

RWANDA / JUDGMENT

PROSECUTION v. MURINDA et. Al.

RPA 0448/13/HC/NYA

COURT

High Court

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Text

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PROSECUTION v. MURINDA et. Al. [Rwanda HIGH COURT – RPA 0448/13/HC/NYA (Ngabire, P.J.) April 25, 2014] Evidence law – Distance between eye witness and the crime scene – Contradiction in evidence produced. –The fact that the distance between eye witnesses and the crime scene could not allow them to see clearly what was happening, the fact that their testimonies were contradictory and that the presumed co - offender is exculpated by witnesses who state that she was not at the crime scene when the crime was committed bring about doubt about the accused – Law 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 35. Criminal procedure – Guilty plea – penalty reduction – The guilty plea made by Murinda is unequivocal; it is not covering his wife charged as a co- offender since taking into consideration the body parts which were hacked, it is clear that the hacked had no longer energy in such way that who hacked him could do it without any other support. Facts: Intermediate Court of Huye convicted Deny Murinda and Cecile Dukuzeyezu of attempted murder. They were sentenced to life imprisonment and ordered them to pay Vital Kalisa 2.148.725 Rwf in damages. Both Murinda and his wife appealed to the High Court,

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the former requesting the reduction and suspension of the penalty was seeking justice. . In responding to the ground of appeal, the Prosecution contended that the guilty plea and the forgiveness of Murinda were not authentic. In contrast, the Prosecution added, he wanted to cover his wife so as to be sentenced lonely. The Prosecution ended requesting the court to uphold the ruling of the appealed judgment. Held: The fact that the Prosecution does not produce any evidence beyond reasonable doubt that Cecilre Dukuzeyezu walked to the palce where Vital Kalisa was hacked and helped her husband in his (Vital Kalisa) hacking, brings about doubt. The latter is highlighted by the fact that the distance separating witnesses from the crime scene Esperance Mukakimonyo and Mathias was so long in such way that they could not see whether they killed him as co-offenders. Moreover, they could have rushed to save him if they were in the vicinity of the crime scene. Additionally, the statement of the witnesses are contradictory; one attests that he saw someone over someone else battering on one hand and another adds that at the end of the events he saw a wife and a husband moving toward Murinda's house. The doubt further is underlined by witnesses who state that at the time of the tragedy, Cecile Dukuzeyezu was at Makuza Evarist's house. Therefore, since doubt favours the accused, Cecile Dukuzeyezu should be acquitted. The guilty plea and forgiveness seeking made by Deny Murinda is unequivocal seeking to avoid the effect of the

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crime and covering his wife since Murnda states that he hacked him on both legs, on the head and the neck and consequently succumbed which implies that a person hacked on such parts of the body lose energy in such way that who intends keeping on hacking him/her can do it without any help. Basing on the pain he suffered and on the aesthetic damages Vital Kalisa underwent caused by 18 blows of machete, the Court finds that 2.148.724 Rwf is not equivalent of to the pain he suffered nor it is equivalent to 500, 000 Rwf which Murinda states he would pay him especially that he spent much time in hospital for treatment. Cecile Dukuzeyezu is acquitted while Deny Murinda benefits the penalty reduction. Deny Murinda is sentenced to 25 years in jail. Deny Murinda should pay Kalisa Vital2.148.725. Deny Murinda is exonerated of the court fees. Statutes and statutory instruments referred to: Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 35. No case was referred to

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- [1] In the case whose number has been stated above, Deny Murinda pleaded guilty of having battered Vital

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Kalisa with blows of machetes in the evening of November 2, 2012 following which arose from the fodder and the plants. Additionally, he admitted that it is him only who battered him with blows of machetes. On the other hand, his wife Cecile Dukuzeyezu pleaded not guilty of attempt

which they were both accused of. On October 16, 2013, the Intermediate Court of Huye ruled on the case and held that the criminal action filed by the Prosecution and the civil action filed by Vital Kalisa have merit. In consequence, the court found Deny Murinda and Dukuzeyezu Cecile guilty of attempted murder. Furthermore, the court ordered both Deny Murinda and Cecile Dukuzeyezu to pay 2, 148, 725 Rwf. The court decided that Deny Murinda and Cecile Dukuzeyezu lost the case, sentenced them to life imprisonment and ordered them to pay 2.148.725 Rwf to Vital Kalisa. Kalisa appealed on November 4, 2013 requesting the penalty reduction and its suspension and the decrease of the damages while Cecile Dukuzeyezu purposed to seek justice in her appeal. II. ANALYSIS OF LEGAL ISSUES [2] Either in his appeal notice or in his appeal submissions and even during the hearing, assisted by counsel Maurice Ndacyayisenga, Murinda Deny requests the penalty and suspension of the penalty imposed on the first instance since he pleaded guilty and sought forgiveness but in vain. He adds that he requests the court to decrease the damages he was ordered to pay Vital Kalisa so that he can pay him at least 500. 000. on the other hand, Cecile Dukuzeyezu seeks justice. In

