THE SUPREME COURT SITTING IN KIGALI HEARING CRIMINAL CASES, PUBLICLY DECIDES ON CASE N° RPA 0041/08/CS ON 25/02/2011 AS FOLLOWS:

PARTIES:

PUBLIC PROSECUTION

Versus

Ngendabanga, son of Uzakunda Appolinaire and Nyandwi Bernadette, born in Murambi, Rususa-Nyaruguru Sector in 1982, bachelor, farmer, first time offender

OFFENCE

Having on the evening of 20/07/2002, in Rususa, Nyaruguru District, Gikongoro Province at the time, raped an 11-year-old girl named Uwamariya, a felony punishable under Article 34 of Law No. 27 / 2001 of 28/04/2001.

I. FACTS AND PROCEDURE

1. On the evening of 20/07/2002 at around 6:30 pm, Niyirora Francine, the mother of Uwamariya, sent her to pick up the firewood in the coffee plantation. She went together with Ngendabanga who had come to borrow a bag. Uwamariya returned home around 7 a.m. crying and told her mother that Ngendabanga had raped her. The mother looked at the child's skirt and saw the semen, and hurried to tell Ngendabanga's father about his son's actions, and the latter replied that he did not ask him to do so. The crime was reported to the police. A medical report dated 23/07/2002 reveals that the girl had had sex, that her hymen was not still intact. Both in the Judicial Police, in the Prosecution, and in Court (*Chambre du Conseil*), Ngendabanga pleaded guilty but said the girl consented to it.

2. In the judgment RP 694/5/03 passed on 06/11/2003 where Ngendabanga denied that he had ever met the girl, the Court of First Instance convicted him on the basis of his earlier confession, the statement of the girl's mother whom Ngendabanga did not accuse of any bias against him, and a medical report explaining that Uwamariya had been sexually abused, and sentenced him to life imprisonment and a fine of 50,000 frw.

3. In the judgment RPA 0074/05 / HC / NYA of 11/11/2005 settling the appeal of Ngendabanga, the High Court of the Republic, Nyanza Chamber, confirmed the first judgement on the ground that appellant did not show how he was wronged by that court.

4. Ngendabanga appealed to the Supreme Court, and in his preliminary examination, the presiding judge affirmed that the appeal was filed in accordance with the procedure prescribed by law.

5. The case was heard on 31/01/2011, Ngendabanga assisted by Barrister Umulisa Alice, while the Prosecution was represented by Higaniro Hermogène. Ngendabanga and his lawyer explained that Ngendabanga's appeal was intended to show the court that he confesses the crime and asks for a reduction of his sentence, and this is the issue to be considered in this case.

II. WHETHER NGENDABANGA DESERVES A REDUCED SENTENCE BECAUSE HE PLEADS GUILTY

6. Ngendabanga and his lawyer state that after the trial, Ngendabanga decided to plead guilty. His lawyer in particular explained that his failure to do so in court was due to bad advice he received in prison and yet he had pleaded guilty before the Judicial Police and the Prosecution. His lawyer further submits that the crime of sexually assaulting an 11-year-old Uwamariya was not a result of a malicious intent, but of an unfulfilled lust, that he should have his sentence reduced in accordance with Article 35 of Law n ° 13/2004 of 17/5/ 2004 relating to Criminal Procedure Code, given that he is a first time offender.

7. The Prosecution representative argues that although the Ngendabanga's confession was delayed and only obtained after he was assisted by a lawyer, the court should consider reducing the sentence, but to no less than 20 years.

8. Article 34, paragraph 2 of Law No. 27/2001 of 2001 Relating to Rights and Protection of the Child Against Violence provides that "*Anybody who rapes a child who is below fourteen years shall be sentenced to life imprisonment and be fined between 200 000 Frw and 500 000 Frw*".

9. The Court finds that Ngendabanga pleads guilty and could have his sentence reduced pursuant to Article 35 of Law nº 13/2004 of 15/5/2004 on Criminal Procedure and Article 83, paragraph 3 of the Penal Code. The determination of the punishment should also take into account the various possible consequences for a child of the age of Uwamariya, for which reason he should be sentenced to fifteen years of imprisonment.

III. COURT DECISION

10. Declares admissible Ngendabanga's appeal it was filed in accordance with the procedure prescribed by law;
11. Holds that the appeal is partially founded;
12. Sentences Ngendabanga to fifteen years of imprisonment.
13. Holds that the judgment RPA 0074/05 / HC / NYA passed on 11/11/2005 by the High Court, Nyanza Chamber, has changed only with respect of the sentence;
14. Orders Ngendabanga to pay half of the costs of the proceedings (17,050 frw), i.e. 8,525 frw, within eight days. If he fails to do so, the State can forcibly take it from his possession.

IT WAS THUS ISSUED AND READ PUBLICLY THIS 25/02/2011 BY THE SUPREME COURT

Signed

RUGEGE Sam
President

Signed **Signed**

HAVUGIYAREMYE Julien **KAYITESI R. Emily**

Judge **Judge**

Signed

MUNYANDAMUTSA Jean Pierre

Registrar