

**REPUBLIC OF SENEGAL**  
**One People-One Goal-One Faith**  
**In the Name of the People of Senegal!**

**DAKAR COUR OF APPEAL**

IN FLAGRANTE DELICTO

**DIOURBEL REGIONAL COURT**

OF 29 NOVEMBER 2012

AT THE ORDINARY PUBLIC HEARING of the Diourbel Regional Court (Senegal) on 29 November 2012, held for police criminal case by Mr. S.F.F., judge at the seat – President, assisted by Mr. A.K. and Mr. S.O.F., seat judges – Members;

**Judgment N° 1128/12**

Prosecution N° 1077/12

In the presence of Mr. M.F, Deputy Public Prosecutor and with the assistance of Mr. D.S, Registrar,

**THE  
PROSECUTOR**

And : Ms. D.D

**C.L:** A.L

**(Civil Party)**

The following judgment was rendered:

**Between: 1)** The Prosecutor, applicant, according to the report of an interrogation on a flagrante delicto case dated July 23, 2012;

**AGAINST**

**And 2):** M.D.D, 12 years old, born in Touba, to C. and ... domiciled at Touba Darou Khoudoss

**T.N.**

D.W. of 23/07/2012  
(Barrister B.)

**C.L:** A.L. born in Touba, domiciled in Darou Khoudoss

**Civil Party:** appearing at the concluding hearing in person;

**NATURE OF  
OFFENSE**

Rape of minor (girl)  
below the age of 13 years  
and pedophilia

Articles 320 and 320 bis  
of the Penal Code

**And: 1)** T.N., born June 6, 1965 in Touba to the late I. and F.D, mason,  
residing in T.D.K;

Detention warrant of July 23, 2012

Accused of rape of a minor under 13 years old and pedophilia; provided  
for and punishable under articles 320 and 320 bis of the Penal Code;

Appearing and concluding at the hearing assisted by his counsel Barrister  
J.B., attorney at the court;

**On the one  
hand**

**On the other hand**

Called up at the hearing of July 26, 2012, in accordance with article 384 of the Criminal Procedure Code, the case was successively adjourned, then at the hearing of August 9, 2012, further investigation was ordered by the court and case adjourned to August 30, 2012 for presentation of report. On the day of the hearing, the case was successively adjourned until the hearing of November 22, 2012 where it was retained for deliberation;

When the case was called up, the Prosecutor explained that, by the aforementioned minutes, he had made the accused appear before the Tribunal at the hearing of the said day to defend himself regarding the above accusations;

The Registrar then read the documents in the file.

Then the witnesses produced by the prosecution were heard;

The defendant was heard, and the Registrar took note of the statements of the witnesses with the responses of the defendant;

The civil party, A.L, declared that she was a civil party, requested acknowledgement from the Court, which so granted to her, and ended by claiming damages;

The Prosecutor did a summary of the case and demanded that the law be applied against the defendant. The defendant presented his defense,

Then the Court, after having deliberated in accordance with the law, ruled as follows:

### **THE COURT**

Having regard to the documents in the file;

Having heard the accused during his interrogation;

Having heard the civil party in his conclusions, the Prosecutor in his requisitions, the accused in his means of defense;

#### **On the form:**

Whereas T.N. appeared before the Criminal Court upon accusation of rape of a minor under the age of 13 and pedophilia;

That it is appropriate to rule on the basis of counter-argumentation with regard to the case;

#### **On the merit:**

Whereas according to the interrogations report on a flagrante delicto case of July 23, 2012, the Prosecutor had T.N. appear at the bar of the criminal court in this jurisdiction upon accusation of having, in the village of Touba, in the jurisdiction de Diourbel, in January 2012, using coercion, threat or surprise, committed an act of sexual penetration on the person of M.D.D, with the circumstance that the victim is under 13 years old; of having in the same circumstances of time and place committed touching or caressing for sexual purposes on the aforementioned person under 16 years of age;

These facts constitute the offenses provided for and punishable under articles 320 and 320 bis of the penal code;

Whereas in the light of the documents in the case file and the hearing proceedings, no clear evidence has been reported to allow the accused to be convicted of the rape of a minor under 13 and of pedophilia for which he is accused;

Whereas there remains a doubt as to the guilt of the accused, and that it is always beneficial to the latter; that he should be acquitted;

**On civil interests:**

Whereas A.L., in her capacity as representative of her minor daughter M.D.D, declared to be a civil party and decided to claim damages;

Whereas the said constitution made before the requisitions of the Prosecution is regular in form, it should be admitted;

But whereas the defendant was acquitted of the offense for which the civil party claims to be victim;

That it is appropriate to declare the claim s of A.L. is ill-founded;

Whereas it is also necessary to attribute the costs to the public treasury;

**FOR THESE REASONS**

Deliberating publicly, on the of counter-argumentation, in criminal matters and in the first instance:

- Acquits T.N;
- Admits the constitution of civil party by A.L. in her capacity as representative of M.D.D;
- Dismisses her request as ill-founded;
- Places costs on the public treasury;

All this done in application of the aforementioned texts, which has been read by President.

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

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