

RWANDA / JUDGMENT

PROSECUTION vs TURATSINZE

RLR V.4-2016

COURT

Supreme Court

DECIDED

19 February 2016

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RPAA0021/12/CS

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THE PROSECUTION v. TURATSINZE [Rwanda SUPREME COURT – RPAA 0021/12/CS (Nyirinkwaya, PJ, Rugabirwa and Ngagi, J.) February 19, 2016] Evidence Law – Presumptions – They are inferences that the law or a court makes from a known fact to discern an unknown fact. They must be important, precise and consistent – Law N° 15/2004 of 12/06/2004 relating to evidence and its production, articles 104 and 108. Criminal Law – Minimisation of Genocide – It shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and downplaying the methods through which Genocide was committed. – Law N° 84/2013 of 11/09/2013 on Genocide ideology and other related crimes, articles 6. Criminal Procedure Law – Consequences of not lodging an appeal against the penalty from the Prosecution – The penalty cannot be increased in the appeal unless the Prosecution did lodge an appeal against the penalty. Facts: The accused appeared before the Intermediate Court of Ngoma, where he was accused of Tutsi genocide denial. The court convicted him and sentenced him to ten (10) years of imprisonment. He appealed to the High Court, Rwamagana chamber, which dismissed his appeal. The accused appealed to the Supreme Court, pleading not guilty and stating that even previous courts convicted him without hearing witnesses as he had requested.

The prosecution contends that the testimonies given by the witness who was at the place when the offence was committed must be taken into consideration, especially that even the accused stated that there is no conflict between them. Held: 1. Presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact. They must be important, precise and consistent.

2. Minimisation of Genocide shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and downplaying the methods through which Genocide was committed.
3. The penalty inflicted to Turatsinze cannot be increased in the appeal because it is recidivism, because even if it would be fair, the previous courts did not consider it in determining his penalty and the Prosecution did not appeal against his penalty. Therefore, he must be sentenced to nine (9) years of imprisonment that is the maximum penalty provided for by the law. Appeal dismissed. Appealed judgment changes with regard to the penalty. The court fees are to be charged to the public treasury. Statutes and statutory instruments referred to: Organic Law n° 01/2012 of 02/05/2012 instituting the penal code, articles 79 and 116.

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Law N° 84/2013 of 11/09/2013 on Genocide ideology and other related crimes, articles 6 and 12
Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 104 and 108. No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE: [1] The case started in the Intermediate Court of Ngoma, where Turatsinze Pierre was accused of Tutsi genocide denial committed on 19 April 2008 when he told Nyirabashumba Françoise to whom he met in his way that when they will go to genocide commemoration of 7 April 04, they should also commemorate the 5th April, the date on which he got married. [2] The court rendered the verdict of the judgment RP 0287/08/TGI/Ngoma on 22 May 2009, convicted him and sentenced him to ten (10) years of imprisonment. [3] Turatsinze appealed to the High Court, Rwamagana chamber, the court rendered the judgment RPA 0110/09/HC/RWG on 11 March 2011, dismissing his appeal. [4] Immediately after the pronouncement, Turatsinze Pierre declared that he lodged appeal though did not communicate appeal statements to the court. The public hearing was held on 29 December 2015, Turatsinze Pierre being assisted by Counsel Umulisa Paola, while the prosecution was represented by Ntawangundi Béatrice, the National Prosecutor. II. ANALYSIS OF THE LEGAL ISSUE: Whether Turatsinze Pierre is not guilty of genocide denial [5] Turatsinze Pierre denies of the offence, admitting only to have met Nyirabashumba who was coming from Hitamungu, being accompanied by the latter's wife Mukandayisenga on 19 April 2008, while he was also going to that home with Karegeya Claver and Innocent. He keeps on explaining that Nyirabashumba greet him, Mukandayisenga went back home, old men who were with him entered into the house and both of them stayed at

Hitamungu's field. He proceeds that they did not argue, that Nyirabashumba great him, telling him that he did dislike her, as he do no longer visit her and he replied that it was due to the lack of time. He states that after five minutes, Nyirabashumba left and he entered into Hitamungu's house. [6] He proceeds that Hitamungu brought them to Viateur's pub to buy alcohol for them for 30 minutes and after 30minutes Nyirabashumba arrived and told people who were with him " I am saddened of what Pierre have just told me". When they asked her to repeat what he had told her, she only repeated that it had saddened her and immediately left. He adds that she just came back 'and said " You can ask Twamugize, what what Turatsinze told me as he was around". They asked him but he affirmed to have passed near them when going to buy kid's flour but could hear those words that had saddened her. They then asked him to tell them what happened, he said that they had great

