

OUAGADOUGOU
COURT OF APPEAL

.....
THE OUAHIGOUYA
HIGH COURT

Judgement No. 30/2020
of 19/02/2020
Suit No. 005/20

Legal Department

Vs

S.A.A

Type of offence:

Theft, invasion of
residence, intentional
damage of property and
domestic violence

Victims:

- B.B
- B.O
-

Decision

(See verdict)

PANEL:

President

K.R. SANOGO

MEMBER.....M.

N. YAMEOGO

MEMBER.....Y

LANKOANDE

Legal Department:

BURKINA FASO
Unity-Progress-Justice

THE OUAHIGOUYA HIGH COURT

HEARING OF 19 FEBRUARY 2020 ON MISDEMEANOUR MATTERS

The Ouahigouya High Court (Burkina Faso), ruling in misdemeanour matters, sitting in its open ordinary court session of Wednesday **nineteen February two thousand and twenty (19/02/2020)**, in the Court of the said town, in which were present: Mr K. **Raymond SANOGO**, Judge at the Bench of the said Court;

President:

Messrs **Martin N. YAMEOGO** and **Yantema LANOANDE**, both Judges at the Bench of the said Court;

PANEL

Assisted by, **D. Maurice YERBANGA**, **Ousmane BELEM**, and **Ismaël OUEDRAOGO**, all Judicial Assessors

In the presence of Mr **Tergou Pie SOME**, State Counsel of Faso at the said Court, assisted by **Y. Bienvenue BOURGOU** and **Noufou KINDO**, all Judicial Assessors;

Legal Department

With the assistance of **Barrister Vilibié BAZONGO**, Court Registrar-in-chief at the said Court;

Court Registrar

And Mr by **Idrissa DIALLO**, Sworn Interpreter

Interpreter

Delivered the following ruling in a suit:

BETWEEN

The State Counsel of Faso, prosecutor in a flagrante delicto proceeding;

ON THE ONE HAND

AND

S.A.A, born on 30 July 1995 in Ouahigouya, of SAWADOGO Issaka and DIARRA Kadidja, painter, domiciled in Ouahigouya/sector 2, living in cohabitation, father of one (1) child, and who declares to have never been convicted, never received an award or recruited;

The Accused:

“1. You are accused to have, on 3 January 2020, in Ouahigouya, less than three (3) years ago, fraudulently withdrawn the sum of CFAF 47,000 (forty-seven thousand) from a coffer kept under a bed, and belonging to BELEM Balguissa, the rightful owner.

Acts provided for and punishable by articles 611-1 and 611-2 of the Penal Code.

.T.P.SOME.

Court Registrar: ...

V. BAZONGO

Interpreter:.....I. DIALLO

JUDICIAL ASSESSORS

- D.Maurice YERBANGA
- Ousmane BELEM
- Ismaël OUEDRAOGO
- Y. Bienvenue
BOURGOU
- Noufou KINDO

2. You are also accused to have, on 12 and 13 January 2020, in Ouahigouya, less than 3 (three) years ago, through fraud or threats of violence against persons or property, entered the house of BELEM Ousseini without informing him before, nor receiving his prior consent, given that the events occurred at night;

Acts provided for and punishable by article 523-6 paragraph 1 of the Penal Code.

3. You are accused to have, on 12 and 13 January 2020, in Ouahigouya, less than 3 (three) years ago, intentionally destroyed or seriously damaged a movable item or a landed property, specifically the window and door shutters of BELEM Ousseini's house.

Acts provided for and punishable by article 622-1 of the Penal Code.

4. You are accused to have, in the same circumstances, and in the same place, less than 3 (three) years ago, manifested domestic violence of physical and/or psychological nature on BELEM Balguissa, by assaulting and insulting him, and verbally threatening him during your cohabitation.

Acts provided for and punishable by articles 531-8 and 531 of the Penal Code”

ON THE OTHER HAND

Entered on the cause list of 29 January 2020, the case was adjourned to 12 February 2020 pending appearance of victims, witnesses and production of medical certificate; on the said date, the case was examined and deliberations relating thereto were heard during that session;

Questioned at hearing, in accordance with article 321-18 of the Criminal Procedure Code, the accused expressed the desire to be tried immediately;

When the case was called, the State Counsel of Faso affirmed that he summoned the above-mentioned accused to Court to defend himself regarding the above-mentioned prejudice;

The case file was read;

the accused was interrogated;

the victims made their statements;

the Legal Department made its submissions;

the accused was heard;

he was the last person to be given the floor to defend himself;

the Court Registrar recorded the unfolding of the hearing;

THE COURT

Mindful of documentary evidence in the case file;

Having arguments made by the accused;

Having heard the submissions of the Legal Department;

The accused having received the floor, in last position, to defend himself;

