

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NARAMABUYE**RPA 0071/10/CS****COURT**

Supreme Court

DECIDED

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UBUSHINJACYAHA v. NARAMABUYE

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UBUSHINJACYAHA v. NARAMABUYE [Rwanda URUKIKO RW' IKIRENGA – 2014SC – RPA 0071/10/CS (Mutashya, P.J., Hitiyaremye na Kanyange, J.) 10 Mutarama, 2014] Amategeko Mpanabyaha – Ubwinjiracyaha mu buhotozi – ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'ibikorwa biboneka, bidashidikanywaho by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bushake bwa nyir'ugukora icyaha [...] – Itegeko-Teka n° 21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 21 Imanza nshinjabyaha – Kugabanyirizwa ibihano – Kugabanyirizwa ibihano mu gihe ubisaba yarangije ibihano bye Incamake y'ikibazo: Uwajuriye yakurikiranyweho icyaha cy'ubwinjiracyaha mu buhotozi cyakozwe ubwo yatonganaga n'umugore we akamuniga akamuca ibisebe mu ijosi. Urukiko Rukuru, urugereko rwa Rusizi rwamuhamije icyaha, rumuhanisha igihano cy'igifungo cy'imyaka 20 no kwamburwa uburenganzira afite mu gihugu. Rwasobanuye ko rwamugabanyirije ibihano, kuko nta kigaragaza ko yari afite umugambi wo kwica, ndetse akaba yaranemeye icyaha ku buryo budashidikanywaho. Yajuririye Urukiko rw'Ikirenga, avuga ko inyito y'icyaha yahamijwe n'Urukiko Rukuru idahuye n'igikorwa yakoze, ko yagombaga guhanirwa icyaha cyo gukubita no

gukomeretsa kandi agahabwa inyoroshyacyaha kuko acyemera akagisabira n'imbabazi. Uhagarariye Ubushinjacyaha we avuga ko hasesenguwe ibyateganywaga n'ingingo ya 21 y'Igitabo cy'amategeko ahana ibyaha yakurikizwaga igihe icyaha cyakorwaga, asanga nta bwinjiracyaha mu buhotozi bwabayeho kuko n'ubwo uregwa yarwanye n'umugore we, ari nabo bikiranuye. Incamake y'icyemezo: 1. Ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'ibikorwa biboneka, bidashidikanywaho by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bushake bwa nyir'ugukora icyaha. kugira ngo ubwinjiracyaha buhanwe, ibikorwa by'intangiriro y'icyaha bigomba kuba byaburijwemo n'impamvu zitaturutse ku bushake bwa nyir'ugukora icyaha, nyamara ku wajuriye hakaba hataragaragajwe icyamubujije kugera ku mugambi, nko kuba hari undi muntu cyangwa izindi mbaraga byamutesheje ntawusoze, hakaba kandi hataragaragajwe ko nyuma y'iyi mirwano uwo mugore yaba yaramuhungiyeye ahandi ahubwo uwajuriye avuga ko bagumanye mu nzu, byumvikanisha ko iyo aza kuba yari yagendereye kumwica aba yarabikoze

