

RWANDA / JUDGMENT

PROSECUTOR vs Nambajimana

RPAA 0323/11/CS

COURT

Supreme Court

DECIDED

22 April 2016

CASE / FILE NUMBER

RPAA 0323/11/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

PROSECUTOR vs Nambajimana

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-22
- Case/document no.: RPAA 0323/11/CS
- Collection: Supreme Court

Text

Page 1

THE PROSECUTION v. NAMBAJIMANA et al [Rwanda SUPREME COURT – RPAA 0323/11/CS (Mukamulisa, PJ, Munyangeri and Hitiyaremye, J.) 22 April 2016] Criminal Procedure Law – Pleading not guilty for the offence admitted in the pre-judicial phase – It cannot be taken into consideration, since there are no evidence challenging the statements made before nor proving irresistible threat that led the accused to admit the offence he did not commit – Law No 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 197 Criminal Law – Two criminal laws – The new law is to be referred to when it provides the lesser penalties – Organic Law n° 01/2012 of 02/05/2012 instituting the penal code, article 8 Facts:. Ndabananiye and Nambajimana were prosecuted before the Tribunal for the first Instance for armed robbery committed when they went to Nyiratebuka Annonciata's in the night, holding the machete and robbed various items. They admitted the offence just at the start of the investigation and explained how they committed it but pleaded not guilty before courts. The court convicted them to the offence they were charged with, basing on the fact that they had admitted the offence in the Judicial Police and the Prosecution, explaining how they committed it. Furthermore, the machete they used to commit the offence was seized. The court sentenced them to twenty (20) years of imprisonment

each. They lodged an appeal in the High Court, which sustained the appealed judgment. They appealed against the decision in the Supreme Court. Ndabananiye was alleging that he was convicted to the offence he had not committed because Nambajimana discharged him when they appeared before the judge of the provisional detention and provisional release and the High Court omitted to conduct investigation. As for Nambajimana Jackson, he stated that the High court disregarded his statements that he admitted the offence because he was beaten and that Nyiratebuka accused him in order to keep his money amounting to ten thousand (10.000 Frw) that she owed him as he used to work for her. The representative of the Prosecution states that the case under the appeal clarified a lot on the grounds for which Ndabananiye Télesphore is found guilty, including the fact that he admitted the offence when he was interviewed before the Judicial Police, where he explained how he committed it, his statement corroborates with those provided by both Nambajimana Jackson and Nyiratebuka Annonciata, and he did not explain what mainly pushed him to admit the offence he did not commit. Held: The fact that the accused pleaded guilty before courts does not devaluates his statements provided in both Judicial Police and the Prosecution, for except the denial of his own statements, there are no evidences challenging them nor proving irresistible threat he was facing leading him to accept the offence he did not commit, hence his ground of appeal lacks merit. However, the new law is the one to be referred to in determining his penalty. Thus, he is sentenced to nine (9) years imprisonment. He must immediately be released because he already served his sentence. Appeal lacks merit. Accused sentenced to nine years imprisonment, immediate release ordered. Appealed judgment changes only with regard to the penalty. Our fees reserved to the public treasury. Statutes and statutory instrument referred to: Organic Law n° 01/2012 of 02/05/2012 instituting the penal code, article 8 and 304

Page 2

Law n° 15/2004 of 12/06/2004 relating to evidence and its production, articles 3 and 119. Decree - Law n° 21/77 of 18 August 1977 instituting the penal code, article 403 bis No case law referred to.

Judgment

I. THE BRIEF BACKGROUND OF THE CASE. [1] The case started in the former Tribunal of the First Instance of Kigali, where Nambajimana Jackson and Ndabananiye Télesphore were prosecuted for armed robbery committed on 7 April 2001 when they went to Nyiratebuka Annonciata's in the night, holding the machete and robbed various items. They admitted the offence just at the start of the investigation and explained how they committed it. [2] After the investigation was closed, the Prosecution filed the case in the Tribunal of the first Instance of Kigali, where they pleaded guilty. The Tribunal changed to the Tribunal of Kigali Town and rendered the verdict on 18 April 2005, convicting them to the offence they were charged with. The court based its decision on the fact that they had admitted the offence in the Judicial Police and explained how they committed it. Furthermore, the machete they used to commit the offence was seized. The court sentenced them to twenty (20) years of imprisonment each. [3] Ndabananiye Télesphore and Nambajimana Jackson were not pleased with the decision and they

