

COURT OF APPEAL
OF OUAGADOUGOU

BURKINA FASO

Unity- Progress-Justice

Judgement No.
21/2019 of
06/03/2019 RP No.
002/2019 of
06/02/2019

CASE:
Public Prosecution:
Vs
S.J

TYPE OF OFFENCE
Assault and Battering
(ITT of 96 hours)

DECISION
(See verdict)

PANEL

PRESIDENT

Salifou
TIENDREBEOGO
Judicial Assessor:
BAZIE Piali Rigobert

LEGAL DEPARTMENT

Wendyam Lambert
SANFO

COURT REGISTRAR

KABORE Victor

HIGH COURT OF KONGOUSSI

HEARING OF MARCH 6, 2019, ON MINOR OFFENCE

The High Court of Kongoussi (Burkina Faso), ruling minor offences during an ordinary court hearing of sixth March two thousand and nineteen, in the Court of the said town at 8 am, in which were present:

Salifou TIENDREBEOGO, President of the said court;

PRESIDENT

Assisted by BAZIE Piali Rigobert, Judicial Assessor

And Mr **KABORE Victor**, Court Registrar;
COURT REGISTRAR,

Mr **Wendyam Lambert SANFO**, State Counsel at the said court of Faso, representing the Legal Department;

LEGAL DEPARTMENT.

Mr **DIALLO Abdoulaye**, Legal Interpreter;

The following judgement was delivered:

BETWEEN

The State Counsel of Faso petitioner by direct summons to the accused in accordance with Articles 531 and 532 of the Code of Criminal Procedure;

ON THE ONE HAND;

AND

S.J, born on 01/01/1970 in Zoura, of the late S.S and S.N, housewife, residing in Kongoussi, widowed mother of five (05) children, who claims to have never been convicted, recruited or given an award; Accused of assault and battering on K.A leading to a 4-day ITT;

Acts provided for and punished by articles 2-4 and 8-8 of decree No. 097-84/PRES/PM/MJ of 28/02/1997 defining and punishing minor offences;

ON THE OTHER HAND

Entered on the cause list of February 6, 2019, for hearing in minor offences, the case was postponed to March 6, 2019, at the request of Barrister OUATTARA Issiaka, lawyer of the accused to summon the victim to appear before the Minor Offence Court; At the hearing of March 6, 2019, the case was summoned, then retained and debated to be judged in accordance with the law; When questioned at the said hearing, the accused declared that she wanted to be tried immediately;

During the appeal, the President checked the identities of the accused and disclosed the facts before the Court;

The accused was questioned;

The witness summoned by the accused gave evidence;

The statements of the victim K.A, assisted by his mother K.W.A were heard;

The claims of the civil party, K.W.A, were heard;

The submissions of the Legal Department were heard,

The accused through her lawyer Barrister OUATTARA Issiaka made her arguments to defend herself, and was given the floor in last position;

The Registrar recorded the responses of the accused and the statements of the victim, the civil party and the witness;

On this, the debates having ended, the Court ruled as follows:

THE COURT

Considering the documents in the file;

Having heard the answers of the Accused;

Having heard the testimony of the witness;

Having heard the statements of the civil party, K.W.A, who filed for civil claims;

Having heard the submissions of the State Counsel;

Having heard the arguments made by the accused, who spoke last;

FACTS

On Monday, December 31, 2018, K.W.A filed a complaint against S.J before the State Counsel of Faso at the Kongoussi High Court for assault and battery committed against her minor child, K.A; The Kongoussi Territorial Brigade opened an investigation to elucidate the circumstances of the case. The accused acknowledged the acts while declaring that she had inflicted the beating on the victim as a punishment for the insulting remarks made against her; Upon completion of the investigation, the judicial investigation reports were transmitted to the State Counsel of Faso at the High Court who, on the basis of the evidence contained therein, initiated proceedings against S.J, following the procedure of direct summons to appear in court for the acts of assault and battery committed against K.A in accordance with Articles 8-8 and 2-4 of Decree No. 97-84 of 28/02/1997 defining and punishing minor offences;

