

**JUVENILE COURT  
OF OUAGADOUGOU**

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**OFFICE OF THE JUVENILE JUDGE OF  
OUAHIGOUYA**

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**Judgement No. 003./2019  
of 05/03/2019**

Legal department No.: 187 /2014

**CASE:**

Public Prosecution:

Vs

**O.M.**

**Provisional Custody Order**

26 June 2014

**BURKINA-FASO**

**Unity - Progress - Justice**

**Hearing of March 5, 2019, on flagrante delicto**

At the hearing of the juvenile judge, sitting in Ouahigouya (BURKINA FASO), on March 5, 2019, on criminal matters, presided over by **Mr Mahamed DIELO**, Juvenile Judge;

**PRESIDENT;**

Ms T. Justine SAWADOGO,  
Deputy State Counsel;

**LEGAL DEPARTMENT;**

Assisted by Barrister Marcel OUANGO,  
sworn Court Registrar;

**COURT REGISTRAR:**

**DABOU Harouna,**  
Social Educator ,

Provisional release of  
05 December 2014

**Accused of:**  
Rape

Civilly liable:  
OUEDRAOGO Salif and  
OUEDRAOGO Azéta

**Victim:**  
OUEDRAOGO Djamilatou  
represented by SOMDA Espérance  
Wakoum  
PANEL:

**President:**  
Mahamed DIELO.

**Legal Department:**  
T. Justine SAWADOGO;

**Court Registrar:**  
Marcel OUANGO

**DECISION**  
(see verdict)

**SOCIAL SERVICE;**

And of **DIALLO Idrissa**,  
Sworn Interpreter,

**INTERPRETER:**

The following judgement was delivered:

BETWEEN

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

**ON THE ONE HAND**

AND

**O.M.**, born in 1999 in Pélé/Oula, of OUEDRAOGO  
Salam and of OUEDRAOGO Azéta,  
Burkinabe national, pupil, domiciled in Ouahigouya,  
unmarried without children, of Burkinabe  
nationality, who declares to have never been  
convicted, recruited or given an award;  
Accused of Rape; Acts provided for and punished by  
article 14 of Law No. 061-2015/CNT on the  
prevention, punishment, and compensation of  
violence against women and girls, and the support  
for victims;

**ON THE OTHER HAND**

When questioned at the hearing of March 5, 2019,  
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 verified the identity  
of the accused and disclosed the acts before the  
Court;

The State Counsel of Faso stated that he summoned  
the above-mentioned accused to appear at today's  
hearing to defend himself on the basis of the above-  
mentioned prejudice, and then the documents in  
the case file were read out;

The Court Registrar also recorded the answers of  
the accused;

The Legal department summarized the case and  
requested the application of the law against the  
accused;

The accused made his arguments to defend himself  
and the juvenile judge ruled as follows:

## **THE JUVENILE JUDGE;**

Considering the documents in the file;  
Having heard the oral submissions of the Legal department;  
Having heard the oral observations of the social service;  
Having heard the arguments of the Accused, who spoke last;  
After having deliberated in accordance with the law;

### **1. FACTS**

On June 16, 2014, O.D. filed a complaint against O.M. at the Territorial Brigade of Ouahigouya for rape; to back up her complaint, she stated that on June 15, 2014, S.I had invited her to her house to discuss with her; on her arrival, she found O.M waiting for her there; that S.I left the house, making sure to close the door without locking it; that it was at that moment that O.M begged her to make love with him; that she categorically refused; that despite her refusal, he dragged her by force into the room where he took off her panties and pants before knocking her down; that he tried once to penetrate her without success and then a second time where he succeeded in penetrating her and having sexual intercourse with her without, however, succeeding in ejaculating because, in the meantime, she had managed to undo his ties and flee, leaving her underwear behind. Opening an investigation, the investigating officers heard O.M, who readily admitted the acts against him; he explained that he was staying with his friend S.I; that he had courted O.D; that, however, she had never given him a favourable or unfavourable response; that he deduced from her behaviour that she had accepted his advances since she regularly sent her sisters to ask him for money on her behalf; that on June 14, 2014, her friend S.I invited O.D to their home; that after some hesitation, she responded favourably; that when they arrived at their home, S.I invited O.D to enter their room; that once inside, SIGUE Issaka asked him to join her; that since he had not yet had sexual relations with a girl, he refused to obey his friend; that the latter encouraged him by asking him if he was not a man; that under the encouragement

of his friend, he joined O.D in the room; that his friend shut the door behind him, and that being there he had forced O.D to have sexual relations with him. Upon completion of the preliminary investigation, O.M was referred to the Legal Department of the State Counsel of Faso at the High Court, which, according to its introductory indictment No. 187/2014 of June 19, 2014, requested the opening of an investigation against him for rape charges; During the investigation phase, both during the initial examination and during the examination of the merits, the accused remained consistent in his statements made during the preliminary investigation; however, he described how he had done so, explaining that once in the room with the victim, he had asked her to undress; When she refused, he grabbed her by her left hand at the level of her trunk and then, with his right hand, pulled her pants up to her knee, from where the pants fell to the ground automatically; he then lifted her by force and laid her down on a mat that had been spread out beforehand, before penetrating her with his penis despite her opposition;