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2. N'ubwo uwajuriye yemeye kuva agifatwa ko yarwanye n'umugore we akamuniga, ntibyafatwa nk'igikorwa cy'intangiriro y'icyaha giteganywa n'itegeko, kuko kuba bararwanye akamuniga nta kigaragaza ko byaganishaga byanze bikunze ku kumwica, cyane cyane ko nta kindi kintu yifashishije ngo bibe byafatwa ko itari imirwano isanzwe.
3. icyaha uwajuriye yakoze ni icyo gukubita no gukomeretsa cyateganywaga n'ingingo ya 318 y'Igitabo cy'amategeko ahana yakoreshwaga igihe icyaha cyakorwaga, iteganya ko "umuntu wese yabishatse, yakomerekeje undi cyangwa yamukubise ku buryo bwa kiboko bubabaje, azahanishwa igifungo kuva ku kwezi kumwe kugeza ku mwaka umwe n'ihazabu y'amafaranga kuva kuri magana atanu kugeza ku bihumbi bibiri, cyangwa kimwe gusa muri ibyo bihano Ubujurire bufite ishingiro kuri bimwe. Uwajuriye ahamwa n'icyaha cyo gukubita no gukomeretsa. Ahanishijwe igifungo cy'umwaka umwe n'ihazabu y'amafaranga ibihumbi bibiri. Amagarama y'urubanza aherereye ku isanduku ya Leta Amategeko yashingiweho: Itegeko Ngenga n° 01/2012 ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo za 8 na 148. Itegeko-Teka n° 21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo za 21 na 318 Nta rubanza rwifashishijwe. Urubanza I.IMITERERE Y'URUBANZA. [1] Mu ijoro ryo kuwa 04/12/2008, Naramabuye yatonganye n'umugore we Ushizimpumu aramuniga amuca ibisebe mu ijosi, nyuma uyu amurega mu Bushinjacyaha avuga ko yashakaga kumwica. Iperereza rirangiye, Ubushinjacyaha bwamureze mu Rukiko Rukuru, Urugereko rwa Rusizi bumukurikiranyeho ubwinjiracyaha mu cyaha cy'ubuhotozi, Naramabuye yiregura avuga ko atigeze ashaka kwica umugore we, ko barwanye gusa bakikiza ko kandi iyo ashaka kumwica aba yarabikoze kuko bararanye kugeza mu gitondo. [2] Urukiko mu rubanza rwaciye rwemeje ko Naramabuye ahamwa n'icyaha aregwa, rumuhanisha igifungo cy'imyaka 20 no kwamburwa uburenganzira afite mu gihugu. Urukiko rwashingiye icyo cyemezo ku mpamvu z'uko Naramabuye yanize umugore we bikagera aho amutera ibisebe mu ijosi, ko kandi kuba atarapfuye bitaturutse ku

bushake bwe. Rwasanze kandi nta kigaragaza ko yari yagambiriye kumwica kuko iyo ajya kubigambirira aba yarabigezeho

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kuko bari bonyine mu rugo, ko ahubwo yamunize biturutse ku mirwano bagiranye itewe n'ubwumvikane buke bwaterwaga n'inshoreke Naramabuye yari afite. Rwasanze kandi yemera icyaha mu buryo budashidikanywaho rubishingiraho rumugabanyiriza igihano. [3] Naramabuye yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ikirenga avuga ko inyito y'icyaha yahamijwe n'Urukiko Rukuru idahuye n'igikorwa yakoze, ko yagombaga guhanirwa icyaha cyo gukubita no gukomeretsa kandi agahabwa inyoroshyacyaha kuko acyemera akagisabira n'imbabazi. [4] Urubanza rwaburanishijwe mu ruhamwe kuwa 09/12/2013, Naramabuye ahari kandi yunganiwe na Me Sibomukiza, Ubushinjacyaha buhagarariye na Ntawangundi Béatrice. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba harabayeho kwibeshya ku nyito y'icyaha Naramabuye yahamijwe no gusuzuma niba yagabanyirizwa igihano. [5] Naramabuye avuga ko inyito y'icyaha yahamijwe idahuye n'imikorere yacyo kuko Ubushinjacyaha butagaragaje umugambi n'ibikorwa yakoze bigize icyaha cy'ubwinjiracyaha mu buhotozi, ko butanagaragaje umuntu waba waraburijemo uwo mugambi cyangwa ubundi buryo bwakoreshejwe mu kuwuburizamo mu gihe nyamara nyuma yo kurwana n'umugore we bamaranye iminsi ibiri atarafatwa, ko rero habayeho kwitiranya uburwanyari n'ubuhotozi mu rwego rwo kuremereza icyaha. [6] Akomeza avuga ko icyaha yakoze ari icyo gukubita atagambiriye kwica akaba ari nacyo yaburanye yemera kandi asabira imbabazi, ko rero atagombaga guhanirwa ubwinjiracyaha mu buhotozi, ko kandi hagombaga gushingirwa ku ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha hamwe n'ingingo za 82 na 83 z'Igitabo cy'amategako ahana yakurikizwaga igihe icyaha cyakorwaga, akagabanyirizwa igihano kuko yemera icyaha. [7] Me Sibomukiza nawe avuga ko Naramabuye yarwanye n'umugore we aba ari nabo bikiranura, bucyiye ajya kumurega ko yashatse kumwica, Urukiko narwo rurabyemeza kandi nta bikorwa bidashidikanywaho byakozwe bigamije ubuhotozi. Akomeza avuga ko hatagaragajwe icyaha cyarabujije ko icyaha kiba kugira ngo hemezwe ko habayeho koko ubwinjiracyaha, ko kandi iyo aza kuba yagambiriye kwica umugore we ntacyari kubimubuza kuko amurusha imbaraga, kuba kandi yaba yaragaragayeho ibisebe akaba ataricyo kimenyetso ko yashakaga kumwica. [8] Uhagarariye Ubushinjacyaha nawe avuga ko hasesenguwe ibyateganywaga n'ingingo ya 21 y'Igitabo cy'amategako ahana ibyaha yakurikizwaga igihe icyaha cyakorwaga, asanga nta bwinjiracyaha mu buhotozi bwabayeho kuko n'ubwo Naramabuye yarwanye n'umugore we, ari nabo bikiranura, ko ahubwo asanga icyaha cyakozwe ari icyateganywaga n'ingingo ya 318

