

“IN THE NAME OF THE PEOPLE OF CAMEROON”

“REPUBLIC OF CAMEROON”

“JUDGMENT”

IN THE HIGH COURT OF FAKO DIVISION

HOLDEN AT BUEA

BEFORE HER LORDSHIP JUSTICE PAMELA MESUMBE EPSE MBUE NGAPPE

WITH HER MRS AJEBE DELPHINE AS REGISTRAR-IN-ATTENDANCE

THIS MONDAY THE 29TH DAY OF JANUARY 2018

SUIT N⁰ HCF/082C/2017

JGT N⁰ HCF/CRMJGT/006/18

BETWEEN

THE PEOPLE OF CAMEROON.....COMPLAINANT

VS

FON PHILIP ENJENWEI.....ACCUSED

PARTIES: Accused (present)

Prosecution witnesses absent.

APPEARANCES: Magistrates Ewane Corine and Ngantu Nicoline for the prosecution.

Accused person is unrepresented.

COURT NOTE: Identity of the accused is verified.

PART I- HEADING

DATE OF VERDICT: 29th /01/2018

BEFORE: THE HIGH COURT OF FAKO DIVISION

COURT MEMBERS:

- PAMELA MESUMBE MBUE NGAPPE.....PRESIDING JUDGE
- EWANE CORINE & NGANTU NICOLINEPROSECUTING COUNSELS
- AJEBE DELPHINEREGISTRAR-IN-ATTENDANCE

ACCUSED: FON PHILIP ENJENWEI AGED 42

DEFENCE WITNESSES: NONE

CIVIL PARTY: NONE

PROSECUTION WITNESS: NONE

COURT NOTE: JUDGMENT IS DELIVERED IN OPEN COURT.

PART II- THE REASONING

The accused person Fon Philip Enjenwei aged 42, was committed for trial before this court under S.346(3) as read with section 347-1 of the Penal Code.

He is alleged to have sometime in April 2017, at Buea, in the Fako Judicial Division had sexual intercourse with one Kone Ponke Guillaume Bienvenue a child aged 15 years old and of the same sex.

Arraigned on the above charge on the 09th day of September 2017, the accused pleaded 'not guilty'.

In the absence of all the prosecution witness, the Learned State Counsel stated the facts of the case as follows:

That on the 31st of March 2017, the accused person (a regional animator of FENASCO games) invited a boy by name Kone Ponke aged 15 years to Buea for the national FENASCO games.

That upon arrival in Buea, the accused person took a room at hotel la Fraicheur situated at Mile 16 for himself and Kone Ponke.

That during their stay there, the accused had anal intercourse with this boy on four occasions, that is on the 2nd, 3rd, 6th and 12th of April 2017.

That this constitutes the offences of indecency to child under sixteen and homosexuality contrary to and punishable under section 346(3) of the Penal Code as read with section 347-1 of same.

The Learned state Counsel sought leave of court to tender in evidence the entire case file as well as the preliminary inquiry file which were admitted in evidence and marked as exhibits 'A' and 'B'.

At the close of the prosecution's case, the accused person was put to his defence. He elected to give evidence on oath after the provisions of section 366 of the Criminal Procedure Code were read out to him. He did not have any witnesses to call.

In his defence, the accused stated that he is a temporal state animator of FENASCO games working in collaboration with the ministers of secondary education, sports and physical education.

That his name was inscribed in the national bordereau of the FENASCO games league 'A' slated from the 1st to the 8th of April 2017 in Buea.

That before then, he had been invited to animate the Regional Finals for the Littoral in Yabassi from the 30th -31st of March 2017.

That while in Buea, in the course of animating in the coca cola podium, he called six athletes amongst whom Kone Ponke to dance. That as they danced, three were later selected and at the end, Kone Ponke emerged as winner.

That the first three had a coca cola T-Shirt, a coca-cola cap and a coca-cola drink, for the 1st, 2nd and 3rd respectively.

That at the end of the competition, Kona approached him and told him that he had seen him in Yabassi; that he was in Buea with his sister and was lodged at GTHS Molyko. That Ponke told him that he was very hungry and because he the accused did not have any money at the time, he sent the said Kone Ponke to the nutritionist. That the latter came back in the evening to thank him and to inform him that he had been employed in the kitchen to wash plates.

That from then on, the little boy became close to his six dancers, and was always in their company. That the young Kone and his dancers usually came to his hotel.

That on the 07th of April 2017, after the men's finals, he and his dancers were invited to one cabaret (dream lodge) at Molyko. That Kone was with them.

That he animated uptill 2 am and when he came out, his dancers were all gone but Kone Ponke was still there waiting for him.

That elements of the police took them to their station for questioning. That he was kept in the police cell from the 07th to the 11th of April 2017 because the young boy was found in his company at a very later hour.

That on the 12th of April 2017, the parents of Kone Ponke came to the station. That he gave his statement in English and then signed. That same day, he was taken to the State Counsel's chambers.

Under cross examination by the Learned State Counsel, he stated that during preliminary investigation, he made his statement in English and later signed. He was shown his statement, which he confirmed to be his but added that he was under pressure at the time.

