

RWANDA / JUDGMENT

**UBUSHINJACYAHA v. MUPENZI N'UNDI**

RPAA 00522/2023/CA

## COURT

Court of Appeal

## DECIDED

31 January 2025

## CASE / FILE NUMBER

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**UBUSHINJACYAHA v. MUPENZI N'UNDI**

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**Text****Page 1**

UBUSHINJACYAHA v. MUPENZI N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00522/2023/CA (Gakwaya, P.J.), 31 Mutarama 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – icyaha cy'ubwicanyi – Ubuhamya – Ihame ku birebana n'ubuhamya ni uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme bukwiye guhabwa, harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, harebwe na none intego y'amategeko y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, Inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire iyo byizewe (preuve par ouï-dire), bivuze ko ari ihame ko ubuhamya butaziguye cyangwa ubuhamya buziguye bwemewe iyo bwizewe. Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ubuhamya – Ubuhamya bw'abantu ntibwateshwa agaciro nuko bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga, ahubwo gashingiye k'ukuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ubuhamya – Uregwa usaba ko

umutangabuhamya umushinjura atumizwa, afite ishingano yo kugaragaza mu buryo bwumvikana akamaro n'inyungu bimufitiye mu kugaragaza ukuri ku byabye, Urukiko rwo rugomba buri gihe gusubiza mu buryo butaziguye kuri ubwo busabe no kugaragaza impamvu atari ngombwa kumwumva kugira ngo ukuri kugaragare. Ibi byumvikanisha ko uregwa uzamura icyo kibazo cyo gutumiza umutangabuhamya ushinjura mu bujurire, anenga urubanza ajuririra, we agomba mbere na mbere kugaragaza ko koko yari yabisabye. Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ubusembure– Mu bujurire, uwajuriye ntashobora kugaruka (gusubira) gusa ku ngingo ze yaburanishije ku rwego rwa mbere, kandi zitarahawe ishingiro, atagaragaza amakosa Urukiko rwabanje rwaba rwarakoze ruzitesha agaciro n'uko ayo makosa agomba gukosorwa. Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Gusaba guhindura inyito y'icyaha – Ubushake bwo kwica undi (volonté ou intention de donner la mort: intention homicide) bugaragazwa n'ikintu cyakoreshejwe gishobora kwica, aho cyakoreshejwe ku mubiri w'umuntu, ni ukuvuga mu cyico (partie vitale du corps humain), ndetse n'ihohoterwa rikabije ryakoreshejwe. Incamake y'ikibazo: Mupenzi Jean Bosco na Uwiringiyimana Innocent bategeye mu nzira Habineza Bosco atashye bamukubita ibuye mu mutwe yitura hasi, ajyanwa kwa muganga, hashize iminsi ibiri (2) arapfa aguye mu bitaro bya Munini. Iperereza rirangiye, Ubushinjacyaha bwabareze mu Rukiko Rwisumbuye rwa Nyamagabe, bubakurikiranyeho icyaha cyo gukubita no gukomeretsa byateye urupfu, busaba ko cyabahama, bagahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). Abaregwa bombi baburanye buri wese yemera icyaha. Urukiko Rwisumbuye rwa Nyamagabe rurabyemeza.

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Abaregwa bombi bajuririyeye Urukiko Rukuru, Urugereko rwa Nyanza, Mupenzi Jean Bosco avuga ko nta ruhare na rutoya yagize mu cyaha cyo gukubita no gukomeretsa byateye urupfu rwa Habineza Bosco, naho Uwiringiyimana Innocent ajurira avuga ko imyitwarire ya nyakwigendera ariyo yatumye icyaha gikorwa, kuko yamuteye umugeru, aramuhunga abonye amukurikiye amukubita ibuye yitabara. Urukiko Rukuru, Urugereko rwa Nyanza, rushingiye ku mvugo z'abatangabuhamya batandukanye rwemeje ko kuri Uwiringiyimana Innocent nta busembure bwabayeho, ahubwo yakoze icyaha yakigambiriye, runemeza ko Mupenzi Jean Bosco yagize uruhare mu gukora icyaha bashinjwa kuko ariwe wahagaritse nyakwigendera maze Uwiringiyimana Innocent amukubita ikintu mu mutwe, bityo ko nta gihindutse ku mikirize y'urubanza bajuririyeye. Abaregwa bombi bajuririyeye mu Rukiko rw'Ubujurire Mupenzi Jean Bosco avuga ko nta ruhare yagize mu cyaha yahamijwe, avuga ko Urukiko Rukuru rwanze kumva abatangabuhamya yarugaragarije bari kwemeza ko nta ruhare yagize mu cyaha, ahubwo rushingira ku mvugo z'abatangabuhamya batizewe kandi bafitanye amasano na nyakwigenderanaho aribo umugore wa nyakwigendera hamwe na muramu we, bityo akaba asaba uru Rukiko kureba ibyo byose rukabona ko nta bimenyetso by'ukuri byabonetse bimuhamya icyaha, rukamugira umwere. Uwunganira Mupenzi Jean Bosco mu mategeko avuga ko anenga kuba yarahamijwe icyaha kandi nta bimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko yagikoze avuga ko ahubwo uwagikoze ari Uwiringiyimana Innocent, bityo ko icyaha cyo

gukubita cyangwa gukomeretsa ku bushake byateye urupfu aregwa atagikoze kuko nta gikorwa kikigize cyagaragajwe yakoze, cyangwa ubushake bwo kugikora bugaragara ko yari afite, asaba ko uwo yunganira yaba umwere. asaba nanone ko abaregwa bakurikiranwaho icyaha cy'ubwicanyi aho kuba gukubita no gukomeretsa ku bushake byateye urupfu. Kuri Mupenzi Jean Bosco, Ubushinjacyaha buvuga ko impamvu z'ubujurire ze nta shingiro zifite kuko nta Tegeko ribuza abafitanye isano n'uwakorewe icyaha gutanga ubuhamya bw'ibyo biboneye cyangwa bumvise, avuga kandi ko yagize uruhare rukomeye mu rupfu rwa Habineza Bosco kubera ko kumuhagarika kwe byorohereje Uwiringiyimana Innocent kumukubita ikibuye mu mutwe, ko iyo bitaba ibyo nyakwigendera yashoboraga kuba yabahunga akiruka akabacika, bityo rero urwo ruhare rwe rukaba rutakwirengagizwa. Uwiringiyimana Innocent we yajuririye avuga ko yaburanye yemera icyaha yakoze yitabara kuko yasembuwe, kandi ko hari ugushidikanya ku mvugo z'abatangabuhamya zashingiweho, avuga ko ibyo bavuga bidakwiye gufatwa nk'ikimenyetso gikuraho ibyo we avuga kandi ariwe wakoze icyaha yemera n'ubwo yagikoze yitabara, asaba uru Rukiko gushingira kuri ibyo byose rukamuhana rutihanukiriye kubera uko gushidikanya kuri mu mvugo z'abatangabuhamya zashingiweho. Uwunganira Uwiringiyimana Innocent mumategeko nawe avuga ko Urukiko Rukuru rwirengagije imvugo z'abatangabuhamya batandukanye, maze rwemeza ko yari afite umugambi wo kwica nyakwigendera, ariko ntrubigaragarize ikimenyetso, bityo akaba asaba uru Rukiko guha agaciro ukwemera no gusaba imbabazi mu buryo budashidikanywaho bye, maze rukemeza ko habayeho ubusembure, akagabanyirizwa igihano.

