DALOA COURT OF APPEAL
DALOA COURT OF FIRST INSTANCE
SASSANDRA SECTION

JUDGMENT No 469/14 OF THUIRSDAY 28 AUGUST 2014

THE PROSECUTOR
VERSUS
M.S

1/ Violation of moral norms - Sexual Indecency – Sexual indecency committed with violence on a minor below 15 years – Elements - Conviction.

2/ Sexual Indecency – Minor victim – Civil action - Constitution of civil party by the mother on behalf of her daughter – Justified action – Sentence on compensation and damages.

1/ The accused must be declared guilty of the acts of sexual indecency committed with violence on a minor aged below 15 years (04 years) and sentenced, as it stems from the declarations of both the victim and the accused himself that she was naked in her room watching a pornographic film; that the victim describes in great detail the circumstances of the indecent assault, even if the medical certificate attests that there are no signs of sexual assault committed.

2 / The constitution of civil party is founded and the accused must be condemned to pay damages, since the mother of the victim has opted to be a civil party and has claimed damages.

THE COURT

Considering the file of the case against M.S on the count of sexual indecency committed with violence on a minor below the age of 15 years in San Pedro, during the year 2014;

Listening to the explanations of the accused;

The requisitions of the Prosecutor;

The defense of the accused;

And after having deliberated in accordance with the law;

According to the interrogation report in the event of flagrante delicto of the Resident Substitute for the Sassandra Court dated August 20, 2014, M.S. was brought before the Trial Court on account of having committed sexual indecency with violence on D.M, a young girl aged below 15 years old (04 years), in San Pedro, in the judicial district of Sassandra, during the year 2014;

Offence provided for and punished by articles 355 paragraphs 1 and 2 point 3 and 359 paragraph 2 of the penal code;

On August 13, 2014, Madam Z.B seized the San-Pedro General and Criminal Investigations Brigade with a complaint against MS for sexual assault on a minor under 15 years old (04 years old);

In support of her complaint, she explained that on August 12, 2014 at around 12 noon, back from the market, she went to pick up her daughter, whom she had entrusted as usual to the shopkeeper, MS who is also her neighbor;

She declared that when she arrived at the shop, she found her daughter in the shopkeeper's room, and the daughter asked her with an air of fear in her voice not to enter the room because she was naked;

Surprised by this reaction, she asked Mr. S if her daughter had gone to the toilet, but he gave no explanation;

She added that when questioned, the girl explained to her that after asking her to undress, M.S had rubbed his penis against her sex organ, and specified that it was not the first time;

After checking and having noted seminal fluid on the sex organ of the girl, she immediately cleaned it and asked for explanations from Mr. S who however denied the said facts;

At his request, she continued, they went to the hospital where after consultation, the gynecologist confirmed that there had been no penetration and that the hymen was intact, but reproached her for having cleaned up the seminal fluid;

Heard in the presence of his mother, D.M confirmed her statements and specified that MS wore on the day of the acts a little red underwear with "stripes";

When taken in for questioning, MS was placed at the disposal of the prosecution;

Questioned on the said facts, the respondent denied them completely;

He maintained that while he was serving customers, the girl had entered his room next to the store, taken his cell phone there, and manipulated it to watch the pornographic video therein;

According to him, the girl asked him to do the same to her as in the video, but that he refused by telling her that she was still small for that;

He claimed that he then seized the cell phone from her and deleted the video;

Finally, he maintained that the little girl undressed herself alone;

Whereas when questioned, Z.B declared that she was acting as a civil party and claimed the sum of 300,000 F for damages;

MOTIVES

ON THE FORM
Mindful of the fact that the accused appeared at the bar of the Court;

It is logical to rule on the basis of counter-argumentation;

ON THE MERIT
Concerning the public action
On the criminal liability of MS

Whereas MS is being prosecuted for acts of sexual indecency committed with violence on a minor under 15, in 2014;

That at the bar, the accused denied the facts charged against him;

But considering that his denials could not prosper;

That in fact, it is undisputable as derived from the declarations of both the victim and the accused himself that the victim was completely naked in the room of the accused watching a pornographic video;

That, even if the medical certificate attests that there is no mark of sexual act committed, the fact remains that the little DM describes in great detail the circumstances of the sexual act, specifying that it was not the first time;

That these facts were confirmed by the seminal fluid discovered by the mother on the genitals of her daughter;

That finally, the underwear discovered in the accused's room and placed under seal corresponds well with the description made by the girl, of the underwear that he wore on the day of the facts;

That thus, he should be found guilty of the acts of sexual indecency committed with violence on a minor under 15 years old (04 years old) in accordance with the criminal code;

Concerning the civil action
Whereas at the bar, Madam Z.B declared herself to be a civil party and claimed the sum of CFAF 300,000 for damages;

Whereas this constitution of civil party is regular in form;

That on the substance, it is proper to consider her declaration just and founded, and to condemn MS to pay her the sum of 300,000 CFA francs as damages;

Concerning costs
Considering that the accused succumbs;

He should be ordered to pay the costs;

FOR THESE REASONS

Deliberating publicly, on the basis of counter-argumentation, on criminal matters and in first instance;

Declares the accused guilty of the acts of sexual indecency committed with violence on a minor under 15 years old (04 years old);

Offences provided for and punishable by articles 355 paragraphs 1 and 2 point 3 and paragraph 359 point 2 of the penal code;

As sanction, sentences him to 05 years of imprisonment, with fine of 100,000 FCFA, to 05 years of deprivation of the rights provided for in article 66 of the penal code and to a 03-year ban from appearing anywhere on the territory of the Republic of Cote d'Ivoire;

Admits the constitution of civil party by Madam Z.B;

Declares it well founded;

Condemns the accused to pay her the sum of 300,000 FCFA as damages;

Condemns him to the costs.

Also condemns him to reimburse the liquid costs worth twenty thousand eight hundred (20,800) francs, including the stamp, registration, postal communication and service fees;

As for the fine, damages and payment of costs to the State, sets the duration of restrictions at the minimum, if these must be complied with within the period of three months from the day of the convict's release;

In all, by application of the aforementioned articles and those hereafter, 117, 118 of the penal code, 464 and 699 of the criminal procedure code which were read at the hearing by the President;

In addition, the President has given the convict the warning prescribed under Article 710 of the Criminal Procedure Code;

In witness whereof, this judgment has been signed by the Magistrate who rendered it and by the Registrar on the aforementioned day, month and year.

President: Ms. SAKHANOKHO FATOUMATA.