

THE SUPREME COURT SITTING IN KIGALI, HEARING PUBLICLY CRIMINAL CASES ON 30/06/2017 DECIDES ON CASE RPAA 0019/14 / CS AS FOLLOWS:

PARTIES:

PUBLIC PROSECUTION

Versus

APPELLANT

BAYAVUGE Patrick, son of Bayavuge Bayard and Bakwiyeyose Stephanie, born in 1979, residing in Shusho Village, Munanira Cell, Nyamyumba Sector, Rubavu District, Western Province.

OFFENCE

Child defilement provided for and punishable by Article 191 of Organic Law n ° 01/2012 / OL of 02/05/2012 establishing the Penal Code

SUBJECT

Appeal against Judgment RPA 0020/13 / HC / MUS rendered on 17/04/2014 by the Musanze High Court

I. FACTS AND PROCEDURE

- (1) The proceedings began in the Rubavu High Court with the Prosecution charging BAYAVUGE Patrick with rape of a 14-year-old girl named Uwera Safi. In its judgment RP 0366/012 / TGI / RBV issued on 24/12/2012, the Court held that BAYAVUGE Patrick was convicted of child sexual abuse and sentenced him to life imprisonment.
- (2) BAYAVUGE Patrick appealed to the High Court, Musanze Chamber which issued the Judgment RPA 0020/13 / HC / MUS on 17/04/2014, stating that the merits of the judgment of the Rubavu High Court remain unchanged, on the ground that he had not been able to contradict the evidence adduced by the prosecution including the victim's deposition.

- (3) BAYAVUGE Patrick appealed to the Supreme Court saying that he now pleads guilty and apologizes, and asking the court to reduce his sentence.
- (4) In the public hearing held on 15/05/2017, the appellant was represented by Barrister KABUYE Jean, while the Prosecution was represented by the National Prosecutor UWOMBONYE HIRWA Sudi.

II. THE ISSUE OF THE CASE AND ANALYSIS THEREOF

Whether BAYAVUGE Patrick can have his sentence reduced based on his confession

- (5) BAYAVUGE Patrick says he was initially deceived by his lawyers and pleaded not guilty, but now that he understands the seriousness of the crime, he pleads guilty and apologizes, asking the Supreme Court to reduce his sentence. He explains that he and the girl were already neighbors and he got to know her because his wife from Kassai did not want to live in Rwanda, and she wanted the girl to take care of her 3 children born to him. He allegedly took her from home to a 3,000 Frw room in a hotel called Dunia, where he had sex with her. He asserts that he did not know the age of the girl and could not have thought that she was a child based on her physical appearance, that all he knew was that she was a student. He asks that the Court pardons him and reduce his sentence because he will not reoffend, and that he also has three children and their mother whose residence is unknown to him.
- (6) Barrister KABUYE Jean submits that BAYAVUGE Patrick's sincere confession to the crime is a mitigating circumstance because his late confession is due to bad advice from his lawyers. He asks the Court to give due consideration to the confession and reduce his sentence because no harm was done to the girl as the doctor indicated that she was not disturbed. He also asks the Court to take into account the fact that BAYAVUGE Patrick is not a recidivist and the fact that he does not know the current residence of his wife and three children.
- (7) The Public Prosecution representative submits that BAYAVUGE Patrick contradicts his first statement, that although his sentence can be reduced only on the ground that he had never been convicted for a criminal offence by a court, he deserves twenty years in prison because his allegations regarding the whereabouts of his wife and children are unproven. He adds that the doctor said there were

preliminary symptoms of trauma, which proves that it was the first time that the girl had sexual intercourse.

III. THE COURT'S ANALYSIS

- (8) Article 71 of Organic Law No. 01/2012 / OL of 02/05/2012 establishing the Penal Code provides that the judge shall determine a penalty according to the gravity of the offence taking into account offender's motives, history and background, circumstances surrounding the commission of the offence and individual circumstances. Article 76 of the same Law provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. The decision to accept mitigating circumstances must be justified. Article 78 of the same Law indicates how the penalty is reduced if there are mitigating circumstances.
- (9) The Court holds the view that although BAYAVUGE Patrick initially pleaded not guilty, before this Court he unquestionably pleaded guilty and apologized, which justify the reduction of his sentence in accordance with Article 76 of the Law n ° 01/2012 / OL of 02/05/2012 mentioned above. The court also finds that, according to the Prosecution's representative, BAYAVUGE Patrick is a first time offender, which militates for the reduction of his sentence on the basis of his conduct before the commission of the crime in accordance with Articles 71 and 76 mentioned above.
- (10) As to how to reduce BAYAVUGE Patrick's sentence, the Court finds that from the point of view of the law recalled above and the reasons provided, BAYAVUGE Patrick deserves to be sentenced to fifteen (15) years of imprisonment, based on Article 78 which provides that the reduction of life imprisonment or life imprisonment with special provisions is replaced by a penalty of imprisonment of not less than ten (10) years, if there is a mitigating circumstance.
- (11) The mitigation of the sentence in favour of a person who pleads guilty has also been confirmed by this Court in many cases, such as in the case RPA 0247/11 / CS-Prosecution vs NTAMUHANGA Théoneste decided on 30/10/2005, in the case of the, case RPA 0034 / 08 / CS- Prosecution vs MUSHIMIRWA Antoine decided on 28/05/2010, and in the case RPA 0246/09 / CS- Prosecution v. Mukankusi Victoire decided on 14/12/2012.

I. COURT DECISION

- (12) Holds that BAYAVUGE Patrick's appeal is well-founded;
- (13) Holds that the Judgment RP 0020/13 / HC / MUS issued by the High Court, Musanze Chamber on 17/04/2014, is changed only on penalties;
- (14) Sentences BAYAVUGE Patrick to fifteen (15) years of imprisonment;
- (15) Orders that the costs of the case be borne by the State Treasury.

ISSUED AND READ PUBLICLY ON 30/06/2017

Signed

MUGENZI Louis Marie

President

Signed

KANYANGE Fidélité

Judge

Signed

NYIRANDABARUTA M. Agnès

Judge

Signed

HABYARIMANA Marcel

Registrar