

In the Name of Allah, Most Gracious, Most Merciful

**Republic of the Sudan**  
**Sudan judiciary**  
**Court of Appeal - Umdurman**

Criminal Section:

No. M A/A S G/2672/2012

Circle:

Mr. Aldan Alhag Musa	Judge in Appeal	Chief Judge
Mr. Dirar Yuosif Seid Ahmed	Judge in Appeal	Member
Mr. Osama Ali Soliman	Judge in Appeal	Member

**Trial:**

**Salih Omer Koko, and others**

The First Criminal Court issued a judgement in the case (G A/107/2012) to convict (Anas Alnoor Isamaël) according to article 149, read with two articles (25/B2/26) of the Criminal Law sentencing him to a one-year imprisonment, from the date of entry to Police custody on 7/8/2012. In addition, a sentence of three years imprisonment for violating article 174/175 of the same law. He was also ordered to pay a penalty of one-thousand Pounds, for violating article 142 of the same law, and, if not paid, an additional term of imprisonment for another six months is ordered. The court also convicted the Second Accused (Musa Abbas Ali) according to article 174 reading with article 175 of the same law and sentenced him for a three-years prison term from date of entry into Police custody on 7/8/2012. [The court] also sentenced him to a one-year imprisonment term for violating article 149, read with two articles (25/B/ 26) of the same law. He was also sentenced to pay a penalty of one-thousand Pounds, and if not paid, an additional term of six months imprisonment is imposed, for violating article 149 of the Criminal Law. [The court] also convicted the Third Accused (Sabri Sabir Abd Allah) according to article 149 of the same law, in addition, he is to be subjected to one-hundred whip lashes; he was also sentenced to a three-years imprisonment term, starting from date of entry into Police custody on 7/8/2012. He had also sentenced him with a term of two-years imprisonment for violating Article 175 of the same law. He was also sentenced to pay a penalty of one-thousand Pounds, and if not paid, an additional term of six months imprisonment is imposed. Also, [the court] also convicted the Fourth Accused (Salih Omer Koko) in accordance with article 175 of the Criminal Law and sentenced him for a three-years prison term, starting from the date of entry into Police custody on 7/8/2012. [The court] also sentenced him with a one-year prison term for to violating article 149, read with two articles of the law (25/26/2B) and to pay a penalty of one-thousand Pounds, and if not paid, an additional term of six months imprisonment is imposed. [The court] also convicted the Fifth Accused (Alzaki Hassan Alzaki) sentencing him to be subjected to one-thousand whip lashes and a three-years prison term starting from the date of entry into Police custody on 7/8/2012 for violating article 149 of the Criminal Law. [the court] also sentenced him with a two-years prison term for violating article 175 of the same law. He is also ordered and to pay a penalty of one-thousand Pounds, and if not paid, an additional term of six months imprisonment is imposed. [The court] also convicted the Sixth Accused (Sobhi Altaib Digis) sentencing him with a three-years prison term for to violating article 175 of the Criminal Law and sentenced him with a one-year prison term for to violating articles (25/26/2B) MA 149; He is also ordered and to pay a penalty of one-thousand Pounds, and if not paid, an additional term of six months imprisonment is imposed, to be spent consecutively.

All the convicted individuals must pay, collectively or individually, a sum of one-thousand Pounds to the plaintiff as compensation for the pain caused, and the payment should be collected by the justice department, in accordance with article 198 of the Criminal Law Procedures. The confiscated items must be delivered to the plaintiff. All knives and exhibited items should be confiscated by the Sudan Government; all these orders were made on 26/11/2012.

On 28/11/2012, 29/11/2012 and 4/12/2012 leniency requests were made by the families of First, Second, Third, Fourth, and the Sixth convicts seeking to lower the sentence, due to their family circumstances.

On 9/12/2012 Lawyer Zeinab Hussain Muhammad filed an appeal on behalf of the Plaintiff to compensate for the financial, moral and psychological pains; in the reasons of the request it was claimed that the court ordered a compensation for pain that caused by the beating she endured. [the request] added that the victim was subjected to a group rape, which caused her a lot of psychological, physical and moral harm.

