

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

DAKAR COURT OF APPEAL

IN FLAGRANTE DELICTO

DIOURBEL REGIONAL COURT

Of 22 NOVEMBER 2012

Judgment N° 1104/12

Prosecution N° 1481/12

AT THE ORDINARY PUBLIC HEARING of the Regional Court of Diourbel (Senegal) on 22 November 2012, held for criminal police cases by Mr. A.KA, judge at the seat – President, assisted by Mr. A.D. and Mr. S.F.F., seat judges – members;

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

THE PROSECUTOR

And: **D.G.**

C.L: D.F.

(Civil Party)

The following judgment was rendered:

Between: 1) The Prosecutor, applicant, in accordance with the interrogation minutes of flagrante delicto case dated October 19, 2012;

And 2): D.G, born in 1995 in Diourbel, to A. and D.F, house-help, living in the Ndayane district with her mother;

AGAINST

O.S.

CR: D.F, his mother;

Civil party appearing at the concluding hearing in person;

**NATURE OF
OFFENCE**

On the one hand

Rape of minor (girl) by a person with authority over her

Articles 320 and 321 of the Penal Code

And: 1) O.S, born in 1987 in Nébé, to M. and N.F, farmer, domiciled in Ndayanne;

Warrant of detention of October 19, 2012.

Accused of rape of minor by a person having authority over the minor, provided for and punishable under articles 320 and 321 of the Penal Code;

Appearing in the concluding hearing, assisted by his counsel Barrister A.B;

On the other hand

Called up for hearing on October 24, 2012, in accordance with article 384 of the Criminal Procedure Code, the case was adjourned to November 08, 2012 for the appearance of the civil party, then to 15 November 2012 at the request of the accused's counsel. At this hearing, the case was retained for deliberation;

The Prosecutor explained that by the aforementioned minutes, he had the accused appear before the Court at the hearing on the said day to defend himself regarding the above-mentioned accusations;

The Registrar then read the documents in the file.

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

The civil party D.G, through the person with civil liability over her, D.F, declared herself to be a civil party, requested to be so be acknowledged by the Court which granted her request, and she concluded not to make any claim;

The Prosecutor summarized the case and demanded that the law be applied against the defendant. The defendant presented his defense;

The Court then scheduled the case for delivery of judgment on November 22, 2012. On that date, the Court, having deliberated on the matter, in accordance with the law, ruled as follows:

THE COURT

Having regard to the documents in the file;

Hearing the accused during his interrogation;

Hearing the conclusions of the civil party, the Prosecutor's requisitions, and the defense of the accused;

Whereas by the minutes dated October 19, 2012, the Prosecutor sued O.S. before the criminal court of this jurisdiction on the accusation of having in Diourbel on October 18 2012, by coercion, threats or surprise committed an act of sexual penetration on the person of D.G. over whom he had authority;

Facts provided for and punishable under articles 320 and 321 of the Penal Code;

On the merit:

Whereas it results from the minutes N° 251 of 18 to October 2012 of the urban police station of Diourbel that D.F filed a complaint against his spouse O.S. for committing rape on his daughter D.G whom she had during another relationship;

She stated that she had noticed a change in morphology and a precarious state of health of her daughter, which is why she took her to the hospital where she was informed the child was 7 weeks pregnant; and after interrogation, the child indicated that it was O.R. that forced her to have sex with him;

D.G. agreed with her mother on having had sex with his mother's husband on four occasions, and each time he used violence to achieve his ends;

She also stated that the acts took place after the respondent made the children leave the farm, and she never dared to speak to any member of the family because of the death threats made to her by the accused, and also the risks it could pose on her mother's marriage;

As for O.S, he contested the accusation of rape, while claiming that D.G. is poorly brought up and has a lot of contact with men, as a result of which he reprimanded her;

Whereas at the bar, the parties reiterated the substance of their statements made at the preliminary investigation, however O.R. added that D.G. and his mother D.F. wanted to plot against him;

That he also revisited certain statements made before the investigators;

Whereas the prosecutor considered that with regard to the elements contained in the medical certificate which reveals a total deflowering of the hymen and the declarations of D.G, O.S, who is an adoptive father to the victim, is the perpetrator of the acts which are levied against him;

That he therefore requested that he be found guilty of the offense of rape of a minor by a person in authority over the minor and sentenced to 10 years' imprisonment under Article 320 of the Penal Code;

Whereas the defense counsel noted contradictions in the statements of D.G. and considered that the victim did not tell the truth, since in March it had not started raining for people to go to the farm; therefore, there is no element in the file to attribute the facts to the accused;

Whereas article 320 of the Penal Code defines rape as any act of sexual penetration of any kind, committed on another person using violence, coercion, threat or surprise;

Whereas D.G. constantly maintained that her adoptive father, O.S. had sexual intercourse with her four times, and each time using violence to achieve his ends;

Whereas the certificate issued on October 18, 2012 by Doctor D.W.S.D, Deputy Medical Officer for the Diourbel health district, reports a recent deflowering and an evolving mono-fetal pregnancy of 17 weeks confirmed by the echography carried-out the same day;

That thus, it turned out that D.G. underwent sexual penetration which she attributes to the defendant O.S;

While it is true that D.G. did not spontaneously denounce the acts of rape which she underwent, and they were discovered because of her change in morphology due to her state of pregnancy. However, the formal and constant declarations she made were not seriously contested by the defendant O.S;

That in fact, she declared that the defendant sexually penetrated her on several occasions; first, the act happened at home in the absence of her mother and her sisters, before continuing at the farm where she suffered sexual assault on three occasions by the accused after the children had left, and each time, the accused used violence to satisfy his sexual desire;

Whereas the defendant is contented simply with systematic denials while accusing D.G. during the investigation of being a girl of poor morals; before changing his mind at the bar of the court where he remarked that such acts were reported to him without however specifying the source;

Moreover, the defendant talks of a plot hatched against him by D.G. and his mother D.F; however the thesis of a settling of scores cannot succeed since no reason has been put forward to justify such claims, besides the fact that D.F. had maintained never having had a problem with her husband;

Therefore, in view of the above, the offense of rape is established; however the proof of the authority of the defendant over the victim D.G. has not been reported;

That it is therefore appropriate to disqualify the accusation of rape of a minor by a person with authority over the minor, to declare O.S. guilty and to sentence him to 02 years of imprisonment;

On civil interests:

Whereas D.F, person with civil liability over D.G, became a civil party and did not make any claim;

It is therefore necessary to so acknowledge;

FOR THESE REASONS

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

- Disqualify the accusation of rape of a minor committed by a person in authority over the minor brought against O.S;
- Finds him guilty;
- Sentences him to two (02) years of imprisonment;
- Admits the constitution of civil party by D.F, acting in the capacity of D.G;
- Acknowledges that she is not making any claims;
- Orders the accused to pay the costs;
- Orders the duration maximum duration of imprisonment for non-payment of the dues;

This is entirely done in application of the aforementioned texts, which has been read-out by President.

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

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