyi, kikaba cyagabanywa, mu buryo kitajya hasi y'igifungo cy'imyaka icumi (10).

d. Ku bijyanye n'indishyi zisabwa na Mukambanda

[78] Mu bujurire bwuririye ku bundi, Mukambanda na Me Karamira umwunganira, bavuga ko mu Rukiko Rukuru yagenewe indishyi nke zingana na 10.000.000Frw kandi yari yasabye 500.000.000Frw. Bavuga ko hari hakwiye kuzirikanwa agaciro k'umuntu, hakanarebwa ko urupfu rwa Sebera rwagize Mukambanda umupfakazi, n'abana ntibabe bagishoboye kwiga, kandi se yari afite uburyo bwo gushaka amafaranga, agatunga umuryango we, kuko yakoraga imirimo itandukanye irimo kuba ukuriye

[8] Mukamana Jeanne yagize ati : "numvise imodoka iparitse imbere y'inzu yanjye, gitifu avuze ngo nimugende mumuzane, mu kanya numva amasasu aravuze, gitifu aramanuka, ahura n'umusirikari wijujuta ngo arabarashe kandi ararasa ikitwa ikinyabuzima cyose, gitifu akavuga ngo mbabarira ntiwongere kurasa" yongeraho ko iyo atamutwara aba yararashe n'abandi.

[9] Iyo ngingo iteganya ko iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongera igihe cyangwa umubare, bitewe n'uburyo ibyaha byakozwe, ariko ntarenze urugero ntarengwa wongeyeho icya kabiri (1/2) cy'icyo gihano kirushije ibindi gukomera.

koperative z’abahinzi b’umuceri mu gishanga. Basaba Urukiko kuba rwagena indishyi zikwiye, mu bushishozi.

[79] Habyarimana Festus na Me Nsengiyumva Viateur na Me Nsengiyumva Enos bamwunganira, bavuga ko adakwiye gutegekwa kwishyura indishyi kandi atari we wakoze icyaha, ko n’uziregera atagaragaza isano iri hagati y’ikosa na Habyarimana usabwa indishyi.

[80] Uwiragiye Fabiola na Me Kabasenga na Me Nuru Gatabazi na Me Hakizimana bamwunganira, bavuga ko yaciwe indishyi nyinshi zidakwiranye n’icyaha yakoze, kuko yagikoze asembuwe, bagasaba kandi ko hagobokeshwa Leta kuko yari umupolisi uyikorera, icyaha kikaba cyarakozwe ari mu kazi.

[81] Rugamba Frank na Me Hakizimana na Me Habiyambere na Gatabazi Nuru bamwunganira, bavuga ko nta ndishyi akwiye kwishyura kuko nta cyaha yakoze, kandi ko na 10.000.000Frw yagenewe mbere nta shingiro zifite.

[82] Karemera Steven na Me Habyarimana na Me Gatabazi Nuru amwunganira, bavuga ko akwiye kugirwa umwere, ariko ko n’uburyo 10.000.000Frw, zabazwe butagaragajwe.

UKO URUKIKO RUBIBONA

[83] Ingingo ya 258 y’Igitabo cya gatatu cy’Urwunge rw’amategeko mbonezamubano, iteganya ko nyir’ugukora igikorwa cyangirije undi ategekwa gusana ibyangiritse ku makosa ye, naho iya 45 y’Itegeko-Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy’amategeko ahana igateganya ko abantu bose bahaniwe icyaha kimwe bafatanya kwishyura ihazabu, ibisubizwa, indishyi z’akababaro, n’amagarama y’urubanza.

[84] Urukiko rurasanga, hashingiwe ku ngingo z’amategeko zibukijwe haruguru, Habyarimana, Uwiragiye na Karemera bagomba guha indishyi Mukambanda waziregeye kuko bahamwa n’ibyaha baregwa byamwangirije bigatera urupfu rw’umugabo we, ariko kubera ko urugero rw’izo asaba zigeze kuri 500.000.000Frw rukabije, hakaba nta bisobanuro byumvikana atanga, bituma avuga ko 10.000.000Frw yagenewe mbere ari make, hagomba kwemezwa izo ndishyi yagenewe n’Urukiko Rukuru, kuko ziri mu rugero rukwiye.

[85] Ku byerekeye imiburanire ya Uwiragiye uvuga ko hagombye kugobokeshwa Leta y’u Rwanda yamukoreshaga kugira ngo ibe yasabwa kwishyura indishyi, Urukiko rurasanga iryo gobokesha ku gahato atasabye ku rwego rwa mbere ritashoboka, kuko ingingo ya 118 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko “kugoboka bigamije gusaba ko uhatiwe kugoboka agira ibyo acibwa ntibishobora gukorwa bwa mbere mu rwego rw’ubujurire.

III. ICYEMEZO CY’URUKIKO

[86] Rwemeje ko ubujurire bwa Habyarimana Festus, Uwiragiye Fabiola, Karemera Steven na Rugamba Frank bufite ishingiro kuri bimwe;

[87] Rwemeje ko, mu buryo bw’impurirane y’imbonezamugambi, bahamwa n’icyaha cyo kwinjira mu rugo rw’umuntu mu buryo bunyuranyije n’amategeko, hamwe n’icy’ubwicanyi butagambiriwe;

[88] Ruhanishije buri wese muri bo igifungo cy’imyaka cumi n’itanu (15);

[89] Rubategetse gufatanya kwishyura Mukambanda indishyi zihwanye na 10.000.000Frw;

[90] Rwemeje ko ubujurire bwuririye ku bundi bwa Mukambanda uregera indishyi nta shingiro bufite;

[91] Ruvuze ko urubanza 0105/12/HC/NYA rwajuririwe ruhindutse kuri bimwe;

[92] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.