

**JUVENILE COURT OF
BOBO-DIOULASSO**

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BOBO-DIOULASSO**

**RP No. 024/2018 of
30/07/2018
JGT No. 009 of 21/02/2019**

**P.D
VS
O.I
Rape
DECISION
See verdict**

**BURKINA FASO
UNITY-PROGRESS-JUSTICE**

**HEARING OF FEBRUARY 21, 2019,
ON CRIMINAL MATTERS**

At the ordinary hearing in chambers of the Juvenile Judge in Bobo Dioulasso (Burkina Faso) on February 21/02/2019, in which were present: Mr ONADJA Yempabou, Juvenile Judge of Bobo-Dioulasso;

PRESIDENT,

Mr TIAHO Marius, Deputy State Counsel of Faso;
Mr SAWADOGO Augustin and ZOMA Didier,
Judicial Assessors;

PUBLIC PROSECUTION,

Assisted by Mrs LANKOANDE T. Juliette,
Court Registrar;

COURT REGISTRAR,

The following judgement was delivered:

BETWEEN

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

ON THE ONE HAND,

AND

O.I born on 05/06/2002 in..... ;

Accused: of: “having committed rape in Bobo-Dioulasso on July 15, 2017, less than ten years ago, on O.R;

Acts provided for and punished by article 533-10 of the penal code”;

ON THE OTHER HAND,

When questioned at the hearing, in accordance with the provisions of article 396 of the Code of Criminal Procedure, the accused declared that he wanted to be tried immediately; During the appeal, the State Counsel of Faso stated that he had summoned the aforementioned accused to appear before

the Juvenile Court Judge at today's hearing to defend himself on account of the above-mentioned prejudice;
And the accused was questioned;
The submissions of the Legal Department were heard;
The accused made his arguments to defend himself;
He was last to speak;
The Court Registrar recorded the responses of the accused;
On this, the debates having ended, the Juvenile Judge ruled as follows:

THE JUVENILE JUDGE;

Considering the documents in the file;
Having heard the answers of the accused;
Having heard the submissions of the Legal Department;
Having heard the arguments of the accused;

FACTS

On the night of July 11-12, 2018, O.R. accompanied by K.S went to the Bobo-Dioulasso Gendarmerie Brigade and filed a complaint against O.I and four other people for rape; she declared that during the said night at around 11 p.m., she returned home after having had a conversation with her friend; on her way home, she was hailed by a group of young people who had been following her for some time and who told her to stop; that since she didn't do so, they wanted to grab her; that she then rushed to hide; that they grabbed her and threatened to kill her with knives if she made a noise; that one of them closed her mouth and she couldn't breathe; that they took her to a house where they undressed her, put her loincloth on the floor, put her down and had sexual intercourse with her in turns; that they even filmed it; that when they noticed that she was bleeding from her genitals, they ordered her to get up; that they dipped her loincloth in a container and told her to wash it; as she did not wash it quickly because of tiredness, they beat her up; she tried to escape and they caught up with her in front of the door, dragged her and beat her again before bringing her back into the house; a rescuer then appeared and they threatened him; the neighbours of the torturers arrived and her aggressors left her to flee; they managed to apprehend one of them;

When questioned about the acts alleged against him, O.I., the only one arrested, the others being still at large,

acknowledged them after some hesitation; he explained that in the evening of July 11, 2018, he went to his friend S.C.'s house where he and other friends used to sleep; that he found him inside the room with O.R.; that around 10 p.m., he came back and found O.R. again, but this time with three other boys, namely- S. M, Daou and Moumouni; that his four friends told the girl that they wanted to have sexual relations with her; that, as she objected, his companions beat her up and forced her to wash the clothes of one of them; that the victim's crying attracted someone to whom he asked to go home simply because nothing was happening; answering the question of the judicial police officer, O. I acknowledged that he and his friends successfully had sex with O.R. that day and before;

