

THE RWAMAGANA HIGH COURT, HEARING PUBLICLY CRIMINAL CASES ON APPEAL, DECIDES ON CASE RP.0415/10/HC/RWG ON 23/09/2011 AS FOLLOWS:

PARTIES

THE PUBLIC PROSECUTION REPRESENTED BY MADAME BUNYOYE Grace

APPELLANT: NIYIRIHO Venuste, son of Harerimana and Mukamusoni, born in 1989, in Gakenke Cell, Rusagara Sector, Gakenke District, Northern Province, where he lives and resides.

OFFENCE: Rape of a 15-year-old girl named NYIRABEMERIKI Séraphine. The offense is provided for and punishable by Article 34 al.1 of Law n ° 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence.

I. FACTS AND PROCEDURE

1. The Prosecution filed a complaint against NIYIRIHO Venuste in the Nyagatare High Court alleging that on 24/05/2008 he invited NYERABEMERIKI to tell her something, and when she arrived he locked the door, raped her and got her pregnant. He is accused of sexually abusing a child under the age 18 years. NIYIRIHO Venuste pleaded guilty.
2. On 09/09/2010, the Nyagatare High Court convicted NIYIRIHO Venuste of raping a child under the age of eighteen and sentenced him to three years' imprisonment and a fine of one hundred thousand francs (100,000Frws). As NIYIRIHO Venuste was not happy with the decision, he appealed to the Rwamagana High Court arguing that he had pleaded guilty and apologized but had been given a heavier sentence, and asked for a reduced sentence. The question to be considered in this case is whether NIYIRIHO Venuste could have his sentence reduced.

II. ANALYSIS OF THE ISSUES IN THE CASE

•Whether NIYIRIHO Venuste who pleaded guilty should have his sentence reduced again

3. NIYIRIHO Venuste alleges that he appealed because he pleaded guilty and apologized but had been given a heavier sentence, and he continued to appeal to the court for a reduction of the sentence because the child NYIRABEMERIKI Séraphine gave birth to needs care because the mother left the child alone and went to marry a man, that he

continues to apologize and requests that the court reduce his sentence. In this regard, the prosecution's representative argues that NIYIRIHO Venuste's request for a reduced sentence is unfounded as he has already been given a reduced sentence by the first instance court because he pleaded guilty, and that his request to be released in order to help in the upbringing of the child should have been expressed by NYIRABEMERIKI Séraphine.

4. Article 177 of Law n ° 13/2004 of 17/05/2004 of the Criminal Procedure Code as amended and supplemented to date, provides that the appellate court's jurisdiction is limited to the grounds of appeal. NIYIRIHO Venuste asks for a reduction of sentence because he pleads guilty and continues to apologize. The court notes that the trial court accepted the mitigating circumstance and reduced his sentence based on Article 82 of the First Part of the Penal Code of Rwanda which provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence and on Article 83 thereof which provides that if there are mitigating circumstances, a temporary sentence of imprisonment of five to twenty years or more may be reduced to one year of imprisonment. Rape of a child under the age of eighteen years is punishable by article 34 al.1 of law n ° 27/2001 of 28 / 04/2001 Relating to Rights and Protection of the Child Against Violence which provides that anybody who rapes a child who is below 18 years shall be sentenced to an imprisonment of 20 to 25 years. The provisions of this law are consistent with NIYIRIHO Venuste's request. The court concludes that his appeal is well-founded because he continues to apologize and the law allows him to have his sentence reduced to no less than one year in prison, so he must have his sentence reduced.

III. COURT DECISION

5. HOLDS that the appeal filed by NIYIRIHO Venuste is well-founded, that he deserves a reduced sentence, and he is sentenced to two years and six months' imprisonment (30 months' imprisonment) and a fine of one hundred thousand francs. His imprisonment is calculated from his arrest on 09/04/2009. The judgment RP0191 / 09 / TGI / NYG issued on 09/09/2010 is only changed with respect to the sentence of imprisonment.

6. ORDERS NIYIRIHO Venuste to pay legal costs of fifteen thousand nine hundred Rwandan francs (15,900Frws), failing to do so the State can forcibly remove it from his possession.

7. Recalls that appeal can be made in thirty days from the date of the judgment.

ISSUED AND READ IN PUBLIC ON 23/09/2011 BY THE RWAMAGANA HIGH COURT COMPOSED OF THE TRIAL JUDGE TWAGIRUMWAMI Martin AND THE COURT'S REGISTRAR MUHAYIMANA Bernardin.

JUDGE

TWAGIRUMWAMI Martin

REGISTRAR

MUHAYIMANA Bernardin