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contrast, the Prosecution request that the appealed judgment would be upheld since the guilty plea made by Deny Murinda is not genuine as he tends to cover his wife so that he can be solely convicted. Vital Kalisa on the other hand request the increase of the damages as awarded on the first instance. Hence, in the case the court will analyse whether in cutting with blows of machete Vital Kalisa Deny Murinda accomplice his wife, Cecile Dukuzeyezu. In other words, whether the guilty plea made by Deny Murinda is genuine in such a way that it can constitute mitigating circumstance for him (1) the issue of the determined damages (2). Whether Deny Murinda and his wife Cecile Dukuzeyezu accomplice the battering with blows of machete against Vital Kalisa and whether the guilty plea and the forgiveness seeking made by Deny Murinda are genuine on such way that it can constitute the mitigating circumstance. [3] The Prosecution vehemently rejects the defence presented by Deny Murinda that who states that he only battered Vital Kalisa by blows of machetes first on the leg which caused him to succumb to then fell down and then Deny Murinda kept on battering him. In contrast, the Prosecution notes that the guilty plea and the forgiveness seeking made by Deny Murinda is equivocal following 18 blows of machete excluding the leg. It implies, the prosecution added, he had a co-offender as testified. [4] In his claim as submitted to the prosecution the day following of his batter by a machete, the court finds

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that Vital Kalisa stated that among the parts of the body which were battered include the leg. This is emphasized by the photo in the case file on mark 34 which reveals four wounds on the legs of Vital Kalisa. Therefore, the statement of the Prosecution that Deny Murinda did not batter Vital Kalisa on the legs with the machete has no merit especially that either in his action or during the pleading, Vital Kalisa stated that Deny Murinda battered him by blows of machete on the neck and the head which is also approved by the photos in the case file on mark 30, 31 and 33, which

conclusively support the statements of Deny Murinda that he battered Vital Kalisa then succumbed to the his continous blows of machete which is clear to the court that someone whose both legs, neck and head have been battered by using the machete can fail to resist and consequently fall down in such way that whoever wants to continue battering him can do it without an help aspecially that Vital Kalisa who was battered states in his claim that when both him and Murinda started fighting, they both fell down. [5] The court finds tht the witnesses testimonies relied on in confirming that Deny Murinda and Cecile Dukuzeyezu are co-offenders in in battering with machete Vital Kalisa include among others Esperance Mukakimonyo Mathias Iyakaremye and they were on the other hill opposite the place where Vital Kalisa was battered as they testified during their interrogation to the judicial police which is also approved by Vitali Kalisa himself in his claim as stated above the same as the Executive Secretary of the Rmera in his report of September 26, 2013 whereby he testifies that between

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the place whereby Kalisa was baterred and the place where the witnesses stood, there is a vert long distance in such way that they could see the manner through which Vital Kalisa was battered. Therefore, the statement of Esperance Mukakimonyo and that of Mathia Iyakaremye inculpatng Cecile Dukuzeyezu that she was a co-offender of his husband, Deny Murinda, have no cause doubt especially that if they had seen Vitali Kalisa being battered, they should have crossed to save him. In addition, Iyakaremye personally states that when he was home he hearded the screaming of Vital Kalisa ‘ save me as they are killing me’. However, even nthemselves admitted that they had never reached the crime scene. Moreover, the court notes that the statement of those witnesses(Esperance Mukakimonyo and Mathias Iyakaremye are contadictory) since the first testifies that it is Deny Murinda and his wife Cecile Dukuzeyezu who battered Viatal Kalisa by machete. However, in some statements he states : ‘ I saw someone over someone else beating but I could not see whom he was beating’. It implies that who battered Vital Kalisa was only one single person while the second (Iyakaremye Mathias states that when he hearded the sreaming of Vital Kalisa calling for a help) he stood at the view of the scene and saw someone over someone else beating, which implies that it was only one person he saw battering Vital Kalisawith a machete. Further, Mathias Iyakaremye adds in contradiction that “ at the end of the event I saw a husband and a wife on their way toward Murinda’s house. The court considers false the context in which Esperance Mukakimonyo and Mathias explain that Dukuzeyezu Cecile was co offender of her

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huasband Deny Murinda in battering Vital Kalisa. Therefore, thier statements should not be considered pursuant to article 65 of the law relating to evidence and its production [6] Furthermore, the court notes that Makuza Evariste, Uwimana Kaniziyo and Nyiraneza Takirineattest that the time when Murinda Deny was battered using the machete, Dukuzeyezu Cecile was at Evariste Makuza’s house. Further, the statement of Evariste Makuza, Uwimana Kaniziyo and Nyiraneza Takirine match the defence presented by Cecile that he was not with her

husband when he battered Kalisa Vital with the machete. In contrast, the court notes, she was at Evarist Makuza since he was coming from there after they heard the screaming that Deny Murinda had fight with Vitali Kalisa. Furthermore, these statements cause doubt that Dukuzeyezu Cecile might have been the co- offender of her husband Murinda Deny in battering Vital Kalisa in addition to the fact that in the course of thye hearing the prosecution did not demonstrate thatCecile Dukuzeyezu was on the farm with her husband keeping the cattle so as toconfirm that hse might have been thye co-offender of his husbnad in the battering Vital Kalisa using the machete. Moreover, there is no any other reliable evidence proving that Cecile Dukuzeyezu was a co-offender of his hasband in battering Vital Kalisa. [7] Basing on the expplanations as set above, the court finds that there is no any evidence produced by the prosecution toproving with no doubt that Cecile Dukuzeyezu had ever arrived at the place where Deny