lodged an appeal in the High Court, which rendered the verdict on 11 November 2011 sustaining the appealed judgment. [4] They were not satisfied with the decision once more, and they appealed against it in the Supreme Court. Ndabananiye Télesphore was alleging that he was convicted to the offence he had not committed because Nambajimana Jackson discharged him when they appeared before the judge of the provisional detention and provisional release and the High Court omitted to conduct investigation. As for Nambajimana Jackson, he stated that the High court disregarded his statements that he admitted the offence because he was beaten and that Nyiratebuka accused him in order to keep his money amounting to ten thousand (10.000 Frw) that she owed him as he used to work for her. [5] The public hearing was held on 21 March 2016, Ndabananiye Télesphore was present and assisted by Counsel Rutagengwa Mukiga, while Nambajimana Jackson was absent, because on his summon was written that he is no longer in Gasabo Prison because he was released on parole on 1 December 2011. The Prosecution represented by Dushimimana Claudine, the National Prosecutor immediately requested that the appeal lodged by Nambajimana Jackson be struck off. [6] After noticing that Nambajimana Jackson failed to appear before the court and did not make any follow up for his appeal, basing on the provision of article 186, paragraph 5 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, the Supreme Court decided immediately after the hearing that his appeal was cancelled because any more he has no interest in it any more. II. ANALYSIS OF THE LEGAL ISSUE. Whether Ndabananiye Télesphore was convicted of the offence without evidence. [7] Ndabananiye Télesphore declares that the High Court disregarded his statements in order to give him justice, that the one who committed the offence has finally discharged him. Furthermore, he

Page 3

stated that the victim did never mention him among people who attacked her, requesting that she may be appeared before the court to be interrogated. [8] Rutagengwa Mukiga, the Counsel, states that Nambajimana Jackson accepted the crime when he was interviewed before the Judicial Police where he stated that when he was going to steal at Nyiratebuka Annonciata's, he went together with Ndabananiye Télesphore and other one of whom he did not recognise the name, to this point the Judge should have questioned himself why someone can plan to do something with the people he/she is not accustomed with, and requested that the Supreme Court should base on that and then declare this statement without merit. [9] He keeps on stating that during the provisional detention and provisional release, Nambajimana Jackson exculpated Ndabananiye Télesphore, and during her interrogation, Nyiratebuka Annonciata explained that among the thieves she came up to recognize Nambajimana Jackson, and failed to remark the second and third of them, hence the Court should base on all these to declare that there is doubt regarding Ndabananiye Télesphore. [10] The representative of the Prosecution states that the case under the appeal clarified a lot on the grounds for which Ndabananiye Télesphore is found guilty, including the fact that he admitted the offence when he was interviewed before the Judicial Police, where he explained how he committed it, his statement corroborates with those provided by both Nambajimana Jackson and Nyiratebuka Annonciata, and he did not explain what mainly pushed him to admit the offence he did not commit. [11] Regarding the fact that Nyiratebuka Annonciata

was not interviewed as Ndabananiye Télesphore requested, the representative of the Prosecution finds that the court stated that his statement was enough and that only the court can assesses the relevance, pertinence and admissibility or rejection of testimonial evidence as the Supreme Court stated in the case law RPA 011/08/CS rendered on 29 May 2009, the Prosecution vs Urayeneza Mike. [12] Regarding the fact that the third person amongst the thieves who were going to steal at Nyiratebuka Annonciata's was not identified should be in favor of Ndabananiye Télesphore, the representative of the Prosecution finds that it is groundless since it cannot discharge Ndabananiye Télesphore of the offence and it is not challenging previously proved evidences. The view of the court. [13] Article 3 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production provides « Each party has the burden of proving the facts it alleges. A judge may nevertheless order any contending party to produce elements of proof they have», while article 119 of the mentioned Law provides « In criminal cases, 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 defence evidence». [14] With regard to this case, the Prosecution accuses Ndabananiye Télesphore basing on his own statements in the both Judicial Police and Prosecution, where he admitted the offence that he went to steal to Nyiratebuka Annonciata's and explained how he committed the offence until he reversed his version before courts. [15] After analyzing documents embedded in the case file, the Supreme Court, finds that during his interview before both Judicial Police and Prosecution, Ndabananiye Télesphore admitted the offence that he went together with Nambajimana Jackson to steal at Nyiratebuka Annonciata's, and stated how and where they sold the stolen items, in denying the crime he failed to explain why he admitted twice the offence he did not commit, while he is not proving the pressure or influence under which he was put.

