

**COURT OF APPEAL OF
OUAGADOUGOU**

**HIGH COURT
OF OUAHIGOUYA**



**Judgement No. 116/2019
of 30/10/2019
Legal Department No. 123/2019**

Case

Public Prosecution

Vs

G.S alias Kakaga

Type of the offence

Rape

Decision

(See verdict)

PANEL:

President: DIELO Mahamed

Legal Department: KABORE Lamine

Court Registrar: Iliassé SAVADOGO

Interpreter: DIALLO Drissa

JUDICIAL ASSESSORS:

OUEDRAOGO R. Balguissa,
BOURGOU Y. Bienvenue, KINDO
Noufou; OUEDRAOGO Ismaël

**BURKINA FASO
Unity-Progress-Justice**

HEARING OF OCTOBER 30, 2019, ON FLAGRANTE DELICTO

The High Court of Ouahigouya (Burkina Faso) ruling in a criminal suit during an ordinary court hearing on 30/10/2019 (thirtieth October two thousand and nineteen), held at the Court House of the said city, in which were present: **DIELO Mahamed**, Judge at the said Court;

President

Assisted by OUEDRAOGO R. Balguissa, BOURGOU Y. Bienvenue, OUEDRAOGO Ismaël and KINDO Noufou;

Judicial Assessors

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

Legal Department

Assisted by Barrister Massé SAVADOGO, Court Registrar at the said court;

Court Registrar

Mr DIALLO Drissa

Sworn Interpreter:

The following judgement was delivered:

BETWEEN

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

ON THE ONE HAND

AND

G.S alias Kakaga, born on January 1, 1983, in Méné, son of G.I and N.M, of Burkinabe nationality, commercial employee domiciled in Méné/Koumbri, who declares to have never been convicted, recruited or given an award;

Accused of having attempted to commit rape against T.D in Barga on October 3, 2019, less than three (3) years ago; this attempt was manifested by the beginning of the commission of the crime, in this case grabbing the hands of the above-mentioned woman and dragging her into the bushes, forcibly undressing her and attempting to have sexual intercourse with her, which only failed due to circumstances beyond his control, in this case the arrival of the victim's mother at the scene;

Acts provided for and punished by articles 122-1, 122-2, 122-3, 122-4, and 533-10 of the Penal Code;

ON THE OTHER HAND

That he undressed her by tearing her loincloth before undressing as well; that it was while he was preparing to forcibly engage in sexual intercourse with her that his mother, who had waited in vain for her return, arrived on the scene; that the latter projected the light of her torch into the bushes and saw them all in their Adam's garb, that to compel G.I alias Kakaga to abandon his crime, her mother used a stick and beat him up.

When invited to give her version of the events, K.M, the victim's mother, described the events as recounted by the victim, but added that when she arrived in front of the suspect's shop, she heard a noise coming from the bushes; that, to get a full picture, she projected the light of her torch towards the place where the noise was coming from; that she saw a naked boy leaning over her daughter who was also naked; that she threatened them and used a stick to separate the boy from her daughter; that this boy, who happened to be G.S alias Kakaga, went to the Divisional Officer of the Barga Division to complain on the grounds that he had been beaten by her; that the administrative authority, after hearing them, advised them to refer the matter to the police;

G.S alias KaKaga, who was arrested and questioned during the police investigation, readily admitted the facts. He stated that in the evening of October 3, 2019, he ordered food in a restaurant near his shop; that shortly afterwards a girl arrived in front of his shop with his order, namely a dish of tô; that at the sight of the girl, he held back in vain from the desire to have sexual relations with her on the spot: that this is how he declared his desire to the girl, who said that she would reply after having served other customers; that as his instinct had not allowed him to free the girl, he pulled her by force towards a field of sorrel not far from his shop, succeeded in undressing himself and the girl; that, however, when the time came for the sexual act, the girl's mother pointed at them with the light of a torch and threatened them; that he was therefore obliged to free the girl; and that, had it not been the arrival of the victim's mother, he would have succeeded in forcibly having sexual intercourse with her; Upon completion of the investigation, the reports and the various documents were sent to the State Counsel of Faso who, on the basis of the evidence against him, instituted proceedings under the flagrante delicto procedure against G.S alias Kakaga for attempted rape, on the basis of articles 122-1, 122-2, 122-3, 122-4 and 533-10 of the Penal Code;

G.S alias Kakaga, after being heard in the flagrante delicto investigation before the State Counsel of Faso, reiterated these statements made during the preliminary investigation;

Appearing at the hearing, the mother stated that she used a stick to force the abuser to leave her daughter; that the intentions of G.S alias Kakaga did not succeed because of the fierce resistance of the victim who escaped with a torn loincloth and the arrival of her mother as a backup; that, moreover, the accused admitted at the bar that, had it not been that he was surprised by the victim's mother, he would have succeeded in satisfying his sexual instinct by forcibly having sexual relations with the victim;

It should be noted that the accused did not voluntarily withdraw from his action, the abandonment of his criminal plan being due to the arrival of K.M, the victim's mother; that there is therefore no voluntary withdrawal;

Whereas, moreover, the accused was aware of the criminal nature of the acts he was attempting to commit, as evidenced by his modus operandi consisting in forcibly dragging the victim out of people's sight, the fact of obstructing the victim's voice by using her loincloth to prevent her from calling for help, and was

also aware that if he had succeeded in his intention, he would have caused definite harm to the victim, which would have affected both her honour and her dignity;

That in so doing, all the elements constituting the offence of attempted rape are sufficiently present against the accused G.S alias Kakaga; That he should therefore be retained in the scope of the offence of attempted rape, declared guilty and be sentenced;

B- SENTENCE

Whereas G.S alias Kakaga was found guilty of the attempted rape alleged against him;

Whereas pursuant to Article 122-4 of the Penal Code, the applicable penalty for attempted rape is that of the offence itself; Whereas the penalty for attempted rape is the same as that for the offence of rape;

Whereas according to the provisions of article 533-10, rape is punishable by imprisonment for 7 (seven) to 10 (ten) years and a fine of CFAF six hundred thousand (600,000) to CFAF two million (2,000,000);

Whereas, however, article 615-1 of the Code of Criminal Procedure provides for that: "If the convicted person has not been sentenced prior to imprisonment for a crime or offence under ordinary law, the courts and tribunals may order by the sentencing judgement and by a reasoned decision that all or part of the sentence be suspended";

Whereas in this case, it should be noted that GANAME Saidou alias Kakaga has never been sentenced prior to imprisonment for a crime or offence under ordinary law; that he also made an act of contrition at the hearing;

E- COSTS

Whereas, pursuant to Article 321 -94 of the Code of Criminal Procedure, any judgement of conviction handed down against the accused shall condemn him to pay the expenses and costs to the State;

Whereas in this case, GANAME Saidou alias Kalaga was found guilty of attempted rape; he should be ordered 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 G.S alias Kakaga guilty of the acts of attempted rape alleged against him;
- In repression, sentences him to 12 (twelve) months suspended imprisonment and an actual fine of CFAF one hundred thousand (100,000);
- Receives an application for civil damages against T.A and states that it is well-founded;
- Condemns G.S alias Kakaga to pay her the sum of CFAF ten thousand (10,000) as compensation;
- Orders the restitution of sealed evidence No. 2019-30, consisting of a torn loincloth all kept at the Registry of this Court under No. 51/2019 of

18/10/2019, to T.A;

- Further orders G.S alias Kakaga to pay the costs.

Thus acted, judged and pronounced on the aforementioned days, months and years.

The President

The Court Registrar