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each other, Nyirabashumba told him that he did dislike her as he did no longer visit her and he replied that it was not like that and after a short time, Nyirabashumba went home. The conversation was over. [7] He refutes what Twamugize stated before the Judicial Police that he found him with Nyirabashumbato Hitamungu ground because it is false. With regard to the reason why Nyirabashumba would falsely accuse him, he replied that they normally lived in harmony, occasionnaly visiting each other, but in 2007, she requested him, as someone who had pleaded guilty, to accuse the named Nyirabukeye Clémentine in Gacaca courts to have looted the commune's property, she wanted to tell him how he could do it but he told her that he cannot falsely accuse her. [8] He states that previous courts convicted him without hearing witnesses as he had requested, namely Karegeya Claver, Mukandayisenga and Hitamungu who were around when he talked with Nyirabashumba on 19 April 2008 and who can say if there have been any dispute between them, as for others, they know that Nyirabashumba had requested him to accuse Nyirabukeye, namely Muyango Martin, and the named Viateur who was in charge of security in the Cell. With regard to know how they got informed about it, he states that he is the one who told them. [9] Counsel Umulisa Paola, assisting Turatsinze, she states that apart from the fact that her client pleads not guilty, to say "when you commemorate genocide victims, commemorate also my wedding date" could not be considered as Tutsis Genocide denial, as such words do not prevent people to commemorate Genocide nor deny its exixtence, but instead, to value it. [10] She keeps on stating that to value one's wedding date could not be seen as the way to deny genocide, but that such words as charged to Turatsinze can break the heart of the one who used to be his lover as they intend to remind him the date on which he got married. It could be in such context that he broke Nyirabashumba's heart who used to be in love with him but he did not marry him. [11] He states also that in the Intermediate Court of Ngoma, Turatsinze requested investigation, but the judge told him that his case took longtime in the court, that it cannot be postponed, that although his request of investigation is not mentioned, nothing prevent it to be taken into consideration by the Supreme Court which should give him chance to hear witnesses plus Sumba Shabani, Nyiramatabaro Jeanne, Karegeya Claver, Mukandayisenga Claudine and Nyirabukeye Clémentine who know relationship between him and Nyirabashumba and they

would testify also whether he is able to state such words considering his behavior. [12] With regard to the fact that he would have told such words to Nyirabashumba, in order to break her heart as the one who was in love with him but he did not marry her, Turatsinze states that it is true tht they were in love and he did not marry her after knowing that she was HIV positif, but that it would have not drive him to tell her such words to break her heart. [13] The representative of the Prosecution states that the statements Twamugize Chantal made in the Judicial Police that she found Nyirabashumba crying, urging with Turatsinze, and she repeated what Turatsinze had told her, and when he asked him about it, he repeated what Nyirabashumba had told her, she states that nothing would prevent it to be taken into consideration as Turatsinze stated that there is no conflict between them.

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[14] She keeps on arguing that there is no family relashionship between Nyirabashumba and Turatsinze that would make him remember his wedding day, that considering the weight of Genocide, it would be its revisionism to compare the commemoration of its victims to the wedding date, especially that doing so, Turatsinze was aware that it would break Nyirabashumba's heart. [15] With regard to witnesses he requested to be interrogated, she states that it would be without importance because hi,self stated that there is no conflict between him and Nyirabashumba, that none knew that sheasked him to accuse Nyirabukeye apart from to those he told it. He also stated that there was none when he was talking to Nyirabashumba at Hitamungu's ground apart from Twamugize who passed and stopped there. [16] She concludes that Turatsinze would have been sentenced to the doubled penalty as provided for by article 75 of Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code relating to the penalty in case of recidivism as he was sentenced to ten (10) convicted to Tutsi Genocide, but that she would not request it while the prosecution did not appeal. She adds that although the current penal code provides for by the lesser penalty that the one that was into force at the time Turatsinze committed the offence, she requests that the penalty inflicted to him by previous courts be held considering that it is recidivism. The opinion of the court: [17] In this case, it is to be considered whether Turatsinze told Nyirabashumba that ' when they commemorate on 7 April, they should also commemorate the day on which he got married on 5th of the same mounth and if he did, whether such words constitute Genocide denial. [18] Article 104 of the Law relating to evidence and its production above mentioned states that presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact. As for article 108, it states that the court shall admit only those presumptions if they are important, precise and consistent. [19] The court finds that although Turatsinze denies to have told Nyirabashumba the words charged to him, he recognizes to have met her on 19 April 2008 and passed a while with her, and that at the same day Nyirabashumba told people she found in Viateur's pub that she was hurted by what he had told her. [20] The court finds also that even if before this court, Turatsinze states that Twamugize did not pass where he and Nyirabashumba were, he admitted it before the Prosecution, and what he admitted after his arrest are to be

considered because it was also what was stated by Nyirabashumba and Twamugize, while he stated that there was any conflict between them that could led him to falsely incriminate him. [21] The court finds also that even if before this court, Turatsinze states that Nyirabashumba falsely incriminate him because they have been involved in a relationship but he married another one cannot be taken into consideration, because he did mention it neither in pre- judicial phases nor the courts, therefore, he changes statements as before, he only stated that it was due to the fact that she requested him to accuse Nyirabukeye in Gacaca courts and he refused.

