

THE SUPREME COURT SITTING IN KIGALI, HEARING CRIMINAL CASES IN PUBLIC ON 04/03/2011, DECIDES ON CASE N ° RPA 00155/08 / CS AS FOLLOWS:

PARTIES

PROSECUTION

Versus

Ndagijimana Emmanuel, son of Bariyanga and Nzabandora, a resident of Vunga, Kora, Mutura, Rubavu District, Western Province, detained in Ruhengeri Prison.

OFFENCE

Raping a girl under 14 years (she was 7 years) in Cell No. 6, Kora Sector, Mutura District, Gisenyi Province at the time, on the evening of 01/11/2005 around 6:30 pm, an offense provided for and punishable by Article 34 of Law n° 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence.

I. The summary of the case

1. On 01/11/2005, a 7-year-old girl named Uwineza left her home at 6:30 pm and her mother gave her a sheep to take to her grandmother's house. On her way, she met Ndagijimana Emmanuel nicknamed Gasore, a 20-year-old man, monitoring farming fields. He grabbed her and took her to his shelter from which he monitors the fields and raped her. After the rape, he escorted her home. Mukamusoni Olive and Nyiransabimana Consolée saw Gasore and Uwineza in the shelter, tried to help her, but Ndagijimana threw stones at them and compelled them to retreat.
2. A medical report dated 04/11/2005 shows unquestionably that the child had been raped.
3. In the judgment RP 0434/06/TGI/RBV passed on 06/11/2003 by the Rubavu High Court, where Ndagijimana was pleading not guilty, the court convicted him with rape and sentenced him to 25 years imprisonment and a fine of one hundred thousand (100,000) based on his confession during hearing on the legality of his detention that he met the girl that evening, the statements of Nyiransabimana Consolée and Nyiramigisha Béatrice confirming that they saw Ndagijimana getting out of the shelter with the girl, which Ndagijimana did not dispute, and a medical certificate confirming that the child had been raped, and no one else was

accused of raping her based on what the child told her mother who filed the complaint.

4. In the judgment RPA 0016/08 / HC / MUSA passed on 25/11/2008 on the appeal of Ndagijimana, the High Court, Musanze Chamber ruled confirmed the judgment under appeal.
5. Ndagijimana appealed to the Supreme Court. After a preliminary examination, the pre-trial the judge ruled that the appeal had been filed in accordance with the procedure prescribed by law.
6. The case was heard on 07/02/2011, with Ndagijimana defending himself, while the Prosecution was represented by Higaniro Hermogène. Ndagijimana explains that he has dropped the grounds of his appeal and that his aim is to prove to the court that he confesses his offence and asks for a reduction of his sentence. That was the subject matter in this case which the court proceeds to analyze.

Whether Ndagijimana's plea of guilt justifies a reduced sentence

7. **Ndagijimana** explains that he confesses the felony which he committed, that he committed it while he was intoxicated after consuming drugs, that when he was sexually assaulting Uwineza he expelled people trying to rescue her by throwing stones at them, that he had been repeatedly accused of rape except that the complaints were not filed in court. He commits to avoid repeating the same crime.
8. **The Prosecution representative** states that it is good that Ndagijimana is determined to tell the truth despite with delay, that it shows that he has already understood the gravity of the crime, that his confession should be a mitigating circumstance, and requests to do so taking into consideration the girl's age i.e. below of 14 years and the effects on her. Regarding Ndagijimana's allegations that he was intoxicated, the Prosecution submits that intoxication cannot be a mitigating factor because he committed rape willingly, that the only valid mitigating circumstance would be his plea of guilty.
9. Article 34 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".

10. This Court finds that although Ndagijimana pleaded guilty which justifies a reduced sentence pursuant to Article 35 of Law n° 13/2004 of 15/5/2004 relating to Criminal Procedure Code and Article 83 of the Penal Code, determining his punishment should also take into account the various possible effects on a child of the same age as Uwineza who was raped.
11. With regard to Ndagijimana's claim that he committed the offence under the influence of intoxication by drugs, Article 70, paragraph 2 of the Penal Code states that anyone who commits an offence shall be held liable even if he/she acted unwillingly. This is in line with what legal experts, including Professor Nyabirungu mwene Songa in his book "Droit pénal général zaïrois", Editions Droit et Société, 1989, page 245, where he states that: "any individual who intoxicates himself willingly shall anticipate the possible consequences of his/her acts and face them if they were to occur".
12. The Court also finds that Ndagijimana had his sentence reduced because he was sentenced to 25 years of imprisonment instead of life imprisonment.
13. The Court finds, however, with respect to the 25 years of imprisonment Ndagijimana was sentenced to, that Article 35 of the Penal Code stipulates that a temporary sentence shall be valid for a term of not less than one day and not exceeding twenty years as provided by law, except in case of recidivism or other circumstances prescribed by law.
14. The Court finds that the crime Ndagijimana is being prosecuted for does not fall within the scope of the other provisions, for which reason his sentence is to be reduced to 20 years.

I. COURT DECISION

15. **Declares** admissible Ndagijimana's appeal because it was filed in accordance with the procedure prescribed by law;
16. **Holds** that it is well founded with regard to the age of imprisonment;
17. **Sentences** Ndagijimana to twenty years in prison;
18. **Holds** that judgment RPA 0016/08 / HC / MUSA passed on 25/11/2008 by the High Court, the Musanze Chamber is changed only in respect of the sentence;

19. **Orders** Ndagijimana to pay half of the costs of the proceedings (27,200 frw), i.e. 13,600 frw, failing to pay it within eight days, the State can forcibly remove it from his possession.

ISSUED AND PUBLICLY READ THIS 04/03/2011 BY THE SUPREME COURT

NYIRINKWAYA Immaculée

President

HAVUGIYAREMYE Julien

Judge

KAYITESI R. Emily

Judge

HABYARIMANA Marcel

Registrar