

RWANDA / JUDGMENT

PROSECUTION v. KAMONYO

RPA0073/09/CS

COURT

Supreme Court

DECIDED

1 November 2013

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RPA0073/09/CS

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PROSECUTION v. KAMONYO

[Rwanda SUPREME COURT – 2013SC – RPA0073/09/CS (Kayitesi Rusera, P.J., Mukandamage and Rugabirwa, J.) November 1 2013]

Criminal Law – Effects of non respect of the right to defence to the judgment – Constitution of the Republic of Rwanda of 4 June 2000, article 18.

Criminal Law – Conspiracy that causes death – Mitigating circumstances based on good behaviours – Decree Law no21/77 of 18/8/1977 instituting the penal code, article 168

Facts: The appellant was charged with the offense against state security basing on that he acted with infiltrators. The High Court, Musanze Chamber ruled that the appellant is guilty of the offense against the state security and sentenced him to eight (8) years of imprisonment and explained that he benefited penalty reduction because of having admitted that he acted with infiltrators by preparing food for them. He appealed to the Supreme Court stating that the High Court disregarded that he admitted to have searched food for infiltrators, that his accusers did that due to fear and that he plead without legal counsel.

Held: 1. The right to defence is an absolute right at all levels and degrees of proceedings before administrative, judicial and all other decision making organs. The effects of not respecting this principle is that the taken decisions without respect of that right are nullified. Therefore, the fact that this right was violated to the appellant is a critic that results in that the appealed judgment must be nullified and this case be heard in first instance.

2. The fact that there are evidences proving that the appellant had great participation in the

activities of infiltrators by drafting lists of people who would be killed, betraying them by indicating their residences so that they may be killed while there is no evidence that he had duress, since there are other citizens who didn't involve in infiltrators' activities as he did. This is the offence of conspiracy that causes death.

3. The appellant must be sentenced to life imprisonment but due to the fact that it is not proven to the Court that the appellant had bad behaviours before he committed the offence, it can be mitigating circumstance for him and get sentenced to eight(8) years of imprisonment including those he spent in jail.

The appeal has merit on some issues.

The appealed judgment is quashed,

The appellant is guilty of the offence of conspiracy that caused death.

He is sentenced to eight(8) years of imprisonment including those he spent in jail.

The court fees are the account of the public purse

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Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 4 June 2000, article 18.
Decree Law no 21/77 of 18/8/1977 instituting the penal code, article 168

Cases referred to:

Prosecution v. Pte HABUFITE Vincent, RPA0043/09/CS rendered by the Supreme Court on 18 November, 2011.
Cour Européenne des droits de l'homme, arrêt du 04/11/2010 Kartrish c. France etc,...

JUDGMENT

I. BRIEF BACKGROUND OF THE CASE [1] Kamonyo was arrested by security organs suspected of being an accomplice of infiltrators (abacengezi). During his interrogations in the judicial police on 7th September, 1999, he denied to have been in relation with them but because of his protection, he only accepted to search foods for them. [2] After investigations, the Prosecution filed the case to the High Court, Musanze Chamber. It tried the judgment RP 0349/06/HC/MUS on 17th April, 2009 and ruled that Kamonyo is guilty of the offence the state security and sentenced him to eight (8) years explaining that he benefited the penalty reduction because he admitted that he was in relation with the infiltrators preparing food for them. [3] Kamonyo appealed to the Supreme Court stating that the High Court disregarded that he admitted that he had been in charge of searching food for infiltrators with intention of protecting himself, that his incriminators also did that due to fear and that he appeared in court without legal counsel. The hearing was fixed on 8th July, 2013. On that day, the case was postponed so that the Court summons him for unknown address, since the Court registry did not identify his domicile. [4] The hearing was postponed on 7th October, 2013. On that day, the case was publicly tried; Kamonyo being absent but having been duly summoned and this resulted in the fact that the counsel, Nyamunanage Atticus could not assist him, the prosecution was represented by Mutayoba Alphonse and the Court decided to try him in absentee. II. ANALYSIS OF THE LEGAL ISSUES OF THE CASE To know the impacts that the fact of having forced Kamonyo to plead without legal counsel while he requested to have the time of finding a legal counsel (advocate) but denied will

have to the judgment. [5] Kamonyo states that he requested to have the legal counsel since he felt sick but the Court enforced him to plead without legal counsel, and thus finds that it is a great critic which has to be considered for the decided judgment.

