

**DALOA COURT OF APPEAL  
2ND PRE-TRIAL CHAMBER**

**JUDGMENT N°158 OF 21 MARCH 2013**

**THE PROSECUTOR  
VERSUS**

**1/ Z.I  
2/ Z.B**

**Violation of moral norms – Sexual indecency - Sexual indecency committed on a 15-year-old girl – Victim subjugated using threat.**

By confirming the conviction of the defendants, the first judges made a good assessment of the facts, considering that, to achieve their goal of sexually abusing their victim, one of the defendants persuaded her to accompany him into the school compound, and coerced her with a knife into having sex with him and his friends.

**THE COURT**

Having regard to the documents in the file for the proceedings;

Having listened to the Prosecutor;

Considering the statement of facts, procedure, claims and arguments of the parties and the motives below;

After having deliberated in accordance with the law;

**ACCUSATION**

ZI and ZB were brought before the Daloa Criminal Court, following the flagrante delicto procedure, on the accusation of having in Daloa, 23 April, 2010, committed a sexual offence with violence;

With these circumstances that the aforementioned offence was committed on a 15-year-old girl with the help of several persons;

Offence provided for and punishable under articles 355 points 2 and 3 and 359 of the penal code;

**FACTS AND PROCEDURES**

On 27 April, 2010, ZG, accompanied by his daughter GC, seized the Daloa city gendarmerie brigade with a complaint against ZI, GG, BS and KH for having sexually abused his daughter, aged thirteen (13) years;

He explained that on the night of 23 April, 2010, his daughter was sexually abused, as attested by the medical certificate dated 26 April, 2010, by the aforementioned while she was returning from a funeral vigil held in the neighboring village of Bébouo;

Thereafter, G.C explained that she was first approached by Z.D who succeeded in persuading her to accompany him in the compound of the Bébouo public primary school where he claimed his elder brother, H.M, was waiting for him;

That when they arrived in the school compound, she was taken into a dark corner by Z.I, G.G, B.S, K.H and Z.D who, with the threat of a knife, forced her to have sex with them.

When arrested, ZI and Z.D denied the facts and blamed G.G, B.S and K.H – all on the run – for being the aggressors of G.C;

Z.D pointed out that the victim was his lover to whom he was making love in the schoolyard when they were surprised by the others;

That he could not resist his friends despite his attempts to dissuade them from having sex with the exception of his co-defendant;

As for Z.J, he confirmed that G.C was sexually abused by B.S and K.H while Z.D argued with G.S;

Both at the public prosecutor's office and at the bar, Z.I and Z.D contested the facts and then denounced G.S, B.S and K.H on the run as the offenders;

On her part, GC persisted in saying that she had been sexually abused by a group of young people, including the defendants.

Z.G, his father, was a civil party in his name and on his behalf, and demanded the payment of the sum of five hundred thousand (500,000) francs as damages;

The Prosecutor requested that the defendants be sentenced to 36 months' imprisonment with a fine of 50,000 francs;

By judgment n° 460/10 rendered on 11 May, 2010, the court ruled as follows:

- Declares Z.I and Z.B guilty of sexual assault committed with violence on a minor of 15 years;
- Sentences them each to five (05) years of imprisonment with a fine of one hundred (100,000) thousand francs;
- Admits the constitution of Z.J as civil party on behalf of G C;
- Declares it founded;
- Orders Z.I and Z.B to pay him the sum of 500,000 francs as damages;
- Orders them further to pay the costs

According to letters certified on 17 May, 2010 by the chief-supervisor of the Daloa remand and correctional center and registered at the registry of the court of this jurisdiction with N° 91 and N° 92, the same day ZI and ZB lodged an appeal of this judgment;

In the appeal case, the Court did not receive any response to the summons sent to the defendants and to the civil party;

Moreover, they did not appear at the hearing;

For the Public Prosecutor's Office, the contested judgment deserves to be confirmed in its entirety.

## **MOTIVES**

### **On the nature of the decision**

Considering that the Court did not receive any response to the summonses sent to the defendants and to the civil party, to appear in Court;

That for this reason, the present case has undergone more than one postponement;

That in application of Article 545 of the Criminal Procedure Code, it is appropriate to rule by default in their regard;

### **ON THE FORM**

#### **On admissibility of the appeal**

Considering that the appeal of the defendants was introduced in compliance with the forms prescribed by article 498 of the criminal procedure code;

That in addition, this appeal was made within the period of twenty (20) days allotted by paragraph 1 of article 491 of the same code;

That it should therefore be declared admissible.

### **ON THE MERIT**

Considering that indecent assault consists of any indecent act carried out directly on a person of either sex;

Considering in the present case, it emerges from the documents in the file that, in order to achieve their aim, which was to sexually abuse their victim, one of the defendants in this case, ZB, persuaded her to accompany him into the premises of the primary school where he said his older brother was waiting for him;

That it was when she arrived there that Z.B forced her with the threat of a knife to have sexual intercourse with him and his friends, including his co-defendant undoubtedly;

That it is for this reason that the defendants, who actually participated in this sexual assault, were rightly denounced by GC, so that their designation is not subject to any doubt.

All the more so since the defendants do not dispute that they were in the company of their victim at the place indicated at the time of the facts;

Better still, the financial contributions that they respectively made for the medical care of their victim attest that they are not estranged to this offense and eliminate any doubt as to their guilt;

That their denials, in trying to insinuate that one is the victim's lover and that the other did not participate in the aggression, cannot prosper; as well as the futile attempts of Z.B to exonerate his co-defendant;

That from all the foregoing, it follows that their conviction by the first judges proceeds from a good assessment of the facts of the case, so their decision must be confirmed in all its provisions;

#### **On Costs**

Considering that the defendants were declared guilty of the criminal acts charged against him;

That they should be ordered to pay the costs;

#### **FOR THESE MOTIVES**

Deliberating publicly, by default, on minor criminal matters and as a last resort,

#### **ON THE FORM**

- Declares admissible the appeals of ZI and Z.B lodged on 17 May 2010, against judgment No. 460/10 rendered on 11 May, 2010 by the Daloa Criminal Court;

#### **ON THE MERIT**

- Declares them ill-founded and dismisses them;
- Confirms the judgment in all its provisions;
- Orders ZI and Z.B to pay the costs.

**President: M. YAPI AKOLOS.**