

RWANDA / JUDGMENT

PROSECUTOR v. URAYENEZA

RPAA 0178/11/CS

COURT

Supreme Court

DECIDED

15 April 2016

CASE / FILE NUMBER

RPAA 0178/11/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-15
- Case/document no.: RPAA 0178/11/CS
- Collection: Supreme Court

Text

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THE PROSECUTION v. URAYENEZA [Rwanda SUPREME COURT – RPAA 0178/11/CS (Hatangimbabazi, PJ, Kalimunda and Gatete, J.) April 15, 2016] Criminal Procedure Law – Provisional release before the case on merit – When the accused is held in provisional detention before the court is seized to hear the case on its merits, his/her status remains the same until the judgement on merit – Law no 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 121. Criminal Procedure Law – Doubt – it favors the accused – Law no 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 165. Facts:. The Prosecution alleged against the accused in the Intermediate Court of Nyarugenge, where for the having stolen two thousand dollar (2.000 USD) from Nikobisanzwe André after housebreaking. The court found that he contradicted himself while there are evidences incriminating him. The court found him guilty and sentenced him to ten years (10) imprisonment. Not pleased with the decision, he appealed against in in the High Court, stating that the Court convicted him basing on the contradicting testimonies. The High Court found that his appeal was without merit and maintained the judgment appealed against. He appealed against the decision in the Supreme Court, stating that the High Court disregarded his request of conducting investigation to the place where the offence

was committed, and ruled on the case basing on the contradicting testimonies which led it to convict him of the offence he did not commit. The pre-screening judge found that he had exhausted the time limit for appeal and rejected his appeal. He appealed against the decision stating that he delayed to file his appeal due to measles epidemic that was sweeping through Nyarugenge prison and prisoners were quarantined. In the judgment rendered on 15 January 2016, the court found that the fact that measles epidemic swept through the prison was a strong reason to prevent him to file his appeal within the time limit provided for by the Law and the court admitted his appeal. The Prosecutor contends that the case file have matters in question such as to know why such amount of money of two thousand dollars can be kept in an envelope in a room where builders are working, the fact that there is no proof so far of its existence, and the fact that Urayeneza Francois-Xavier is accused of having looked into the envelop supposed to be the one containing the dollars while it does not explain that he is the one who stolen it. Therefore, all of those issues prove the doubt on evidence based on to incriminate him of the theft committed by housebreaking. Held: 1. When the accused is held in provisional detention before the court is seized to hear the case on its merits, his/her status remains the same until judgement on merit.

2. There is doubt on evidence based on to incriminate Urayeneza François Xavier of theft committed by housebreaking, therefore, it must play in his favor so that he can be acquitted. Appeal has merit. Accused acquitted and immediate release ordered. Appealed judgment overturned. Court fees charged to the public treasury.

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Statutes and statutory instruments referred to: Law no 30/2013 of 24/05/2013 relating to the code of criminal procedure, articles 121 and 165. Case laws referred to: RPA 0043/09/CS the Prosecution vs Pte Habufite Vincent, rendered by the Supreme Court on 18 November 2011, paragraph 20.

Judgment

I. THE BRIEF BACKGROUND OF THE CASE [1] The case started in the Intermediate Court of Nyarugenge, where the Prosecution was alleging against Urayeneza François-Xavier for the having stolen two thousand dollar (2.000 USD) from Nikobisanzwe André after housebreaking. [2] In the case RP 0444/08/TGI/NYGE rendered on 27 April 2009, the court found that Urayeneza François-Xavier contradicted himself while there are evidences incriminating him. The court found him guilty and sentenced him to ten years (10) imprisonment. [3] Urayeneza François-Xavier was not pleased with the decision and appealed against in in the High Court, stating that the Court convicted him basing on the contradicting testimonies. In the judgment RPA 0556/09/HC/KIG rendered on 02 September 2010, the High Court found that his appeal was without merit and maintained the judgment appealed against. [4] Urayeneza Francois-Xavier appealed against the decision in the Supreme Court, stating that the High Court disregarded his request of conducting investigation to the place where the offence was committed, and ruled on the case

basing on the contradicting testimonies which led it to convict him of the offence he did not commit. The pre-screening judge found that he had exhausted the time limit for appeal and rejected his appeal. [5] Urayeneza François-Xavier appealed against the decision stating that he delayed to file his appeal due to measles epidemic that was sweeping through Nyarugenge prison and prisoners were quarantined. In the judgment rendered on 15 January 2016, the court found that the fact that measles epidemic swept through the prison was a strong reason to prevent him to file his appeal within the time limit provided for by the Law and the court admitted his appeal. [6] The public hearing was held on 14 March 2016, Urayeneza François-Xavier was present and assisted by Counsel Umugwaneza Claudine while the Prosecution was represented by Habineza Jean Damascène, the National Prosecutor. [7] At the start of the hearing, the Counsel for Urayeneza François Xavier requested to be provisionally released before the case on merit be pronounced because the time he passed in prison exceed the maximum of the time provided by the new Rwandan penal code for the offence he is charged with. II. ANALYSIS OF LEGAL ISSUES

