

COURT OF APPEAL OF
OUAGADOUGOU

BURKINA FASO

Unity- Progress-Justice

HIGH COURT OF OUAHIGOUYA

Judgement No. 056/19
of 12/06/2019

Legal Department No. 044/2019

Public Prosecution v.

W.M.

of 01/03/2019

HEARING OF JUNE 12, 2019,
ON CRIMINAL MATTERS

At the public hearing of the High Court sitting in Ouahigouya (Burkina Faso) on the twelfth of June two thousand and nineteen, on criminal matters in which were present:
Mr **Ali SANOU**, judge at the seat and acting as President,

PRESIDENT

Mr **Lamine KABORE**, Deputy State Counsel of Faso at the said Court, representing the Legal Department;

TYPE OF THE OFFENCE

Statutory rape

LEGAL DEPARTMENT,

Assisted by Barrister **Iliasse SAVADOGO**,
Court Registrar;

DECISION

See verdict

COURT REGISTRAR,

And Mr. Idrissa DIALLO,
Sworn Interpreter;

INTERPRETER

The case was called:

PANEL

BETWEEN

PDT: **Ali SANOU**

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

LD: **Lamine KABORE**

ON THE ONE HAND

CD: **Iliasse SAVADOGO**

AND

Int: **Idrissa DIALLO**

W.M., born on December 31, 1995, in Ninigui/Koumbri, to W. Madi and O.A, 23 (twenty-three) years old, Burkinabe, a baker living in Sector 10 of Ouahigouya, single without children, who declares to have never been convicted, given an award, recruited, detained, or assisted;
Accused of statutory rape;

Acts provided for and punished by article 532-18 of the Penal Code;

Appearing in person at the hearing;

ON THE OTHER HAND:

When questioned in accordance with the provisions of article 396 of the Code of Criminal Procedure, the accused declared that he wanted to be tried immediately;

During the appeal, the President established the identity of the accused and gave notice of the act referring the case to the Court before notifying the prejudice; the State Counsel of Faso stated that he had summoned the above-mentioned accused before the Court, at today's hearing, to defend himself on account of the above-mentioned prejudice;

The accused was questioned and his answers were heard;

The victim made his statements and filed a civil claim

The submissions of the Legal Department were heard;

The accused, who spoke last, made his arguments to defend himself;

The Court Registrar recorded the proceedings of the hearing; Then at the end of the proceedings, the Court having ruled in accordance with the law, the following judgement was pronounced;

THE COURT

Considering the documents in the file;

Having heard the answers of the accused;

Having heard the victim's statements and the filing of a civil claim;

Having heard the submissions of the Legal Department;

Having heard the arguments of the accused, who spoke last;

I) FACTS

On February 27, 2019, the Central Police Station of the Ouahigouya town received a visit from Mrs. S.M., a housewife living in Sector 01 of the town, who declared that she had come to file a complaint against W.M. for statutory rape of her daughter O.H., a minor aged 12 years, as she was born on March 2, 2007;

During the hearing of her complaint, Ms. S.M explained that one night, at around 10 pm in September 2018, she surprised her daughter not far from her yard in the company of W.M; that the next day, she noticed that she had abandoned the family home; that she learned that her daughter was in Sector 10 of the

town of Ouahigouya, at the home of W.M.;

That she then urged W.M. to let her daughter return home, but without success; that W.M. was opposed to this despite the many negotiations she had undertaken with the latter's employer; that during the time she spent at his home, that is about ten days, the accused sexually abused her daughter, as she was not mature enough for such acts;

O.H. interviewed by the investigating officers corroborated her mother's statements; she stated that she was taken from her home to Sector 10 of the town of Ouahigouya by W.M., whom she considered to be her boyfriend;

When arrested and then interrogated, W.M. readily admitted the facts against him; he stated that he had accommodated the woman named O.H. at his home for about ten days, despite the plaintiff's opposition;

At the end of his hearing, W.M. was summoned before the State Counsel of Faso at the said court, which decided to prosecute him under the procedure of flagrante delicto for statutory rape in application of article 532-18 of the Penal Code;

