

**COURT OF APPEAL OF
OUAGADOUGOU**

**HIGH COURT
OF OUAHIGOUYA**

Judgement No. 038
of
06/05/2020

Legal Department No.15/20

Public Prosecution
Vs
SML

Type of offences
Indecent assault and
statutory rape

Victims:

- OUEDRAOGO Ramatou
- OUEDRAOGO Mariétou

Panel:

President: W.P.MINOUNGOU
Public Prosecution: S. KIEMDE
Court Registrar: ...I. SANFO
Interpreter:.....I. DIALLO

Judicial Assessors

- D. Maurice YERBANGA
- Ousmane BELEM

Decision
(see verdict)

**HIGH COURT
OF OUAHIGOUYA**

**HEARING OF MAY 6, 2020, ON CRIMINAL
MATTERS**

The High Court of Ouahigouya (Burkina Faso) ruling in a criminal suit during an ordinary court hearing on Wednesday, May 6, 2020 (06/05/2020), held at the courthouse of the said town, in which were present: Mrs **W. Pauline MINOUNGOU**, Judge at the said court, assisted by **D. Maurice YERBANGA** and **Ousmane BELEM**, Judicial Assessors;

President

Mr **Saïdou KIEMDE**, Deputy State Counsel of Faso at the said Court;

PUBLIC PROSECUTION

Assisted by **Barrister Idrissa SANFO**, Secretary of the Registry and Legal Department at the said Court;

Court Registrar

And Mr **Idrissa**,
Sworn Interpreter;

Interpreter

The following ruling was delivered:

BETWEEN

The. State Counsel of Faso, petitioner in a flagrante delicto proceeding;

ON THE ONE HAND;

AND

SML, born on December 7, 1989, in Ouahigouya, son of SH and OS, commercial employee of Burkinabe nationality, domiciled in Ouahigouya / sector 10, single with no children, who declares to have never been convicted, given an award or recruited;

Accused of:

1- having in Ouahigouya, during the years 2019-2020, less than 3 (three) years ago, committed acts of sexual penetration, of any nature whatsoever, on another person by violence, coercion, threat or surprise, in this case by having sexual relations with OR, a minor girl;

Acts provided for and punished by article 533-10 of the penal code;

2- having in Ouagadougou, on January 31, 2020, in any case, less than 3 (three) years ago, without violence, threat or fraud, abducted or attempted to abduct or divert OR, a minor girl, in Ouagadougou, to bring her back to Ouahigouya without the knowledge of her guardian and her family;

Acts provided for and punished by article 532-18 of the penal code;

ON THE OTHER HAND;

When questioned at the hearing of April 29, 2020, in accordance with Article 321-18 of the Criminal Procedure Code, the accused declared that he wanted to be tried immediately;

During the appeal, the State Counsel of Faso stated that he had summoned the above-mentioned accused before the Court to defend himself on account of the above-mentioned prejudice;

Then, the documents in the case file were read out;
And the accused was questioned;
The statements of the victims were heard;
The submissions of the Legal Department were heard;
The arguments of the accused were heard;
He was the last to speak;
The Court Registrar recorded the proceedings of the hearing;

THE COURT

Considering the documents in the file;
Having heard the answers of the Accused;
Having heard the submissions of the Legal Department;
Having heard the arguments made by the Accused, who spoke last;

I- FACTS

On February 02, 2020, OM filed a complaint to the Ouahigouya gendarmerie investigation brigade against SML for the kidnapping of her niece OR, aged about 15 (fifteen) years; In support of her complaint, she explains that her family, having noticed that OR missed her classes to go to a video club which is close to the courtyard where she had special relations with the manager, summoned the latter to find out more; that the SML reassured the family that he has no special relationship with OR; that nevertheless, the family sent OR to Ouagadougou on January 27, 2020, to continue her studies; that on January 31, 2020, the guardian of OR in Ouagadougou informed her that she had left the house since the morning without leaving any trace; that she contacted SML several times to get news of her niece, without success; that finally SML later returned to her by phone on February 02, 2020, to announce that her niece was going to return to

her family in Ouahigouya that very day;

When questioned, the victim OR claims that she has been in love with SML since February 2019; that following her family's decision to send her to pursue her studies in Ouagadougou, she planned her return to Ouahigouya with him; that on January 31, 2020, the latter came to Ouagadougou to pick her up and they reached Ouahigouya through the Transport Company "Aorèma et Frères" (STAF); that she spent 2 (two) nights at the home of SML before returning to the family home in Ouahigouya; that she had consensual sexual relations with the latter on several occasions; that she did not inform any member of her family of her return to Ouahigouya because she did not want anyone to know where she was;

When questioned, SML readily admitted the facts; he stated that he rallied Ouagadougou to bring OR back to Ouahigouya on January 31, 2020; that he had sexual relations with OR and that he knew she was 15 (fifteen) years old;