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Kuri Uwiringiyimana Innocent, Ubushinjacyaha buvuga ko ukwivuguruza kugaragara mu mvugo ze zaba izo yavugiye mu nzego z'iperereza n'ibyo yanditse mu mwanzuro ajurira, bigaragaza ko atavugisha ukuri, bikaba bihagije mu kwemeza ko yakoze icyaha afashijwe na Mupenzi Jean Bosco. Ubushinjacyaha buvuga kandi ko impamvu y'ubujurire bwa Uwiringiyimana Innocent ishingiyeye ku kuba harabayeho ubusembure, nta shingiro ikwiye guhabwa kuko nk'uko babigaragaje mu mwanzuro nta bwabayeho, ko rero muri ibyo avuga ntahagaragara ko yamusembuye kandi hakaba hari n'abatangabuhamya babisobanuye neza uko byagenze, bityo busaba uru Rukiko ko abaregwa bakomeza guhanishwa igifungo cy'imyaka cumi n'itanu (15), rukabagabanyiriza ihazabu, aho kuba amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), ikaba amafaranga y'u Rwanda miliyoni eshatu (3.000.000 Frw) kuko ariyo iteganyijwe n'iryo Tegeko. Urukiko rw'Ubujurire rwemeje ko ubujurire bwatanzwe na Mupenzi Jean Bosco na Uwiringiyimana Innocent nta shingiro bufite, ariko urubanza ruhindutse ku birebana n'inyito y'icyaha nk'uko bigaragajwe haruguru, bakaba bahamwe n'icyaha cy'ubwicanyi, aho kuba icyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu, ariko kubera ko ku rwego rw'ubujurire Urukiko rudashobora kuzamura igihano cyabo mu gihe Ubushinjacyaha butakijuririye, igihano bahanishijwe cy'igifungo cy'imyaka cumi n'itanu (15) kigumyeho, ariko ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) bari bakatiwe ikaba ivuyeho.

Incamake y'icyemezo: 1. Ihame ku birebana n'ubuhamya ni uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme bukwiye guhabwa, harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, harebwe na none intego y'amategako y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, Inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire iyo byizewe (preuve par ouï-dire), bivuze ko ari ihame ko ubuhamya butaziguye cyangwa ubuhamya buziguye bwemewe iyo bwizewe.

2. Ubuhamya bw'abantu ntibwateshwa agaciro nuko bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga, ahubwo gashingiye k'ukuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya.
3. Uregwa usaba ko umutangabuhamya umushinjura atumizwa, afite ishingano yo kugaragaza mu buryo bwumvikana akamaro n'inyungu bimufitiye mu kugaragaza ukuri ku byabye, Urukiko rwo rugomba buri gihe gusubiza mu buryo butaziguye kuri ubwo busabe no kugaragaza impamvu atari ngombwa kumwumva kugira ngo ukuri kugaragare. Ibi byumvikanisha ko uregwa uzamura icyo kibazo cyo gutumiza umutangabuhamya ushinjura mu bujuriye, anenga urubanza ajuririra, we agomba mbere na mbere kugaragaza ko koko yari yabisabye.
4. Mu bujuriye, uwajuriye ntashobora kugaruka (gusubira) gusa ku ngingo ze yaburanishije ku rwego rwa mbere, kandi zitarahawe ishingiro, atagaragaza amakosa Urukiko rwabanje rwaba rwarakoze ruzitesha agaciro n'uko ayo makosa agomba gukosorwa.

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5. Ubushake bwo kwica undi (volonté ou intention de donner la mort: intention homicide) bugaragazwa n'ikintu cyakoreshejwe gishobora kwica, aho cyakoreshejwe ku mubiri w'umuntu, ni ukuvuga mu cyico (partie vitale du corps humain), ndetse n'ihohoterwa rikabije ryakoreshejwe. Ubujuriye nta shingiro.

Nta mategeko yashingiweho. Imanza zifashishijwe: Urubanza RPAA 0059/08/CS, Ubushinjacyaha na Nshimiyimana n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2010; Urubanza RPAA 00059/2021/CA, rw'Ubushinjacyaha na Bahati Havugiyaremye Athanase, rwaciwe n'uru Rukiko ku wa 23/2/2024. Urubanza

I. IMITERERE Y'URUBANZA [1] Ku wa 15/7/2020 saa moya (19h00) z'ijoro, Mupenzi Jean Bosco na Uwiringiyimana Innocent bategeye mu nzira Habineza Bosco atashye bamukubita ibuye mu mutwe yitura hasi, ajyanwa kwa muganga, hashize iminsi ibiri (2) arapfa aguye mu bitaro bya Munini. [2] Iperereza rirangiye, Ubushinjacyaha bwabareze mu Rukiko Rwisumbuye rwa Nyamagabe, bubakurikiranyeho icyaha cyo gukubita no gukomeretsa byateye urupfu, busaba ko cyabahama, bagahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). Mupenzi Jean Bosco na

Uwiringiyimana Innocent baburanye buri wese yemera icyaha. [3] Mu rubanza RP 00249/2020/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 27/8/2020, rushingiye ku kwemera icyaha kwa Mupenzi Jean Bosco na Uwiringiyimana Innocent, ku mvugo z'abatangabuhamya Ntwari Karoko Alphonse, Niyonsaba Alphonsine na Minani Olivier babashinja kuba barategeye mu nzira Habineza Bosco, Mupenzi Jean Bosco akamuhagarika hanyuma Uwiringiyimana Innocent akamuturuka inyuma akamutera ikintu mu mutwe akitura hasi, bamujyana kwa muganga akaza gupfa, rwemeje ko abaregwa bombi bahamwa n'icyaha cyo gukubita no gukomeretsa byateye urupfu, rubahanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). [4] Abaregwa bombi bajurirye Urukiko Rukuru, Urugereko rwa Nyanza, Mupenzi Jean Bosco avuga ko nta ruhare na rutoya yagize mu cyaha cyo gukubita no gukomeretsa byateye urupfu rwa Habineza Bosco, ko uwagikoze aciyemerera mu buryo budashidikanywaho kandi icyaha ari gatozi, naho Uwiringiyimana Innocent ajurira avuga ko imyitwarire ya nyakwigendera ariyo yatumye icyaha gikorwa, kuko yamuteye umugeri, aramuhunga abonye amukurikiye amukubita ibuye yitabara.