When questioned at the Legal Department, he reiterated his statements made during the police investigation; he also stated that he had had sexual relations with the victim;

At the bar of the Court, he acknowledged the acts alleged against him before apologising; S.M, having been heard in her explanations, decided not to file a civil claim;

The Legal Department, after having summarised the facts, requested that the accused be maintained in the scope of the above-mentioned prejudice and that he be sentenced to 8 (eight) months suspended prison term and a fine of CFAF one hundred thousand (100,000);

The accused sought clemency from the Court which ruled as follows;

II - PROCEDURE

A-Guilt of the accused

Whereas W.M is accused of the abduction of a minor;

Whereas under the provisions of Article 532-18 of the Penal Code, "is punishable by 1 (one) to 10 (ten) years' imprisonment and a fine of CFAF 1,000,000 to 5,000. 000, anyone who, without violence, threats or fraud, abducts or seduces or attempts to abduct or seduce a minor"; that for this offence to be considered a crime, the only

requirement is that the minor must have been knowingly or voluntarily led and displaced by a third party for a certain period of time, even if the minor had consented to this, and without there being any reason to consider the circumstance which, at the time the incriminated acts took place, the minor had already left, of his own free will, the domicile or residence where he normally stayed; that, in other words, the offence of statutory rape presupposes, in addition to the material act of rape, a guilty intention; that this guilty intention is analysed according to knowledge that the accused had the conscious intention to abduct or misled a minor from the authority of his parents or from the custody of the persons to whom the minor had been subjected or entrusted for a certain period of time; that the accused's knowledge of the age of the victim is a determining factor in this guilty intention;

Whereas in this case, the accused admits having accommodated the victim in his home for about ten days; whereas he tries to justify his attitude by the fact that he considered the victim as his girlfriend and that he intended to marry her; whereas it has been established that the victim was only 12 (twelve) years old at the time of the events and therefore lived with her mother in Sector 01 of the victim's home in Ouahigouya; that despite multiple orders from the latter to return the above-mentioned minor to her place of habitual residence, the accused did not deign to comply; that such an action by the accused, even if devoid of any violence or fraud, undoubtedly constitutes the material act of statutory rape referred to above;

Whereas the accused W.M was well aware of the victim's minority; that he himself recalled this throughout the investigation of the case in court; that despite everything, he did not deign to renounce his act; that by deciding to take her from her mother's residence to his home, the accused was well aware that he was participating in taking her away from her parents' authority; that he was therefore not unaware of the reprehensible nature of his act; that his guilty intention was therefore established; that it was appropriate to convict him of the offence of statutory rape, to find him guilty of it and to seek a conviction against him;

B- Sentence

Whereas it is clear from the provisions of Article 532-18 of the Penal Code that "anyone who, without violence, threats or fraud, abducts or seduces or attempts to seduce or abduct a minor shall be punished by 1 (one) to 10 (ten) years' imprisonment and a fine of CFAF 1,000,000 to 5,000,000";

Whereas in this case, the accused W.M is a first-time offender for not having yet been convicted for acts of the same kind; That he humbly admitted his wrongdoing at the hearing by promising to make amends for the future; That taking into account his above-mentioned pleas and promises, he should be given a second chance at social reintegration; And for this reason, he should be sentenced to 8 (eight) months imprisonment and a suspended fine of CFAF one hundred thousand (100,000), pursuant to the benevolent provisions of articles 217-4 of the Penal Code and 694 et seq. of the Code of Criminal Procedure;

UPON THESE GROUNDS:

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

Declares W.M guilty of the charges of statutory rape alleged against him;

In repression, condemns him to 8 (eight) months suspended prison term and a fine of CFAF one hundred thousand (100,000);

Acknowledges S.M. decision of not filing a civil claim.

Condemns W.M to pay the costs;

In witness whereof the judgement was signed by the President and the Court Registrar on the above-mentioned days, months and years.

The President

The Court Registrar