

RWANDA / JUDGMENT

PROSECUTOR v. MBONIMPAYE

RPA 0193/12/CS

COURT

Supreme Court

DECIDED

22 July 2016

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Text

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PROSECUTOR v. MBONIMPAYE [Rwanda SUPREME COURT – RPA 0193/12/CS (Mukanyundo, PJ, Rugabirwa and Nyirandabaruta, J.) July 22, 2016] Evidence law – The burden of proof – Insanity – None can justify him/her self that he/she was insane when the offence was committed without proving it – Evidence Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 3. Damages – increasing damages previously granted – None can prevent damages to be increased when it is not adequate to the harm caused by offence – Civil Code Book III, article 258. Facts: The accused was accused before the High Court, chamber of Nyanza, where the Prosecution was alleging that he murdered Minani Daniel of 16 years old, by drowning him into Mwongo River. The court found him guilty of murder and sentenced him to life imprisonment, ordering him to pay 500.000 Frw of moral damages and 78.000Frw of procedure fees to the civil party Niyonagira Euphrasie, all totalling 578.000 Frw. He appealed against the judgment in the Supreme Court, stating that the heavy penalty inflicted to him should be reduced because he committed the offence due to the fact that he was insane. The Prosecutor contends that the penalty inflicted to Mbonimpaye cannot be reduced because he does not plead guilty and seek forgiveness, because he pretends to have committed it being under influence of insanity while it

is wrong as long as he did not prove it with medical certificate confirming that he was insane before 28 January 2011, before he commits offence, the fact that he was never medically consulted for that issue by a recognised doctor prove that he was sane while he committed the offence, that he deliberately committed it. Held: 1. Analysed evidence available in the case file prove that the accused was sane when he committed the offence, therefore, his statements that he committed the offence due to insanity lacks merit because it intends to escape the criminal liability. This implies that it is not necessary to conduct further investigation as he requests nor order that he be consulted by medical physicians to prove that he was insane. Therefore, he must be convicted for the murder he committed.

2. Damages granted to the civil party are very few comparing to the harm caused by unexpected and atrocious murder committed against her child, whose the corpse was never found to be inhumed. They are to be increased. Appeal granted. Accused acquitted and immediate release ordered. Court fees charged to the public treasury. Statutes and statutory instruments referred to: Law N° 15/2004 of 12/06/2004 relating to evidence and its production, articles 3, 65 and 119

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Decree - Law N° 21/77 of 18/08/1977 instituting the penal code, article 311 Case laws referred to: RPA 0125/07/CS rendered on 02/07/2010, Prosecutor vs Nyirahabimana Eliyada et al. RPA 0134/07/CS rendered on 29/08/2008, Prosecutor vs Uwimana Faustin et al. RPA 0144/05/CS rendered on 25/08/2006, Prosecutor vs Ntawumenyumunsi Drocella et al. Doctrine: Droit Pénal Spécial, 4 ème Edition, Edition Cujas, Paris, 2006, p.34-35.p

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] The case started in the High Court, chamber of Nyanza, where the Prosecution was alleging against Mbonimpaye Nicodème, for having murdered Minani Daniel of 16 years old, by drowning him into Mwongo River on 28 January 2011, around 2H00PM. The prosecution explains that Mbonimpaye Nicodème found kids called Nshimiyimana Régis, Ndagijimana Pacifique and Minani Daniel, and they lough at him because he was about to swim naked, what led him to cross the river and joined them at the other side, he started beat Nshimiyimana Régis, and then Minani Daniel who was the oldest of them asked him why he was beating their friend, Mbonimpaye Nicodème stopped beating Nshimiyimana Régis and caught Minani Daniel, tied his neck and arms and drowned him into the river and his corpse was never found. [2] The court rendered the verdict n° RP 0019/11/HC/NYA on 27 July 2012, found Mbonimpaye Nicodème guilty of murder and sentenced him to life imprisonment, ordering him to pay 500.000 Frw of moral damages and 78.000Frw of procedure fees to the civil party Niyonagira Euphrasie, all totalling 578.000 Frw. [3] Mbonimpaye Nicodème appealed against the judgment in the Suoreme Court, stating that the heavy penalty inflicted to him should be reduced because he committed the offence due to the fact that he was insane. [4] The case was held in public on 20 June 2016, where Mbonimpaye Nicodème was assisted by Counsel Mukandera

Clotilde, while the civil party, Niyonagira Euphrasie, was assisted by Counsel Mukarusine Agnès. The Prosecution was represented Ntawangundi Béatrice, the National Prosecutor. II. ANALYSIS OF LEGAL ISSUES:

1. Whether Mbonimpaye Nicodème should not be held criminal responsible because he was insane at the time he committed the offence.