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[5] Mu rubanza RPA 00826/2020/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 29/11/2023, rushingiye ku mvugo z'abatangabuhamya barimo Ayingeneye Clémentine umugore wa nyakwigendera wavuze ko umugabo we yamubwiye ko abaregwa bamutegeye mu nzira, Mupenzi Jean Bosco aramuhagarika, Uwiringiyimana Innocent amuturuka inyuma amukubita ikintu mu mutwe yitura hasi, barya inzara uwitwa Ntwari Karoko Alphonse wari ugerageje kubafata, rushingiye no ku mvugo za Ntwari Karoko Alphonse wavuze ko bari bahembwe, batashye bageze mu ishyamba basanga abo bahungu babategeye mu nzira, Mupenzi Jean Bosco arabahagarika, Uwiringiyimana Innocent aturuka inyuma afite ikintu agikubita Habineza Bosco mu mutwe ahita yikubita hasi, nawe ahita yirukankana Mupenzi Jean Bosco, amufashe ahita amurya inzara mu ijosi, amubwira ko n'ubundi bari bagambiriye kubatega, rwemeje ko kuri Uwiringiyimana Innocent nta busembure bwabayeho, ahubwo yakozwe icyaha yakigambiriye, runemeza ko n'ubwo Mupenzi Jean Bosco avuga ko nta ruhare yagize mu ikorwa ry'icyaha, abatangabuhamya bavuzwe haruguru nawe bamushinja uruhare rwe kuko ariwe wahagaritse nyakwigendera maze Uwiringiyimana Innocent amukubita ikintu mu mutwe, rwemeza ko nta gihindutse ku mikirize y'urubanza bajurirye. [6] Ku wa 13/12/2023, Mupenzi Jean Bosco yajurirye Urukiko rw'Ubujurire avuga ko nta ruhare yagize mu cyaha yahamijwe kuko uwagikoze aciyemerera kandi akaba atamushinja ko bagifatanyije, ko kandi Urukiko rwirengagije kubaza abatangabuhamya bemeza ibyo avuga yagaragaje kuva mu nzego z'iperereza, ahubwo rukamuhamya icyaha rumurenganya, nta n'ibimenyetso by'ukuri byagaragajwe, uretse gukeka no gushidikanya, hashingiwe ku mvugo z'abatangabuhamya barimo umugore wa nyakwigendera uvuga ibyo atiboneye cyangwa yiyumviye ubwe, ahubwo aribyo yabwiye n'umugabo we atarapfa na Ntwari Karoko Alphonse muramu w'urega wabeshye ko babategeye mu nzira kandi icyaha cyarabereye mu rugo kwa Vincent, asaba kugirwa umwere. [7] Ku wa 13/12/2023, Uwiringiyimana Innocent nawe yajurirye uru Rukiko avuga

ko yaburanye yemera icyaha yakoze yitabara kuko yasembuwe, ariko Inkiko zanga kubiha agaciro, ko kandi uretse na Mupenzi Jean Bosco baregwa hamwe nta n'undi muntu wagize icyo amukoraho, akaba yarasabye ko habazwa abandi batangabuhamya yagaragaje nabyo ntibyakorwa, ahubwo hashingirwa ku mvugo z'abatangabuhamya bavuga ibyo batiyumviye ubwabo cyangwa biboneye, babwiwe na Habineza Bosco, umwe akaba ari umugore we undi ari muramu we, ko rero ibyo bavuga bidakwiye gufatwa nk'ikimenyetso gikuraho ibyo we avuga kandi ariwe wakoze icyaha yemera n'ubwo yagikoze yitabara, akaba asaba uru Rukiko gushingira kuri ibyo byose rukamuhana rutihanukiriye kuko hari ugushidikanya ku mvugo z'abatangabuhamya zashingiweho. [8] Ubushinjacyaha buvuga ko impamvu z'ubujurire za Mupenzi Jean Bosco nta shingiro zifite kuko nta Tegeko ribuza abafitanye isano n'uwakorewe icyaha gutanga ubuhamya bw'ibyo biboneye cyangwa bumvise. Ku birebana n'ibivugwa n'umwunganizi we, buvuga ko nabyo nta shingiro bikwiye guhabwa kuko ntaho ahera avuga ko nta ruhare yagize mu rupfu rwa Habineza Bosco kandi ariwe wamutangiriye, bikorohereza Uwiringiyimana Innocent kugera ku mugambi we wo kumukubita ikintu mu mutwe byaje kumuviramo urupfu nyuma y'iminsi ibiri. [9] Kuri Uwiringiyimana Innocent, Ubushinjacyaha buvuga ko ukwivuguruza kugaragara mu mvugo ze zaba izo yavugiye mu nzego z'iperereza n'ibyo yanditse mu mwanzuro ajurira,

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bigaragaza ko atavugisha ukuri, bikaba bihagije mu kwemeza ko yakoze icyaha afashijwe na Mupenzi Jean Bosco, ari nayo mpamvu atari ngombwa kubaza abandi batangabuhamya. [10] Urubanza rwahawe RPAA 00522/2023/CA, ruburanishwa ku wa 9/1/2025, Mupenzi Jean Bosco yunganiwe na Me Mbituyimana Jean de Dieu, Uwiringiyimana Innocent yunganiwe na Me Bizimana Ndigija Seth, naho Ubushinjacyaha buhagararaiwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. [11] Muri iryo buranisha, uru Rukiko rubyibwirije rwazamuye ikijyanye n'inyito y'icyaha abaregwa bahamijwe, abunganizi ba Mupenzi Jean Bosco na Uwiringiyimana Innocent bavuga ko Urukiko rufite ububasha bwo guhuza ibikorwa n'inyito y'icyaha aho urubanza rwaba rugeze hose, ko kandi barebye igice cy'umubiri nyakwigendera yakubiswemo ibuye, mu mutwe (mu cyico), n'icyo kintu cyakoreshejwe akubitwa, abaregwa bari bakwiye kuregwa icyaha cy'ubwicanyi, naho Ubushinjacyaha buvuga ko kubera ko umuntu atahise apfa ako kanya bakomeza gukurikiranwaho gukubita cyangwa gukomeretsa byateye urupfu. [12] Hashingiwe ku myanzuro n'imiburanire y'ababuranyi yo ku wa 9/1/2025, ibibazo bizasuzumwa ni ibi bikurikira: -Kumenya niba Mupenzi Jean Bosco yarahamijwe icyaha nta bimenyetso bidashidikanywaho bikimuhamya, Urukiko Rukuru rukaba rwaranze kumva abatangabuhamya yarugaragarije bari kwemeza ko nta ruhare yagize mu cyaha, ahubwo rushingira ku mvugo z'abatangabuhamya batizewe kandi bafitanye amasano na nyakwigendera, umwe ubeshya n'undi uvuga ibyo atiboneye ahubwo yabwiwe na nyakwigendera; -Kumenya niba Urukiko Rukuru rwarakoze amakosa yo kudaha agaciro ubusembure Uwiringiyimana Innocent yaburanishije, rukanga no kubaza abatangabuhamya yarugaragarije babwemeza, ahubwo rugashingira ku buhamya bw'abafitanye amasano na nyakwigendera II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA -Kuri Mupenzi Jean Bosco 1. Kumenya niba Urukiko Rukuru rwarakoze

amakosa yo guhamya Mupenzi Jean Bosco icyaha nta bimenyetso bidashidikanywaho bikimuhamya, nyamara rwaranze kubaza abatangabuhamya yarugaragarije bari kwemeza ko nta ruhare yagize mu cyaha, ahubwo rugashingira ku batangabuhamya batizewe kandi bafitanye isano n'uwakorewe icyaha [13] Mupenzi Jean Bosco avuga ko nta ruhare yagize mu cyaha yahamijwe kuko uwagikoze acyiyemerera kandi atamushinja kuba baragifatanyije, ko we yari mu nzu y'akabare ko kwa Vincent nyamara icyaha cyarabereye hanze, asohoka kimwe n'abandi basanga Habineza Bosco yamaze gukomereka, ibyo byose akaba yarabivuze anatanga abatangabuhamya babyemeza barimo uwitwa Muhawenimana Devatha, Nibagwire Donatha na Vincent nyiri akabare banywerekemo, bari kwemeza ko ibyo avuga ari ukuri ariko hakaba nta numwe wabajijwe, ahubwo inkiko zimuhanisha igifungo cy'imyaka cumi n'itanu (15) zimurenganya, zishingiye ku mvugo z'abatangabuhamya zitizewe z'abafitanye amasano na nyakwigendera nk'umugore we witwa Ayingeneye Clémentine uvuga ibyo atiboneye cyangwa yiyumviye ubwe ahubwo aribyo yabwiwe n'umugabo we atarapfa n'imvugo za muramu we witwa Ntwari Karoko Alphonse wabeshye ko