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y'Igitabo kimaze kuvugwa kuko Ushizimpumu atagaragaza uwabujije umugabo we kumwica, iyo ashakaga kumwica aba yarabikoze. [9] Akomeza avuga ko mu kumukurikiranaho ubwinjiracyaha mu buhotozi byaturutse ku batangabuhamya bavuze ko babonye Ushizimpumu ibisebe mu ijosi. Na none kandi ngo kuba Naramabuye yarabajijwe akemera icyaha, bigomba kumvikana ko icyo yemeraga ari uko yakubise umugore we, ko kandi n'urukiko rwasanze koko nta mugambi

yari afite wo kwica umugore we, rukaba rero rutaragombaga kumuhamya ubwinjiracyaha mu buhotozi rubishingiye ko yemera icyaha, asoza asaba ko urukiko rwahindura inyito y'icyaha Naramabuye yahamijwe rukemeza ko ahamya n'icyaha cyo gukubita no gukomeretsa byoroheje kuko nta raporo ya muganga yagaragaje ububabare yagize, akaba yahanishwa igifungo cy'umwaka umwe. II.UKO URUKIKO RUBIBONA [10] Imikirize y'urubanza rwajuririwe igaragaza ko mu guhamya Naramabuye icyaha cy'ubwinjiracyaha mu buhotozi, Urukiko Rukuru rwabishingiye ku kuba yaranize umugore we ageza aho amutera ibisebe mu ijosi, ko kandi yemeye icyaha mu buryo budashidikanywaho. Bigaragara ariko kandi ko mu mpamvu urukiko rwatanze, rwanasobanuye ko nta mugambi wo kwica umugore we yari afite, ariko rubirengaho rumuhamya icyaha cy'ubwinjiracyaha mu buhotozi. [11] Ku birebana n'ubwinjiracyaha, ingingo ya 21y'Igitabo cy'amategako ahana yakurikizwaga igihe icyaha cyakorwaga, iteganya ko ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'ibikorwa biboneka, bidashidikanywaho by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bushake bwa nyiriugukora icyaha. [12] N'ubwo Naramabuye yemeye kuva agifatwa ko yarwanye n'umugore we akamuniga, Urukiko rurasanga icyo ubwacyo kitafatwa nk'igikorwa cy'intangiriro y'icyaha kivugwa mu ngingo yavuzwe haruguru, kuko kuba bararwanye akamuniga nta kigaragaza ko byaganishaga byanze bikunze ku kumwica, cyane cyane ko nta kindi kintu yifashishije ngo bibe byafatwa ko itari imirwano isanzwe. Kuri iki kibazo, abahanga mu mategeko nabo bavugaga inkiko zagiye zemeza ko bifatwa ko hari intangiriro yo gukora icyaha, iyo hari igikorwa cyakozwe kiganisha ku cyaha ubwacyo, kandi hari umugambi wo gukora icyaha; ko izo nkiko zemera ko iyo ntangiriro iba ihari iyo umuntu ari mu gikorwa ubwacyo kandi ibikorwa byamaze gukorwa bikaba bishobora gutuma hatekerezwa ko yari kugera ku cyifuzo cye (Dans de nombreuses affaires, la Cour de Cassation a affirmé que “constitue un commencement d'exécution tout acte qui tend directement au délit, lorsqu'il a été accompli avec l'intention de le commettre”. Ainsi, elle admet qu'il y a commencement d'exécution, dans l'hypothèse où l'auteur est déjà “en action