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- [5] Mbonimpaye Nicodème argues that the Supreme Court should reduce the heavy penalty inflicted by the High Court, chamber of Nyanza, because he committed the offence being insane. He explains that on 28 January 2011, the day before he commits the offence, he burnt the staffs belonging to his wife, which made people to tie him until he ripped it off. He kept on explaining that they run after him in order to tie him again so that he may broke anything, but he killed the kid while he only wanted to escape those who were chasing him. [6] He further states that he does not have medical certificate proving that he was insane because he was consulted by traditional curer, and he is responding adequately to questions before the Court because he is cured. He adds that if the Court should have conducted investigations to his parents, his siblings, his wife and people living in the same village as him, they would confirm that he was insane because he sometimes ran away and disappeared. [7] Counsel Mukandera Clotilde assisting him argues that Mbonimpaye Nicodème committed the offence under influence of insanity because he used to run away and disappeared, that he was never consulted by the medical recognised by the State, because he was not insane at that time, but in case the court would doubt on that, it should order his consultation by State physicians, because his sickness confuse people, as sometimes he looks like a normal person and other times, he is insane. She keeps on stating that when Mbonimpaye Nicodème was interrogated during pre- trial phase, he sometimes recognised that he was insane and other times denied it, thus his answer on the matter depends on his mental state. [8] She further states that in case the Supreme Court conducted investigations to interrogate witnesses such as Renzaho Tharcisse, Ndabashimiye Gérard, Niyonsaba Cécilia, her wife as he committed offence a year after his wedding, Bayingana, Nsengiyumva Matiyasi and Athanase A.K.A Mbwigire, they would confirm that Mbonimpaye Nicodème committed the offence after breaking cord with which he was tied up. He adds that those witnesses never knew about his judgment, because they would appear to testify. [9] The Prosecutor contends that the penalty inflicted to Mbonimpaye cannot be reduced because he does not plead guilty and seek forgiveness, because he pretends to have committed it being under influence of insanity while it is wrong as long as he did not prove it with medical certificate confirming that he was insane before 28 January 2011, before he commits offence, the fact that he was never medically consulted for that issue by a recognised doctor prove that he was sane while he committed the offence, that he deliberately committed it due to the rage caused by the fact that those kids were laughing at him because he was about to swim naked, stating that even doctors can prove that he is still insane does have any sense in this case as he was sane when he committed the offence. [10]

He emphasises that another proof that Mbonimpaye was sane when he committed the offence is that before the Judicial Police, he explained well how the offence was committed, stating that he did not commit the offence because the deceased was drowned because he touched and scared him, and affirmed that he had tied him before drowning him. However, an insane person cannot remember all he did.