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nyakwigendera yakubiswe bamutegeye mu nzira kandi icyaha cyarabereye ku kabare kwa Vincent, akaba asaba uru Rukiko kureba ibyo byose rukabona ko nta bimenyetso by'ukuri byabonetse bimuhamya icyaha, rukamugira umwere. [14] Me Mbituyimana Jean de Dieu wunganira Mupenzi Jean Bosco avuga ko anenga kuba yarahamijwe icyaha kandi mu by'ukuri nta bimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko yagikoze ahubwo uwagikoze ari Uwiringiyimana Innocent. Ko urebye igika cya makumyabiri (20) cy'urubanza rujuririrwa, icyo Urukiko Rukuru, Urugereko rwa Nyanza rwashingiyeho ari uko ariwe wahagaritse Habineza Bosco kandi uko kumuhagarika bikaba bitavuze ko yamufashe n'amaboko ye kugira ngo Uwiringiyimana Innocent abone uko amukubita ibuye mu mutwe, ko ndetse atariwe watoraguye iryo buye ngo arimuhereze. Ko rero mu byukuri icyaha cyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu aregwa atagikoze kuko nta gikorwa kikigize cyagaragajwe yakoze, cyangwa ubushake bwo kugikora bugaragara ko yari afite, ko kuba yarabwiye nyakwigendera gusa ngo ahagarare bitagize icyaha, kuko nawe yatunguwe no kubona mugenzi we amukubise iryo buye. [15] Akomeza avuga ko urebye imvugo ya Ntwari Karoko Alphonse mu Bugenzacyaha yavuze ko ari Uwiringiyimana Innocent wakubise nyakwigendera ibuye mu mutwe yitura hasi, kandi uwo nawe akaba abiyemerera mu mvugo ze akanemeza ko mupenzi Jean Bosco nta kintu yamukubise, ko ndetse n'umutangabuhamya Minani Olivier yahamije ko Uwiringiyimana Innocent ariwe wamukubise ikintu mu mutwe. Avuga ko mu mvugo za Niyonsaba Alphonsine ntaho yavuze ko ari Mupenzi Jean Bosco wakubise nyakwigendera. Ko n'innyandiko ya expertise medicale mu mwanzuro wayo igaragazako urupfu rwa Habimana Bosco rwaturutse ku bubabare bukomeye bwo ku mutwe ku gice cy'ubwoko, bikaba bihura neza n'ibuye yakubiswe na Uwiringiyimana Innocent. ko rero ibyo bigaragaza ko atafatanyije icyaha na Mupenzi Jean Bosco, atanabaye icyitso cye, Uwiringiyimana Innocent wabikoze ubwe akaba ariwe ugomba kubihanirwa, naho uwo yunganira akaba umwere hashingiwe ku ngingo ya 111 y'itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ndetse

n'ingingo ya 83 y'itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange kuko uburyozwacyaha ari gatozi. [16] Ubushinjacyaha buvuga ko Mupenzi Jean Bosco yagize uruhare rukomeye mu rupfu rwa Habineza Bosco kubera ko kumuhagarika kwe byorohereje Uwiringiyimana Innocent kumukubita ikibuye mu mutwe, ko iyo bitaba ibyo nyakwigendera yashoboraga kuba yabahunga akiruka akabacika, bityo rero urwo ruhare rwe rukaba rutakwiringagizwa. Ku bijyanye n'abatangabuhamya Muhawenimana Devotha, Nibagwire Donatha bari kuza kwemeza ko koko nta ruhare mu ikorwa ry'icyaha, buvuga ko ntaho bigaragara ko yaba yarasabye urukiko kubumva rukaba rutarabikoze, naho kuba umutangabuhamya Ayingeneye Clémentine na Ntwari Karoko Alphonse baba bafitanye isano na nyakwigendera bikaba atari inenge, kuko nka Ntwari Karoko Alphonse avuga ibyo yiboneye bikaba bitateshwa agaciro n'uko yari muramu wa nyakwigendera, ndetse nta n'itegeko ribabuza gutanga ubuhamya kubera iyo mpamvu, bityo kuba urukiko rwarashingiye ku mvugo zabo rukaba nta kosa rwakoze nk'uko byemejwe mu rubanza RPAA 00754/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 24/04/2023, haburana Ubushinjacyaha na Iradukunda Jean-Marie Vianney1, narwo rwabishingiye ku murongo watanze mu rubanza

1 muri urwo rubanza Urukiko rw'Ubujurire rwagaragaje ko kuba umutangabuhamya afitanye isano n'uwahohotewe cyangwa ari uwahohotewe ubwe, ubwabyo bidatesha agaciro ubuhamya kandi ko urukiko arirwo rusuzuma ireme

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RPAA0118/11/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015 haburana Ubushinjacyaha na Ngurinzira. UKO URUKIKO RUBIBONA [17] Impaka kuri iyi ngingo zishingiye ku kumenya niba Urukiko Rukuru rutaragombaga guhamya Mupenzi Jean Bosco icyaha rushingiye ku mvugo z'abatangabuhamya we avuga ko zitizewe kandi bafitanye isano n'uwahohotewe, nyamara rwaranze kubaza abo ku ruhande rwe bari kuruhamiriza ko nta ruhare yagize mu cyaha aregwa. [18] Nk'uko byemejwe mu rubanza RPAA/ Gén 00002/2018/CA rwaciwe n'uru Rukiko ku wa 25/7/20232, ihame ku birebana n'ubuhamya ni uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, ko Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme bukwiye guhabwa3, ko harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, harebwe na none intego y'amategako y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, Inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire iyo byizewe (preuve par ouï-dire), bivuze ko ari ihame ko ubuhamya butaziguye cyangwa ubuhamya buziguye bwemewe iyo bwizewe. [19] Nk'uko byemejwe kandi mu rubanza RPAA 00371/2020/CA rwaciwe n'uru Rukiko ku wa 15/12/2022, Urukiko arirwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira [20] Nk'uko byanemejwe mu rubanza RPAA 0059/08/CS, Ubushinjacyaha bwaregagamo Nshimiyimana Alexis, Twagirumukiza Anastase na Habimana rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2010, ko ubuhamya bw'abantu butateshwa agaciro nuko bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo

kadashingiye ku babutanga, ahubwo

ry'ubuhamya rushingiye ku bumenyi bw'ababutanga n'uburyo basobanura ibyo biboneye cyangwa bumvise, rukabigereranya n'ibindi bimenyetso. 2 Uru Rukiko rwabyemeje rusesengura ibyakumvikana harebwe ibivugwa mu ngingo ya 62, iya 65 n'ya 119 z'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itagwa ryabyo. Ingingo ya 62 y'iryo Tegeko iteganya ibikurikira:” Ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa”, iya 65 iteganya ibikurikira: “Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira”, naho iya 119 iteganya ko” Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa”. 4 Nk'uko byemejwe kandi mu rubanza RPAA 00371/2020/CA rwaciwe n'uru Rukiko ku wa 15/12/2022, Urukiko arirwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira<sup>42</sup>.

