

**JUVENILE COURT OF
BOBO-DIOULASSO**

**JUVENILE JUDGE OF
BOBO-DIOULASSO**

JGT No. 037 of 10/08/2017

RP No. 022 /2017 of 31/07/2017

**BURKINA FASO
UNITY-PROGRESS-JUSTICE**

**HEARING OF AUGUST 10, 2017, ON CRIMINAL
MATTERS**

At the ordinary hearing in chambers of the Juvenile Judge in Bobo Dioulasso (Burkina Faso) on August 10, 2017, in which were present: Mr. **ONADJA Yempabou**, Juvenile Judge of Bobo-Dioulasso;

PRESIDENT,

Mr. **MEDA G. K. Evariste**, Deputy State Counsel of Faso;

LEGAL DEPARTMENT,

Assisted by Barrister **KIENDREBEOGO T. Therese**,
Court Registrar;

COURT REGISTRAR

LD

C/

1- A.B

2- D.S

3- T.A

4- S.H

The following ruling was delivered:

Between the State Counsel of Faso, petitioner by way of an indictment initiating proceedings;

ON THE ONE HAND,

**TYPE OF THE
OFFENCE**

Rape

DECISION

See verdict

AND

1- A.B, born August 01, 2001, in :

Accused of: "having committed rape in Bobo-Dioulasso on July 15, 2017, less than ten (10) years ago, on B.K.;

Acts provided for and punished by articles 1, 2, 4, 14 of Law No. 061-2015 /CNT of September 6, 2015, on the prevention, punishment, and reparation for violence against women and girls, and support for victims";

2- D.S, born on 12/12/2000 in..... ;

Accused of: "having committed rape in Bobo-Dioulasso on July 15, 2017, less than ten (10) years ago, on B.K.;

Acts provided for and punished by articles 1, 2, 4, 14 of Law No. 061-2015 /CNT of September 6, 2015, on the prevention, punishment, and reparation for violence against women and girls, and support for victims";

3- T.A, born on April 01, 2000, in.....

Accused of: "having committed rape in Bobo-Dioulasso on July 15, 2017, less than ten (10) years ago, on B.K.;

Acts provided for and punished by articles 1, 2, 4, 14 of Law No. 061-2015 /CNT of September 6, 2015, on the prevention, punishment, and reparation for violence against women and girls, and support for victims";

4- S.H, born August 02/ 12/ in.....;
Accused: of: “having committed rape in Bobo-Dioulasso on July 15, 2017, less than ten (10) years ago, on B.K.;
Acts provided for and punished by articles 1, 2, 4, 14 of Law No. 061-2015 /CNT of September 6, 2015, on the prevention, punishment, and reparation for violence against women and girls, and support for victims”;

ON THE OTHER HAND,

When questioned at the hearing, in accordance with the provisions of article 396 of the Code of Criminal Procedure, the accused declared that they wanted to be tried immediately;
During the appeal, the State counsel of Faso stated that he had summoned the aforementioned accused to appear before the Juvenile Court Judge at today's hearing to defend themselves against of the above-mentioned prejudice;
And the accused were questioned;
The submissions of the Legal Department were heard;
The accused made their arguments to defend themselves;
Speaking last, they asked for the clemency of the jurisdiction;
The Court Registrar recorded the responses of the accused;
On this, the debates having ended, the Juvenile Judge ruled as follows:

THE JUVENILE JUDGE;

Pursuant to Article 14 paragraph 1 of Law No. 061-2015/CNT of September 6, 2015, on the prevention, punishment, and reparation for violence against women and girls, and support for victims;
Considering the documents in the file;
Having heard the responses of the accused;
Having heard the submissions of the Legal Department;
Having heard the arguments made by the accused;

FACTS

On the 16/07 /2017, Miss B.K. filed a complaint against A.B at the Regional Judicial Police Service of Bobo-Dioulasso for rape committed against her during the night of 15/07/2017; she explained that that day after having participated in the feasting of a friend's success, another friend asked one of the guests to drop her off at home; this guest accepted and was accompanied by a group of young people all on mopeds; that they all started off and rode in the opposite direction to her home at high speed; that she was prevented from trying to understand what was going on; that the group of young people stopped in front of a home and invited her to enter; that her former classmate A.B persuaded her to come in, telling her that they just wanted to change their clothes before dropping her off at home; once inside, they rushed her into the

bedroom, dropped her on the bed, and as she screamed, put a sheet in her mouth; that while the others held her limbs, A.B climbed on top of her and had sex with her; after him, the others sexually abused her;