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[11] He further urges that another ground that could prevent Mbonimpaye's penalty reduction is the high cruelty in which he committed the offence and grave consequences it had on victim's family, because till then, the corpse was never found. He adds that the Supreme Court should conduct any further investigation as requested by Nicodème and his counsel because it is not up to population to decide whether a person is mentally disabled or not, but rather, recognized medical doctors. [12] Counsel Mukarusine Agnès, assisting Niyonagira Euphrasie, the deceased mother appearing as the civil party, states that when Mbonimpaye killed Minani Daniel drawing him into a river, was not mentally disabled as he emphasizes because nothing proves that he has been consulted by doctors before he commits offence, but rather, evidence prove that he was sane, namely, the fact that when kids laughed at him when he was about to swim naked, he got angry, and that anger cannot be caused by mental illness, the fact that after he commits the offence, people who came for rescue found him hid in papyrus, the fact that when he was interrogated before the Judicial Police, he said the lies that the kid escaped him and fell into the river, the fact that he was not legally assisted at the first instance and managed to answer all questions as a normal person and the fact that he was freshly married. [13] She rather states that the reason why Mbonimpaye pleads not guilty is to escape consequences resulting from his offence and the penalty inflicted to him, while he should have pleaded guilty and sought forgiveness instead of complicating things and requesting to be medically checked while he is sane. The view of the Court [14] With regard to murder, article 311 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, provides that "Murder is intentional killing of a person" [15] With regard to the intent to kill, Law scholars namely Jean Pradel and Michel Danti- Juan, in their publication "Droit Pénal Spécial", they explain that the intent to kill is one of the elements constituting murder. Furthermore, there are some case laws, where judges proved that the intent to kill can be demonstrated by the circumstance in which the offence was committed, like the fact that the accused was aware that his/her act could kill a person, and that the murder could be committed¹. [16] Regarding evidence in criminal cases, article 119 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production states that: « In criminal cases, evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments», while article 65 of the same Law provides " Only the court can 1 « L'élément intentionnel du meurtre consiste dans la volonté de causer la mort (animus necandi). Aussi les juges vont-ils déduire cette intention des circonstances (...). La connaissance de l'effet mortel d'un acte volontaire vaut intention de tuer. Pour la

jurisprudence, l'intention résulte non seulement de la volonté d'obtenir le résultat, mais aussi de la connaissance quasi certaine du résultat », par Jean Pradel et Michel Danti-Juan, "Droit Pénal Spécial, 4 ème Edition, Edition Cujas, Paris, 2006, p.34-35.p

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assesses the relevance, pertinence and admissibility or rejection of testimonial evidence....». As for article 3 of the same Law provides that "Each party has the burden of proving the facts it alleges". [17] The case file proves that before this court, Mbonimpaye Nicodème admitted to have killed Minani Daniel drowning him to Mwogo River, but he stated that he had no intent to kill him, but it was due to the mental disorder he was suffering. He said that this is proved by the fact before he committed the offence has burnt staffs belonging to her wife, and that he committed the offence when he was running from people who wanted to catch him in order to tie him so that he stops to break things. [18] Basing to article 3 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production, the court finds that the statements made by Mbonimpaye Nicodème that he killed Minani Daniel due to the fact that he was insane is without merit, because he does not prove it with medical nor administrative certificate proving that he was insane when he committed the offence. [19] The court finds that another proof that Mbonimpaye Nicodème was sane when he committed the offence, is that during pre-trial phase as before the courts where he appeared, his parents, his brothers, his wife, local administration or people of his village did never discharge him. [20] The court finds rather that evidence proving that Mbonimpaye Nicodème was sane when he committed murder, meaning that he deliberately committed it are follow: In the statement made in the Judicial Police and the Prosecution on 31 January 2011 and 3 February 2011, Mbonimpaye Nicodème was denying to have committed the offence being influenced by insanity but rather, stated that others considered him as insane because of conflicts he had with his wife. Immediately after committing the offence, Mbonimpaye went to hide his in the papyrus when Nshimiyimana Régis and Ndagijimana Pacifique were calling for help saying that he killed his fellow by drowning him into a river. It is even where people who came for help found him as attested by Ndagijimana Pacifique of 14 years old who was with the deceased at that time. It is also confirmed by a witness called Ndagijimana Joël in the statement they both made in the Judicial Police on 1 February

2011. However, an insane cannot hide after committing the offence because he would not be conscientious, and it is because an insane cannot control his acts that he is not liable pursuant to article 70 of Decree - Law n° 21/77 of 18/08/1977 mentioned above, providing that there is no criminal liability for an insane². In his statements mentioned above, Mbonimpaye Nicodème admits that he reached at the river and found kids who were swimming and that he touched one of those kids who drowned. Furthermore, Ndagijimana Pacifique (C 11-C12) accuses him to have 2 Article 70 of Decree - Lw n° 21/77 of 18/08/1977 instituting the penal code that was into force at the time the offence was committed provides that " There is no criminal liability for an accused who was insane when committing an offence(...)".

