

2nd PRE-TRIAL CHAMBER
Judgment N°17 OF 09/01/2013

Revision

The Prosecutor
versus
M.T.

1/Crimes and offences against children- Abduction of minor – Minor under the authority of her parents – Minor who has stayed for one week with the accused without the authorization of her parents – Appeal by the accused (none) - Conviction.

2/ Violation of moral norms – Sexual indecency – The accused admits having had sexual intercourse with the minor during her stay at his house – Conviction.

3/ Violation of personal liberty – The victim having freely followed the accused by accepting to wait for him at the home of a third party before heading to his residence - Sequestration (none).

1/ The accused pleaded guilty of abduction of minor and the contested judgment has to be confirmed, since he does not challenge the fact that the minor, still under the authority of her parents, stayed with him for one week, without the authorization of her parents.

2/ The Court rightly accepted the guilt of the accused and condemned him for sexual indecency, since he admits having had sexual intercourse with the minor during her stay in his home.

3/ The judgment entered into must be reformed with regard to the facts of kidnapping and the accused must be declared not guilty, since the facts of kidnapping are not established.

THE COURT

Having regard to the documents in the file;
Hearing the Public Prosecutor's Office in its requisitions;
After having deliberated in accordance with the law;

On 26 December, 2007, K.A. lodged a complaint with the police criminal department against an unknown person for the kidnapping of his 13-year-old daughter K.R.

He explained during the preliminary investigation that his daughter left for school on 21 December, 2007, but did not return home.

He noted that, thanks audio-visual media announcements, he received calls from people who enabled him to find her;

On her part, KR maintained that on 21 December, 2007, the public transport vehicle which she had boarded to return home had changed route and, despite her resistance, under the threat of MT, the conductor, she was taken to Adjamé where the latter entrusted her to a group of individuals, then took her back around 10pm to Yopougon, in a precarious neighborhood, locked her in an unlit room and abused her;

She added that on 28 January, 2008, with the assistance of persons of goodwill, she managed to escape through the window;

When questioned, M.T. confirmed that he had indeed kept K.R. at his home and abused her;

Before the Abidjan Criminal Court, following the flagrante delicto procedure, M.T. did not recognize the facts levied against him:

He stated that the victim had agreed to stay with him;

Following judgment N° 362/08 of 25 January, 2008, the Abidjan Trial Court rendered the following decision in the case:

Declares the accused M.T. guilty of the accusations brought against him – kidnapping of a minor, forcible confinement and sexual indecency committed with violence on a 15-year-old minor:

As sanction, sentences him to 05 years of imprisonment with a fine of 50,000 francs;

Pronounces against him, the deprivation of the rights provided for in article 66 of the penal code for 10 years;

Bars him from the entire territory of the Republic of Cote d'Ivoire for 05 years;

Orders him further to pay the costs;

By letter dated 29 January, 2008, registered on 29 January, 2008, the defendant M.T. appealed against the aforementioned judgment.

He however failed to show up during the appeal hearing to present his arguments;

The Prosecutor requested confirmation of the contested judgment.

MOTIVES ON THE FORM

On the nature of the decision

The defendant M.T, who escaped from prison as attested by the letter dated 21 December, 2011 from the registrar, was not aware of the present proceedings;

The civil party also did not appear in in the appeal hearing;

It is appropriate to pass a default ruling with regard to all the parties

On the admissibility of the appeal

M.T's appeal, made in the form and within timeframe prescribed by the law, is admissible.

ON THE MERIT

Concerning the accusation on abduction of a minor

The accused M.T. does not dispute that the minor K.R., still under the authority of her parents, stayed with him for a week without their authorization;

That he was thus guilty of the accusation of kidnapping of a minor levied against him;

It is therefore logical to confirm the contested judgment on this point;

Concerning the accusation on sexual indecency

M.T. admits having had sexual intercourse with K.R. during her stay at his home, and is thus guilty of sexual indecency;

The Court was therefore right to find him guilty of the said facts.

Concerning the accusation on sequestration

It appears from the file of the proceedings that KR, who boarded the vehicle with which MT works, freely followed the latter by agreeing to wait for him at a third party's place until the end of his shift before following him to his home.

It follows that the facts of sequestration have not been sufficiently established in the present case;

It is therefore appropriate to revise the judgment entered into on this charge and to declare him not guilty of the acts of kidnapping charged against him;

On the costs

The accused succumbs to the proceedings;

He should be ordered to pay the costs.

FOR THESE MOTIVES

Deliberating publicly, by default with regard to all parties, on criminal matters and as a last resort;

ON THE FORM

Admits M.T's appeal relating to judgment N° 362/08 rendered on 25 January, 2008 by the Abidjan Criminal Court;

ON THE MERIT

Declares it ill-founded:

REVISION

Declares M.T. not guilty of the acts of kidnapping charged against him;

Confirms the rest of the judgment;

Orders him to pay the costs.

President: Mr. OUATTARA SIRIKI