

RWANDA / JUDGMENT

PROSECUTOR v. MBARUSHIMANA

RPA 0187/12/CS

COURT

Supreme Court

DECIDED

15 July 2016

CASE / FILE NUMBER

RPA 0187/12/CS

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Text

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PROSECUTOR v. MBARUSHIMANA [Rwanda SUPREME COURT – RPA 0187/12/CS (Nyirinkwaya, Kayitesi and Mukandamage, J.) July 15, 2016] Criminal Law – Attempted murder – None could deny that he committed it while he used a weapon to kill and hit it regardless to the body party and stopped by others – Decree - Law n° 21/1977 of 18/08/1977 instituting the penal code, article 21 Criminal Law – Penalty reduction – It cannot be granted when the offence was committed with high cruelty and the offender did not prove any regret and left grave consequences to the victim's family – Organic - Law n° 01/2012/OL of 02/05/2012 instituting the penal code, article 71. Facts: The accused was prosecuted before the High Court, Musanze chamber, for murder and violation of person's domicile committed in the night of 15 February 2010 when he went to his grandmother's home around midnight, holding a small hoe, broke the door and once inside, started to hit his grandmother and her daughter with who they stayed together with the hoe and they were luckily rescued by neighbours. The court convicted him of the offence he was charged with and sentenced him to the life imprisonment and ordering him to pay damages to the civil party. He appealed to the Supreme Court, stating that he was convicted of attempted murder while he committed assault and battery, and that he was sentenced to the heavy penalty while he

pleaded guilty and sought forgiveness. The prosecution contends that the victims hit by the accused and witnesses interrogated during the Judicial Police confirmed that he attacked his grandmother and aunt and that they still alive because neighbours came for rescue after hearing his aunt's kid calling for help. Held: 1. The fact that the accused violated person's domicile around mid-night holding the small hoe in his hands while it is a weapon to kill, and hit them with it without caring the body part to which he was hitting as he himself admits, proves the intent to kill and he failed to do so because the kid of his aunt called their neighbours for help and they came for rescue.

2. The accused does deserve no penalty reduction, considering the high cruelty with which he committed the offence. This court also finds that he should not be granted any penalty reduction because a part from the cruelty that accompanied his offence, any regret in his defence and the offence he committed had grave consequences because her grandmother became permanently physically disabled as she still need to move with bicycle for handicapped. Appeal dismissed. Appealed judgment sustained. Court fees charged to the public treasury. Statutes and statutory instruments referred to: Organic - Law n^o 01/2012/OL of 02/05/2012 instituting the penal code, article 71. Decree - Law n^o 21/77 of 18/06/1977 instituting the penal code, articles 21, 22, 24, 76 and 312 .

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No case referred to.

Judgment

I. THE BRIEF BACKGROUND TO THE CASE: [1] The case started in the High Court, Musanze chamber, where Mbarushimana was prosecuted for murder and violation of person's domicile committed in the night of 15 February 2010 when he went to his grandmother's home (Bashimiraho Josepha) around midnight, holding a small hoe, broke the door and once inside, started to hit his grandmother with it. When the daughter of the latter named Nyirakamana Catherine, who lived together with her noticed his presence, she woke up and Mbarushimana hit her also with the small hoe and they were luckily rescued by neighbors. [2] The court rendered the verdict of the judgment N^o RP 0032/10/HC/MUS on 25/05/2012, convicting Mbarushimana of the offence he was charged with and sentencing him to the life imprisonment and ordering him to pay damages to the civil party, 572.000 Frw to Nyirakamana and 1.580.000 Frw. To Bashimiraho [3] Mbarushimana appealed to the Supreme Court on 29 May 2012, stating that he was convicted of attempted murder while he committed assault and battery, and that he was sentenced to the heavy penalty while he pleaded guilty and sought forgiveness. [4] The public hearing was held on 13 June 2016, Mbarushimana being assisted by Counsel Kayirangwa Marie Grâce, Bashimiraho and Nyirakamana, the civil party, being represented by Counsel Baragondoza Jean Marie, while the Prosecution was represented by Mutayoba Aphonse, a National Prosecutor. ANALYSIS OF LEGAL ISSUES:

- a) Weather Mbarushimana committed assault and battery against his grandmother Bashimiraho Josepha and his paternal aunt Nyirakamana Catherine without the intent to kill them. [5] Mbarushimana admits that he violated a person's domicile and not attempted murder because he did not committed further than assault and battery against Bashimiraho Josepha and Nyirakamana Catherine. [6] He explains that he passes all the day drinking beer to his neighbor and when he was going home, he passed in front of his grandmother's and found her quarreling with her daughter at the entrance; he asked them the reason of the quarrel and his paternal aunt replied that it was not his business, they kept on arguing and finally fought each other, his paternal aunt escaped ran to the house and he followed her. He kept on explaining that the aunt took a small hoe aiming at hitting him with and he took it off her and when he was about hitting her with it due to anger, it accidentally hit the grandmother at the leg and led her to become disabled because she still move in the bicyce

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for disabled, and the aunt was injured on the arm because of the wood with which he used to hit her. [7] Mbarushimana further states that he does not remember the parties of the body where he was hitting because he was drunkard. With regard to know whether there was conflict with his grandmother and paternal aunt, he replied that there were land related conflict. [8] Me Kayirangwa Marie Grâce states that the court should compare the statements Mbarushimana made before it with the one he made before available in the case file. [9] The representative of the prosecution contends that the victims hit by Mbarushimana and witnesses interrogated during the Judicial Police confirmed that he attacked his grandmother and aunt and that they still alive because neighbours came for rescue after hearing his aunt calling for help. The view of the court: [10] With regard to the offence committed by Mbarushimana, the court finds that though he pleads not guilty for murder, his statements during the Judicial Police, the Prosecution and before this court prove that he admits to have violate other's domicile and that he hit his aunt and grandmother and the latter have got permanent physical disability. [11] Furthermore, the court finds that though he states that he was about to resolve quarrels between his grandmother and aunt, his declaration cannot be taken into consideration because he does not prove others who have heard that quarrel nor the root of the quarrel. However, statements made by Bashimiraho and Nyirakamana stating that he hit them with the small hoe at their home around mid-night and that they were rescued by neighbours are to be considered, because they are confirmed by people who came for rescue namely Nsabimana Théogène, Ntabana Moise and Hategekimana Félicien who declared that they found them lying down, after he had hit one with the small hoe at the leg and the upper head while another one was hit at the back and fingers. [12] The court finds that the intent to kill his grandmother and his aunt by Mbarushimana is proved by the fact that he violated their domicile around mid-night holding the small hoe in his hands while it is a weapon to kill, and hit them with it without caring the body part to which he was hitting as he himself admits it and he failed to kill them because the kid of his aunt called their neighbours for help. [13] Considering the explanations mentioned above, the court finds that Mbarushimana hit and injured his grandmother Bashimiraho Josepha and his paternal aunt Nyirakamana Catherine

with the intent to kill them as it was decided by the High Court, Musanze chamber. Therefore, his appeal on this point lacks merit.

- b) Whether the penalty inflicted to Mbarushimana should be reduced [14] Mbarushimana states that he pleaded guilty since he was arrested and requests that his guilty plea should be considered to reduce his penalty while the Prosecutor argues that Mbarushimana appealed against the penalty inflicted to him but ignore the provisions of the Law.

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- [15] The prosecutor alleges that the penalty inflicted to Mbarushimana should not be reduced taking into account of the cruelty in which he committed the offence. [16] The representative of the civil party argues that the court should analyse the appeal grounds concerning the penalty because he nor civil party did appeal against damages. The view of the court: [17] Attempted murder is punished with life imprisonment pursuant to the provisions of articles 21, 22, 24 and 312 of Decree Law N° 21/1977 of 18/08/1977 instituting the penal code that was into force at the time the offence was committed. [18] With regard to the points to be considered in determining the penalty, article 71 of the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code into force states that The judge shall determine a penalty according to the gravity of the offence taking into account offender's motives, history and background, circumstances surrounding the commission of the offence and individual circumstances. [19] With regard to penalty reduction specially, article 76 of the same Organic Law provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. [20] Especially to the case in hand, the High Court, chamber of Musanze explained that Mbarushimana does deserve no penalty reduction, considering the high cruelty with which he committed the offence. This court also finds that he should not be granted any penalty reduction because a part from the cruelty that accompanied his offence, any regret in his defence and the offence he committed had grave consequences because her grandmother became permanently physically disabled as she still need to move with bicycle for handicapped. THE DECISION OF THE COURT: [21] Dismiss the appeal lodged by Mbarushimana Fulgence; [22] Sustains the judgment RP 0032/10/HC/MUS rendered by the High Court, Musanze chamber on 25 May 2012 sentencing him to life imprisonment. [23] Orders the court fees to be charged to the public treasury.

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