

DALOA COURT OF APPEAL
JUDGMENT W14 OF JANUARY 17, 2013

Assault and battery – Intentional assault and battery – The accused having been recognized by The victim - Conviction.

The accused must be condemned for the facts against him, once he has been recognized by his victim, the variations which have enameled his statements from the preliminary investigation up to the bar of the Court of Appeal being sufficiently edifying in that he was not unfamiliar with the impugned facts.

THE COUR

Considering the documents of the file of the procedure;

The public Prosecution, heard;

Together the facts, procedure, claims and submissions of the parties and reasons below;

After having deliberated in accordance with the law;

OFFENCE

G was brought before the Daloa Correctional Court following the direct summons procedure under the offence of having, at Digbapia S / P de Gboguhe, in the judicial arrondissement of Daloa, on May 22, 2012, in any case since time not covered by the time limitation, deliberately beaten and injured S., causing him total incapacity for work (ITI) for 21 days;

Facts provided for and punished by articles 345-3 ° and 348 of the penal code;

FACTS AND PROCEDURE

On May 22, 2012, K. J, her face tumefied, presented herself to the Daloa city brigade of police station where she lodged a complaint against the named G.N.B, to whom she accused of having struck her a violent blow, with the aid of a wood;

She explained that, during funeral of G.T, while she publicly paid tribute to the body of the deceased in accordance with the Bete custom, and this, in order to wash away all suspicion, -G. N. B, his elder brother, grabbed a wood and gave her a violent blow in the face, causing her injuries, as evidenced by the medical certificate issued on May 22, 2012, by doctor A.Y.M, from the CHR of Daloa;

Interrogated about the facts, GNB denied them, arguing that on contrary to the complainant's statements, he did not give her a single violent blow, even though he had suspected her, because she had previously threatened to kill his late younger brother;

He specified that the wounds which K.J sustained were orchestrated by a group of young people of the village of Digbapia which included her nephew T.Z;

Prosecuted in court, G.N.B maintained his denials;

However, he pointed out that he was not at the scene at the time of the facts;

But, he was charged by the witnesses and the victim who filed as a civil party action and requested damages of the sum of 500,000 francs;

The Public Prosecution requested the conviction of the accused to 3 months of imprisonment and a fine of 100 000 francs;

By judgment no.670/2012, delivered on June 27, 2012, the court ruled as follows:

- Declares G.N.B guilty of the facts charged to him;
- Sentences him to three (03) months of imprisonment and a fine of one hundred thousand (100,000) francs;
- Receives the civil party action instituted by Lady K.J.,
- Declares it however well founded;
- Condemned G.N.B to pay her the sum of 300,000 francs as damages;
- Sentences him to costs;

According to the statement made on June 27, 2012, at the registry of the Daloa court and registered under number 123, the same day, G. N.B appealed against this judgment;

In the trial on appeal, he appeared and denied having beaten and injured K.J; He explained that on the day of his late brother's funeral, gripped by the pain caused by this death and busy paying tribute to his late brother, he had neither the strength nor the time to do such acts, so that he finds it strange to be accused by the victim;

Moreover, he denied having previously accused the young people of his village as well as his nephew T. Z;

For her part, K.J maintained that G.N.B threw her to the ground before grabbing a piece of wood to strike her in the face which knocked her unconscious;

For the General Prosecutor's Office, the accused having lost his temper due to the death of his younger brother, did himself justice by attacking violently the one that he had wrongly accused to be the author of this death;

He therefore requested confirmation of the impugned judgment in all its provisions;

REASONS

IN THE FORM

On the nature of the decision

Considering that both the accused and the civil party have appeared and put forward the means of defense;

That it is therefore necessary to rule after trial with regard to them;

On the admissibility of the appeal

Considering that the appeal of the accused was introduced in compliance with the forms prescribed by Article 497 of the Code of Criminal Procedure;

That in addition, this appeal was made within the period of 20 days set by paragraph 1 of Article 491 of the same code;

That it should be declared admissible;

ON MERITS

On public action

Considering that G. N. B denied being the author of the physical assault of which K.J. was the victim;

Considering, however, that it stems from the debates at the hearing that it was during the funeral of G.T that the blow was struck on the victim while she was publicly performing a funeral rite;

That in these circumstances, the designation of the perpetrator of the criminal act should not come under discussion, especially since the aggression did not result from a generalized fight;

That, moreover, in his capacity as an elder brother of the defunct and therefore, playing the leading role at this ceremony, the accused was in a social and physical position such that he could not remain in ignorance of the assailant of K J;

That, if it were true that he was not the aggressor of KJ, whom he suspected, as he stated in the hearing, of having mystically given death to his younger brother, he would have revealed the identity of the responsible person;

That, it is with full knowledge of the facts that he pretends to ignore the identity of the aggressor, since in reality it is he who is the perpetrator;

That the variations in his statements from the preliminary investigation to the bar of this Court of Appeal through the prosecution and the tribunal are sufficiently edifying that he was not ignorant about the impugned facts;

That the victim having seen him striking her in the face before sinking into unconsciousness, she was therefore right to designate him as such;

That his is indisputably the person who struck the victim the blow which caused her wounds as evidenced by the medical certificate to her delivered by the doctor A. Y. M of the CHR of Daloa;

That it follows that his guilt does not suffer from any dispute, as the first judges very aptly decided;
That it is fit to confirm their decision on this point;

On Civil action

Considering that found guilty of assault and battery, the accused was ordered to pay as damages of the sum of three hundred thousand (300,000) francs to K. J;

Considering that in the light of the debates and the documents in the case, the amount awarded is excessive in comparison with the damage actually suffered by her, especially since she does not sufficiently prove the said damage;

That it is necessary to reduce it to two hundred thousand (200,000) francs, thus reversing the impugned judgment on this point;

On the costs

Considering that the appellant succumbs partially;
That it is fit to condemn him to the costs;

FOR THESE REASONS

Ruling publicly, after all parties have been heard, in correctional matters and as a last resort;

IN THE FORM

-Declares admissible the appeal lodged by G.N.B on June 27, 2012 against the judgment no. 670/2012, rendered on June 27, 2012 by the Daloa Correctional Court;

ON MERITS

-Holds that it is partially founded;
- Overturns the impugned judgment in that it allocated to K.J the sum of three hundred thousand (300 000) francs for damages;

Ruling again

-Sentences G. N.B to henceforth pay to K J the sum of two hundred thousand (200,000) francs for damages;
-Confirms the impugned judgment in its remaining provisions;
-Sentences G.N.B to pay the costs

President M. YAPIAKOLOS