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gashingiye k'ukuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. [21] Nk'uko byagaragajwe mu rubanza RPAA 00059/2021/CA rwaciwe n'uru Rukiko ku wa 23/2/2024, haburana Ubushinjacyaha na Bahati Havugiyaremye Athanase, bikanakurikizwa mu rubanza RPAA/Gen. 00012/2019/CA rwaciwe ku wa 20/12/2024<sup>53</sup>, uregwa usaba ko umutangabuhamya umushinjura atumizwa, afite ishingano yo kugaragaza mu buryo bwumvikana akamaro n'inyungu bimufitiye mu kugaragaza ukuri ku byabye<sup>6</sup>, Urukiko rwo rugomba buri gihe gusubiza mu buryo butaziguye kuri ubwo busabe no kugaragaza impamvu atari ngombwa kumwumva kugira ngo ukuri kugaragare<sup>7</sup>. Ibi byumvikanisha ko uregwa uzamura icyo kibazo cyo gutumiza umutangabuhamya ushinjura mu bujurire, anenga urubanza ajuririra, we agomba mbere na mbere kugaragaza ko koko yari yabisabye. [22] Mu gace ka makumyabiri (20) k'urubanza rujuririrwa, Urukiko Rukuru rwemeje ko n'ubwo Mupenzi Jean Bosco avuga ko nta ruhare yagize mu ikorwa ry'icyaha, hari abatangabuhamya bagaragaza uruhare rwe ko yari kumwe na Uwiringiyimana Innocent bategera mu nzira Habineza Bosco, aba ariwe umuhagarika, naho Uwiringiyimana Innocent amuturuka inyuma amukubita ikintu mu mutwe. [23] Mu nyandikomvugo y'ibazwa rya Mupenzi Jean Bosco abazwa n'Ubugenzacyaha ku wa 17/7/2020, nyuma yo kumenyeshwa ko akekwa icyaha cyo kwica Habineza Bosco, yavuze ko yemera icyaha kandi ko agisabira imbabazi, asobanura ko barwanye barafatana bikubitana hasi bose basinze, maze mugenzi we Uwiringiyimana Innocent atora ibuye arimukubita mu mutwe, nyakwigendera akaba yari kumwe na Karoko ari babiri (Habineza Bosco na Karoko), nabo (Mupenzi Jean Bosco na Uwiringiyimana Innocent) ari babiri, Habineza Bosco akimara gukubitwa ibuye mu mutwe ahita yikubita hasi, bahamukura

bamujyana kwa mugana, nyuma baza kumva ko yapfuye. Yavuze kandi ko ibyo byabereye mu Mudugudu wa Kibayi, Akagali ka Mpanda, mu Murenge wa Kibeho. [24] Mu nyandikomvugo ya Uwiringiyimana Innocent y'uwo munsu nawe abazwa n'Ubugenzacyaha, nyuma yo kumenyeshwa icyaha akekweho cy'ubwicanyi, yavuze ko acyemera agisabira imbabazi, ko ariko atabishakaga ahubwo ari uko bari basinze. Yasobanuye ko yasanze abagabo babiri bari kunywa ikigage, we na Mupenzi Jean Bosco nabo bagura ikigage baranywa, abo bagabo baramushotora, umwe atera Mupenzi Jean Bosco umugeri arasohoka arabahunga, nawe Habineza Bosco ashaka kumufata ngo amukubite, amucika ariruka afata ibuye ararimutera agwa hasi, ariko mbere yo kumutera iryo buye Habineza Bosco akaba yarabanje kurwana na Mupenzi Jean Bosco, ko impamvu yatumye amutera ibuye kandi atariwe barwanaga, ari uko undi mugabo wari kumwe na nyakwigendera nawe yamufashe bararwana, amucitse ahita atora iryo

5 Urubanza rw'Ubushinjacyaha na RURIBIKIYE NTIBARIKURE Emmanuel na bagenzi be. 6 "Il appartient, dès lors, au prévenu non seulement de faire la demande d'entendre tel témoin à décharge mais également de préciser l'importance et l'intérêt pour la manifestation de la vérité de cette audition", Cour eur. D.H., Pisano c. Italie, 27 juillet 2000, p. 430 et note, voir aussi Cour eur. D.H., Perna c. Italie, 6 mai 2003, Cour eur. D.H., Morel c. France, 12 février 2004, in Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P. 1045. 7 "Le juge doit en tout état de cause répondre de manière explicite à la demande d'audition d'un témoin et décider en quoi cette audition n'est pas nécessaire à la manifestation de la vérité", in Michel Franchimont, Ann Jacobs et Adrien Masset, op.cit., P. 1044.

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buye, ariteye rifata Habineza Bosco. Yavuze ko kandi byabereye mu Mudugudu wa Kibayi, Akagali ka Mpanda, mu Murenge wa Kibeho. [25] Ntwari Karoko Alphonse, abazwa mu Bugenzacyaha ku wa 19/7/2020, yavuze ko Habineza Bosco akubitwa yari ahari, ko byabereye mu Mudugudu wa Kibayi, Akagali ka Mpanda, mu Murenge wa Kibeho, Habineza Bosco amaze kubahemba kuko yari gapita wabo aho babumbaga amatafari, barazamuka bageze hirya mu ishyamba basanga Uwiringiyimana Innocent na Mupenzi Jean Bosco babateze, Mupenzi Jean Bosco arabahagarika barahagarara, Uwiringiyimana Innocent aturuka inyuma afite ikintu agikubita Habineza Bosco mu mutwe agwa hasi, afata Mupenzi Jean Bosco ahita amurya inzara mu ijosi, amubwira ngo ntago ariwe umukubise ariko bari bagambiriye kubatega, abaturage bahita bahurura, bamukura aho bamujyana kwa muganga nyuma aza gupfa. [26] Mu nyandikomvugo ya Ayingeneye Clémentine abazwa mu Bugenzacyaha ku wa 19/7/2020 yavuze ko umugabo we yaje amubwira ko Mupenzi Jean Bosco na Uwiringiyimana Innocent Sebiraza bamutegeye mu nzira saa moya z'ijoro (19h00) bari mu Mudugudu wa Kibayi, Akagali ka Mpanda mu Murenge wa Kibeho, abanza guhagarikwa na Mupenzi Jean Bosco, maze Uwiringiyimana Innocent Sebiraza amuturuka inyuma amukubita ikintu mu mutwe yitura hasi, abantu bagiye kubafata nabo barabarwanya, barya inzara Karoko Ntwali Alphonse bari kumwe kandi wabibonye, yavuze ko yamubajije niba batonganye, umugabo we amuhakanira, akeka ko baba baramuteze bashaka kumwambura amafaranga kuko yari kapitana mu gishanga ashinzwe guhemba ababumba amatafari. [27] Umutangabuhamyi Minani Olivier, wabajijwe n'Ubugenzacyaha ku wa