Before the court, the accused acknowledged the acts; She explained that, while looking for her pig, the victim, who was passing through, arrived at her courtyard and said the following: "Here is the harlot and her children"; So she went to the victim's mother to question her about her child's behaviour; In response, her mother defended him; She then went to her neighbour's house to tell him what the victim had said about her; Again, the victim invited herself into their debate, still making insulting comments about her and calling her a liar; As a result, she had to hit him on the head, and the victim fainted; she remained there until the victim was revived and then transferred to the hospital; After the victim was transferred to the hospital, she went there to take responsibility of the bills for the medical care given to him; She said that she had beaten the victim as a sign of correction, in view of his attitude towards an elder, but that she had no intention of hurting him;

The Legal Department pointed out to the accused through three (03) diagnostic tables, that there is no evidence reported of the insults she accused the victim of uttering against her; that the victim, on seeing the accused and the witness talking about him, certainly came to defend his honour; Finally, not only does the diagnosis made in the medical certificate prove the contrary of what the accused declared to have struck a single blow, but also after the acts, the accused left the premises even though she could have come to his aid by evacuating him to the hospital; that this behaviour indicates that she could have been prosecuted for attempted murder or failure to assist a person in danger;

Barrister OUATTARA Issiaka in response to the Legal Department's observations pleaded that her client administered only one blow to the victim, which caused him to faint, that her client remained there until the victim was revived and transferred to hospital; that she even paid for the victim's medical expenses; that finally, her client regretted her act; that she declared that her intention was rather aimed at correcting the victim's attitude than the injury that ensued; that consequently her client acknowledged the acts and apologized, that it would be appropriate for Mr. President to apply the law benevolently, to allow the civil claims and to deduct from them the medical expenses already incurred by her client up to the sum of CFAF 32,820 (thirty-two thousand eight hundred and twenty);

K.A, the victim, in the case at hand, stated that he was on his way to his mother's business, when he saw both the accused and the witness S. Joachim discussing; that he approached them and told the witness in essence: "not to listen to the accused, because she is lying"; that he was joking with his parents; that this prompted the accused' daughters to accuse him of having insulted them;

K.W.A, plaintiff, stated before the court that when the accused arrived at her home, she began to insult her because her child had insulted her; that she asked the child if he had insulted her, but he denied the facts; that she and the accused had problems, that she believes it was because of these past events, that she had come to provoke her by accusing her child of having insulted her; that the accused gave the child two blows and even trampled him on the chest; that she was at her business place during the events; that it was a lady who came to inform her that the accused had hit her child and that he had fainted; that she is a civil party and is claiming the expenses she incurred for the medical care of her child;

S. Joachim, a witness called to the stand, stated that the accused came to his home to explain to him the victim's attitude towards her; that while they were discussing, the victim who was passing through told him not to listen to the accused; that he did not insult her but rather joked with his parents; that the accused tried to hit him, but he intervened; that the accused took advantage of his inattention to hit the victim on the forehead, causing him to faint; that he revived him before leaving the scene; that the accused remained on the scene until the victim woke up;

On this, the hearing ended; the Court reserved the case for judgement to be handed down the same day, and ruled as follows:

PROCEDURE

1- PROSECUTION

CONSTITUTING THE OFFENCE CHARGED AGAINST SAWADOGO JULIENNE

Whereas S.J is accused of having inflicted blows or injuries on KINDA Armel and the resulting ITT lasted 4 (four) days; Acts provided for and punished by Articles 2-4 and 8-8 of Decree No. 97-84/PRES/PM/MJ of February 28, 1997, defining and punishing minor offences;

Whereas, pursuant to article 8-8 of the aforementioned decree, the charges alleged against S.J to be constituted require the combination of a material act of blows to a human victim, a guilty intention and an ITT of less than 7 (seven) days;

