

RWANDA / JUDGMENT

PPROSECUTION v. UWAMURENGEYE**RLR V.1 - 2014****COURT**

Supreme Court

DECIDED

31 January 2014

CASE / FILE NUMBER

RPAA 0110/10/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-01-31
- Case/document no.: RPAA 0110/10/CS
- Collection: Supreme Court

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PROSECUTION v. UWAMURENGEYE [Rwanda SUPREME COURT- RPAA 0110/10/CS (Kayitesi Zainabo, P.J., Mukanyundo and Gakwaya, J.) January 31, 2014] Criminal Law – Parricide – Battery and bodily injuries to a parent in the deadly part resulting into death proves the intent to commit the offense of murder – Decree Law no21/77 of 18 August, 1977 instituting the penal code, article 314 – Organic Law no 02/2013/OL of 16/06/2013 modifying and complementing Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts as modified and complemented to date, article 10. Criminal Procedure – Reclassification of the offense – The right and duty of the judge to reclassify an offence in the appellate court – The competent court to try that case after nullification – The case starts in the competent court to try that offense in the first instance – Law no13/2004 of 17/05/2004 relating to the Code of Criminal Procedure, article 35. Facts: The defendant was charged with battery and bodily injuries against his mother which resulted in her death before the Intermediate Court of Rusizi that found him guilty, sentenced him to 10 years of imprisonment and fined him with 100.000 Rfw. He appealed to the High Court, Rusizi Chamber. During the trial, the Prosecution requested the Court to reclassify the offence to parricide, nullify the judgment rendered by the Intermediate Court, and

order that the trial starts at first instance in the High Court since it is the competent court. The High Court found that the appeal of the defendant lacked merit and rejected the prosecution's request stating that the prosecution did not appeal and that reclassifying the offence would result in an increase of the penalty. The prosecution appealed to the Supreme Court indicating that the committed offense is parricide instead of battery and bodily injuries and that the competent court is the High Court while Uwamurengeye denied to have had an intent to kill his mother. Held: 1. The fact that the medical report and the witnesses assert that the deceased died due to the injuries she sustained when she was beaten with a plank proves that there was an intent to murder

2. The reclassification of an offence is a right and duty of the judge. Therefore, the defendant must be prosecuted for parricide and the previous judgments must be nullified since they have been tried by incompetent courts, so that the case starts in the competent court.
3. Considering territorial jurisdiction, the Intermediate Court of Rusizi has jurisdiction to try the defendant for parricide at first instance. The appeal is granted. The qualification of the offence is parricide. Previous judgments are nullified;

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The case of parricide will commence in the Intermediate Court of Rusizi, With costs to the Public treasury. Statutes and statutory instruments referred to: Organic Law no 02/2013/OL of 16/06/2013 modifying and complementing Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts as modified and complemented to date, article 10; Law no 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 190, par.2 Decree Law no 21/77 of 18 August, 1977 instituting the book of penal code, article 314. Cases referred to: Prosecution v. Nyawera Celestin, RPAA 0033/11/CS, tried by the Supreme Court on 14th September, 2012 Prosecution v. Corporal Ngabonziza, RPAA 0117/07/CS, tried by the Supreme Court on 17th November, 2010.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] This case commenced in the Intermediate Court of Rusizi, Uwamurengeye Venant being charged with battery and bodily injuries against his mother which resulted into her death. The Court found him guilty, sentenced him to ten (10) years of imprisonment and a fine of 100.000 Rwf. [2] Unsatisfied with the decision, Uwamurengeye appealed to the High Court, Rusizi Chamber. During the trial, the Prosecution argued that Uwamurengeye's grounds of appeal are not valid. The Court should have reclassified the offence to parricide because the accused held a grudge against his mother basing on that she attempted to poison him. As a result, he beat her multiple times on the head with plank. The court should have nullified the judgment of the Intermediate Court of Rusizi so that the accused could be tried on parricide in the High Court which has jurisdiction. [3] Regarding on the appeal of Uwamurengeye, the Court found that the grounds of appeal for the first judgment were not valid and ruled that the judgment should be sustained. Relating to the prosecution's request, the Court

found that the prosecution had not appealed and that the reclassification of the offence would result in the increase of penalties. Therefore, per article 174 of Law no13/2004 of 17/05/2013 of the Code of Criminal Procedure, the court rejected the prosecution's request. [4] The prosecution appealed against the judgment to the Supreme Court. The trial was held on 23rd December, 2013. Uwamurengeye Venant was present and assisted by Umulisa Alice, the counsel, while the prosecution was represented by Ntawangundi Beatrice.