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tied Minani Daniel to the neck with the cord that he was holding when he came for swimming, and Mbonimpaye admitted in the Judicial Police (C 17) that he was holding a cord when he committed the offence. The fact that he remember every single detail of what happened proves that he was sane when he committed the offence. Mbonimpaye Nicodème was vexed that kids including the deceased laughed at him when he was about to swim being naked, that is why he crossed the river to beat them and it is when he drowned the deceased into the river as testified by witnesses namely Ndagijimana Pacifique (C11-C12) and confirmed by Ndagijimana Joël (C 13-C14) and Niyibaho Jeannette (C10), another proof that Mbonimpaye was sane when he committed the offence because otherwise he would not be vexed of the fact that they laughed at him because he was naked, as he would even not notice that he was naked. Mbonimpaye Nicodème committed the offence one year after his wedding as his counsel stated it and confirmed by a witness named Niyibaho Jeannette, proving once again that the accused was not insane because no girl would have accepted to marry a person proved to be insane. Report issued on 30 January 2011 by the Executive Secretary of Kadhoo cell accuses Mbonimpaye Nicodème that he tied Minani Daniel at the neck and drowned him into a river and that he was transferred to the police station of Cyabakamyi Sector so that he may be prosecuted for that. This report proves that the accused was sane when he committed the offence because in otherwise, the Executive Secretary would have inserted it in his report. [21] The court finds that analysed evidence as mentioned above available in the case file prove that Mbonimpaye Nicodème was sane when he committed the offence, therefore, his statements that he committed the offence due to insanity lacks merit because it intends to escape the criminal liability. This implies that it is not necessary to conduct further investigation as he requests nor order that he be consulted by medical physicians to prove that he was insane. Therefore, he must be convicted for the murder he committed.

2. Whether the cross appeal filed by Niyonagira Euphrasie, the civil party, has merit. [22] The counsel for Niyonagira Euphrasie, the civil party, states that basing on article 258 of the civil code book III, providing that any person who causes damage to another shall repair, Mbonimpaye Nicodème must pay her 3.000.000 Frw of moral damages instead of 500.000 Frw granted to her before, because they are few considering the cruelty in which he killed his child, by drowning him into a river and that the sorrow he caused to his family never ceased, as the corpse was never found until now. He also states that damages must be added to 78.000 Frw of procedural fees granted to her in the first instance, to make the total of 3.078.000 Frw. [23] Mbonimpaye Nicodème and his counsel argue that Niyonagira Euphrasie should remain with damages granted to her at the first instance in case the court finds him guilty. The view of the court

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[24] Article 258 of the civil code book III provides that “Any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it. [25] Based on the above mentioned article, the court finds 500.000Frw of moral damages granted to Niyonagira Euphrasie by the High Court, Nyanza chamber, very few comparing to the harm caused by unexpected and atrocious murder committed against her child, whose the corpse was never found to be inhumed. Therefore, she is granted of two millions Rwandan francs (2.000.000 Frw)³ of moral damages in the court discretion because she requests excessive. [26] The court finds further that the above mentioned damages are to be added to 78.000Frw of procedural fees granted to her in the first instance, the total is 2.078.000Frw. III. THE DECISION OF THE COURT [27] Finds the appeal lodges by Mbonimpaye Nicodème with merit. [28] Sustains the judgment n° RP 0019/11/HC/NYA rendered by the High Court, chamber of Nyanza, on 27 July 2012, a part from moral damages. [29] Orders Mbonimpaye Nicodème to pay 2.078.000Frw of moral damages and procedural fees to Niyonagira Euphrasie. [30] Orders that the court fees be paid to the State as the accused is in jail. 3 In many case laws rendered by this court namely judgment RPA 0125/07/CS rendered on 02/07/2010, Prosecutor vs Nyirahabimana Eliyada et al., RPA 0134/07/CS rendered on 29/08/2008, Prosecutor vs Uwimana Faustin et al., RPA 0144/05/CS rendered on 25/08/2006, Prosecutor vs Ntawumenyumunsi Drocella et al, it was decided that the damages granted in the first instance were very few comparing to the harm caused to the civil party and it was increased.

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