RWANDA / JUDGMENT

PROSECUTOR v.HABIMANA

RLR V.1-2018

COURT
Supreme Court

DECIDED
18 March 2016

CASE / FILE NUMBER
RPAA0321/10/CS

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Text

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THE PROSECUTION v HABIMANA [Rwanda THE SUPREME COURT – RPAA 0084/12/CS (Hatangimbabazi, PJ, Kalimunda and Gakwaya, J.) April 8, 2016] Criminal Law – Mitigating circumstances – Sincere guilty plea, being the first offender and the sake of the child of the defiled can serve as mitigating circumstance – Decree - Law n° 21/77 of 18/08/1977 instituting the penal code, article 21. Facts:. The accused was prosecuted before the former Tribunal of the First Instance of Kigali, for having defiled a young girl named D.B aged of 14 years and consequently, she have got pregnant. The accused pleaded not guilty but the court convicted him of the offence he was charged with and sentenced him to twenty (20) years of imprisonment. He was not satisfied with the decision and appealed against it in the High Court, pleading guilty, seeking forgiveness and requesting the penalty reduction but the court have dismissed his appeal and sustained the judgment appealed against. He lodged an appeal before the Supreme Court, requesting the penalty reduction basing on the fact that he was pleading guilty and seeking forgiveness. He explained that he pleaded guilty in the High Court but the Court disregarded it and omitted to reduce his penalty. The Prosecution contends that the High Court did not take into consideration the appeal lodged by the accused because he has exceeded the terms of mandate

pursuant the provisions of article 177 of the Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure that was into force at that time, but for the sake of the child, therefore, requesting to the court to valid his request so that the child could not be the victim of the mistakes made by his/her parents. Held: The fact that the accused's guilty plea is sincere, he sought forgiveness for the offence he committed, he is the first offender and for the sake of the child born to him and D.B, the victim, it can serve as mitigating circumstance in his favour making that the penalty inflicted to him by the previous courts be reduced, for him to be sentenced to thirteen (13) years of imprisonment instead of twenty (20) years. Appeal has merit. Judgment appealed against changes with regard to the penalty. Accused to be released because he served his sentence. Court fees charged to the public treasury. Statutes and statutory instruments referred to: Law N° 13/2004 of 17/5/2004 relating to the code of criminal procedure, article 177 Decree - Law N° 21/77 of 18/08/1977 instituting the penal code, articles 82 and 83. No case laws referred to.

Judgment

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I. THE BRIEF BACKGROUND OF THE CASE [1] The case started in the former Tribunal of the First Instance of Kigali, where the Prosecution was alleging against Habimana Xavier for having defiled a young girl named D.B aged of 14 years and consequently, she have got pregnant. Habimana Xavier pleaded not guilty. [2] On 29 July 2003, the court rendered the verdict of RP 41.056/Kig, convicted Habimana Xavier of the offence he was charged with and sentenced him to twenty (20) years of imprisonment. [3] Not satisfied with the decision, Habimana Xavier appealed against it in the High Court, pleading guilty, seeking forgiveness and requesting the penalty reduction. On 27 January 2011, the court ruled on RPA 0668/06/HC/KIG, the appealed lodged by Habimana Xavier was dismissed and sustained the judgment appealed against. [4] Habimana Xavier was not pleased with the decision and lodged an appeal before the Supreme Court, requesting the penalty reduction basing on the fact that he was pleading guilty and seeking forgiveness. He explained that he pleaded guilty in the High Court but the Court disregarded it and omitted to reduce his penalty. [5] The public hearing was held on 7 March 2016, Habimana Xavier was assisted by Counsel Kamanzi Tchuma, while the prosecution was represented by Munyaneza Nkwaya Eric, the National Prosecutor. II. ANALYSIS OF LEGAL ISSUES Weather the penalty inflicted to Habimana Xavier by the primary courts should be reduced [6] Habimana Xavier argues that he appealed in order to beg pardon, for the court to reduce his penalty. He explains that he pleaded guilty from the High Court, he sought mercy from D.B's family and he have got a child with D.B aged of 15 years now. He ended seeking pardon to the court so that he can be sentenced to thirteen (13) years imprisonment equivalent to the time he spent in prison, for him to join the child who is currently with her/his grandmother, because the mother left for Uganda for eight years now. [7] Counsel Kamanzi Tchuma declares that Habimana Xavier was sentenced to twenty (20) years of imprisonment by the Court of the first Instance of Kigali while he was pleading not guilty. However in the High Court where he pleaded guilty, the court omitted

to reduce his penalty. Therefore, pursuant to article 35 of the Law n° 30/2013 of 24/5/2013 relating to the criminal procedure, he is requesting to the court to reduce twenty (20) years of imprisonment inflicted to him up to the time spent in prison. [8] The Prosecution contends that the High Court did not take into consideration the appeal lodged by Habimana Xavier because he has exceeded the terms of mandate pursuant the provisions of article 177 of the Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure that was into force at that time, but for the sake of the child, therefore, requesting to

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the court to valid his request so that the child could not be the victim of the mistakes made by his/her parents. THE VIEW OF THE COURT [9] Article 82 of the Decree - Law nº 21/77 of 18/8/1977 instituting the penal code that was into force at the time the offence was committed provides "The judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence". [10] Article 83 of the Decree - Law nº 21/77 of 18/8/1977 mentioned above provides: "If there are mitigating circumstances, the reduction of penalties shall be as follows: a penalty of imprisonment of five (10) years to twenty five (20) years may be reduced up to a term of imprisonment of one (1) year". [11] The Supreme Court finds that as mentioned in paragraph 5 of the judgment rendered by the High Court, it omitted to reduce the penalty inflicted to Habimana Xavier because in his written statements, he had mentioned that the Court of the first Instance of Kigali disregarded exculpatory evidence he presented and convicted him, sentencing him to twenty years. However in he later on pleaded guilty in hearing and explained how he committed the offence. The court, relying on article 177 of the Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure that was into force at the time the offence was committed, indicated that his guilty plea does not reveal the mistake in the judgment appealed against as a ground of appeal but rather, it was the way to request the penalty reduction. [12] The Supreme Court finds that Habimana Xavier kept pleading guilty before this court and sought forgiveness, requesting the penalty reduction so that he may take care of the child born between him and D.B, the victim. Furthermore, the court finds that Habimana Xavier is the first offender. [13] The Supreme Court finds therefore that his guilty plea is sincere and sought forgiveness for the offence he committed, he is the first offender and for the sake of the child born to him and D.B, the victim, it can serve as mitigating circumstance in his favour making that the penalty inflicted to him by the previous courts be reduced, for him to be sentenced to thirteen (13) years of imprisonment instead of twenty (20) years. [14] The Supreme Court finds that Habimana Xavier was imprisoned on 15/10/2002 as mentioned in his temporarly arrest warrant, therefore, he must be immediately released because he has already served his sentence of thirteen (13) years inflicted to him by this court. III. THE DECISION OF THE COURT [15] Finds the appeal lodged by Habimana Xavier with merit; [16] Sentences Habimana Xavier to thirteen years (13) imprisonment instead of twenty (20) years inflicted to him by previous courts;

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[17] Orders his immediate release; [18] Orders that the court fees be charged to the public treasury.

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