

**BOUAKE COURT OF APPEAL
BOUAKE COURT OF FIRST INSTANCE
TOUMODI COURT SECTION**

JUDGMENT N° 423/2013 OF 13 NOVEMBER 2013

**THE PROSECUTOR
VERSUS
O.M**

1/ Violation of moral norms – Sexual indecency –Sexual indecency
committed on a 10-year-old girl - Elements - Conviction

2/ Sexual indecency - Victim – Civil action - Constitution of civil party -
Condemnation of the accused to pay damages.

1/ The accused is guilty and must be sentenced, as the victim's statements are corroborated by the doctor's findings in his medical certificate that the accused has agreed to reimburse the medical costs.

2 / The accused must be condemned to pay the damages, as the elder sister has constituted a civil party on behalf of her sister.

THE COURT

Considering the documents of the proceedings against O.M on the count of sexual indecency on a 10-year-old minor;

Considering the witnesses in their statements;

The accused in his explanations;

The Prosecutor in its requisitions;

The accused having had the floor last in his defense;

Whereas according to the interrogation report in the event of flagrante delicto dated 08 November, 2013, OM appeared before the criminal court of this jurisdiction to answer to the accusation of sexual indecency on a minor of ten (10) years;

That these offences are provided for and punishable under article 356 of the penal code;

Whereas it emerges from the file that on 6 November, 2013, Ms SM seized the police station of the 2nd District of Yamoussoukro with a complaint against the above-named person whom she accused of having committed sexual abuse on her younger sister, ten (10) years old;

That she explained in support of her complaint that on 1 November, 2013, she noticed that her sister was having difficulty walking;

That when questioned to understand the reasons for such an attitude, the latter

revealed to her that on several occasions she had been victim of sexual abuse by OM;

She added that, taken immediately to the hospital, the diagnosis made by the doctor showed that she had been deflowered, and her vagina appeared red, and also hurt when touched;

That she produced a medical certificate issued by Doctor SR, a doctor at the YAMOUSSOUKRO Regional Hospital Center, which concluded there was "presence of obvious signs of sexual violence" and prescribed total incapacity for work for twenty-one days (ITT 21 days);

That when heard, the little girl S.F declared to the investigating agents that A had abused her on three occasions;

That she alleged that on 30 October, 2013, around midnight, she was returning from the toilet when the respondent asked her to go and get him the sum of five hundred francs (500F) which was on the table in his room;

That she indicated that as soon as she entered the said room, the latter joined her there and closed the door while telling her not to cry out if she valued her life.

That he thus grabbed her, threw her onto the bed and took off her underwear, before abusing her;

That she added that some days later, she decided to spend the night with her friend who is the niece of the respondent;

That late at night, he took advantage of her presence at his home to have sex with her, and repeated the act on the night of 1 November, 2013;

That she specified that she remained silent about the violations for fear that the respondent would execute his threats;

During her testimony, the little girl K.K confirmed that the victim had actually spent the night with her at her uncle's home;

That however, her deep sleep that night had prevented her from seeing the incidents related by her friend;

That when questioned, O.M denied the charges made against him;

That he defended his innocence by claiming to be unconnected with these facts;

That he recognized, however, that, when he was designated by the girl as the perpetrator of the sexual abuse on her person, he had initially agreed to pay her medical expenses before reconsidering his decision;

That in court, the victim would essentially repeat his statements made at the preliminary investigation;

As for the accused, he maintained his first statements and affirmed that it was under pressure from the neighborhood that he had agreed to pay the medical bills.

On the above,

ON THE FORM

Whereas the accused appeared and asserted his means of defense;

That it befits to rule on the basis of counter-argumentation;

ON THE MERIT

On the public action

Whereas the accused refutes the facts charged to him;

That, however, it is a question of vain denials which cannot prosper;

That in fact, it is common ground that the victim's statements regarding the sexual act were corroborated by the doctor's findings in his medical certificate;

That it is also common ground that one of the circumstances of the commission of the facts described by the girl was also confirmed by the niece of the accused himself;

That it follows that the victim's words are so coherent and so correct that the name of the perpetrator of the said facts cannot be an error or a lie,

That more-so, when the accused was pinpointed, he first agreed to pay the girl's medical bills before reversing his decision;

That this attitude of the accused inevitably translates into the situation of an individual seeking at first glance an amicable settlement for his criminal acts before finally opting to tell lies as a defense;

That he infers from the above that there is no shadow of any doubt that he committed a sexual offence on a minor of ten (10) years;

That thus, the facts brought to his charge are established;

That there is therefore reason to find him guilty and to apply the criminal law on him;

On the civil action

Whereas at the bar of the court, Ms. SM declared that she was acting as a civil party on behalf of her younger sister and requested the court to order the accused to pay her the sum of sixty thousand francs (60,000 francs) as damages;

That this constitution of civil party is regular in form;

That it should be declared admissible;

That on the merit, it is justified;

That it is appropriate to declare that it is well founded and to condemn the accused to pay her the above-mentioned amount as damages;

FOR THESE REASONS

Deliberating publicly on minor criminal matters and in first instance;

Declares the accused guilty of the facts charged to him;

As sanction, condemns him to five (05) years of imprisonment and a fine of two hundred thousand francs (200,000 FCFA);

Orders the publication of the decision in a newspaper of legal notices;

Admits the constitution of civil party by Ms. S.M on behalf of her minor sister;

Declares it well founded;

Condemns the accused to per her the sum of sixty thousand francs (60,000 francs) as damages;

Also condemns the accused to costs.

President: Mr. KOUAME KOUASSI JULIEN.