19/7/2020, yavuze ko Habineza Bosco yari kapita wabo aho babumbiraga amatafari, amaze kubahemba asohoka mbere yabo, ageze imbere gato bagiye kubona babona Uwiringiyimana Sebiraza na Mupenzi Jean Bosco baramukubise yitura hasi, bahamukura bamujyana kwa muganga. Yavuze ko abo bombi bafite uruhare mu cyaha kubera ko babasize aho bari barazamuka baramutega. [28] Umutangabuhamya Niyonsaba Alphonsine yabajijwe n'Ubugenzacyaha ku wa 19/7/2020, avuga ko Habineza Bosco yakubiswe na Uwiringiyimana Sebiraza na Mupenzi Jean Bosco bamukubitira mu Mudugudu wa Kibayi, Akagali ka Mpanda, mu Murenge wa Kibeho mu gashyamba aho bari babategeye barimo gutaha, Habineza Bosco ari imbere yabo gatoya agenda bamureba, bumva baramukubise agwa hasi, biruka bajya kureba icyo abaye, Karoko afata umwe mu bari bamukubise ariwe Mupenzi baragundagurana, aramucika ariruka, bahita bafata Habineza Bosco bamujyana kwa muganga. [29] Urukiko rw'Ubujurire rurasanga Mupenzi Jean Bosco aburana avuga ko Urukiko Rukuru rwakoze amakosa yo kumuhamya icyaha atagizemo uruhare, rushingiye gusa ku mvugo z'abatangabuhamya batizewe kandi rwaranze guhamagaza abo we yifuzaga ko babazwa ngo bashimangire ko nta cyaha yakoze, nyamara nawe nk'uko byagaragajwe mu duce tubanziriza aka, abazwa mu Bugenzacyaha mbere na mbere ku ikubitiro yiyemereye ko ariwe wabanje gufatana na Habineza Bosco bararwana biturana hasi, hanyuma Uwiringiyimana Innocent azana ibuye arimukubita mu mutwe. Rurasanga kandi harebwe izo mvugo ze, ubuhamya bw'abatangabuhamya bagaragajwe mu bika bibanziriza aka<sup>84</sup> n'ibyo abatangabuhamya anenga (Ayingeneye Clémentine

8 Minani Olivier na Niyonsaba Alphonsine.

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na Ntwari Karoko Alphonse) byaraje gushimangira bimwe mubyo yivugiye, uretse n'ibyo kandi uwo bakoranye icyaha nawe abazwa yagaragaje ko ariwe wabanje kurwana na nyakwigendera, nawe amukubita ibuye mu mutwe ariko ashaka kuritera uwari uri kumurwanya ariwe Ntwari Karoko Alphonse, wari kumwe na nyakwigendera, ibyo bikaba bigaragaza uruhare yagize mu guhohotera Habineza Bosco byaje kumuviramo urupfu, bikaba kandi binavuguruza iby'umwunganira aburanisha avuga ko we icyo yakoze ari ukumuhagarika gusa. [30] Urukiko rw'Ubujurire rurasanga rero ibivugwa na Mupenzi Jean Bosco ko abatangabuhamya Ayingeneye Clémentine na Ntwari Karoko Alphonse batizewe kuko batavugisha ukuri, bitahabwa agaciro kuko nk'uko byagaragajwe haruguru, ibyo bavuze bishimangirwa n'ibyo ubwe yavuze mu Bugenzacyaha n'ibyavuzwe n'abatangabuhamya Minani Olivier na Niyonsaba Alphonsine, Urukiko Rukuru mu bushishozi bwari rukaba rwarasuzumye hamwe ubwo buhamya, rwanzura ko bufite agaciro kuko bwizewe. Rurasanga na none ku birebana n'aho icyaha cyabereye, umwanzuro we muri uru Rukiko Mupenzi Jean Bosco yemeza ko icyaha cyabereye hanze, we yari mu nzu y'akabare ko kwa Vincent, asohoka kimwe n'abandi, asanga Habineza Bosco yamaze gukomerera, bityo rero ntashobora kunenga ubuhamya bwa Ayingeneye Clémentine na Karoko Ntwari Alphonse ko butizewe kuko bavuze ko icyaha cyabereye mu nzira kandi nawe nk'uko bigaragara ashimangira ko kitabereye mu kabare nk'uko yabigarutseho aburana imbere y'uru Rukiko. [31] Ku birebana n'ibivugwa na Mupenzi Jean Bosco ko Urukiko rwabanje rutagombaga gushingira ku mvugo za Ayingeneye Clémentine na Ntwari Karoko Alphonse kuko bafitanye isano

na nyakwigendera, Urukiko rw'Ubujurire rurasanga bitahabwa agaciro kuko harebwe umurongo wagaragajwe haruguru, ubuhamya bw'abantu butateshwa agaciro kuko bafitanye amasano n'uwawotewe cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga, ahubwo gashingiye k'ukuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. Rurasanga rero nk'uko byavuzwe haruguru, ubuhamya bwabo bwizewe kuko bushimangirwa n'ubundi buhamya, ndetse n'imvugo ze mu Bugenzacyaha. [32] Ku bijyanye no kuba hatarabajijwe abatangabuhamya bo ku ruhande rwe, Urukiko rw'Ubujurire rurasanga hashingiwe ku murongo wagaragajwe haruguru, ibivugwa na Mupenzi Jean Bosco nta gaciro bifite, kuko we ubwe imbere y'uru Rukiko yivugiye ko atigeze abiburanisha mbere, ndetse ko ntanaho ashobora kugaragaza ko yasabye ko batumizwa, bityo rero akaba atanenga urubanza rujuririrwa, avuga ko Urukiko rwabanje rwanze gutumiza abatangabuhamya bamushinjura kandi atarabirusabye. [33] Hashingiwe ku byagaragajwe haruguru byose Urukiko rw'Ubujurire rurasanga Urukiko rwabanje nta makosa rwakoze mu kwemeza ko Mupenzi Jean Bosco yagize uruhare mu rupfu rwa Habineza Bosco, bityo ubujurire bwe nta shingiro bufite. Kuri Uwiringiyimana Innocent 2. Kumenya niba Urukiko Rukuru rwarakoze amakosa yo kudaha agaciro ubusembure Uwiringiyimana Innocent yaburanishije, rukanga no kubaza abatangabuhamya

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yarugaragariye babwemeza, ahubwo rugashingira ku buhamya bw'abafitanye amasano na nyakwigendera [34] Uwiringiyimana Innocent avuga ko yaburanye yemera icyaha yakoze, ko ariko yasembuwe na Habineza Bosco wamukubitiye mu kabare ko kwa Vincent hari n'abandi bantu benshi, arasohoka agiye kunyara baturira mu muryango amukubita ikofe mu maso aramubabaza, aramuhunga arasohoka, abonye akomeje kumukurikirana nawe atoragura ibuye hasi arimukubita mu mutwe inyuma, ariruka arahunga. Ibyo byose akaba yarabibwiye Urukiko ariko ntirwabiha agaciro, ndetse arusaba guhamagaza umutangabuhamya Muhawenimana Devotha, Nibagwire Donatha na Vincent ngo babazwe ntibyakorwa, ahubwo hashingirwa ku mvugo z'abatangabuhamya bavuga ibyo batiyumviye ubwabo cyangwa biboneye, umwe akaba ari umugore w'uwahohotewe, Ayingeneye Clémentine, uvuga ibyo nyakwigendera yamubwiye atarapfa, undi akaba ari muramu we, Ntwari Karoko Alphonse, uvuga ko we na Mupenzi Jean Bosco babategeye mu nzira ari kumwe na nyakwigendera, nyamara atagaragaza aho hantu aho ariho n'abemeza ko ibyo avuga ari ukuri, ko rero ibyo bavuga bidakwiye gufatwa nk'ikimenyetso gikuraho ibyo we avuga kandi ariwe wakoze icyaha yemera n'ubwo yagikoze yitabara, akaba asaba uru Rukiko gushingira kuri ibyo byose rukamuhana rutihanukiriye kubera uko gushidikanya kuri mu mvugo z'abatangabuhamya zashingiweho. [35] Me Bizimana Ndigija Seth, wunganira Uwiringiyimana Innocent, avuga ko kuva mu ntangiriro kugera mu Nkiko, Uwiringiyimana Innocent yisobanuye yemera icyaha anagaragaza uruhare yagize mu rupfu rwa nyakwigendera Habineza Bosco bari kumwe mu kabare ko kwa Vincent basangira inzoga, abisabira imbabazi, ariko agaragaza ko uruhare rwe rwatewe n'imyitwarire ya nyakwigendera kuko yamusembuye (provocation), ariko Urukiko rukaba rwarabitesheje agaciro rushingiye ku mvugo z'abatangabuhamya b'urubande rumwe rwa nyakwigendera aribo Minani Olivier, Ntwari