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Murinda bettered Vital Kalisa using the machete in conjunction with his wife to commit attempted murder. Hence dout should favor her to be acquitted as provided for by article 165 of the law relating to the code of criminal procedure. Furthermore, the court finds that the explanations provided above indicate that the guilty plea and the forgiveness seeking made by Deny Murinda before the judicial police he prosecution, in the Intermediate Court of Huye and even in the course of the hearing of the case are unequivocal instead of being quitting the effects of the iffence and cover up his wife so as to be convicted lonly as found by Intemediate Court of Huye. Hnce his plea of guilty and forgiveness seeking should constitute for him mitigating circumstance which should entail the penalty reduction following the provisions of article 35 of the law relating to the code of criminal procedure as well as on article 77 and 78 of organic law instituting the penal code. However, in the reduction of the penalty, his cruelty and the magnitide of the crime in hacking Vital Kalisa using the machete should be taken into consideration. As for his request of the penalty suspension, the court is of the view that his penalty should not be suspended because of the cruelty under which he hacked Vital Kalisa and should suffer the whole imposed penalty being in prison so as te be sufficiently corrected especially that the imposed penalty is greater than that which is provided for by the law so as the suspension of the penalty to be granted as it is stipulated for by article 85 of organic law referred to above. Regarding damages

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[8] Deny Murinda requests the court to decrease the damages totalling 2.148.725 Rwf which he was ordered to pay Vital Kalisa in conjnction with Cecile Dukuzeyezu since,according to him, is excessive. He requests that he would pay him at least 500 000 Rwf while Vital Kalisa asks the court to order Deny Murinda to add 300, 000 Rwf in addition to those awarded at the first instance for the tax moto driver who used to provide him with food while he was admitted to the hospital. In addition to this, he requests the court do award the moral damages amounting to 1000, 0000 Rwf 200,000 Rwf for time he spent in litigations and 300, 000 Rwf forcounsel fees at appeal level. [9] The court is of the view that 2.148.724 granted to

Vital Kalisa in damage is not excessive as alleged by Deny Murinda following the gravity of attempted murder committed against Vital Kalisa on 18 place of his body hacked as Deny Murinda accepts. This inflicted him much pain in such way that though Vital Kalisa did not pass away, the hacked parts of the body inflicted him much pain and left him much aesthetic damage as the photoes in the case file confirm. In addition, the pain he suffered can neither be compared to damages awarded to Vital Kalisa nor it to 500.000 Rwf which Murinda proposes to be paid to him especially that Vital Kalisa spent long time to the hospital for treatment. Furthermore, it implies that he suffered much loss in his hacking. Hence, the ground of appeal of Deny Murinda has no merit.

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[10] The court finds that the damages Vital Kalisa was awarded on the first instance embodies the moral damages, counsel fees and the medical expenses as it is motivated in paragraph 18 of the appealed judgment. Hence, other moral damages and some other amount he asks at appeal level have no merit, chiefly, the moral damages to be awarded to him should be determined in the discretion of the court. In addition he did not prove that he spent long time on litigations in the court. In contrast, it is his counsel who pleaded the case. At appeal level, no counsel fees should be awarded since it was mandatory to plead since the appeal of Dukuzeyezu Cecile revealed that it had the merit. It implies he cannot pretend that it was Deny Murinda who made him hire a counsel at appeal. Regarding the 300, 000 Rwf Vital Kalisa requests for he entered into the contract with the tax moto driver who regularly provided him with food at the hospital, the court finds that it cannot be awarded as long as the contract which he serves as a basis was effective since October 2, 2012 prior to his hacking its content does not prove the reality. III. THE DECISION OF THE COURT [11] Finds with merit the ground of appeal of Cecile Dukuzeyezu while the ground of appeal of Deny Murinda has merit in parts. Hence, the case RP 0256/13/TGI/HYE rendered by Intermediate Court of Huye on October 16, 2013 is changed on Dukuzeyezu Cecile who is acquitted and on the sentence to be

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imposed on Deny murinda following the motivations above mentioned. [12] Acquits Cecile Dukuzeyezu. [13] Confirms the change of the judgment n° RP 0256/13/TGI/HYE as rendered by Intermediate Court of Huye on October 16, 2013 in regard to Cecile Dukuzeyezu who is acquitted and on the penalty imposed on Deny Murinda following the motivations above mentioned. [14] Sentences Deny Murinda to 25 years in jail. [15] Orders Deny Murinda to pay 2.148.725 Rwf in damages as decided on the first instance failure of which as provided for by the law would be performed by public coercion. [16] Exonerates Murinda of the court fees totalling 4 700 Rwf since he is in prison following the provisions of article 268 of the law relating to the code of criminal procedure.

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