

RWANDA / JUDGMENT

PROSECUTION v. HAGUMIRAGIRA

RPA 0223/09/CS

COURT

Supreme Court

DECIDED

2 November 2013

CASE / FILE NUMBER

RPA 0223/09/CS

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Text

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THE PROSECUTOR v. HAGUMIRAGIRA [Rwanda SUPREME COURT – 2013SC – RPA 0223/09/CS (Kayitesi PJ.. Hatangimbabazi and Munyangeri J) November 2, 2013] Criminal Procedure law – Collection of incriminating and/or exculpatory evidence – Benefit of the doubt to the accused – Law N° 30/2013 of 24/5/2013 relating to the code of Criminal Procedure, as amended to date in its articles: 5, 19 and 165. Facts: The High Court acquitted the accused for aggravated assault and battery, theft by housebreaking and attempted murder. The Public Prosecution appealed to the Supreme Court but in the course of the trial changed their position by recanting that there is doubt on the incriminating evidences produced against the accused since they failed to interrogate the exculpating witnesses stated by the accused. Held: While the Prosecution itself states that it merely focused on incriminating witnesses against the accused. It failed to examine exculpating evidence comprised of statements made by witnesses, it should be upheld, like it is stated by the its Representative, that there is doubt on the fact that the accused has committed the offences he is charged of, and thus the fact that the doubt benefit the accused, he should be again declared innocent. Appeal dismissed. The court decision of the precedent court upheld. The court fees are charged to the public treasury. Statutes and stator instruments referred to: Law

n° 13/2004 of 17/5/2004 Relating to the code of Criminal Procedure, article 5 and 19. Decree Law n° 21/77 of August 18, 1977 instituting the penal Code, articles 21, 22, 24,312 and 400. No case law referred to.

Judgment

BRIEF BACKGROUND OF THE CASE [1] The case originated in the High Court. The Prosecution was charging Hagumiragira Narcisse with aggravated battery, aggravated assault and battery, theft by housebreaking and attempted murder committed against Kabagina and her daughter on May 5, 2008 [2] The Court delivered its verdict on 31/07/2009 and ruled that he was acquitted of the allegations against him and thus ordered that he won the case.

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[3] The Prosecution appealed against the judgment to the Supreme Court contesting in its submissions that, the High Court disregarded the produced incriminating evidence proving that Hagumiragira was responsible for the charges against him. [4] The hearing started on September 9, 2013. Hagumiragira was assisted by Simbizi, the counsel while the prosecution was represented by Mutayoba Alphonse. THE LEGAL ISSUE OF THE CASE AND ITS ANALYSIS. To know whether or not there is evidence beyond reasonable doubt proving that HAGUMIRAGIRA is guilty. [5] In its appeal submissions, the Prosecution contends that the High Court acquitted Hagumiragira Narcisse of the offence he was prosecuted for. Those offences are as listed : aggravated battery aggravated assault and battery, theft by housebreaking and attemptedmurder committed against Kabagina and her daughter. Thre Court disregarded the evidence producedincluding different witnesses statements testifying that he has committed offences he is accused of. [6] However in the course of this trial, the Representative of the Prosecution states that even though they have filed an appeal there is doubt regarding the offences they are prosecuting Hagumiragira because in his defence he proved that he was in conflicts with his relatives and that there were witnesses who exculpate him yet not interrogated so as to know whether or not he went with those who ran to save Kabagina and her daughter to prove that he participated in the attack directed against Kabagina's house. [7] The Representative of the Prosecution requested the Court to uphold the judgment appealed against for Hagumiragira to remain acquitted since the doubt benefits the accused. [8] Hagumiragira and his defence counsel uphold the request of the Prosecution and add that the fact that the Prosecution exculpates him proves that it stands for the whole community and hence it was required to interrogate all persons who rushed with Hagumiragira to save Kabagina and her daudghter without solely focusing on those from Kabagina's relatives. They argue that the fact that this has not been done brings about doubt for the allegations against Hagumiragira, Thus he should be acquitted, based on article 165 of the Law n° 30/2013 of 24/5/2013 relating to the Code of Criminal procedure. [9] As the case file indicates when Hagumiragira initially appeared before the Judicial Police Organs suspspected to have committed the aforementioned offences, he announced that he was falsely incriminated for having cooperated in the attack directed against Kabagina.He

states that he rushed with other neighbors who came for Kabagina's rescue. He listed the names of those persons together with whom he substantially cooperated in rescue including Munyambonera, Jerimani, Nibamwe, Sipiriyani, Inosenti, and the one named Angélique, Sezibera, Mekanika, Sadamu and some others. He asked for all of them to be interrogated in order to prove whether or not he cooperated with others to rescue Kabagina as she was attacked. This was not done until he was tried in the High Court. Also, the Prosecution only indicted him basing on the statements made by people he declared he was in socio-familial conflicts.

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[10] Article 5 and 19 of the Law n° 30/2013 of 24/5/2013 relating to the code of Criminal Procedure as amended to date indicates the manner in which criminal investigation is carried out for the offences against someone who is being suspected to have committed them whereby they indicate that incriminating and exculpatory evidences should be collected¹. [11] The Court notes that since the Prosecution admits it focused only on persons incriminating Hagumiragira without examining also the exculpating evidence made of statements made by witnesses mentioned above who saw him rushing to rescue Kabagina. Therefore it should be affirmed that there is doubt on whether or not Hagumiragira committed the offences he is prosecuted for as the prosecution states. Hence basing on article 153 of the Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure which states that the doubt benefits the accused, Hagumiragira should be acquitted again. THE DECISION OF THE COURT [12] Holds that the appeal of Prosecution is without merit. [13] Holds that he remains acquitted of the offences he is charged of.. [14] Holds that the decision of the High Court remains in force. [15] Orders the court fees to be charged to public treasury. 1 Article 5 : An investigative measure refers to all actions which are meant to search for offences, to collect evidence whether for the prosecution or the defense, as well as those of examining whether to prosecute the accused for trial or not. Article 19 : The Judicial police is responsible for investigation of crimes, receiving complaints and documents relating to the offences, gathering evidence for the prosecution and defense and, searching for perpetrators of the crimes, their accomplices and accessories so that they can be prosecuted by the Prosecution.

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