Karoko Alphonse n'iz'umugore wa nyakwigendera, zuzuyemo ibinyoma no kuvuguruzanya bagamiye guhisha uruhare rwe muri ubwo busembure, aho bavuze ko icyaha cyabereye ku musozi kandi batagaragaza aho ariho, nyamara ahubwo byarabereye mu kabare aho nyakwigendera yari yasinze cyane yanyoye inzoga y'inkorano yitwa dundubwonko, iba ari nayo yabaye imbarutso y'izo mvururu, nyakwigendera akubita Uwiringiyimana Innocent ingumi mu jisho, nk'uko n'Ubushinjacyaha hari aho bwemeje ko ari umugeri yamukubise. [36] Me Bizimana Ndigija Seth akomeza avuga ko Urukiko Rukuru rwirengagije imvugo z'abatangabuhamya Nibagwire Donatha, Muhawenimana Devatha ndetse n'Ubuyobozi bw'inzego z'ibanze zisanzwe zizi imyifatire ya Uwiringiyimana Innocent ngo babihuze n'inzoga z'inkorano (dundubwonko) zanywerwaga muri ako kabare zaba arizo zateje imvururu, rwemeza ko Uwiringiyimana Innocent yari afite umugambi wo kwica nyakwigendera, ariko ntirubigaragarize ikimenyetso. Akaba asaba uru Rukiko guha agaciro ukwemera no gusaba imbabazi mu buryo budashidikanywaho bye, rukemeza ko habayeho ubusembure, akagabanyirizwa igihano. [37] Ubushinjacyaha buvuga ko impamvu y'ubujurire bwa Uwiringiyimana Innocent ishingiye ku kuba harabayeho ubusembure, nta shingiro ikwiye guhabwa kuko nk'uko babigaragaje mu mwanzuro nta bwabayeho, ko ahubwo mu mvugo ze hagaragaramo ukwivuguruza aho mbere abazwa yavuze ko Habineza Bosco yabiyenjejeho amukubita ikofe ari kumwe na Mupenzi Jean Bosco bose basinze ikigage, yongeye kubazwa avuga ko yasohotse ari wenyine ahura na

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nyakwigendera amukubita ikofe nawe ahita atora ibuye arimukubita arakomereka, ko rero muri ibyo avuga ntahagaragara ko yamusembuye kandi hakaba hari n'abatangabuhamya babisobanuye neza uko byagenze, ndetse na Habineza Bosco atarapfa akaba yarabisobanuye mu buryo busa neza n'imvugo za Ntwari Karoko Alphonse bari kumwe. Bukomeza buvuga rero ko atari ngombwa kubaza abandi batangabuhamya kuko uko kwivuguruza kwe guhagije mu kumushinja ko yakozwe icyaha abifashijwemo na Mupenzi Jean Bosco watangiriye nyakwigendera, bigatuma nawe amuturuka inyuma akamukubita ikibuye bikaza kumuviramo gupfa. [38] Ubushinjacyaha buvuga ariko ko hashingiwe ku ngingo ya 121y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko yahinduwe n'ingingo ya 119 5y'Itegeko N° 059/2023 ryo ku wa 4/12/2023, busaba uru Rukiko ko abaregwa bakomeza guhanishwa igifungo cy'imyaka cumi n'itanu (15), rukabagabanyiriza ihazabu, aho kuba amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), ikaba amafaranga y'u Rwanda miliyoni eshatu (3.000.000 Frw) kuko ariyo iteganyijwe n'iryo Tegeko. UKO URUKIKO RUBIBONA [39] Impaka kuri iyi ngingo zishingiye ku kumenya niba Urukiko Rukuru rwarirengagije ubusembure Uwiringiyimana Innocent yaburanishije, rukaba rwaranze no gutumiza abatangabuhamya be bari kubwemeza, ahubwo rugashingira ku buhamya bw'abafitanye isano na nyakwigendera. [40] Nk'uko byemejwe mu manza zitandukanye zaciwe n'Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda, mu bujurire, uwajuriye ntashobora kugaruka (gusubira) gusa ku ngingo ze yaburanishije ku rwego rwa mbere, kandi zitarahawe ishingiro, atagaragaza amakosa Urukiko rwabanje rwaba rwarakoze ruzitesha agaciro n'uko ayo makosa agomba gukosorwa<sup>10</sup>. [41] Nk'uko bigaragara guhera mu gace ka cumi na gatatu (13) kugeza ku ka cumi na gatanu

(15) tw'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko rushingiye ku mvugo z'abatangabuhamya Ayingeneye Clémentine na Karoko Ntwari Alphonse basobanuye uburyo Uwiringiyimana Innocent na Mupenzi Jean Bosco bategeye mu nzira nyakwigendera n'uburyo bamuhohoteye<sup>116</sup>, nta busembure nyakwigendera yakoreye Uwiringiyimana Innocent. [42] Uretse no kuba Urukiko rwaciye urubanza rujuririrwa rutarirengagije imiburanire ya Uwiringiyimana Innocent y'uko yasembuwe nk'uko bigaragajwe mu gace kabanziriza aka, aho rwasobanuye impamvu rutabihaye agaciro, Uwiringiyimana Innocent ntanagaragaza inenge ku bisobanuro byatanzwe, uretse kugaruka ku byo yaburanishije mu Rukiko Rukuru, Urukiko rw'Ubujurire rero rurasanga hanakurikijwe uko ibintu byagenze bigaragarira mu mvugo ye bwite n'iz'abandi bantu babajijwe, nta busembure bwabayeho kuko yivugiye ko atariwe warwanaga na nyakwigendera, ahubwo yarwanaga na Mupenzi Jean Bosco, naho we Karoko Ntwari Alphonse ashaka kumukubita, bituma atoragura ibuye ngo arimutere, rifata Habineza Bosco, kandi ibi ni

9 “Iyo gukubita cyangwa gukomeretsa byateye urupfu, igihano kiba igifungo kitari muni y'imyaka 10 ariko kitarenze imyaka 20 n'ihazabu itari muni ya 3.000.000 FRW ariko itarenze 5.000.000 Frw”.