Page 4

[16] Regarding the fact that Nambajimana Jackson exculpated him during the judgment with regard to the provisional detention and provisional release, the Supreme Court finds it without merit since that time he only declared he said lies on him and his brother as he was beaten at the district office, and this was only one of the ways to get rid of the offence, as he failed to provide additional evidence. Thus, the Supreme Court finds that this ground of appeal is without merit, since the statement provided by Nambajimana Jackson, Ndabananiye Télesphore and Nyiratebuka Annonciata - the victim, before the Judicial Police corroborate with the circumstances in which the offence was committed. [17] The fact that he states that the High Court refused to conduct an investigation, the Supreme Court finds that the Judge is not obliged to conduct investigation whenever he/she is requested to, he/she can do that only when he/she finds that it can help finding the truth. Hence, regarding this case, the Supreme Court decides that there is no mistake that the Judge who tried this case has made in refusing to conduct an investigation as it finds that evidences available then were sufficient, no one else was needed to be interviewed regarding what happened since those who knew them namely; Ndabananiye Télesphore, Nambajimana Jackson and Nyiratebuka Annonciata the victim were all present. [18] Considering the fact that when

Nambajimana Jackson was interviewed before the Judicial Police where he revealed that there was another person whom he does not know with whom they committed the crime, Ndabananiye Télésphore and his counsel state that those statements too are doubtful in the favour of Ndabananiye Télésphore, the Supreme Court finds that it is also without merit since failing to know his name is not an evidence proving that both Ndabananiye Télésphore and Nambajimana Jackson were the accomplices in that theft as it was explained above. [19] The Supreme Court finds that the fact that Ndabananiye Télésphore reported himself before the courts and denied the charges, does not devalue his statements that he provided in both Judicial Police and the Prosecution, where he accepted his crime as stated above, rather it is one of the ways to get rid of the crime, for except the denial of his own statements, there are no evidences challenging them nor proving an irresistible threat he was facing leading him to accept the offence he did not commit, hence his ground of appeal lacks merit. [20] However, the Supreme Court finds that, in determining penalties at this instance, article 8 of the Decree Law n° 01/2012 of 02/05/2012 instituting the new penal code, provides that « In case of conflict of two criminal laws including the old one under which the offence was committed and the new one enacted after the offence was committed but before the final judgment is delivered, the new law shall be applied, if it provides for a lesser penalty». [21] Regarding the case in hands, article 403 of the Decree - Law n° 21/77 of 18 August 1977 instituting the penal code that was into force when the crime was committed provided the imprisonment from fifteen (15) to twenty (20) years for armed robbery, whilst article 304 of the Decree Law n° 01/2012 of 02/05/2012 instituting the new penal code provides the imprisonment sentence from six (6) to nine (9) years for the same crime. Therefore, the Supreme Court decides that the new law should be used in punishing Ndabananiye Télésphore, thus, he is subject to the punishment of nine (9) years, and then be released as he has already fully served the sentence. III. THE DECISION OF THE COURT [22] Finds the appeal lodged by Ndabananiye Télésphore without merit; [23] Sentences Ndabananiye Télésphore to nine (9) years imprisonment; [24] Decides that the judgment RPA 120/05/HC/KIG - RPA 0882/06/HC/KIG rendered by the High Court on 11 November 2011 changes only with regard to the penalty;

Page 5

- [25] Orders that Ndabananiye Télésphore be immediately released after the pronouncement because he has already served his sentence; [26] Orders that the court fees be charged to the public treasury.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7850/8126>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/armedrobbery-supreme-court-2016--6a3ea5223b1caa91298182dd>

Prepared on 8 October 2026 · Esheria