

RWANDA / JUDGMENT

PROSECUTION v. TWAGIRANYAGASANI

RPA 0403/13/HC/NYA

COURT

High Court

DECIDED

24 December 2013

CASE / FILE NUMBER

RPA 0403/13/HC/NYA

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PROSECUTION v. TWAGIRANYAGASANI

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Text

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PROSECUTION v. TWAGIRANYAGASANI [Rwanda HIGH COURT – RPA 0403/13/HC/NYA (Kamanzi, P.J.,) December 24, 2013] Criminal procedure law – Guilty plea – Penalty reduction – Despite his guilty plea he cannot benefit the penalty reduction since he recidivated since he is not the first offender. – Organic Law no.01/2012 of 02/05/2012 instituting the penal code, articles 13, Law no.30/2013 of 24/5/2013 relating to the code of criminal procedure article 33 and 35 and Law no.15/2004 of 12/06/2004 relating to evidence and its production, article 110.. Facts: Augustin Twagiranyagasani was charged with genocid ideology. Intermediate Court of Huye found him guilty and sentenced him to 6 years and a fine of 300.000 Rwf. Not satisfied of the penalties, he appealed to Intermediate Court pleading guilty and seeking forgiveness. The Prosecution opposed that his request was granted at the first instance and hence the court should not continue reducing the penalty. Held: The guilty plea and forgiveness seeking favour the accused. However, though he pleads guilty and seeks forgiveness, the penalty inflicted on him should not be reduced basing on the fact that he recidivated in genocide and that he committed infanticide whereby he missed the mother of the child and hit the child on the

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head and died immediately. This is emphasized by the hatred he had for Tutsi as it is highlighted by the statement of his wife who reported him to the police who harassed her because she is a Tusi. Appeal has no merit. He is guilty of the offence he is charged with. Augustin Twagiranyagasani loses the case. The penalty inflicted by court of first instance is confirmed. The appealed judgment is upheld. The court fees to public fund. Statutes and statutory instruments referred to: Organic law no.01/2012 of 02/05/2012 instituting the penal code in Rwanda, article 135. Law no.30/2013 of 24/5/2013 relating to the code of criminal procedure, articles 33 and 35. Law no.15/2004 of 12/06/2004 relating to evidence and its production, article 110. No cases referred to:

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BRIEF BACKGROUND OF THE CASE

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[1] Augustin Twagiranyagasani was indicted by the Prosecution for he was suspected that he committed genocide ideology by telling Celestin Rubangisa who was coming from the funeral of his relatives victims of genocide after meeting him in the cabaret " when this time comes, they never want any other person to survive...why did they leave you?, he told him again. " When Celestin Rubangisa told him that he would report him, he told him to do it and added that he would never say sorry to any Tutsi. He added that he knows where he left his bed" whereupon Celestin Rubangisa report him to the police and the investigation so started. [2] The case started at Intermediate Court of Huye. It had a registration number RP 0195/13/TGI/HYE and was rendered on September 17 2013. Augustin Twagiranyagasani was sentenced to 6 years of imprisonment and a fine of three hundred thousand Rwandan francs (300,000.00 Rfr). [3] Not satisfied of the decision of the court, Augustin Twagiranyagasani appealed to Intermediate Court of Huye which tried the case in public on December 5, 2013 defending himself with no legal counsel while the prosecution was represented by Deon Lamber Mugabo. In the course of the hearing, Twagiranyagasani Augustin pleaded guilty and sought forgiveness explaining, "why did they leave you?". The Prosecution contended that his request was granted at the first instance. He requested the court to rule inadmissible his appeal since his request was granted.