I- FACTS

On 13 January 2020, B.B arrived the Ouahigouya Central Police Station and expressed the intention to lodge a complaint against S.A.A

for theft of cash amounting to CFAF 47,000 (forty-seven thousand), invasion of residence, destruction of private property and death threats;

In her statement, she explained that, she is a mother of a 7 (Seven) month-old baby she had with S.A.A as a result of their cohabitation;

that on 3 January 2020, following a misunderstanding with her partner on some dirty clothes, he chased after her in the room, slapping her, and she fell with her baby; that he assaulted her with his belt; that she survived thanks to the intervention of her brother's wife who had been alerted by her housemaid; that he went further to expel her from his house without giving her time to take her belongings; that she came back in the evening, using a spare key, to get few dresses; that 3 (three) days after the fight, S.A.A arrived

her brother's house, where she had found refuge, at about 4 a.m., under the pretext of wanting to see the baby, forcing open the window shutters to get into the house and collect the baby, after having been denied access through the door; that later, her partner's mother brought the baby back to her; that on 13 January 2020, he came again at about 1 a.m. for the same reason, but this time forcing the door to her brother's house, where she had found refuge; that she gave him the baby to avoid the worst from happening, but his mother still brought the baby back to her the next morning; she added that by the time she was leaving her partner's house, she left a coffer containing the sum of CFAF 47,000 (forty-seven thousand) under the bed; that when she returned there to collect it, she found the coffer broken, and emptied of its content;

Whereas B.O declared that S.A.A had intruded two times, specifically on 12 January at 4 a.m. and 13 January at 1 a.m. to take his child, while threatening B.B; that the first time he forced his window to get in; that the second time, he tried forcing the door open by hitting it and shouting, and that on both occasions, he was compelled to give him the baby; considering that DIARRY Kadidja declared that on 12 and 13 January at about 4 a.m. and 1 a.m. respectively, her son S.A.A came and handed her his child, claiming that he and the child's mother had fought; that on both occasions, she returned the child to its mother the following morning;

When interrogated on the acts of which he is accused, S.A.A declared that due to her failure to comply with his instructions regarding washing of his clothes, he slapped and expelled his concubine from his house; that he acknowledged having gone to his concubine's brother's house twice, forcing the window shutters the first time in order to enter the house; that the second time, he had started forcing the door open by removing the shutters; that he did not complete his action because his concubine's brother opened the door and gave him his child; he affirmed that he had acted under the influence of alcohol and that he regretted his act;

That he acknowledged having assaulted his concubine at least 5 (five) times during their cohabitation; that regarding the alleged theft, he had been informed about it by his mother and his friends, but he does not admit having committed it, given he did not see the coffer in question;

At the end of the investigation, the above-mentioned Police station drafted a report relating thereto and transmitted the case file to the State Counsel of Faso who prosecuted S.A.A in a flagrante delicto proceeding, for facts of theft, invasion of residence, destruction of property and domestic violence on fifteen January two thousand and twenty (15/01/2020);

Before the State Counsel of Faso, the accused admitted the facts of which he was accused, except the charge of theft;

At Court, he denied the allegations of theft, but admitted those of invasion of residence, intentional destruction of property and domestic violence, then pleaded the clemency of the Court;

B.B and B.O declared that they were not filing a civil claim;

After having summarised the facts, the Legal Department requested that the accused be discharged of the count of theft on the benefit of doubt, but he should be punished for the charges of invasion of residence, intentional destruction of property, domestic violence and sentence him to a non-suspended six (6) months imprisonment term and a fine of CFAF 250,000 (two hundred and fifty thousand).

Taking the floor in last position, the accused pleaded for the Court's clemency. At the end of the proceedings, the Court adjourned the case for judgement on 19 February 2020; On that date, the Court proceeded to determine the case by delivering the following judgement:

II- PROCEDURE

A- PROSECUTION

1- GUILT OF THE ACCUSED

a)-Act of theft

Whereas the accused, SAWADOGO Abdoul Aziz is prosecuted for the theft of a sum of CFAF 47,000 (forty-seven thousand) which was kept in a coffer belonging to B.B;

Whereas according to Article 611-1 of the Penal Code, whoever fraudulently takes another person's property shall be guilty of theft; that it emerges from this provision that an offence is constituted when there is the physical act of taking property belonging to another person, and a criminal intent;

Whereas upon examination of the file, none of the ingredients of the offence of theft was established with certainty against the accused, S.A.A

; that the fact that the theft took place in the latter's house cannot constitute sufficient charges and therefore characterize the offence; given that the accused was not found in possession of the said sum of money; that considering this, there was still doubt as to whether he was guilty of the acts he was accused of; that he should be discharged by reason of the benefit of this doubt;

b) Act of invasion of residence

Whereas S.A.A is prosecuted for invasion of residence;

