

IN FLAGRANTE DELICTO

ORDINARY PUBLIC HEARING OF 12 JUNE 2015

Judgment No:

Prosecution No:

At the public and ordinary hearing of the Dakar Regional Court (Senegal) on 12 June 2015 on police criminal matters by Ms. ..., Judge at the Court – President, assisted by Ms.... and Mr...., in the presence of Mr. ..., representing the Prosecutor and with the assistance of Maître..., Registrar, the following judgment was passed:

THE PROSECUTOR

AND

1)

(Barrister ... and ...)

(Civil party)

CONTRE

...

(Barrister...)

(D.W. of 18.05.2015)

Nature of offence

Rape of a minor (girl) below the age of 13 years, Pedophilia

(Articles 320 and 379 of the Penal Code)

BETWEEN:

The Prosecutor, Applicant, following minutes of interrogation for the flagrante delicto case No... of 18.05.2015;

AND:

1) ..., born 01 January 2012, assisted by her mother, born in 1984 in Bignona, trader, domiciled at the “Parcelles Assainies” unit 18;
(CIVIL PARTY)

Appearing and concluding at the hearing with the assistance of her lawyers, Barristers.... and ;

ON THE ONE HAND

AND:

... born on 02 March 1997 in Agnam Thiadiaye, to ... and ..., caterer, residing in Greater Dakar, villa No...;

Detained following detention warrant of 18.05.2015;

Accused of rape of a minor below the age of 13 years and pedophilia;

Appearing at the hearing in person with the assistance of his lawyer, Barrister....;

ON THE OTHER HAND

Questioned by the President at the hearing of 20/05/2015 in conformity with article 384 of the Criminal Procedure Code, the accused declared that he wanted to be judged immediately, and the case was successively adjourned until this day, when it was enlisted for hearing;

When the case was called up for hearing, the Prosecutor stated that he had brought the aforementioned accused before the Court on this day to defend himself on account of the above-mentioned accusations;

The accused was interrogated;

The Registrar took note of the accused's responses;

The Prosecutor requested against the accused a prison sentence of ten (10) years;

The accused and his counsel presented their means of defense;

Then the Court, after deliberating in conformity with the law, ruled as follows:

THE COURT

Having regard to the documents of the file;
Having heard the accused during interrogations;
Having heard the requisitions of the Prosecutor;
After deliberating on the matter in accordance with the law;

Whereas, according to the interrogation minutes of the flagrante delicto case No...of 18 May 2015, the Prosecutor sued ... upon the accusation of having, in Dakar, in the year 2015, through the use of violence, coercion, threat or surprise, committed an act of sexual penetration on ..., aged below 13 years;

Of having, in the same circumstances of time and place, proceeded to caressing, touching or performing other acts for sexual motives on the latter;

Offenses provided for and punishable under articles 320, 320 bis and 348 of the penal code;

Whereas both parties appeared in court together with their counsels, it is appropriate to rule on the basis of counter-argumentation;

ON THE MERIT **ON THE CIVIL ACTION**

On the facts

Whereas, as per the minutes of the preliminary investigations No ... of 06 May 2015 prepared by elements of the Greater Dakar Police, Ms... field a complaint against... for raping her daughter R.C, aged 03 years;

That according to the terms of her complaint, she explains that, in the afternoon of Saturday 02 May 2015, she and her daughter had gone to Greater Dakar to pay a visit to the son of their friend ... by name ... who had been circumcised, and that is at the time when the latter and her daughter were in the compound with ..., employee of ... that R. came crying, asking that they should go back home. That when they got home, she noticed that her daughter felt pain when urinating, and that when she examined her genital, she noticed scratches;

That when questioned, her daughter told her that it is ... who inserted his finger into her genital when they were inside the sheep pen, and it is for this reason that she came crying and asking that they should return home, before specifying that at the same time, the circumcised child ... had alerted her by saying in Wolof that it is ..., with any other precise information;

That on her part, her daughter ... said to the investigators that it is at the time when she was with ... and ... in the sheep pen that the latter took advantage to ask her to take off her underwear, while caressing her and inserting his finger into her genital;

That the witness ... declared that Ms..., who is the wife of his friend, visited him in the afternoon of Saturday 02 May 2015 to see his son who had just been circumcised, and that it is just after their arrival at "Parcelles Assainies" that her friend reached him on phone to inform him that her daughter had been raped by ...;

That he explains that he informed the elder brother of the latter, and they went to the residence of Ms..., specifying that they had not yet brought the situation to the attention of T. for fear that he might escape;

Finally, he adds that it is T. who takes care of the sheep kept in a pen with a small wall and completed at the top with a grill;

That before the investigators, the accused said he was present at the house of his employer ... on the day of

the incident, in the company of the children ... and ... in front the door to the house, and not in the enclosure;

That he explains that even ... with whom he works at the residence of ... saw him sitting with the children at the place he talked about, and that he is not the perpetrator of the offences levied against him, because the allegations of the girl are completely false;

Whereas at the hearing the civil party ..., assisted by her mother, reiterated the declarations made at the preliminary hearing;

That her counsel argued that all the evidence to determine a rape offence are pointing at the accused, and that the little girl has constantly argued that it is the accused who is the perpetrator, a position supported by the child ...together with the medical certificated submitted during the hearing;