On February 21, 2018, the juvenile judge closed the information and issued an order to refer the case to the same court for trial in accordance with the law; Entered on the cause list of March 20, 2018, the case was referred several times for the accused's appearance; failing to reach the accused, the file was finally referred to the general roll at the hearing of September 04, 2018, before being rescheduled for the hearing of March 05, 2019, date on which the file was retained and debated; the accused acknowledged the acts alleged against him by reiterating his statements made since the preliminary investigation; the victim declared that she would not file a claim for damages parallel to prosecution; Upon completion of the hearing, the State Counsel of Faso requested that the court find the accused guilty of the acts alleged against him and, as a punishment, order that he be handed over to his parents for better care; speaking last, the accused regretted his act and requested the clemency of the juvenile judge; the juvenile judge dismissed the case by issuing the following judgement:

## **II. GROUNDS FOR THE DECISION;**

### **A. Competence of the Juvenile Judge**

Whereas, according to article 2 of law No. 015-2014/AN on the protection of children in conflict with the law or those in danger, a child is defined as any human being under the age of 18 (eighteen); whereas article 18 of the same law, states that the juvenile judge is competent to hear contraventions and offences committed by the child;

Whereas in this case, it emerged from the debates at the hearing that O.M was born in 1999 in Pélé/Oula; that pursuant to article 2 paragraph 3 of the above-mentioned law, it is appropriate to say that his date of birth is December 31, 1999; that between this date and June 16, 2014, date of commission of the acts, less than 18 (eighteen) have elapsed; that it is appropriate to say, within the meaning of the aforementioned law, that O.M was a minor at the time of the acts; that consequently, he must be tried by the Juvenile Judge;

### **B. Prosecution**

#### **1. Guilt**

Whereas O.M is being prosecuted for acts of rape; Whereas, according to Article 14 of Law 061-2015/CNT on the prevention, punishment and reparation of violence against women and girls, and the support for victims, is guilty of rape and is punishable by imprisonment from 5 (five) to 10 (ten) years, any person who commits by violence, coercion or surprise, an act of sexual penetration of any kind whatsoever on a woman or a girl; that this provision therefore states that the offence of rape, to be established, requires the combination of a material element of sexual penetration, the exercise of violence, coercion or surprise, and guilty intention;

Whereas, in this case, O.M acknowledges that he forced the victim to lie on a mat that he had previously established by terracing her: it is appropriate to conclude that there was no consent of the victim;

Whereas he also admitted having introduced his penis into the victim's vagina after having subdued her; whereas it is appropriate to conclude that O.M used violence to sexually penetrate his victim: that thus, the material act of sexual penetration and the use of violence are found against him;

Whereas the guilty intention can be inferred from the circumstances of the case; whereas by dragging his victim into the room and then removing her intimate clothing in order to force her to have sexual relations with him, O.M unambiguously demonstrated a guilty intention; whereas in view of all the foregoing, all the elements constituting the crime of rape are established against him; whereas he should be found guilty and convicted:

### **2-Sentence**

Whereas, within the meaning of Article 14 of the above-mentioned law, rape is punishable by 5 (five) to 10 (ten) years' imprisonment; whereas, however, pursuant to Article 77 of Law No. 015-2014/AN of 13 May 2014 on the protection of children in conflict with the law or those in danger, a child for whom the prejudice of a contravention or offence is established is subject to one or more measures or sanctions, including handing him/her over to his/her parents;

Whereas in this case, it emerges from the proceedings at the hearing corroborated by the social investigation report that the criminal situation of the minor is due to his bad company; that since his provisional release on December 5, 2014, the minor improved his relations; that he has a family where he enjoys a harmonious life with his concubine; that he is the father of a child to whom he provides care and attention; that he carries out an income-generating activity that has enabled him to integrate perfectly into society; Moreover, the victim and his mother appearing at the hearing affirmed that the two families have forgiven each other; that, when questioned specifically on the matter, the victim affirmed that she had forgiven her aggressor; that the incident is now a past event; that the accused should be given a sentence that will enable him to further consolidate his social integration; that, in this sense, handing the minor over to his parents is the most appropriate sentence; that, in application of article 77 of the above-mentioned law, it is appropriate to hand the minor over to his parents for better care;

### **C. Civil Action**

Whereas under articles 2 and 418 of the Code of Criminal Procedure, the claim for damages parallel

to prosecution caused by a crime belongs to all those who personally suffered the damage directly caused by the crime; whereas the compensation can be requested at the criminal hearing before the submissions of the Legal Department;  
Whereas in this case, O.D, appearing at the hearing, declared before the Legal Department's submissions that she would not be a civil party;  
Whereas, pursuant to the above-mentioned provisions, the victim is only offered the option of filing a civil action; it is therefore appropriate to acknowledge O.D's failure to file a civil action;

#### **D- Costs**

Whereas under Article 473 of the Code of Criminal Procedure, the accused person found guilty is also ordered to pay the costs;  
Whereas in this case, O.M was found guilty of the acts of rape; he should be ordered to pay the costs;

#### **UPON THESE GROUNDS**

The Juvenile Judge ruling publicly following full trial of a misdemeanour matter in first resort;

- ❖ Declares O.M guilty of the charges of statutory rape alleged against him;
- ❖ In repression, orders his return to his parents for better care;
- ❖ acknowledges O.D's failure to file a civil action,
- ❖ Also condemns O.M to pay the costs;

Thus acted, judged and pronounced on the aforementioned day, month and year

Signed by:

**The President**

**Court Registrar**