When questioned about the acts, A.B. and the others implicated in this case-D.S, T.A., S.H-readily acknowledged the acts;

Upon completion of the investigation, the procedure was transmitted to the State Counsel of Faso at the High Court of Bobo-Dioulasso; before this authority, the three suspects again recognized the acts alleged against them; he explained that they were at the party of R around 11:00 pm; that being there K asked D.S. to take B.K. home; that they then left in a group but D.S took the direction of his own home; while he was there, he entered his room with the victim while the other three waited outside; the other three joined them and took turns to force sexual relations on the girl; when she screamed, T.A closed her mouth with his hand; the Legal Department brought charges of rape against the accused before the Juvenile Judge and issued provisional custody orders against them;

The case was entered on the cause list of August 10, 2007, at which time it was held; A.B. again admitted that he had had sexual relations with B.K.; that he was helped by D.S., who had grabbed the victim's hands; that he knew that she did not consent; S.H. declared that he had had sexual relations with the victim; that to do so, D.S grabbed the girl's chest; that he was aware that the girl did not consent; T.A. said that when he climbed on the victim, someone grabbed the victim's chest; D.S. also admitted that he had had sexual intercourse with the victim and that he had been helped by his companions who had immobilized the victim; that he knew that the victim did not consent;

The victim, assisted by her sister B.S., declared that she was withdrawing her complaint against the accused in order to allow them to continue their schooling; B.S., the representative of the minor victim, aged 17, said that she had no objection to the withdrawal of the said complaint; she declared, however, that she was filing a civil suit and demanded payment of the sum of CFAF 105,000 (one hundred and five thousand), representing the cost of examinations and prescriptions, against the accused;

The Legal Department, after having summarized the facts, requested that all the accused be found guilty of rape and sentenced to 18 (eighteen) months' imprisonment;

Then, the Juvenile Judge, after having deliberated in accordance with the law, made the following decisions publicly before the court;

PROCEDURE

A-PROSECUTION

1- On the acts of rape brought against A.B

Whereas according to the above-mentioned article, "is guilty of rape and punishable by imprisonment of 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 girl"; That the offence of rape to be considered as rape, presupposes an act of sexual penetration, the absence of consent of the victim and a guilty intention of the perpetrator;

Whereas in the case at hand, it is common knowledge that there was an act of sexual penetration by A.B. on B.K. on July 15, 2017; whereas the accused does not contest this and the victim claims to have been sexually penetrated by him; whereas the element of an act of sexual penetration is thus established; whereas to carry out the sexual act, the accused claims that D.S had grabbed the victim's hands; that under these conditions, it must be said that the victim did not consent; that, on the contrary, she suffered an act of violence; that A.B. acknowledges that he knew that the victim did not consent; that his guilty intention is therefore established;

That A.B. should be found guilty of rape and be convicted;

2- On the acts of rape brought against D.S

Whereas according to the aforementioned article, the offence of rape, to be constituted, presupposes an act of sexual penetration, the absence of consent of the victim and the guilty intention of the perpetrator;

Whereas in this case, it is common knowledge that there was an act of sexual penetration by A.B. on B.K. on July 15, 2017; whereas the accused does not contest this and the victim claims to have been sexually penetrated by him; whereas the element of an act of sexual penetration is thus established; whereas to carry out the sexual act, the accused claims that one of his companions had immobilized the victim; that under these conditions, it must be said that the victim did not consent; on the contrary, she suffered an act of violence; D.S. acknowledges that he knew that the victim did not consent; that his guilty intention is therefore established;

That D.S. should be found guilty of rape and be convicted;

3- On the charges of rape brought against T.A

Whereas according to the aforementioned article, the offence of rape, to be constituted, presupposes an act of sexual penetration, the absence of consent of the victim and the guilty intention of the

perpetrator;

