

THE SUPREME COURT SITTING IN KIGALI, HEARING CRIMINAL CASES ON 24/03/2017, PUBLICLY DECIDES ON CASE N ° RPAA 0024/13 / CS AS FOLLOWS:

**PARTIES:**

**PUBLIC PROSECUTION**

Versus

**Abisi Lambert**, son of Munyankindi Jean and Mukamusoni, born in 1988, in Kigara Village, Kabeza Cell, Gitare Sector, Rusizi District, Western Province, resides in Kigarama Village, Kigarama Cell, Kimisagara Sector

**OFFENCE**

Rape of a child below 14 years, an offense provided for and punishable by Articles 33 and 34 of Law No. 27/2001 of 2001 Relating to Rights and Protection of the Child Against Violence

**I. FACTS AND PROCEDURE**

1. The trial began in Nyarugenge High Court, where a house-help Abisi Lambert was charged with sexually assaulting an eight-year-old child, Teta Bithia. The Prosecution submitted that on March 17, 2012, he entered the room where the girl and her young brother were sleeping, took off her underwear while the girl was still asleep and raped her. The child felt pain and woke up immediately. Then, Abisi Lambert also went out running. The Prosecution relied on the testimony of witness Umutoni Marie Claire, elder sister to Teta Bithia, the girl's statement, and a medical report indicating that she lost her virginity (hymen torn between 5 and 7 p.m.), that she was sexually abused (with signs of genital trauma), and that she has been infected with sexually transmitted infections.

2. At the Judicial Police and the Prosecution, Abisi Lambert pleaded not guilty. Before the Nyarugenge High Court he continued to plead not guilty, adding that his employer lied because she had asked him to have sex with him which he refused; she then told him that he would be charged within two days, and indeed after those days he was arrested.
3. In its judgment No. RP 0265/12 / TGI / NYGE on 28/09/2012, the Nyarugenge High Court convicted Abisi Lambert of child sexual abuse and sentenced him to life imprisonment and a fine of 200,000 Frw.
4. Abisi Lambert appealed to the High Court, stating that he was sentenced for a crime he did not commit. In its judgment N° RPA 0974/012/HC/KIG of 15/11/2013, the Court confirmed the judgment appealed against.
5. Abisi Lambert appealed to the Supreme Court on 19/11/2013, again stating that he had been convicted of a crime he did not commit. But, in his additional submissions he states that he pleads guilty and apologises for the offence he committed, that he is ready to tell truth over the commission of the crime, because he had already seen the gravity of the crime he had committed, and also demanded a reduction of the sentence.
6. The case was heard in public on 20/02/2017, Abisi Lambert assisted by Barrister Furaha Amida, while the Prosecution was represented by Higaniro Hermogène.

## **II. THE ISSUE OF THE CASE AND ANALYSIS THEREOF**

### **Whether Abisi Lambert deserves a reduced sentence**

7. Abisi Lambert states he does not challenge the reasons underlying the judgment he appealed against, that he wants to prove to the Court that he now pleads guilty

and apologizes, and that he deserves a reduced sentence because he has repented, he is ready to clear up the confusion about how he committed the offence, and has already seen the gravity of the offence he committed.

8. He submits that on the day the crime was committed, he went to the room where Teta Bithia was with her young brother, both asleep. He slowly entered into the blanket and inserted his penis into the girl's vagina and began to rape her. The girl tried to cry but he forced her to remain silent, and he went on raping her. The elder sister of the girl named Umutoni Claire entered the room while he was still raping her, and he came out running, and the girl also came out running. Then, Umutoni Claire called the Police which came and arrested him. He further submits that the fact that he did not try to escape police arrest whereas he was able to do so is a mitigating circumstance.
9. Regarding his defense in lower courts where he pleaded that the girl's mother was falsely accusing him because she tried to have sex with him without success, he indicates that he was lying based on bad advice from other inmates, and he also apologizes for it.
10. His lawyer Furaha Amida submits that Abisi Lambert does not challenge the High Court's decision, but only appears before the Court determined to be truthful, apologizing to the mother he falsely accused of trying to have sex with him, and asks the Court to accept his confession and reduce his sentence.
11. The Prosecution's representative states that Abisi Lambert's sentence should not be reduced because the rape of an eight-year-old (8) year-old girl by a twenty-five (25) years old man who moreover infected her with sexually transmitted infections according to a medical report constitute aggravating circumstances.

### The Court's analysis

12. With regard to mitigating circumstances, Article 76 of Organic Law n ° 01/2012 / OL of 02/05/2012 establishing the Penal Code stipulates that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence.
  
13. The Court finds that in the present proceedings Abisi Lambert admits to having raped Teta when she was found in the room sleeping with her little brother asleep. but his allegations that he did not try to escape after the girl's older sister Umutoni Claire entered the room, found him raping her, and called the Police, cannot not be taken as true because the child's elder sister explained to the Judicial Police that Teta told her that she felt pain in her sex; when asked what had happened, she told her that while she was asleep Lambert came and inserted his fingers in the vagina, and that when she woke up Lambert immediately ran away. Her statement coincides with that of Uwimana Beligne, the girl's mother, who also testified that Umutoni Claire called her on the phone and told her that Teta was crying so much saying that she has pain in the vagina; when she asked Claire what had happened, Claire told her that Lambert put his fingers in the vagina while she was asleep. Teta also was questioned by the Police and explained that she woke up and found Lambert's fingers in her vagina, and he immediately ran away.
  
14. The Court finds that such misrepresentation of the manner in which he was arrested intends to prove that he did not escape arrest even if it was possible, so that in the end his conduct after the offense would be treated as a mitigating circumstance.
  
15. The Court therefore finds that although he admits the charges against him, these were already supported by overwhelming evidence. The fact that he continues to

lie in order to get his sentence reduced shows that he is pleading guilty not because he feels the gravity of his crime as he alleges, but only to get a reduced sentence.

16. Based on the explanation provided, the Court finds that the reduction of the sentence which Abisi Lambert is requesting cannot be granted because he still does not tell the truth, and he has pleaded guilty to it without any sincere remorse.

### **III. COURT DECISION**

17. Holds that Abisi Lambert's appeal was unfounded;

18. Holds that the judgment under appeal is not reformed, and Abisi Lambert shall continue to serve his sentence to life imprisonment and a fine of 200,000 Frw;

19. Orders that the costs of the proceedings be borne by the State Treasury.

**ISSUED AND READ PUBLICLY ON 24/03/2017**

**Nyirinkwaya Immaculée**

**President**

**Mukanyundo Patricie**

**Judge**

**Muhumuza Richard**

**Judge**

**Habyarimana Marcel**

**Registrar**