

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
DIOURBEL**

OF 29 NOVEMBER 2012

N° 1138/12 of Judgment

N° 1521/12 Prosecution

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

In the presence of Mr. XXX, Deputy Public Prosecutor and with the assistance of Mr. XXX, Registrar,

The following judgment was rendered:

Parties:

And: **A.F.**

- 1) The Prosecutor of the Republic requesting according to the report of an interrogation of flagrante delicto dated October 29, 2012;

CL: M.K.

(CIVIL PARTY)

AND

- 2) XXX, born in 2003 in Ndangalma, XXX, student in primary 2, living with her parents;

VERSUS

O.M.

- 3) XXX born March 02, 1971 in Mbadiane (Lambaye), XXX, trader, domiciled in Ndangalma;

(M.D of 29/10/12)

Civil party appearing at the concluding hearing in person and pleading herself;

ON ONE HAND

OFFENCE

And: 1) xxx, aged 19, born in Koundara (Guinea) xxx, woodman, passing through Ndangalma;

Pedophilia et indecent assault with violence;

Detention Warrant of October 29, 2012

Articles 320 et 320 bis of the Penal Code

Defendant of pedophilia and indecent assault with violence, provided for and punished by articles 320 and 320 bis of the Penal Code;

Appearing and concluding at the hearing, in person; **ON THE OTHER**

DECISION

See operative part

Questioned at the hearing of November 08, 2012, in accordance with article 384 of the Code of Criminal Procedure, the defendant declared that he wanted to be tried immediately but the case was postponed to wait for the appearance of the civil party to November 22, 2012, where it was pleaded;

At the appeal of the case, the Prosecutor of the Republic explained that by the aforementioned report, he sued the accused before the Tribunal at the hearing of that day on account of the above offences;

The Registrar then read the documents in the file;

Then the witness produced by the prosecution was heard;

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

The civil party XXX, as representative of his minor daughter xxx declared to be a civil party, requested act of the Court which granted it to him but declared 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,

Then the Court, after having deliberated in accordance with the law, ruled in these terms:

THE COURT

Having regard to the documents in the file;

After hearing the accused during his interrogation;

After hearing the submissions of the civil party, the submissions of the Public Prosecution, the defense of defendants;

Whereas the report of interrogation of flagrante delicto dated October 29, 2012 xxx was brought before the correctional court under the offence of having in Bambey on October 28, 2012 in any case before the public action was time barred, committed gestures, touches, caresses for sexual purposes on the person of xxx under the age of 16;

To have in the same circumstances of time and place committed an indecent assault with violence on the aforementioned;

Facts provided for and punished by articles 320 and 320 bis of the penal code;

On public action;

Whereas on October 28, 2012 the Bambey gendarmerie brigade was seized by telephone by xxx to inform them that his 9-year-old daughter was a victim of pedophilia and indecent assault committed on her by the named xxx in the locality of Ndangalma;

Whereas the girl xxx, heard subsequently at the preliminary investigation and before the bar and in the presence of her tutor, maintained that on October 27 after dinner, she went with her sister to a dance ceremony which was held in the public square of the village, that on the spot while she was alone, a person came to ask her to go buy her sweets, which she refused, then the person later known as xxx held her by the forearm to drag her in the direction of the outskirts of the village, took her into the tall grass despite her cries, near an unfinished building where he took off her underwear and was getting ready for the sexual penetration sexually, but because of her cries a lady who lived in a neighboring house came to her aid, which led to xxx to flee before being caught by the young people of the village;

Whereas the defendant explained during the police investigation that he admits to being the author by explaining that on that day he had a strong desire for sex and having seen a girl alone, he asked her to go and buy him some candies by giving her a 200-francs, that when the latter refused, he led her into the bush, holding her by the forearm, on the outskirts of the village where he undressed her and began to caress her sex, adding that when he was about to penetrate her, the girl screamed loudly, which alerted a lady who came to her aid, which compelled him to flee before being caught;

Whereas before the bar the defendant denied the facts by arguing that he did not want to do anything to the girl, that he simply asked her to accompany him to show him a path he was looking for, that in on the way the girl who did not know the place got scared and shouted alerting the inhabitants;

On pedophilia;

Whereas article 320 bis characterizes as pedophilia any gesture, caress, touching, pornographic manipulation, or use of images or sounds for sexual purposes on a minor under the age of sixteen;

That it is not in dispute that xxx is under the age of 09;

Whereas she has constantly stated that the defendant took her overnight to an isolated place where he undressed her and caressed her sex;

That during the police investigation the defendant confessed in full detail that he had undressed xxx and caressed her sex and was even preparing for penetration;

Whereas xxx heard as a witness declared that on the day of the events when she was alerted by the shrill cries of a girl, she approached and saw a girl named xxx in tears with her panties down and at the same time saw xxx flee before he was caught by the young people of the village;

That the confession of the accused made at the preliminary investigation, the constant statements of the victim, the damning testimony of the lady xxx as well as the circumstances of the arrest in into the act of the defendant are all evidence of commission by the defendant of acts of pedophilia on the young girl xxx, aged 9;

That his unfounded denials made in front of the bar are only attempts to evade his criminal responsibility, that it therefore befits to declare xxx guilty of pedophilia and sentence him to 02 years of imprisonment by allowing him to benefit from the extenuating circumstances;

On indecent assault;

Whereas article 320 paragraph 6 of the penal code punishes indecent assault committed or attempted with violence with a penalty of five to ten years;

Whereas indecent assault refers to any act of a sexual nature contrary to morality committed on the person of another with or without violence;

Whereas the fact for the defendant to lower the underwear of the little girl xxx, whom he knows to be a minor after having dragged her by force despite her refusal to a solitary place to caress her private parts, is analyzed as acts of indecent assault, that these facts are sufficiently established by the elements of the file in particular the confession of the defendant made in front of the investigators, the testimony of the lady xxx and the detailed statements of the complainant;

That in view of all these observations, the defendant should be found guilty of pedophilia and sentenced to 02 years' imprisonment;

On civil action;

Whereas xxx, tutor of the minor xxx, declared that he did not claim anything, that he should be given notice thereof;

FOR THESE REASONS

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

On public action;

Declares the accused guilty of pedophilia;

Sentences him to 02 years' imprisonment in accordance with Articles 320 and 433 of the Criminal Code;

Also finds him guilty of the offense of indecent assault;

Sentences him to 02 years' imprisonment;

Orders the concurring sentencing in application of article 5 of the penal code;

Holds that only the sentence of 02 years of imprisonment will be applied;

On civil action

Notifies the civil tutor for the civil party that he is not claiming damages;

Orders the accused to pay the costs;

Sets the maximum prison term for failure to comply;

All done in application of the aforementioned texts, which have been read by Mr. President.

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

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