Whereas that according to Article 523-6 of the Penal Code, whoever enters or tries to enter another person's residence by means of fraud, threats or violence against persons or property shall be guilty of invasion of residence; that within the meaning of this article, it is the illegal entry into another person's residence without their consent which is criminalized;

Whereas according to documentary evidence, B.B, after being repudiated by her partner, found refuge at her brother B.O's residence to avoid being brutalized by the former; that nevertheless, he forced the entrance to B.O's house; that he entered at unusual hours, specifically 4 a.m. and 1 a.m. to importune his concubine, without having received any authorization to get in; that worst of all, he stayed in the house against the wish of the owner; that by acting thus, he invaded B.O's residence and was therefore guilty of the misdemeanour which is criminalized by the above-mentioned article;

c) Act of intentional destruction of property

Whereas S.A.A is prosecuted for intentional destruction of property;

Whereas according to Article 622-1 of the Penal Code, whoever intentionally destroys or seriously damages a movable item or a landed property belonging to another person shall be guilty of intentional destruction of property;

Whereas in the case at hand, the accused admitted that having arrived B.O's residence with the intention of seeing his child, he broke the window and door shutters to get into the house, following a refusal to be opened the door; considering that the accused was aware that by ripping off the window shutters and trying to remove those of the door, he was going to damage them; that he therefore willingly destroyed B.O's door and window;

That in the light of the foregoing, he should be convicted for the charges against him and convicted in application of the punitive provisions provided for in the article of the Penal Code;

d) Acts of domestic violence

Whereas S.A.A is prosecuted for domestic violence;

Whereas according to the provisions of Article 531-8 of the Penal Code, domestic violence refers to violence committed within the bounds of a relation between partners, concubines or between ascendants and descendants manifested through physical, psychological, sexual, economic and spiritual aggression such as intentional assault and battery;

Whereas in the case at hand, the accused admits to have assaulted B.B, who is his concubine; that pursuant to the above-mentioned provisions, such assault is viewed as physical aggression against his concubine; that in this light, the offence of domestic violence with which S.A.A is charged, consisting in this case, of physical assault on B.B is characterized; that he should be found guilty and sentenced accordingly for this act;

2- SENTENCE

Whereas according to Article 523-6 of the Penal Code, invasion of residence is punishable by imprisonment for from 3 (three) months to 1 (one) year and with a fine of from CFAF 250,000 (two hundred and fifty thousand) to CFAF 600,000 (six hundred thousand); that Article 622-1 of the same Penal Code punishes intentional destruction of property by imprisonment for from 3 (three) to 2 (two) years and with a fine of from CFAF 250,000(two hundred and fifty thousand) to

CFAF 1,000,000 (one million), and that Article 531-8 of the Penal Code punishes whoever is guilty of domestic violence by imprisonment for from 2 (two) months to 1 (one) year and with a fine of from CFAF 250,000 (two hundred and fifty thousand) to CFAF 1,000,000 (one million).

Whereas within the meaning of Article 111-8 of the Penal Code, where any person is convicted on several charges or misdemeanour, the sentence of the most severely punished offence may be passed; that in the case at hand, the accused was found guilty of invasion of residence, intentional destruction of property and domestic violence; that of the three offences, the offence of intentional destruction of property is the most severely punished; that it is appropriate to apply provisions of Article 622-1 of the Penal Code to the accused;

Whereas in the case at hand, it is worth mentioning that even if S.A.A is a first-time offender, his action is nevertheless grievous given the vulnerability of the victim who is a young abandoned mother who had found refuge at her brother's residence and who is harassed right in the latter's house; That, to deter him from ever committing such ignominy, he should be sentenced to an actual 6 (six) months in prison and to a suspended fine of CFAF 250,000 (two hundred and fifty thousand).

B -COSTS

Whereas according to Article 321-94 of the Penal Code, any accused found guilty shall also be sentenced to pay the costs; that in the case at hand, S.A.A has been found guilty and sentenced in this proceeding; that the costs of the proceeding be also be borne by him;

UPON THESE GROUNDS

Delivering judgement in an open Court after a full hearing on misdemeanour matters and at first instance;

DECIDES

Discharges the accused, S.A.A on the count of theft on the benefit of doubt;

Finds him guilty on the counts of intentional destruction of property, invasion of residence and domestic violence;

Sentences him to a 6 (six) months non-suspended imprisonment term and to a fine of CFAF 250,000 (two hundred and fifty thousand) subject to a stay of execution.

Sentences him to pay the costs;

Thus, the case was heard and judgement delivered in open Court by the Ouahigouya High Court on the dates, months and year as indicated above;

THE PRESIDENT

[Signature here]

THE REGISTRAR

[Signature here]