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[6] The prosecutor contends that the raised critic cannot be an issue of the court since he should have had the legal counsel in case of need. He added that the fact of not having had a legal counsel had no negative impact to him since he pleaded without any obstacle. [7] Article 18 par.3 of the Constitution of the Republic of Rwanda provides that “The right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs ». [8] The Court finds that in the hearing in the High Court on 26th March, 2009(mark 95), Kamonyo requested to have a legal counsel and the Court stated that it doesn't accept his request since he should have found the legal counsel before. [9] The Court therefore finds that ,even if there is specific law ordering that a party to the case must have a legal counsel in all levels,except in Supreme Court as provided in the Organic Law no03/2012/0L of 13/06/2012 regulating the organization, functioning and competence of the Supreme Court, right to defence is an absolute right of the party to the case in all cases he/ she finds it necessary as provided by the constitution in its article 18 abovementined.The effect of not respecting this principle is that the decisions taken with violation of this right are nullified.The fact that this right was violated for Kamonyo, it is a critic that results in that the appealed case is nullified and this Court tries this case in first instance. [10] This is also similar to the decision of the judgment RPA0043/09/CS rendered by the Supreme Court, where it ruled that the penalty of not respecting this principle provided by the Constitution is that the taken decisions are nullified1, and the Supreme Court nullified the judgment that had been rendered by the Military High Court since the defendant was tried without being given time to find a legal counsel, but rather forced to plead without legal counsel while the right to defence is an absolute right provided to him by the constitution in its article 18 abovementioned. Therefore, in taking this decision , the Court has reffered to the guideline taken in other case laws2. To know if there are incriminating evidences to Kamonyo Faustin for the offences he is charged with. [11] In the Court submissions of Kamonyo, he states that the Court disregarded that he admitted to have prepared food for infiltrators to save his life. He added that the Court did not pay attention to know if the testimonies of the incriminating witnesses were also protecting themselves due to being afraid. [12] He stated that the fact that he was forced to prepare food for the infiltrators should be an excuse of criminal responsibility as provided by article 70 of the penal code that was in force when the offense was committed. [13] The Prosecutor contends that he is not keen on the issue that Kamonyo who is absent prepared food for infiltrators but rather that the offense he was charged with is to help them in 1 2 Cour Europeenne des droits de l”homme , arret du 04/11/2010 Kartrish c.France,etc,...

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killing those called « cadres » of inkotanyi. The prosecutor contends that he is the one with infiltrators showing them the residences of those people, since they did not know these areas. [14] The prosecutor explained that the all interrogated witnesses stated that Kamonyo is the one who enrolled people and signed for those who were supposed to be killed; therefore, stating that those witnesses said so due to fear is not true since there is no reason to incriminate him while they also admitted that they collaborated with infiltrators. THE VIEW OF THE COURT [15] Article 168 of the penal code that was in force provides” Serial crime, massacre or looting shall be punishable by imprisonment of fifteen (15) years to twenty five (25) years Conspiracy to commit offences mentioned under Paragraph One of this Article shall be punishable by imprisonment of ten (10) years to fifteen (15) years if any act has been carried out in preparation for their execution, otherwise, it will be punishable by imprisonment of five(5) years to ten(10) years. If the attempt or conspiracy causes death, the offender shall be liable to death penalty. [16] The case file proves that in his interrogations in Judicial Police on 7th September, 1999, Kamonyo denied that he has been working with infiltrators but admitted that he was in charge of searching food for them to save his life so that he shouldn't be killed. In Prosecution, he was asked if he had ever worked for infiltrators and replied by stating “Yes, it is true”(mark 22) but denied that to have participated in the killing of the deceased but rather, he heard that there were people who had been killed. [17] In the testimonies found in the case file, different witnesses incriminated Kamonyo that he was very close to the infiltrators who killed people and stole of others, including Tuyishime Innocent who said that Kamonyo came with other three persons having a list of people who were supposed to be killed and added that one of his parents was also killed among those persons and looted his properties. The named Ntawigenga Edouard(mark 1 in Prosecution) stated that Kamonyo held meetings requesting them to join infiltrators and that they were co-authors of the killing of Nyirabyanze and Ndamiyehe who were betrayed by Kamonyo himself. The named Ngayaboshya (mark 4) stated that Kamonyo held meetings of finding foods for infiltrators. The named Ntawiringiyuwe P.Celestin(mark 8) stated that before the death of Munyawera, Kamonyo had told him that he was on the list of those who had to die. Rabiyo Alphonse(mark 12) stated that Nyirabyanze was killed during night and the killers had the order of Kamonyo's committee. [18] The Court finds that the statements of Kamonyo that his accusers were also saving their lives cannot be considered since he doesn't produce evidences proving that they were threatened or forced in prosecution or in judicial police. [19] The Court finds that the evidences found in the case file are made of the defendants' testimonies and those of the witnesses only, are beyond reasonable doubt that Kamonyo had greatly participated in the activities of the infiltrators such as drafting lists of those who had to be killed, conspiracy of their murder by leading infiltrators to the residences of those people to be killed while there is no evidence that there is were no duress upon him since there are other citizens who did not participate in the activities of infiltrators as he did it. Therefore, he is

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convicted of the offense of conspiracy that caused death that was punishable by death penalty but replaced by life imprisonment. [20] Therefore, the Court finds that Kamonyo must be punishable for this offense and be sentenced to life imprisonment. However, due to the fact that there are no bad behaviors that Kamonyo had before he committed this offense, this can be mitigating circumstance, therefore, he is sentenced to 8 years including those covered in jail. III. THE ORDER OF THE COURT [21] Rules that the appeal of Kamonyo Faustin has merit on some issues. [22] Rules that the appealed judgment RP 0349/06/HC/MUS rendered on 17th April, 2009 is quashed; [23] Rules that Kamonyo Faustin is guilty of the offence of conspiracy that caused death; [24] Rules that he is sentenced to eight (8) years of imprisonment including years spent in jail as explained. [25] Rules that the court fees are to the account of the public purse.

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