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II.1. Whether Urayeneza François-Xavier should be provisionally released before the final judgment. [8] Umugwaneza Claudine, states that article 301 of Organic – Law No 01/2012/OL of 02/05/2012 instituting the penal code into force provides four years of imprisonment as maximum penalty for the theft committed by housebreaking accused to Urayeneza Francois-Xavier, while article 400 of the Decree – Law No 21/77 of 18/08/1977 instituting the penal code that was into force at the time was committed provides ten (10) years of imprisonment, implying that the new law provides for the lesser penalty. Urayeneza Francois-Xavier served seven years imprisonment meaning that he has already served even the maximum penalty, requesting that he may be provisionally released before the judgment of the case on merit pursuant to article 121 of the Law No 30/2013 of 24/05/2013 relating to the code of criminal procedure. [9] The representative of the Prosecution contends that the time for the provisional release has elapsed, that the case is onmerit now, implying that there is now way to come back to the provisional release of Urayeneza François-Xavier. THE VIEW OF THE COURT [10] Article 121, paragraph 1 of the Law no 30/2013 of 24/05/2013 relating to the code of criminal procedure provides « If the accused is held in provisional detention or granted provisional release before the court is seized to hear the case on its merits, his/her status remains the same until judgement.» [11] The case file shows that Urayeneza François-Xavier has first served provisional imprisonment and the decision of the Judicial Police was changed with the decision of the Prosecution before he was brought before the Court (Quote 12 and 14). The Intermediate Court of Nyarugenge, which received this case at first, decided that the case n° RP 0444/08/TGI/NYGE that was tried on 27/04/2009, and that Urayeneza Francois- Xavier is declared guilty of sneaked into theft and then the Court sentenced him with the imprisonment of ten (10) years (Qoutes 27-30). This judgement was maintained by the decision of the High Court in the case no RPA 0556/09/HC/KIG tried on 02/09/2010. [12] The Court finds that Urayeneza François-Xavier was detained by basing on the decisions of the Courts, and then those courts found that he was guilty of sneaked into theft, and then punished him with ten (10) years of imprisonment. The fact that after decisions of those

courts the new law that diminishes the penalty against the crime of which Urayeneza François-Xavier is guilty was published cannot help declaring that the punishment given to him be confusingly considered as the provisional imprisonment, rather the fact that the new Law is in his favour should be evaluated as the grounds for the appeal, even the Court that received his appeal should find that he is guilty of the crime of which he is charged, his statement that the new Law that is in his favour should be valued while deciding on the reasonable punishment to be given to him in relation to the crime he committed, thus the statement of Umugwaneza Claudine, the Counsel, that Urayeneza François-Xavier should be given provisional imprisonment is without merit. [13] The court finds the fact that the accused is held in provisional detention before the court is seized to hear the case on its merits, his/her status remains the same until judgement meet the case law rendered by this court, the Prosecution vs Private Habufite Vincent, emphasizing that the provisional release requested by Urayeneza Francois-Xavier's counsel lacks merit.

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II.2. Weather there are strong evidence incriminating Urayeneza François Xavier of the theft by housebreaking he is charged with. [14] Urayeneza François-Xavier states that he was declared guilty of theft without evidences since there is no written document of seizure proving the sum of dollars which he is accused of stealing, that the cupboard likely to contain them sneaked into was not showed before the Judicial Police, and he was not even caught up with keys that he might have used opening the said cupboard, more to that, no written statement of those who reported to have eyed him stealing the money so that it should be known whether they eyed him stealing the money, thus he requests the Court to clairvoyantly analyze evidences in the case file and then release him. [15] Umugwaneza Claudine, the Counsel, states that there was no theft as Urayeneza François-Xavier only went to construction site «chantier» with purpose to repair the damaged iron sheets, and not to steal the dollars in the cupboard. The fact that the cupboard was was neither broken down nor opened, it is clear that the dollars were not stolen, rather Nikobisanzwe André who filed the case forged the theft, hence this Court should declare that there are no evidences proving Urayeneza François-Xavier guilty of the crime of which he is accused, and then be declared innocent by basing on article 165 of the Law no 30/2013 of 24/05/2013 relating to the code of criminal procedures. [16] The Prosecutor contends that the case file have matters in question such as to know why such amount of money of two thousand dollars can be kept in an envelope in a room where builders are working, the fact that there is no proof so far of its existence, and the fact that Urayeneza Francois-Xavier is accused of having looked into the envelop supposed to be the one containing the dollars while it does not explain that he is the one who stolen it. Therefore, all of those issues prove the doubt on evidence based on to incriminate him of the theft committed by housebreaking. THE VIEW OF THE COURT [17] The case file shows that during the interview before the Judicial Police and the Prosecution, Urayeneza François Xavier stated that he worked for Nikobisanzwe André at Kana located in Sainte Famille where he repaired damaged iron sheet, there, he met Nziko Jean Claude who was showing him where materials for repairing the damaged iron sheet were kept as he was not aware of where those