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[22] The court finds wrong the statements that Nyirabashumba falsely incriminate him because he refused to accuse Nyirabukeye as she had requested him to because it is contradicted of what he stated to another hand that they lived in harmony, and that Nyirabashumba is the one who received him when he was released from the prison convicted of Genocide. [23] With regard to the witnesses he requested to be heard, the court finds that it can change nothing, as himself stated before the Judicial Police and Prosecution that no one else passed where he and Nyirabashumba were, apart from Twamugize, that he lived in harmony with Nyirabashumba, and that those who know that she had asked him to accuse Nyirabukeye are those to whom he told it. Therefore, they cannot testify for it as they did not personally hear nor see it. [24] When analysing the statements made by Twamugize Chantal before the Judicial Police, that she found Nyirabashumba with Turatsinze crying, asking him the reason why he always offend her, that even Turatsinze repeated what he had told to Nyirabashumba, that in April they should remember his wedding date of 5 April, and comparing it to the statements Nyirabashumba made before the Judicial Police when she was filing the claim,states that Twamugize found her with Turatsinze, and the latter repeated what he just told her, when confronting them to the statements Turatsinze made before the Prosecution, confirming that Twamugize found him with Nyirabashumba, considering contradiction and inconsistency that made his statements, the court finds that there is no doubt that he told to Nyirabashumba the words he is charred with. [25] With regard to know whether the words Turatsinze stated constitute the Genocide denial, article 6 of Law n° 84/2013 of 11/09/2013 on the Genocide ideology and other related offences stating that minimisation of Genocide shall be any deliberate act committed in public, aiming at downplaying the gravity or consequences of Genocide and downplaying the methods through which Genocide was committed. [26] The court notices that the statements made by Turatsinze's counsel, that such words should not be considered as Genocide denial as they do not deny it nor prevent to commemorate it, do neglegate that the Genocide is the high ranked crime that gravely hurted numerous Rwandans, therefore, commemorating its victims were killed with such atrocity should not be compared to one's wedding date. [27] The court finds that Turatsinze, as the one who was adult during Genocide, who perpetrated it and was punished for that, he was aware that to tell Nyirabashumba that when they commemorate Genocide, they shall also do the same for his wedding date is the way to

minimize Tutsi Genocide, comparing the weight of remembering genocide victims that involves the Nation and all citizens to the way of remembering one's wedding date involving only the concerned. Doing so, he was intending to hurt Nyirabashumba, proving that he does not care about atrocities committed against Tutsis and the sorrow of its survivors. [28] With regard to the penalty, article 4 of the Law no 33bis/2003 of 06/09/2003 punishing the crime of genocide, crimes against humanity and war crimes that provided for the imprisonment of ten

- (10) years to twenty (20) years to the one convicted of Genocide denial and recidivism, these penalties were replaced by five (5) years to nine (9) years considering provisions of article 12 of the Law n° 84/2013 of 11/09/2013 relating to Genocide denial and related offences and the provisions of article 116 of Organic Law n° 01/2012 of 02/05/2012 instituting the penal code.

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[29] With regard to the penalty to be inflicted to recidivist, article 85 of the Decree Law n° 21/77 of 18/08/1977 instituting the penal code that was into force at the time the offence was committed stated that In case of recidivism, the convict shall receive the maximum penalty provided by Law and the penalty may be doubled. The same is provided for by article 79 of Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code that is into force. [30] The court finds that the penalty inflicted to Turatsinze cannot be increased in the appeal because it is recidivism, because even if it would be fair, the previous courts did not consider it in determining his penalty. Moreover, the Prosecution did not appeal against his penalty. Therefore, he must be sentenced to nine (9) years of imprisonment that is the maximum penalty provided for by article 116 of Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code into force for the one convicted of genocide denial. III. THE DECISION OF THE COURT: [31] Dismiss the appeal Turatsinze Pierre lodged; [32] Besides that the judgment n° RPA 0110/09/HC/RWG rendered by the High Court, Rwamagana chamber on 11 March 2011 changes with regards to the penalty inflicted to Turatsinze Pierre with respect to the recent Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code; [33] Sentences Turatsinze Pierre to nine (9) years of imprisonment; [34] Orders that the court fees be charged to the public treasury.

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