When referred to the Legal Department and then questioned about charges of rape and statutory rape, SML admitted that although he went to fetch OR to bring her back to Ouahigouya and had several sexual relations with her, he did so with her consent; Nevertheless, the State Counsel of Faso decided to prosecute him for rape and statutory rape on the basis of articles 533-10 and 532-18 of the penal code;

When heard at the bar, SML maintained his statements as made during the flagrante delicto investigation and before the State Counsel of Faso; Upon completion of the investigation, the Legal Department, after summarizing the facts, requested that the rape be reclassified as an indecent assault and that the accused be maintained in the scope of this prejudice, as well as that of statutory rape, and that he be sentenced to 24 (twenty-four) months suspended prison term and an actual fine of CFAF two hundred thousand (200,000); the accused, being the last to speak in his defence, implored the leniency of the court; the court then reserved the case for judgement to be handed down on May 6, 2020; on that date, the decision was handed down, for which the following grounds were given:

II- PROCEDURE

A-PROSECUTION

1) Acts of rape brought against the accused

Whereas SORE Mohamed Lamine is being prosecuted for acts of rape committed against OR, a minor girl; whereas Article 533-10 of the Penal Code provides that "*Any act of sexual penetration, of any nature whatsoever, committed against another person by violence, coercion, threat or surprise constitutes rape*"; whereas it follows that rape is characterized by the material act of sexual

penetration, the absence of consent of the victim and the guilty intention of the perpetrator;

Whereas it follows from the facts of the case as presented at the bar that the accused had sexual relations with OR; whereas, however, these sexual relations were consented by the victim, as she herself stated during the hearing; whereas, therefore, the rape cannot be held against SML;

Whereas, however, it is common knowledge that OR was only 15 (fifteen) years old when she was courted by the accused who had several sexual relations with her; that these acts are contrary to good morals; that, moreover, the accused acted knowingly in the sense that he denied having a relationship with the victim when he was questioned by the victim's family; that these facts fall under article 533-2 of the penal code which states that any act of a sexual nature contrary to public decency directly and intentionally exercised on a minor constitutes an indecent assault; that SML should be found guilty of indecent assault;

2) Acts of statutory rape

Whereas SML is also prosecuted for acts of statutory rape; whereas, according to article 532-18 of the Penal Code, anyone who, without violence, threat or fraud, abducts or seduces a minor is guilty of statutory rape; whereas the offence in order to be constituted presupposes a material act of abduction or displacement, the absence of fraud, violence or threat and guilty intent;

Whereas in this case, it emerges from the proceedings at the hearing that SML went to get OR, a minor of 15 (fifteen) years old, in Ouagadougou to bring her back to Ouahigouya and this, without the knowledge of her family; that these facts characterize the material act of abduction or statutory rape of a minor; that, moreover, it is clear that the victim was moved with her consent; that consequently, there was no fraud, threat or violence; that finally, it is established that SML hid the victim in his home for two nights before dropping her off at her home in Ouahigouya; that his guilty intention is obvious; that it follows that SORE Mohamed Lamine has all the elements of the offence of statutory rape against him; that, moreover, having acknowledged the acts, he should be declared guilty;

3) Sentence

Whereas article 523-4 of the Penal Code punishes indecent assault on a minor-aged over fifteen 15 (fifteen) and under 18 (eighteen) years with a prison sentence of 6 (six) months to 5

(five) years and a fine of CFAF two hundred and fifty thousand (250,000) to CFAF six hundred thousand (600,000); that article 532-18 of the same code punishes the offence of statutory rape with a prison term of 1 (one) to 10 (ten) years and a fine of CFAF one million (1,000,000) to CFAF five million (5,000,000); that, moreover, article 111-8 of the said code stipulates that in the event of conviction of several crimes or offences, only the strongest sentence shall be pronounced;

Whereas in this case, SML was guilty of indecent assault and statutory rape; whereas statutory rape is the most severely punished offence; whereas it is established that SML is a first-time offender; whereas in view of the circumstances of the commission of the offence, it is appropriate to sentence him to a 24 (twenty-four) month suspended prison term and an actual fine of CFAF five hundred thousand (500,000);

B- COSTS

Whereas under article 321-94 of the Code of Criminal Procedure, the accused person found guilty is also ordered to pay the costs; Whereas in the case of SML having been found guilty in these proceedings, it is appropriate to order him to pay the costs;

UPON THESE GROUNDS.

Ruling in a public hearing following full trial of a misdemeanour matter in first resort, the court;

- Declares SML guilty of the acts of statutory rape alleged against him;
- Classifies as indecent assault the acts of rape alleged against him and declares him guilty;
 - In repression, sentences him to a 24 (twenty-four) month suspended prison term and an actual fine of CFAF five hundred thousand (500,000);
 - also condemns him to pay the costs;

Thus acted, judged and pronounced publicly by the High Court of Ouahigouya on the aforementioned days, months and years.

The President

The Court Registrar