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II. ANALYSIS OF THE LEGAL ISSUE Whether the offence of which Uwamurengeye Venant was charged should be reclassified and its impacts [5] The representative of the prosecution argued that in the High Court, UWAMURENGEYE Venant was charged with battery and bodily injuries against his mother which resulted into her death. However, there is evidence that prior to killing his mother, he held a grudge against her because she attempted to poison him. In addition to this, he beat her twice on the deadly part of the head with a plank. These instances prove that he intended to kill her and that the offence committed is parricide and not battery and bodily injuries. The High Court has jurisdiction [6] The Prosecution also stated that even if they had not requested for the reclassification of the offence, it was the duty of the Judge on his own initiative to rule that the case should start in the High Court based on article 89 of the Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts. Therefore, the Supreme Court must rule that the case starts in the High Court, Rusizi Chamber. The representative of the Prosecution added that he is not stuck on this ground of appeal and that it is the Supreme Court's discretion to make a decision on this issue and that in case it finds that the accused had no intention to kill his mother, the Prosecution would have no objection. [7] Uwamurengeye stated that he never had the intent to kill his mother and that the case file contains evidence including statements by his father and siblings which indicate that he did not have a sour relationship with his mother in twenty five years he lived with his parents. He argues that he does not know what happened when he stated that his mother poisoned him and his siblings. Since he was closer to his mother in comparison to his siblings, and that he does not really know what caused him to beat her in a manner that resulted in her death. He states that he must have been insane during that period since he was not aware of what he was doing. He added that the statements of the Prosecution that he had a grudge against his mother because she poisoned him were groundless. Particularly, because it was based on the statements he made to judicial police when he was interrogated, after one week being in hospital where he was given sedative drugs due to mental defects that he suffered. He again explained that even if he is insane, and his father used to take him for treatment to the named André, he had no medical report since his siblings who should help him have hated him since the death of their mother. Concerning the issue of beating his mother on a deadly part of her head, he conceded for having beaten her with a plank on the head, but stated that he seeks forgiveness, and requests the court to release him so that he can go to reconcile with his family. [8] Umulisa, Uwamurengeye's Counsel, stated that there is evidence that proves that Uwamurengeye had a behavioral problem when he committed the offence. For instance, he intended to destroy his parent's house, suffered

from mutism, threw things in the toilet, fought, and when the police arrested him, they had to use a lot of force and injected him “Phenergan”, a sedative drug. The counsel added that they do not intend to exclude Uwamurengeye from the criminal liability, but rather to prove that he never intended to kill his mother. Umulisa added that his mother did not immediately die after being beaten, but died on the way to hospital. Therefore, this cannot be classified as parricide.

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THE VIEW OF THE COURT [9] Article 314 of Decree Law no 21/77 of 18/08/1977 instituting the Penal Code, which was in effect at the time the offence was committed, provides that “It’s qualified as parricide, the murder committed against his father or mother...” [10] Whereas, article 321 of Decree Law no 21/77 of 18/08/1977 provides that “If intentional assault and battery without an intent of killing has caused death, the accused will be sentenced to five(5) to ten(10) years of imprisonment and a fine less than ten thousands. He will be sentenced to ten (10) up to fifteen years of imprisonment in case he committed that with premeditation or ambush”. [11] The Court finds that, even if Uwamurengeye states that he killed his mother without intent because of his mental illness and that he had no conflicts with her, the fact that his siblings and his father asserted that he had a strange silence while his counsel stated that he committed that offence when he had exceptional behaviours such as: hitting others and destroying the house of his parents; it cannot have a basis in ruling that he committed the offence when he was insane, since they did not provide evidence proving that Uwamurengeye had mental illness when he committed that offence [12] The Court therefore finds that, based on the case file, Uwamurengeye Venant beat his mother Nyirabazungu Theresie with a plank on the head and she died as a result of these grave injuries upon her arrival at Bushenge Hospital (par.1), This is emphasized by the statements made by Hagenimana Fabien and Nyirabwimana Theopiste, his siblings asserting that the accused beat his mother with a plank on head which caused her injuries resulting in her death on the way to hospital. The medical report also confirms that Nyirabazungu Theresie died due to the plank she had undergone on the head (par.10). Therefore, there is no doubt that the cause of death of Nyirabazungu Theresie was the plank that she was beaten by her son Uwamurengeye Venant. Furthermore, the act of beating Nyirabazungu with the plank on a deadly part of her head proves his intention of committing the offence of murder. [13] Concerning the qualification of the offence, as it has been ruled by this Court in the case between the Prosecution and Nyawera Celestin, and in the case between the Prosecution and corporal Ngabonziza, reclassification of the offence is the right and duty of the Judge. The Court therefore finds that based upon the above explanations in article 314 of the Decree Law no 21/77 of 18/08/1977, also mentioned above, which was in force when the offence was committed, Uwamurengeye Venant must be charged with the offence of parricide. Therefore, the judgment RP.0149/08/TGI/RSZ tried by the Intermediate Court of Rusizi on 19th February, 2009 and the judgment RPA 0151/09/HC/RSZ tried by the High Court, Rusizi Chamber, in appellate court, are nullified because these courts had no jurisdiction considering the qualification of the offence. [14] Concerning the case of parricide, the Court finds that basing on article 190, paragraph 2 of the Law 30/2013 of 24/05/2013 relating to the Code of Criminal Procedure, which provides that

“The Court nullifying the decision subjected to appeal shall not retry the case on its merits. However, parties may again seize the court of first instance of the case if it is possible to correct mistakes made before”; this case must start in the competent Court.

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[15] Basing on article 10 of Organic Law no 02/2013/OL of 16/06/2013 which modifies and complements Organic Law n° 51/2008 of 09/09/2008 which determines the Organization, Functioning and Jurisdiction of Courts as modified and complemented to date and the territory where the offense was committed, the Court finds that the Intermediate Court of Rusizi has jurisdiction to try Uwamurengeye Venant on parricide at first instance. III. THE ORDER OF THE COURT [16] Rules that the prosecution’s appeal has merit. [17] Rules that the offence Uwamurengeye Venant committed should be classified as parricide rather than assault and battery resulting into death. [18] Orders that judgment RP.0149/08/TGI/RSZ rendered by the Intermediate Court of Rusizi on 19th February 2009 and judgment RPA 0151/09/HC/RSZ rendered by the High Court, Rusizi Chamber are nullified. [19] Orders that Uwamurengeye Venant’s trial for the offence of parricide, as charged by the prosecution, should commence in the Intermediate Court of Rusizi. [20] Rules that the court fees be allocated to the public purse.

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Prepared on 13 October 2026 · Esheria