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du crime tenté et les faits d'ores et déjà accomplis permettent de penser que l'agent serait allé jusqu'au bout de son entreprise criminelle”)1. [13] Byongeye kandi, ingingo ya 21 yavuzwe haruguru iteganya ko kugira ngo ubwinjiracyaha buhanwe, ibikorwa by'intangiriro y'icyaha bigomba kuba byaburijwemo n'impamvu zitaturutse ku bushake bwa nyiriugukora icyaha, nyamara kuri Naramabuye hakaba hataragaragajwe icyamubujije kugera ku mugambi, nko kuba hari undi muntu cyangwa izindi mbaraga byamutesheje ntawusozwe, hakaba kandi hataragaragajwe ko nyuma y'iyi mirwano uwo mugore yaba yaramuhungiyeho ahandi ahubwo Naramabuye avugaga ko bagumanye mu nzu, byumvikanyishye ko iyo aza kuba yari yagendereye kumwica aba yarabikoze [14] Nk'uko rero n'Urukiko Rukuru rwabisobanuye, nta bikorwa bigaragaza ko Naramabuye yari afite umugambi wo kwica umugore we, ikigaragara ahubwo akaba ari uko barwanye biturutse ku bibazo byo mu rugo bari basanzwe bafite bigera n'aho akomeretsa umugore we nk'uko uyu abivugaga, bikanemezwa n'umutangabuhamya witwaga Mategeko wavuze ko yamubonye ibisebe ku ijosi. [15] Urukiko rurasanga rero icyaha

Naramabuye yakoze ari icyo gukubita no gukomeretsa cyateganywaga n'ingingo ya 318 y'Igitabo cy'amategako ahana cyakoreshwaga igihe icyaha cyakorwaga, iteganya ko "umuntu wese yabishatse, yakomerekeje undi cyangwa yamukubise ku buryo bwa kiboko bubabaje, azahanishwa igifungo kuva ku kwezi kumwe kugeza ku mwaka umwe n'ihazabu y'amafaranga kuva kuri magana atanu kugeza ku bihumbi bibiri, cyangwa kimwe gusa muri ibyo bihano". Hashingiwe kandi ku biteganywa n'ingingo ya 8 y'Itegeko Ngenga n° 01/2012 ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategako ahana, Urukiko rurasanga akwiye guhanishwa ibihano biteganywa n'ingingo ya 318 yavuzwe haruguru kuko ariyo iteganya ibihano byoroheje ugereranyije n'ibiteganywa n'ingingo ya 148 y'Itegeko rishya rihana, bityo akaba ahanishijwe igifungo cy'umwaka umwe n'ihazabu y'amafaranga ibihumbi bibiri (2000 FRW). [16] Ku birebana no kugabanyirizwa igihano Naramabuye asaba abishingiye ko yemera icyaha, Urukiko rurasanga bitakiri ngombwa kuko igihano ahawe yakirangije. III.ICYEMEZO CY'URUKIKO [17] Rwemeje ko ubujurire bwa Naramabuye Etienne bufite ishingiro kuri bimwe; [18] Rwemeje ko ahamwa n'icyaha cyo gukubita no gukomeretsa; [19] Rumuhanishije igifungo cy'umwaka umwe (1) n'ihazabu y'amafaranga ibihumbi bibiri (2000 FRW); 1 Bernard Boulloc, Haritini Matsopoulou, Droit pénal général et procédure pénale, 16e edition, 2006, p.77.

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[20] Rwemeje ko urubanza rwajuririwe ruhindutse ku birebana n'inyito y'icyaha no ku gihano Naramabuye yari yarahawe; [21] Rwemeje ko amagarama y'urubanza aherera ku isanduku ya Leta.

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