

REPUBLIC OF SENEGAL
One People-One Goal-One Faith
In the name of the people of Senegal!

DAKAR COURT OF APPEAL

FLAGRANTE DELICTO

REGIONAL COURT OF

Of 22 NOVEMBER 2012

DIOURBEL

AT THE ORDINARY PUBLIC HEARING of the Regional Court of Diourbel (Senegal) on the twenty-second of November two thousand and twelve, held for cases of correctional police by Mr. xxx, judge at the seat, President, assisted by Messrs. xxx, judges, members;

Judgment

Prosecution No

In the presence of Mr. xxx, deputy of the Public Prosecutor and with the assistance of Mr. xxx, Registrar,

The following judgment was rendered:

PUBLIC

PROSECUTION
AND: xxx

Between: 1) Mr. Prosecutor of the Republic requesting according to the report of an interrogation of flagrante delicto dated September 25, 2012;

C.L: xxx
(Civil Party)

And 2): xxx, born November 21, 2006 in Mbacké, xxx, domiciled in Touba Darou Khoudoss;

VERSUS

xxx
D.W. of 25/9/2012
(Lawyer xxx)

C.L: xxx, born in 1974 in Touba, xxx, religious leader, domiciled in Touba in the Darou Khoudoss District; Civil party appearing at the concluding hearing in person;

Offence

On one hand

Indecent assault and
pedophilia

And: 1) xxx, born in 1971 in Taïf xxx, farmer, living in Touba Darou Khoudoss; Warrant of detention of April 20, 2012 Accused of indecent assault and pedophilia, provided for and punished by articles 319 and 320 of the Penal Code;

Articles 319 et 320 of
the Penal Code

Appearing and plaidant at the hearing, assisted by his counsel attorney xxx, lawyer at the court;

On the other

DECISION

See operative
part

Arrested at the hearing on September 27, 2012, in accordance with article 384 of the Code of Criminal Procedure, the case was successively postponed until the hearing of November 15, 2012, where it was usefully held;

At the appeal of the case, the Prosecutor of the Republic explained that by the aforementioned report, he had made the accused appear before the Tribunal at the hearing of that day to defend himself because of the above offence;

The Registrar then read the documents in the file.

Then the defendant was heard, the Registrar took note of the witness's statements and the defendant's answers;

The civil party xxx, through her tutor, declared that she was a civil party, requested an act from the Court which it granted her and stated not to claim damages;

The public prosecutor summed up the case and demanded against the defendant the application of the law. The defendant presented his defense,

The Tribunal then reserved the case for judgment to be delivered at the hearing on November 22, 2012.

On that date, the Court, after having deliberated in accordance with the law, ruled as follows:

THE TRIBUNAL

Having regard to the documents in the file;

Having heard the accused during his interrogation;

Hearing the submissions of the civil party, the requests of the Public Prosecutor, the defense of accused;

Whereas by report of interrogation of flagrante delicto dated September 25, 2012 Mr. the public prosecutor charged xxx before this correctional court of having in Touba, September 23, 2012, in any case before prescription of public action, committed an indecent assault without violence on the person of xxx under 13 years old;

To have in the same circumstances of time and place, committed gestures, touching or fondling for sexual purposes on the latter;

Facts provided for and punished by articles 319 and 320 of the Penal Code;

On public action:

Whereas it results from the procès-verbal n ° 669 dated September 15, 2012 from the special police station of Touba that the named xxx and her husband xxx filed a complaint against the named xxx for acts of pedophilia; xxx declared having caught xxx caressing the private parts of her daughter xxx; As for xxx, he agreed with his wife before indicating that the respondent first tried to deny the facts before admitting them and proposing him an amicable settlement to cover up the case that risks to damage the reputation of the family.

He also stated that he noticed that xxx used to isolate himself with her daughter when he came home and sometimes gave her small gifts;

During her hearing by the investigators, xxx explained that xxx had lifted her loincloth and put his hand on her sex;

She indicated that this was the second time that xxx engaged in this kind of act with her, but she never denounced it;

xxx for his part disputed the charges against him while claiming that he was playing with xxx as his mother entered the veranda. He clarified that xxx accused him because she was terrorized by her mother;

Whereas at the bar, the parties reiterated their statements made at the preliminary inquiry;

Whereas the public prosecutor, after a brief reminder of the facts, submitted that the defendant went to the home of xxx where he caressed the private parts of xxx; He therefore demanded that the accused be declared guilty of the offenses of pedophilia and indecent assault and sentenced to one (01) and two (02) years of imprisonment respectively;

Whereas the defendant's counsel submitted that the facts are not real, it is simply an invention of the mind because there were suspicions that weighed on xxx due to the uncomfortable position in which he was;

He therefore argued that no objective evidence in the file was found to support the victim's accusations;

Whether he requested an outright acquittal or for the benefit of the doubt;

Whereas xxx constantly maintained that xxx pressed her against the wall then lifted her loincloth before putting his hand on her sex;

Whereas these accusations of the civil party were contested by the defendant, xxx who considered that his only fault was to have played with xxx and it was his mother who deduced offence from it and consequently trained her daughter to make unfounded statements;

Whereas these denials of the accused are only means of defense which cannot prosper;

That indeed, in addition to the formal and unchanging accusations of xxx; xxx testified both at the preliminary investigation and before the bar of the court having caught the defendant who spread the legs of her daughter before starting to fondle her sex while the defendant speaks of an uncomfortable position;

That in addition to this, xxx, father of xxx confirmed the accusations made by his daughter and his wife against the defendant by maintaining that he had admitted the facts before changing his mind and added that the accused came to his home and used to isolate himself with his daughter;

That in light of the foregoing, the charges against the accused are proven;

Whereas these facts violate several legal provisions, this is the reason why the accused was prosecuted for the offenses of pedophilia and indecent assault, however only one offense will be retained in this case, the offense of indecent assault without violence;

That it therefore befits to find him guilty of this offense and to sentence him to one (01) year of imprisonment;

On civil damages:

Whereas xxx, tutor for xxx has said he is not asking for reparation; it therefore befits to give him notice of the withdrawal of his right;

FOR THESE REASONS

DETAILS OF COSTS

Stamp :	4 000 F
Filing :	8 000 F
Mailing :	75 F
T. F:	75 F
Taxe rép. :	75 F
<u>TOTAL:</u>	12 300 F

Ruling publicly, after trial, in correctional matters and at first instance:

- Declares the defendant guilty of indecent assault without violence;
- Sentences him to a prison term of one (01) year;

On damages:

- Notifies the civil party of the withdrawal of his right;
- Orders the accused to pay the costs;
- Fix the maximum prison term for failure to pay;

The whole in application of the aforementioned texts, which has been read by Mr. President.

Thus done, judged and pronounced on the aforementioned day, month and year.

And signed the **PRESIDENT** and the **REGISTRAR**