He said he was lodged at hotel la Fraincheur where his dancers used to come for training which took place in the corridor. He added that the boy never slept in his room and that he had never had intercourse with him.

When asked why he was accused of the same offence in 2011, he dispelled that as mere rumours.

Questioned by the court, he stated that he is a professional animator working at Ecole Publique Bare hock and that he trains dancers who sometimes dance rough and almost naked on stage.

Asked why the accusations against him he said that his dancers planned all that because they thought he would not pay them their dues.

At the end of the defence's case, the prosecution in their submission urged this court to find the accused person guilty of the offences for which he is being charged.

It is on the evidence of the above facts that this court has to determine whether or not the accused person has been caught in the web of section 346(3) as read with section 347-1 of the Penal Code.

It is a fact that the said Kone Ponke Guillaume Bienvenu is a male child aged 15 as can be seen on his birth certificate tendered in evidence by the Learned State Counsel. That he was born on the 06th of April 2002.

Section 346(1) of the Penal Code provides that 'whoever commits an indecent act in the presence of a child under the age of 16 shall be punished with imprisonment for from 2 to 5 years and with fine of from 20.000 frs to 200.000 frs'

(3) " the penalty shall be imprisonment for from 10 to 15 years where the offender has sexual intercourse with the victim notwithstanding his or her consent".

In the course of the trial, the prosecuting counsel tendered in evidence the entire case file containing the statement of the accused during preliminary investigation, wherein the latter wrote that the said Kone Ponke used to sleep in his hotel room, contrary to what he stated before this court. Can it then be inferred that in wanting to change his statement the accused person has something to hide?

In the report on visit to the locus in quo by elements of the Buea Central Police, a school bag containing the belongings of Kone Ponke was found in the hotel room of the accused person.

This to my mind further implicates the accused person who during the trial said the victim had never spent the night in his room.

The prosecuting counsel tendered in evidence the birth certificate of the victim establishing the fact that he is a minor aged below sixteen as contemplated by section 346 of the Penal Code.

They also tendered in evidence a medical report dated 10th April 2017 and signed by a certain Dr Ngund Mathias, a medical adviser at the Buea Regional Hospital.

In his analysis and after examining the victim, he found that the anal verge is gaping and easily admits the index finger and concluded that his findings were compatible with anal intercourse. It can therefore be inferred that the accused person had and intercourse with the victim within the month of April 2017.

Section 347-1 of the Penal Code stipulates that “whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from 6 months to 5 years and a fine of from 20.000 frs to 200.000 frs”

Sexual assault having then been established by a medical expert, it is an undisputable fact that the said Kone Ponke is a male child and of the same sex as the accused person.

Throughout this trial, the accused has not been able to proof his innocence before this court. He never at any time brought forward any witnesses to proof his innocence.

I can therefore conclude that the prosecution has succeeded in proving its case beyond reasonable doubt and to conclude that the accused person has been caught in the web of sections 346(3) and 347-1 of the Penal Code.

I therefore find him guilty as charged of the offences of indecency to child under sixteen and homosexuality.

VERDICT

Sitting in open court after a full trial, at first instance, this court finds the accused person guilty as charged and proceeds to convict him under sections 346(3) and 347-1 of the Penal Code.

The cost of these proceedings have been set out as follows:

- 1- Cost of registration20.000 frs
- 2- Cost of stamps15.000 frs
- 3- Cost of preliminary inquiry30.000 frs
- 4- Cost of trial20.000 frs
- 5- Cost of execution of judgment15.000 frs

TOTAL TAXABLE COST100.000 FRS

PREVIOUS RECORDS: Nothing known

SUBMISSIONS ON PENALTY: The Legal department resigns to this court’s wisdom.

FINAL STATEMENT OF THE ACCUSED: He pleads with this court to temper justice with mercy. That he is a teacher by profession and doing everything possible to reduce the rate of illiteracy, juvenile delinquency and fostering the growth and development of the Cameroonian youth. That he is married with children and that he is the sole bread winner in his family.

SENTENCE

The convict is a first offender. He has not helped this court much as he has constantly changed the version of facts from what he wrote himself during preliminary investigation.

The convict is a teacher by profession meaning he has a duty to lead the youths entrusted in his care on the right path. It is however regrettable that his profession is not compatible with what he practices as a youth animator as he clearly put in his final statement.

People like him must not go unpunished.

Considering the provisions of section 91(1) of the Penal Code, the convict is sentenced to an imprisonment term of 5 years.

This court shall issue an imprisonment warrant against the convict pursuant to section 397(1) of the Criminal Procedure Code.

ORDER

Pursuant to section 53(1) of the Penal Code, the total period spent by the convict in prison custody awaiting trial, to wit 9 months shall be deducted from the above sentence.

The convict shall bear the cost of these proceedings, to wit 100.000 frs or in default thereof, he shall serve an additional imprisonment term of 06 months pursuant to section 564(1)(d) of the Criminal Procedure Code.

Court Note: The provisions of section 399 of the Criminal Procedure Code shall be complied with.

REGISTRAR-IN-ATTENDANCE

PRESIDENT