In form, I accept the leniency requests, restricted by article "188" of the Criminal Procedures law; and I accept the appeal in formality, because it complies with the necessary conditions, according to articles "183" and "184" of the same law.

As for the subject-matter of the request, the judgment under consideration is based on the Plaintiff reported that at eight o'clock in the evening of the 18<sup>th</sup> of Ramadan month of 2012, the First Convict met the plaintiff at Sabreen station, as she was coming from Omdurman Gardens. She was on her way to her home in Al-Thaura Alhara No 61. As she was walking to her home she has been confronted by the Convicted individuals, who assaulted her and stole her suitcase and the documents inside it; they further ripped apart the trousers she was wearing; two of the convicts raped her and the others helped to facilitate the attack. afterwards, the Police arrived and found the Plaintiff in a bad condition.

The culprits managed to escape, but after a search, they were arrested on the same day. Following a hearing by the First Level court the evidence judged above judgement, the examination requires certainty to make sure that its conformity with law.

With regard of articles "12/26/175/142/149" of criminal law undoubtedly.

So that the procedures certain that the crime stronger than to be doubting. Where the complainant assert, she stocked to rape, kidnapping, and pained by group of people. And the medical report asserts what mentioned. Where medical report asserts that the hymen has been eliminated recently, as it refers to a contusion in a head of front, The report of the criminal laboratory confirmed the rape, Where the first witness who was with complainant at the time of crime confirmed that he knows the culprits, and they caught her from her hands and her bag, during that he left the victim to call the police, and when he did the found her laying on the ground, and the culprits ran away, after saw the police, they found effects of wounds and her trouser and underclothes were torn, and the first witness mentioned that he saw one of them holding a knife. The statement confirmed that the convicts were caught in the crime because the traces of the crime are still alive and their escaping evidence upon their crime. And the second witness mentioned that they caught the convicted with violent resistance, and they admitted that they raped her, in addition to that they found the complainant's phone with them. And the third witness confirmed what has mentioned, moreover the third and fifth culprits admit by the crime, and the second raped her. And the fifth convicted, admitted that he raped her with helping of others, and the second culprit raped her. And that what the third culprit confirmed, and the first culprit took her phone and gave to me. But they modified their opinions in the court and allege that they have been beaten by police. And thus, the article "22/2" of the law of Evidence states that:

(Reversing the acknowledgment of border crimes is a suspicion, makes recognition unambiguous evidence, and certainly this is not a border crime, as well as that the convicts failed to prove their pushing related to coercion or beatings which lead them to recognition, and it well known that the prove in criminal materials rely upon sustain evidences. And the mentioned evidences lead to criminalize the convicts and its way over the suspicion. And statement proves that the culprits stick together to commit the crime, so that we must add article"174". of criminal law. If the looting crime there is no need to prove stealing crime, Where the crime of looting implies the stealing and using the criminal power during the process or at escaping, and that doesn't mean denouncing the culprit by stealing and looting. Therefore, eliminate the complaint of stealing and keeping the complaint of looting. With regard of raping crime, it proved that the first, second, fourth, and sixth culprits caught the victim till the crime has done, so that they made easy for crime to committed. Punishment is appropriate for the offense committed, as the crime was committed in a brutal manner, after it has been proven that the convicts of the gangs of fugitives ... must be deterred to be a As the crime was committed in a brutal manner, after it has been proven that the convicts of the fugitives gangs, must be deterred to be exhortation. And with regard of appeal filed by the victim which ab out compensation and the damage of raping, in this we agree with lawyer in first-degree court with not judging by compensation, regardless the statement, that the cause of compensation in criminal court, that belongs to criminal court, and as long as has been separated in the cause, there's no way except to filed a cause in front of special civil court. That because she has original right, and with regard of compensation it came appropriately with the damage.