Whereas in this case it is common knowledge that there was an act of sexual penetration by A.B. on B.K. on July 15, 2017; whereas the accused does not contest this and the victim claims to have been sexually penetrated by him; whereas the element of an act of sexual penetration is thus established; whereas to carry out the sexual act, the accused claims that one of his companions grabbed the victim's chest; that under these conditions, it must be said that the victim did not consent; on the contrary, she suffered an act of violence; T.A acknowledges that he knew that the victim did not consent; that his guilty intention is therefore established;

That T.A should be found guilty of rape and be convicted;

4-On the charges of rape brought against S.H

Whereas according to the aforementioned article, the offence of rape, in order to be constituted, presupposes an act of sexual penetration, the absence of consent of the victim and the guilty intention of the perpetrator;

Whereas in this case there was an act of sexual penetration by S.H. on the person of B.K. on July 15, 2017; the accused does not contest this and the victim claims to have suffered an act of sexual penetration on his part; the element of an act of sexual penetration is thus established; whereas to carry out the sexual act, the accused says that D.S. grabbed the victim's chest; that it appears that the victim did not consent; that, on the contrary, she suffered an act of violence; that S.H. acknowledges that he knew that the victim did not consent; that his guilty intention is therefore established;

That S.H should be found guilty of rape and be convicted;

3- Sentence

Whereas according to article 78 paragraph 4 of the law of May 13, 2014, on the protection of children in conflict with the law or those in danger, "the measures and sanctions provided for in article 77 above may be pronounced, depending on the case, with regard to a minor child who is the perpetrator of a crime. That according to this article 77, "The child in respect of whom the prejudice of a contravention or an offence is established shall be subject to one or more of the following measures or sanctions, by reasoned decision of the juvenile judge or the juvenile court:

- admonition;
- reprimand;
- community service;

Whereas it emerges from the various social investigation reports that the accused do not show signs of delinquency; that the group phenomenon undoubtedly contributed to committing the offending acts; that, in addition, the four accused are first-time offenders and are students; that for the latter reason, the victim

withdrew her complaint; that a lack of parental control undoubtedly contributed to committing the acts; Finally, the accused have at all levels of the procedure, recognized the facts and at the hearing, requested the clemency of the court; That by allowing the accused to continue their schooling, the path of their social reintegration will be facilitated; That for the benefit of all these observations, it is appropriate to condemn them to a sentence of community service of 150 hours (one hundred and fifty hours) which will be executed at the Provincial Directorate of Women, Family and National Solidarity of Houet from August 14 to September 22, 2017;

B- CIVIL ACTION

Whereas according to article 418 of the Code of Criminal Procedure, "Any person who, in accordance with article 2, claims to have been injured by a crime may, if he has not already acted, file a civil lawsuit, either before the hearing or at the hearing itself(...).

The civil party may, in support of his or her action, claim damages corresponding to the prejudice caused to him or her;

Whereas, in this case, B.S, appearing at hearing, filed a civil claim for the benefit of the minor victim and claimed against the accused the payment of the sum of CFAF 105,000 (one hundred and five thousand) representing the costs of examinations and prescriptions;

That the application for civil damages is admissible;

That it is appropriate to say that the victim, after the acts, has paid for examinations and orders; That this is not contested by the accused who have made no objection to the amount of money claimed; That it is appropriate to grant the request of B.S. and condemn jointly and severally the accused to pay her the sum of CFAF 105,000 (one hundred and five thousand) as damages;

C-COSTS

Whereas under article 473 of the Code of Criminal Procedure, the accused found guilty is also ordered to pay the costs; Whereas, in this case, all four accused have been found guilty of the acts alleged against them; Whereas, consequently, they should be ordered to pay the costs;

UPON THESE GROUNDS

The Juvenile Judge, ruling in chambers following full trial of a criminal matter in first resort;

- Declares all accused guilty of the acts of rape alleged against them;

In repression, sentences them to 150 (one hundred and fifty) hours of community service, which will be executed

at the Provincial Directorate of Women, Family and National Solidarity of Houet from August 14 to September 22, 2017;

- Approves the civil claim from B.S, the victim's representative and declares it entirely well-founded; Consequently, jointly and severally condemns the 4 (four) accused to pay him the sum of CFAF one hundred and five thousand (105,000) as damages;
- Condemns the 4 (four) accused to pay the costs;

Thus acted, judged and pronounced publicly by the Juvenile Judge of Bobo-Dioulasso on the aforementioned days, months and years and signed:

The President

The court registrar