Whereas in his requisitions, the Prosecutor, after having recalled the facts, specified that the rape took place inside the sheep pen and that it sufficiently attests to the willingness of the accused to sexually penetrate the little girl;

That he also noted that the victim has always remained constant in her statements, before requesting the Court to find the accused guilty of the charges levied against him and to sentence him to ten (10) years in prison;

Whereas at the bar of the Court, the accused himself persisted in his denials, and that for his defense, his counsel argued that there is some element of doubt in the matter, before noting that the conclusion of the investigators were accusatory and cannot serve as a basis to enter into sentence;

That, however, he observed that the medical certificate is not based on any objective element, as it contains a lot of contradiction, and that the offenses referred to are not proven, before requesting, after submitting to the wisdom of Court, primarily the release of his client for the benefit of doubt, and at the very least a benevolent application of the law;

ON THE ABOVE:

CONCERNING THE RAPE:

Whereas article 320 of the Penal Code provides that any act of sexual penetration, of whatever nature, committed on another person using violence, coercion, threat or surprise is rape;

Whereas in this case, it is constant fact, as demonstrated by the proceedings, that the little girl has been a victim of sexual assaulted, more precisely an act of sexual penetration;

That this has even been sufficiently supported by medical expert report prepared by Professor... dated May 07 2015, which reported on the existence of traces of vulvar lesions and the absence of hymen;

That it should be noted, as it emerges from the allegations of the civil party, that it is... who is the perpetrator of these acts by having forcibly inserted his finger into her genitals while she was alone with him in the company of the child ... in the sheep pen, and that she had even previously refused to take off her underwear when the accused instructed her to so;

That even if the accused tries to take refuge behind systematic denials in order to escape his criminal responsibility, it should be noted that he was the only person who constantly stayed with the children ... and ... during the latter's brief stay at the home of ...;

That this fact is amply established by the statements of all parties who formally argued both during the inquiry and at the bar of the Court, that during the short visit of the lady ... and her daughter ..., it is the accused who was alone with the children ... and ...;

That it should be added that the pains felt by the girl did not appear until after their prompt departure from the said home and as soon as they arrived home at “Parcelles Assainies”;

That, moreover, this state of affairs, subject to considerations relating to age and to the state of the members of this group, notably the accused himself, 18-year-old adult, the child ... freshly circumcised, aged 2 years old and ..., 3-year-old little girl, demonstrates beyond any doubt that the perpetrator of the sexual assault of which R. is a victim can only be ..., adult in the said group;

That, besides, the witness ... clearly affirmed that members of his family members as well as the mother of ... were inside the building, and that from where ... and the children where, nobody could see them, which further supports the fact that all the conditions were in place to perpetrate the rape on the little girl;

That as such, just the fact that the accused took the children away from anyone’s sight denotes a desire nursed by the accused to commit the offense on the little girl;

That ultimately, having demonstrated the elements to establish the offence of rape of a girl below the age of 13 years charged against ..., it is appropriate to declare him guilty of the offence and to sentence to 10 years in prison, in application of the above-mentioned article;

CONCERNING PEDOPHILIA:

Whereas article 320 bis of the Penal Code, any gesture, touching, caressing, pornographic manipulation, usage of images or sound through whatever technical process, for sexual purposes on a child below the age of 16 years by someone of one or the other sex, constitutes an act of pedophilia;

Whereas in this present case, it is constant, as demonstrated in the proceedings, that the victim... is a little girl aged 03 years old, and she argued that at all stages of the proceedings that it is the accused ... who sent his hand into her underwear, caressed her and later inserted his finger into her genital;

That, besides, the physical appearance of the little girl... at the bar of the Court, attests, even without relying on the birth certificate, that she has not attained 16 years, which sufficiently establishes the last condition for the offence of pedophilia;

That, as such, it is appropriate to declare ... guilty of the offence of pedophilia and to sentence him to 5 years in prison, in application of the above-mentioned article;

Whereas it is important to note that the accused having already been condemned to 10 years and 5 years in prison, it is appropriate, in application of article 5 of the Penal Code, to sentence him to ten (10) years in prison;

ON CIVIL INTERESTS

Whereas ..., having civil liability over her daughter R.C. declared through his counsel to constitute a civil party and has requested for the payment of 5,000,000 FCFA for damages;

Whereas the said constitution done before the requisitions of the Prosecutor was in accordance with the procedures, that it is appropriate to declare it admissible;

Whereas it is important to recall that the request made by the civil party is founded in principle, but exaggerated in the amount, that the Court has sufficient basis to change it to a more fair amount and to fix it at 3,000,000 FCFA, and to condemn the accused to pay the said amount;

Whereas there is ground to order provisional execution, to accord maximum duration of imprisonment for failing to pay the dues, and to condemn the accused to pay the costs;

FOR THESE REASONS

Ruling publicly, on the basis of counter-argumentation, in criminal matters and in first instance;

- Declares ... guilty of the accusations levied against him;
- Sentences him to 10 years in prison, in application of articles 5, 320 and 320 bis of the Penal Code;
- Admits the constitution of civil party by Ms..., with civil liability over her daughter;
- Condemns ... to pay her the sum of 3,000,000 FCFA for damages;
- Orders provisional execution'
- Accords maximum duration of imprisonment for failing to pay dues;
- Condemns the accused to pay the costs;

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

Signed by the Registrar.

The President

The Registrar