11 Imvugo zabo batangabuhamya bombi zagarutsweho mu duce twa 25 na 26 tw'uru rubanza

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nako Mupenzi Jean Bosco nawe abigaragaza mu mvugo ye, bikaba rero bigaragaza ko nta myitwarire nyakwigendera yagize kuri uyu uburanisha ubusembure, yatumye amukubita icyo kibuye mu mutwe, ahubwo ibyo bikorwa bye bishimangira ko habayeho ubufatanyacyaha bw'abaregwa bombi mu cyaha cyakozwe kandi cyateye urupfu rw'umuntu. [43] Hashingiwe rero ku murongo wagaragajwe haruguru, ibivugwa na Uwiringiyimana Innocent ko Urukiko Rukuru rwakoze amakosa yo gudaha agaciro ubusembure yaburanishije, nta shingiro ifite. [44] Ku bijyanye no kuba hataratumijwe abatangabuhamya yifuzaga, birebewe hamwe n'umurongo wagenyweho mu gusubiza Mupenzi Jean Bosco<sup>12</sup> kuri iki kibazo no kuba nawe ntaho agaragaza ko yaba yarabisabye Urukiko Rukuru rukabimwangira, byumvikanisha ko atavuga ko ari inenge kandi ntabyo yasabye ngo babimwime, kubw'ibyo, Urukiko rw'Ubujurire rurasanga ibyo avuga, nta shingiro bifite. [45] Urukiko rw'Ubujurire rurasanga na none kuba abatangabuhamya bashingiweho bafitanye isano na nyakwigendera nabyo birebewe hamwe n'umurongo wagaragajwe haruguru<sup>137</sup>, atari inenge yatuma imvugo zabo zidahabwa agaciro, cyane cyane ku bijyanye n'ahabareye icyaha yazamuye muri ubu bujurire, nyamara atarigeze abigaragaza nk'ikibazo aho yaburanye hose. [46] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga ubujurire bwa Uwiringiyimana Innocent, nta shingiro bufite. 3.Kumenya niba inyito y'icyaha Mupenzi Jean Bosco na Uwiringiyimana Innocent bahamijwe ijyanye n'ibikorwa bakurikiranyweho [47] Me Mbituyimana Jean de Dieu, wunganira Mupenzi Jean Bosco, avuga ko n'ubwo uwo yunganira nta ruhare yagize mu cyaha aregwa, ariko harebwe ibikorwa akurikiranyweho na mugenzi we, harebwe igice cy'umubiri nyakwigendera yakubiswemo n'icyakoreshejwe, bagombaga gukurikiranwaho icyaha cy'ubwicanyi aho kuba gukubita no

gukomeretsa ku bushake byateye urupfu. [48] Me Bizimana Ndigija Seth, wunganira Uwiringiyimana Innocent, avuga ko Urukiko ku rwego urwo arirwo rwose rufite ububasha bwo guhuza ibikorwa n'inyito y'icyaha ikwiye. [49] Uhagarariye Ubushinjacyaha we avuga kuba umuntu atarahise apfa ako kanya abaregwa bakomeza gukurikiranwaho icyaha bahamijwe na mbere. UKO URUKIKO RUBIBONA [50] Harebwe igice cy'umubiri nyakwigendera yakubiswemo n'icyakoreshejwe akubitwa, impaka ziri muri iki kibazo ni ukumenya niba abaregwa bagombaga guhamwa n'icyaha cyo gukubita no gukomeretsa ku bushake byateye urupfu cyangwa icyaha cy'ubwicanyi.

13 " Ubuhamya bw'abantu butateshwa agaciro nuko bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga, ahubwo gashingiye k'ukuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya".

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[51] Nk'uko byemejwe mu rubanza RPAA 00001/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 6/5/2020, haburana Ubushinjacyaha na Kanani Eugène, ndetse n'uko abahanga mu mategeko babisobanuye, ubushake bwo kwica undi (volonté ou intention de donner la mort: intention homicide) bugaragazwa n'ikintu cyakoreshejwe gishobora kwica, aho cyakoreshejwe ku mubiri w'umuntu, ni ukuvuga mu cyico (partie vitale du corps humain), ndetse n'ihohoterwa rikabije ryakoreshejwe. [52] Nk'uko byagaragajwe haruguru, Mupenzi Jean Bosco yavuze ko Uwiringiyimana Innocent yakubise Habineza Bosco ibuye mu mutwe, ndetse n'uyu nawe niko abyemera kandi bishimangirwa n'imvugo z'abatangabuhamya hamwe na raporo ya muganga wemeje ko nyakwigendera yari yangiritse bikomeye mu mutwe kandi ko yari muri coma, byaje kurangira apfuye. [53] Urukiko rw'Ubujurire rurebeye hamwe ibimaze kugaragazwa haruguru byose, rurasanga ibikorwa abaregwa bakoze byo gufatanya guhohotera Habineza Bosco, nk'uko Mupenzi Jean Bosco yasobanuye ko yafatanye nawe bakarwana hanyuma Uwiringiyimana Innocent wari kumwe nawe, akamubita ikintu gishobora kwica (ibuye) mu mutwe (mu cyico), byumvikanisha icyaha kigomba kubahama ari ubwicanyi. [54] Hashingiwe ku byagaragajwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwatanzwe na Mupenzi Jean Bosco na Uwiringiyimana Innocent nta shingiro bufite, ariko urubanza ruhindutse ku birebana n'inyito y'icyaha nk'uko bigaragajwe haruguru, bakaba bahamwa n'icyaha cy'ubwicanyi, aho kuba icyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu, ariko kubera ko ku rwego rw'ubujurire Urukiko rudashobora kuzamura igihano cyabo mu gihe Ubushinjacyaha butakijuririye, igihano bahanishijwe cy'igifungo cy'imyaka cumi n'itanu (15) kigumyeho, ariko ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) bari bakatiwe ikaba ivuyeho. III. ICYEMEZO CY'URUKIKO [55] Rwemeje ko ubujurire bwatanzwe na Mupenzi Jean Bosco na Uwiringiyimana Innocent nta shingiro bufite. [56] Rwemeje ko urubanza RPA 00826/2020/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 29/11/2023 bajuririye, ruhindutse ku birebana n'inyito y'icyaha, bakaba bahamwa n'icyaha cy'ubwicanyi aho kuba icyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu.

14 “ L’intention homicide peut résulter: soit de l’arme employée, lorsque celle-ci a une puissance mortelle en elle-même, soit de l’endroit où le coup a été porté lorsque celui-ci est une partie vitale du corps humain, soit du degré de la violence ou de sa gravité”, Général LIKULIA BOLONGO, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P. 52. “.....l’intention sera censée exister lorsque l’agent a frappé sur une partie vitale du corps et avec une arme dangereuse.....”Jean Pradel et Michel Danti-Juan, Droit pénal spécial, droit commun-Droit des affaires, 4e édition, Cujas, Paris, 2007-2008, P. 35. “L’intention peut s’induire de la nature de l’arme ou du coup, de la région du corps frappée par l’agent.....”, Jean Larguier et Anne-Marie Larguier, Droit pénal spécial, 10e édition, Dalloz, Paris, 1998, P. 10.

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[57] Rwemeje ko igihano cy’igifungo cy’imyaka cumi n’itanu (15) Mupenzi Jean Bosco na Uwiringiyimana Innocent bahawe kigumyeho, ariko ihazabu y’amafaranga y’u Rwanda miliyoni eshanu (5.000.000 Frw) bari bahanishijwe ivuyeho. [58] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.

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