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[4] After both parties were heard, the hearing was closed and the court notified the parties that the judgment delivery was fixed December 24 at 10 a.m. ANALYSIS OF LEGAL ISSUES. Regarding the guilty plea nd forgiveness seeking. [5] In assessing whether the guilty plea made by Twagiranyagasani Augustin can favor him, the Court notes that since his arrest till in the court, he was characterized by the admission and the guilty plea and forgiveness seeking. Article 35 of the law no.30/2013 of 24/5/2013 relating to the code of criminal

procedure, provides “When the accused candidly pleads guilty to the offense, the provisions of Article 34 of this Law shall apply to the prosecution and the judge seized of the case may reduce the penalties down to the half (½) of applicable penalties.” [6] It implies that his guilty plea and forgiveness seeking should favor him since he intentionally pleaded guilty and as conceived by some of legal scholars such as Tomas de Tor quemada, the first Spanish Grand Inquisitor, in his book *The Magical Maze* by Ian Stewart on page 87 “A confession was a complete proof of guilty..., Hinging on confessional evidence, have in the last few years been over turned because of severe doubts that the confessions were genuine”

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[7] He proves that pleading guilty does not conclusively imply it is the suspect who committed it. Again, Mathew in conclusion wrote : “One of Matthews’ most surprising conclusions is that there are circumstances under which the existence of a confession adds weight to the view that the accused is innocent rather than guilty” He calls this discovery the ‘interrogator’s fallacy. The idea offers a general reason for mistrusting confessions in some cases, unless they are supported by appropriate corroborative evidence: [8] In this perspective, the fact that none contests those wordings made by Twagiranyagasani Augustin as listed above such that no supporting evidence is needed especially that there are inculcating witnesses including KAGAMBIRWA, RUBANGURA Joseph and some others who testify that they heard him making such wordings. [9] With regarding to the crime of genocide and related offences, discrimination and sectarianism practices, article 135 of the Organic Law no.01/2012 of 02/05/2012 instituting the penal code in Rwanda provides for applicable sentences against any offender of this crime, however, since the court believes that the first offender should not be sentenced to the maximum penalties provided for by the law appropriate to a committed offence since, after the trial judge assesses the pleading of the accused he consider the appropriate sentences for the offence as well. In addition, legal scholars state that the trial judge assess the mitigating and/or aggravating

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circumstances which the accused should be given the opportunity to present. In this perspective, regardless of the gravity of the offence, Anniken U. in his book *BASIC CRIMINAL LAW* states: “ A bifurcated trial, in which the jury first decides whether the defendant is guilty, and a sentencing stage, at which the jury determines punishment after hearing evidence of aggravating or mitigating circumstances. The condemned prisoner must be given an opportunity to present mitigating factors in his defence, no matter how heinous his crime”. [10] Since Augustin Twagiranyagasani should be given opportunity to repent, for his re – integration into the society for life free of criminality, the court is convinced that he should get time to think on the offence he committed; [11] Article 110 of the law no.15/2004 of 12/06/2004 relating to evidence and its production states that a judicial admission refers to statements the accused or his or her representative makes before the court. Such statements shall serve as plaintiff arguments. [12] Though Twagiranyagasani Augustin pleaded guilty and sought forgiveness, the appellate court

finds that the penalties imposed on him should not be mitigated since he is a recidivate since he had been incarcerated for more that 13 years because of the commission of genocide he perpetrated against Tutsi and prior to genocide perpetration, he killed his own child whereby he missed the child mother intending to hit her on the head and hit the child who died

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immediately(mark 8-10). This comes in addition to the hatrade he has against Tutsi as justified by the statement made by Kamurera Marie (his wife) when she reported him to the police as he persecuted her for she ia a Tutsi. Hence, the penalty imposed on him of 6 years of imprisonment anda fine of 300. 000,00 Rwf are confirmed. THE DECISION OF THE COURT [13] Receive the appeal filed by Augustin Twagiranyagasani but it has no merit. [14] Finds Augustin Twagiranyagasani guilty of genocide ideology as charged with. [15] Augustin Twagiranyagasani loses the case. [16] Confirms the penalty of 6 years of imprisonment and a fine of 300, 000.00 Rwf as determined in the judgment Augustin Twagirimukiza appealed. [17] Holds the judgment RP 0195/13/TGI/HYE rendered by Intermediate Court of Huye on December 17, 2013. [18] The court fees as totalling 4050 Rwf are charged to the public fund as because Augustin Twagiranyagasani who would pay the mis by virtue of the law, exonerated of paying the court fees.

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