

**ABIDJAN COURT OF APPEAL**

**COURT OF FIRST INSTANCE OF ABENGOUROU**

**JUDGMENT W348 / 2013 OF 20 NOVEMBER 2013**

OFFICE OF THE PUBLIC PROSECUTOR

VERSUS

B.B

Offence against morality - Indecent assault with violence - Elements - Attack on a minor of fifteen-year-old-Conviction.

<p>A constitutive element of indecent assault, the sexual act contrary to good morals is perpetrated directly and intentionally by the accused. This offense was committed with violence, when the aggressor threw his victim into the grass and firmly held her neck to stop her from screaming. The victim being a minor of fifteen years, the accused must be declared guilty and convicted for the facts he is charged of.</p>
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**THE COURT**

Considering the exhibits of the correctional file recorded in the Complaints Directory under the number 471/2013;

After the accused presented his defense;

After the public prosecution made his submissions

And after having deliberated in accordance with the law;

**OFFENCE**

According to the interrogation report in the event of flagrante delicto dated November 12 2013, B.B was brought before this Correctional Court under the offence of having in Abengourou, on November 08, 2013, in any case for a long time non covered by the time limitation, committed an indecent assault consumed with violence on the person of Y.B;

With this circumstance that the victim is less than fifteen (15) years old, precisely twelve (12) years old;

These facts are provided for and punished by articles 355 paragraph 2-3 ° and 359 of the penal code.

**FACTS AND THE PROCEDURE**

On November 8, 2013, around 9 a.m., Y.B, born on May 13, 2001, went to a dump located not far from her place of residence to empty a trash. On the way back, she was caught by B.B who threw her on the ground in the surrounding bush, tore the underwear she was wearing and began to introduce his penis into the vagina of this girl of barely (12) years old. To stifle the cries

and calls for help from his victim, B.B tightened her neck and threatened to kill her. Mr A.H, a user of the same route, who witnessed the whole scene, was hampered in his attempt to help the victim by the threats of the aggressor. Nevertheless, he was hurrying to the nearest post of police unit and returned to the scene of the assault with police officers. These agents succeeded in catching up with B.B who had fled following the intervention of agents of a private security company. In their investigations, the police officers discovered on the ground a torn underwear that Y.B was wearing, noted small wounds on the level of her neck and her shoulder.

When questioned, B.B specified that after having trained Y.B in the herbs, he tried but did not succeed in introducing his sex into hers. Therefore, he decided to give up his business. It was at this moment that a security guard arrived who beat him with a truncheon forcing him to flee.

For her part, Y.B produced in the proceedings file, the medical certificate dated November 08, 2013, issued to her by D.E, a Gynecologist-Obstetrician Doctor at Abengourou Regional Hospital Center and an extract from his birth certificate.

## **REASONS**

### ***IN THE FORM***

Considering that the accused appeared;

That it is necessary to rule by decision after trial;

### ***ON MERITS***

#### ***On the public action***

Considering that B.B is accused of the acts of indecent assault consumed with violence on a minor of fifteen (15) years;

Given that it emerges from the testimonies gathered and the statements of the accused that the latter, by duress, laid bare Y.B by removing the latter's underwear, then he put his sex in contact with that of the latter;

That this act, of a sexual nature contrary to good morals, carried out directly and intentionally by B.B on the person of Y.B, constitutes an indecent assault; that this offense was committed with violence, especially since the aggressor threw his victim into the grass and held firmly the neck of the latter to prevent her from crying;

That in addition, it emerges from the examination of the extract of the birth certificate that Y.B, the victim, was born on May 13, 2001; that consequently, she is a minor of fifteen (15) years;

That therefore, the accused BB should be declared guilty of the acts charged to him and punished with the penalties provided for by the laws;

### **Costs**

Considering that the accused succumbs;

That it is appropriate to condemn him to pay the costs;

## **FOR THESE REASONS**

Ruling publicly, after trial, in correctional matters and in first instance;

Declares the accused BB. guilty of the acts of indecent assault consumed with violence on a minor of fifteen (15) years placed in his charge;

In repression, sentences him to five (05) years of imprisonment and a fine of two hundred thousand francs (200,000 f),

Pronounces against him the deprivation of the rights provided for in article 66 of the penal code for a period of five (05) years;

Bans him from the entire territory of the Republic of Cote d'Ivoire, with the exception of his department of birth and that of his father and mother for a period of five (03) years;

Orders the confiscation of the exhibit consisting of an underwear of red and white colors, with a view to its destruction;

Also sentences the accused BB to the costs of the proceedings.

President: M. SERI GUSTAVE.