

COURT OF APPEAL OF FADA N'GOURMA

BURKINA FASO
Unity-Progress-Justice

HIGH COURT OF KONGOUSSI
KOUPELA

HEARING OF JANUARY 31, 2017, ON MISDEMEANOUR MATTERS

JGT No. 006/2017
of 31/01/2017

RP No. 013/2017

The High Court of Koupéla (Burkina Faso) ruling in misdemeanour matters in first instance, sitting in its open ordinary court session of thirty-one January two thousand and seventeen at 8 o'clock, in the Court of the said town, in which were present:

Mr **SOUGA Gnagréba Dramane**, Judge at the Bench of the said Court, acting as President,

PRESIDENT;

Mr **OUATTARA Jean Eudes**, Deputy State Counsel, representing the Legal Department,

LEGAL DEPARTMENT;

Assisted by Barrister **BIRBA Sambo**, acting as Court Registrar;

COURT REGISTRAR;

BETWEEN:

- The **State Counsel of Faso**, petitioner in a flagrante delicto proceeding
- T.Z; appearing victim;

DECISION

ON THE ONE HAND;

See verdict
PANEL

AND

K.I,

Pdt: SOUGA Gnagréba
Dramane

Accused of: "having in ..., the ... 2017, in any case since less than 3 (three) years ago, by gestures and words signifying a manifest will to cause material damage (injury or death to a woman or girl) on T. Z;

LD: OUATTARA Jean
Eudes

Acts provided for and punished by article 13 paragraph 2 of law No. 061-2015/CNT of September 6, 2015, on prevention, punishment and reparation of violence against women and girls, and support for victims;

Court Registrar: BIRBA
Sambo

ON THE OTHER HAND;

When questioned at the hearing, in accordance with the provisions of article 393 of the Code of Criminal Procedure, the accused declared that he wanted to be tried immediately;

During the appeal, the State counsel of Faso stated that he had summoned

the aforementioned accused to appear before the Court at today's hearing to defend himself on account of the above-mentioned prejudice;
And the accused was questioned;
The victim made his statements;
The submissions of the Legal Department were heard;
Speaking in last position, the accused made his arguments to defend himself.
The Court Registrar recorded the proceedings of the hearing;
Then at the end of hearings; the Court ruled as follows:

THE COURT

Considering the documents in the file;
Having heard the answers of the accused;
Having heard the statements of the victim;
Having heard the submissions of the Legal Department;
Having heard the arguments made by the accused to defend himself;

I- FACTS

On 2017, a Vigilante Group of "Koglweogo" led K.I to the P. territorial brigade for violence against TZ.

When questioned by the aforementioned unit, the accused denied the charges against him. In fact, he acknowledged that he had repeatedly attacked TZ and that he had already been arrested by the P gendarmerie, but that as of.....2017, there had been no fights between him and TZ. He maintains that on that day he went to his debtor's home to claim his money. But before leaving the house, fearing for his own safety and considering the hostile feelings that T.Z's entourage had towards him, he held two machetes with him. He then went to his debtor's house and on his return he was intercepted by G.S, T.Z's son, who said he had come to settle the dispute between him and his mother. A fight broke out between them and his opponent yelled "thief" to alert the neighbours. That this is how he was taken to the brigade before being brought before the State Counsel of Faso.

Before this magistrate, he reiterated his statements made during the preliminary investigation. Once in the courtroom to answer for his actions, the accused denied the charges against him.

Summoned to the bar as a witness, G.S stated that he was at the market that day and that he was contacted by telephone by D.S who informed him that

the accused had come to the house to attack his mother. He then went back home to find out what was wrong, but when he arrived he did not find K.I at the scene. So he went to the neighbour's house to inform him. And while talking to him, he saw the accused passing by. He then intercepted him to ask him the reason behind the assault on his mother, which degenerated into a fight in which the accused brandished the machetes he was carrying with him.

II- PROCEDURE

A- Prosecution

1- Constituting the offence

Whereas K.I was brought before the Koupèla High Court to answer for acts of violence against T.Z; whereas there are grounds for a contradictory ruling;

Whereas K.I has been accused of having in P..., on. 2017 , in any case since less than 3 (three) years ago, by gestures and words signifying a manifest intention to cause property damage, injury or death to the woman or girl with respect to TZ;

Acts provided for and punished by Article 13 paragraph 2 of Law No. 061-2015/CNT of September 6, 2015, on the prevention, punishment and reparation of violence against women and girls, and support for victims;

Whereas the offence of psychological and moral violence, as defined in article 13, paragraph 2 of the above-mentioned law, presupposes firstly the perpetration of an act of violence, secondly that such violence must be inflicted on the woman or the girl and thirdly that there is a guilty intention.

Whereas in the case at hand it is constantly apparent from the documents in the case file and from the proceedings at the hearing, that the acts of violence alleged against the accused were perpetrated by the latter against T.Z's son; Whereas the cause of the said acts is the fact that T.Z's son was trying to settle scores with the accused in connection with the conflict between the latter and G.S's mother; That the accused states that he neither assaulted nor set foot in the victim's house today, contrary to the victim's statement; That this latter statement is confirmed by the victim's son, who maintains that he saw him from afar and intercepted him to ask him for explanations regarding his mother's alleged assault and a fight broke out between them;

It should therefore be observed that the violence, even if established, was not directed against the woman, T.Z., but rather against her son; From this point of view, one of the legal conditions, in the case at hand, that the victim must

necessarily be a woman or a girl, has not been met and therefore the offence of violence against women or girls is not established; Furthermore, it does not appear from the investigation carried out at the hearing that the accused committed acts of violence against TZ; That the proof of violence has not been produced, and therefore the accused should be released for the benefit of the doubt.

C- Costs

Whereas according to article 473 of the Code of Criminal Procedure, the accused against whom there is a guilty verdict must be ordered to pay the costs;

In the case at hand KI has not been convicted for the acts alleged against him, and therefore the costs should be borne by the public treasury;

UPON THESE GROUNDS;

Ruling in a public hearing following full trial on misdemeanour matters in first resort, the Court:

- Declares K. I guilty, but not guilty of the acts alleged against him;
- Consequently, the accused is relieved of all charges for the benefit of doubt;
- Places the costs at the expense of the Public Treasury;

Thus acted, judged and pronounced publicly by the High Court of Koupèla on the aforementioned days, months and years. And signed:

The President

The Court Registrar