Whereas, in the case at hand, the accused acknowledges having struck the victim on the head; whereas the material act of striking a human victim is established; whereas she acted in this way as a sign of correction to be inflicted on the victim; whereas her intention to strike is also established; whereas the medical certificate drawn up in the name of K.A and placed in the file shows a 4 (four)-day ITT; whereas it is established that the ITT resulting from the blows to the victim is less than 7 (seven) days;

Whereas of the foregoing it is appropriate to find the accused guilty of the charges against her;

SENTENCE

Whereas pursuant to articles 8 and 2-4 of the aforementioned decree, the acts alleged against S.J are punishable by a fine of CFAF 15,001-50,000; Whereas in the case at hand, it is common ground that the blows inflicted on the victim by the accused were intended to correct the victim's attitude towards an elder; that such behaviour by the victim cannot be accepted in view of the reverence that all children must pay to their elders; that, in addition, the accused took charge of the victim's medical care; that she thus accepted responsibility for her actions; that such attitude from the accused is evidence of her amendment;

That it is appropriate to condemn her to a suspended fine of CFAF fifty (50,000);

II-CIVIL ACTION

Whereas pursuant to Article 2 of the Code of Criminal Procedure, any person claiming to be the victim of a criminal offence may seek compensation before the criminal courts hearing the criminal proceeding by filing a civil action;

That this filing of a civil action must in all cases be made prior to the submissions of the prosecution on the merits in accordance with the provisions of Articles 419 and 421 of the Code;

Whereas at today's hearing, K.W.A declared that she is a civil party;

Whereas as civil party, she claimed from the accused the reimbursement of sums incurred for the medical expenses of her child KINDA Armel; whereas these expenses amounted to CFAF 64,290 (sixty-four thousand two hundred and ninety), and break down as follows:

-Costs of medical prescriptions;

(2790+3300+4500+7300+400+1900+300+6650+5650)= CFAF 32,790;

- Medical examination

CFAF 17,500;

- Hospitalisation costs:

CFAF 4,000;

- Medical certificate Fixing the ITT at four (04) days ;

CFAF 10,000;

Whereas, however, Barrister OUATTARA Issiaka, lawyer of the accused explained that his client also contributed to the medical care of the victim; that the amount of money paid by her amounts to CFAF 32,830 (thirty-two thousand eight hundred and thirty).

Whereas, in the case at hand, S.J was found guilty of the acts alleged against her; she is therefore liable to pay compensation for the damage caused to the victim, K.A;

K.W.A, the plaintiff in this case, claims reimbursement of medical expenses incurred; however, the accused contributed to the victim's medical care to the tune of CFAF (thirty-two thousand eight hundred and thirty); these should be deducted from the sums incurred by the plaintiff;

Whereas from all of the above, it is appropriate to declare admissible and partially founded the civil action of K.W.A and consequently condemn S.J to pay the sum of CFAF 31,460 (thirty-one thousand four hundred and sixty) representing the costs of medical prescriptions she has incurred;

III-COSTS

Whereas pursuant to Article 473 of the Code of Criminal Procedure that the accused found guilty must be ordered to pay the expenses and costs; Whereas in this case, S.J has been found guilty of the acts alleged against her, and should be ordered to pay the costs;

UPON THESE GROUNDS

Ruling in a public hearing following full trial of a minor offence in first resort, the court;

-Declares the accused guilty of the charges against her;

-In repression, sentences her to a suspended fine of CFAF 50,000 (fifty thousand),

-Declares admissible and partially founded the civil action of K.W.A;

-Consequently, condemns S.J to pay her the sum of CFAF 31,460 (thirty-one thousand four hundred and sixty) representing the costs of medical prescriptions she has incurred;

-Orders her finally to pay the costs.

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

And signed:

The PRESIDENT THE COURT REGISTRAR