materials stationed. He explained that they went on searching where on occasion of which he came across an envelope containing invoices and other books, then Nziko Jean Claude told him that the chemical substance to be mixed with gum is not kept into such envelope. When they did not find what they wanted he went and left Nziko Jean Claude there collecting fallen items, and that the said cupboard to be containing the envelop bearing the money was near where Mukamayirese Médiatrice was sitting, and that he did not quit running, since if he had quitted running he should have caught up by constructors who were there (quotes 10-13). [18] Furthermore, the case file shows that Mukamayirese Médiatrice in her interview before the Judicial Police stated that she worked with Nziko Jean-Claude in the room (salle) that is used to host weedings which is located in Kana at Sainte Famille, and she is the one who regularly receives the lease payment, and that on that day she had requested Nziko Jean Claude to keep in dark the said envelop that contained the said dollars. He explained that Urayeneza François-Xavier was given a casual employment to repair damaged iron sheet of that room, before

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commencing the job he requested for gum and other chemical substances to be mixed with it, Nziko Jean-Claude who had to search them for him found him already found the materilas when he (Nziko) went to give materials to Urayenezaand he was already up on the roofing, he then went down and went to keep materials he was using in the room without informing anyone, Nziko Jean-Claude found him near the cupboard, the cupboard padlock was damaged, and he had the envelop in hand, and then disappeared shortly, then he was seen running outside the compound, and then Nziko called Nikobisanzwe André for help by informing him that they were stolen of dollars that were into envelop, then they went to find Urayeneza François-Xavier at Kimicanga where he stays and then caught him up (qotes 5-7). [19] When Nziko Jean-Claude was interviewed in the Judicial Police stated that he did not know that there were some dollars kept in envelop in that room, rather Mukamayirese Médiatrice called him out of where he was washing clothes and then requested him to find Urayeneza François-Xavier gum and other chemical substance to be mixed with the gum so as to repair damaged sheet metals. He explained that he entered the room and found Urayeneza François- Xavier had already found the materials and then went out together, then he continued washing up the clothes, and then later on when he finished all the job Urayeneza Francois-Xavier returned into the room, when Nziko Jean Claude entered the room found Urayeneza Francois-Xavier checking into the envelop, and then asked him if that was the way they keep the gum, and then replied that he was keeping the remaining chemical substances, and then left him there and went to call Mukamayirese Médiatrice since he has already seen Urayeneza Francois-Xavier checking things inside the room, coming back they found Urayeneza François-Xavier already ran away (quotes 8 and 9). [20] The Court finds that Mukamayirese Médiatrice stated that she requested Urayeneza Francois-Xavier to keep the envelope containing the stolen dollars, yet Urayeneza Francois- Xavier denied her statement by revealing that he was not aware that he was assigned to watch on it, this semantic gap between the statements of the witnesses generates doubt on the reality of the situation under which the dollars were stolen, and this is supported by the fact that there is no evidence proving the way

those dollars were taken out of the cupboard in where they used to be kept since there is no evidence proving the way that cupboard was damaged or its padlock was opened, hence therefore there is no evidence proving that dollars were there and were stolen as well. [21] The Court finds that amount totaling to two thousand dollars is not such a big amount to the extent that Mukamayirese Médiatrice who was in charge of keeping them failed to keep and maintain them, and then left them in the room where constructors she did not know or had no trust in them had free access by simply relying on the fact that Nziko Jean Claude who was outside washing the clothes was likely to be waching on them[dollars] who on the otherside stated that he knew nothing of those dollars and the fact that he was in charge of watching over them, this also implies that, may be, those dollars have never been there, or else they have been there yet were not stolen, or if they were stolen were not stolen by Urayeneza François-Xavier since Mukamayirese Médiatrice, Nikobisanzwe André and Nziko Jean-Claude failed to explain why, after the theft, they saw Urayeneza Francois-Xavier running and let him while they suspected that it was him who stole the money, instead of calling for the constructors on site to catch him so as to check him rather went to find him at Kimicanga where he stays, where they arrested him easily. [22] The court finds that considering the explanations mentioned above, there is doubt on evidence based on to incriminate Urayeneza François Xavier of theft committed by

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housebreaking, therefore, pursuant to article 165 of the Law no 30/2013 of 24/05/2013 relating to the code of criminal procedure, doubt must play in his favor so that he can be acquitted. III. THE DECISION OF THE COURT [23] Finds that the appeal lodged by Urayeneza François-Xavier with merit; [24] Finds Urayeneza François-Xavier not guilty of the theft committed by housebreaking; [25] Orders his immediate release; [26] Overturns the judgment RPA 0556/09/HC/KIG rendered by the High Court, on 2 September 2010; [27] Orders that the court fees be reserved to the public treasury.

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Prepared on 13 October 2026 · Esheria