Accordingly:

I see confirmation of denunciation, except the denunciation of articles "174" of criminal law, and confirm the punishment, and the way of application, and compensation, and the way of punishment applying, and confiscation. And after the right of my two moralist colleagues

Signature of:  
Osama Ali Osama

Seal of:  
The president of appeal court Omdurman

26/12/2012

The evidence presented in the case clearly indicates that the convicted were committed the crime, that described in article"174" of criminal law (stealing), Therefore the culprits must be denounced accordingly, where there is no denouncing under article "175" of law. That the legislator considered the aggravating circumstance of the situation of using power is an independent offense under article 175 of the law. And any other saying except that, leads to unreasonable results in addition to it's illegal, and that let him escape from article 174 which is original of procedures. And if put into consideration that the crime under"171""174" the penalty is Hand cutting or imprisonment up to seven years, the sufficiency of the offender to a penalty of up to three years only this(reward)for convicted for using force or threat when stealing, and I do not think this is the desired of founder of legislation, cause the looting is too dangerous for both people and money. And the supreme court decided the same outcome, at the previous number M A / F G/274/2011 (unpublished)which decided (what is coming in article175 of Criminal law of 1991Is to tighten the penalty for those who use criminal force, Stalk with otherwise makes us drop marginal theft when of proven criminal theft, at the time we Had to apply marginal penalty.... And well done when the court judged by applying both articles"74""75"). And that accordant what the court decided with what the two Articles (12/74/75) denounced firstly.

The sanctions were watered down, despite the obvious risk of convicts, according to the data disclosed about their situation near to criminal organization which described in article 65 of

criminal law, which recently appeared threatened security and peace in the society by gangs, relies on strong youth that must be employed for the growth of home.

And what stopping me firstly, that I notice earlier that the court judged the convicts under Article 149 of law, otherwise convicted other culprits with (25/27/B22) without adding the instigator of crime, in the light of the punishment is determined, according to article 25/2\_ besides Court all condemned the defendants under articles 12/ (174/175) of law, as well as under article 21/142 while the charge form included defendants ( Anas/ Musa/Sabri) they are the first, second, and third, and rest of culprits inside, And it was limited on articles (21/ 175" "193" "65" "149")of law x without rest articles that appeared in the decision which are(26"25/2B/174) Although the determination of guilt which violates procedural assets,. The truth after the broad evidence, that this criminal gang, observe the victim, in isolated place where they are observing the victims, and execution of their criminal scheme, with their all participation, they all participate everyone with his individual plan, to execute their criminal plan, and not important for the purpose of criminal responsibility to detail the role of each one separately. Accordingly; it proven that some of convicts rapped the victim according to their criminal plan, so that all the convicts are responsible for what happened, without mentioning any exceptions according to the rules of criminal participation, under article (21) of criminal law. Note that the sanctions are weak and soft, so I see the abolition of all the measures prescribed in this court, returned all the papers to the court to redirect the charges under articles 21(149,174, 175, 65,139,182). And to consider accordingly, and the compensation should be commensurate with what was committed against the complainant, as well as that she violated her virginity, and this is the maximum harm caused by this crime.

Signature of:

Dirar Yousif Seid Ahmed

Seal of:

The president of Appeal Tribunal \_Omdurman  
31/12/2012

With respect to my colleague who had the first opinion, but I agree with the second opinion, in addition to that the trial court did not condemn with all the charges, And the trial court must decide the penalty is determined according to the gravity of the offense and the importance of deterrence, as well as the trial court must consider the matter of compensation for the victim after the physical, and psychological pain, that couldn't be forgotten easily.

Signature of:

Allan Elhag Mahmoud

Seal of:

President of Appeal Tribunal \_ Omdurman  
18/1/2013

Final Order:

- \* Cancel all the judgements
- \* Return the peppers to the court to work as mentioned in the notice

Signature of:

Allan Elhag Mahmoud

Seal of:

President of Appeal Tribunal \_ Omdurman  
Circle Chief  
18/1/2013