

ABIDJAN COURT OF APPEAL

COURT OF FIRST INSTANCE OF ABENGOUROU

JUDGMENT No 171/2014 OF APRIL 16, 2014

OFFICE OF THE PUBLIC PROSECUTOR

VERSUS

K.Y

Offence against morality - Indecent assault - Indecent assault consumed with violence on a minor of 15 years old - Elements-Conviction.

The accused must be declared guilty and sentenced since he admitted to having forced the victim to have sexual intercourse with him and even exhibited his sex, not only to the victim, but also to the first witness, thus characterizing the facts brought against him.

THE TRIBUNAL

Having regard to the documents in the case RI23 / 2013;

Considering the defense of the accused, and the oral submissions of the Public prosecution;

After having deliberated in accordance with the law;

Considering that following an order for re-characterization and referral to the correctional police dated November 28, 2013, the named K.Y was brought before this correctional court, charged with the offence of having, in Apprompron S / P de Diamarakro, in The judicial district of Abengourou, on May 9, 2013, in any case since time not covered by the statute of limitations, committed an indecent assault consumed with violence on a minor under fifteen years;

That these facts are provided for and punished by articles 355-3 ° and 359 of the penal code;

Considering that it emerges from the documents of the file of the procedure that on May 13, 2013, the nurse of the village of Apprompron informed the district post of Bettie that he had just received an 11-year-old girl, victim of sexual violence;

That during the preliminary investigation which ensued, Mr. AM, father of the victim declared that his daughter had been raped by his employee, a Togolese named KY, on Thursday, ascension day, when everyone was outside the encampment, place of the facts;

As for the little K.E in question, she explained that she was in the toilet for needs when the accused surprised her there;

That he had mastered and had sex with her despite her attempts to push him away and the alerts from her younger sister who was outside and her;

That it was when her elder brother, L, entered the bathroom that the defendant released her after finishing his dirty work;

Considering that questioned on the facts which are reproached to him, K.Y made no difficulty in admitting them;

That stated that on the day of the incident, he went to relieve himself in the toilets of the camp and found the victim there;

That it was then that he prevented the latter from going out by pushing her inside and his back sticking to the wall, he had sex with her;

Considering that before the investigating magistrate, K.Y was charged with rape of an 11-year-old minor; That all parties reiterate their statements made during the preliminary investigation;

Considering that before the court, the defendant, after re-characterization of the facts, was prosecuted for indecent assault consumed with violence on a minor of 15 years;

While appearing, he remained constant and faithful to his statements made since the beginning of the proceedings;

That, as to the victim and the other witnesses, they did not appear;

Considering that the Public Prosecution requested that the accused be declared guilty and sentenced to 36 months' imprisonment and a 30,000 F CFA fine;

THEREFORE

IN THE FORM

Considering that the accused appeared;

That the victim and the other witnesses did not appear;

That it is not established that the latter had knowledge of the present Procedure;

That it is advisable to rule after having heard the accused and by default with regard to the others;

OFFENCE

Considering that the accused is being prosecuted for the acts of indecent assault consumed with violence on a 15-year-old minor;

That he had no difficulty in admitting that he forced the little KE, aged 11, as it appears from the extract of the birth certificate produced in the file, to have sexual intercourse with her in toilets open to all the inhabitants of a camp;

That in addition, he even exhibited his sex, not only to the victim, but also to the first witness, in particular the elder brother of the victims who arrived on the scene;

That thus, the facts charged to him are characterized;

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

Costs

Considering that the accused succumbs;

That it befits to condemn him to the costs;

FOR THESE REASONS

Ruling publicly, after trial with regard to K.Y and by default with regard to the victim and other witnesses in correctional matters and at first instance;

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

In repression, sentences him to 05 years of imprisonment and a 200,000 F CFA fine;
Sentences the accused to the costs;

President: M. BEGNANKY G ALEXIS N'DRI.