Upon completion of the investigation, the procedure was transmitted to the State counsel of Faso at the High Court of Bobo-Dioulasso; before this authority, O.I. retracted his statement and declared that he had not performed any sexual act with the victim; he said that he had made a false confession, as a result of the bullying; he added that his friends S.C, S.M. and the man named D. wanted to have sexual relations with the victim and, when she objected, they beat her. The Legal Department then brought proceedings against O.I. for rape before the Juvenile Court judge and issued a provisional custody order against him;

At the hearing of February 14, 2019, the case was retained and judged; the civil party and its legal representatives did not appear; the witness K.S. did not appear either; the accused O.I. retracted again; he declared that when he arrived at S.C.'s home, he was there with three other friends alongside O.R; that they were lying with the young girl on a mat; the accused, after initially maintaining that his friends told him on his arrival that they had had consensual sexual relations with the victim, retracted his statement and declared that on his arrival, his friends instead told him that they had forced sexual relations with the victim; he added that they showed him her dirty underpants; that he lifted it up, held it up in the air and tried to film it because his friends told him that the girl was not clean; that because she was against his will to film, his friends beat her up; that a person showed up after hearing the screaming and crying of the victim and he asked him to leave because nothing was happening;

The juvenile judge presented the cell phone seized by the gendarmerie in the hands of the accused and the latter recognized both the ownership of the device and the content of the film he made;

The Legal Department, after summarizing the facts, demanded that the accused be found guilty of rape and sentenced to an actual prison term of 36 (thirty-six) months and a suspended fine of six hundred thousand francs;

The Juvenile Judge reserved the case for judgement on February 21, 2018, upon that date, he issued his decision as follows;

PROCEDURE

A/ PROSECUTION

1- Reclassifying the acts and the guilt

Whereas O.I. is accused of acts of rape;

Whereas according to article 533-10 of the penal code, "any act of sexual penetration, of any nature whatsoever, committed on another person by violence, coercion, threat or surprise constitutes rape"; That the offence of rape, to be constituted, presupposes an act of sexual penetration, the absence of consent of the victim and the guilty intention of the perpetrator;

Whereas in this case, the accused declares that his four friends had sexual relations with the victim; whereas the certificate dated July 14, 2018, in the file, attests to this act; whereas the material act of penetration is then established; That at the hearing, the accused, after having initially maintained that his friends had declared to him on his arrival that they had had sexual relations with the victim, retracted his statement and declared that on his arrival, his friends had rather let him know that they had forced sexual relations with the victim; Notwithstanding these contradictory statements, it is clear that the dagger was present at the time of the events, and that the victim's tears and cries alerted the neighbourhood; that it can be said that the sexual penetration was done with violence; that the fact that the companions of O.I were aware that they were acting against the will of the victim establishes their guilty intention; that, in the light of these observations, there is no doubt that rape occurred;

Whereas, however, O.I did not admit to having committed

rape, stating that it was only upon his arrival that his companions informed him that they had forced sexual intercourse with the victim;

Whereas, according to article 131-4 of the Penal Code, "is an accomplice to an action qualified as a crime or misdemeanour, anyone who has knowledge of an attempted crime or already committed does not, while it was still possible to prevent or limit its effects or when it was thought that the culprits or one of them would commit new crimes that a denunciation can prevent, immediately notified the administrative or judicial authorities".

Whereas it has already been demonstrated that rape occurred; whereas O.I had knowledge of this crime and did not denounce it to the authorities; better yet, he took an active part in humiliating the victim since he was the one who brandished the victim's underpants with a dagger and started filming; that he continued filming the action in which his companions forced the victim to wash her blood-stained loincloth and the other action in which they beat her, tore her clothes while she was trying to flee; that it is still O.I who told the rescuer to go back home under the pretext that nothing abnormal was happening;

That the charges of rape for which O.I. is accused should be reclassified as complicity in rape and that he should be found guilty of it;

2- Sentence

Whereas according to article 533-10 of the Penal Code, "accomplices to a crime or misdemeanour are punished as the perpetrators of the crime or misdemeanour unless the law provides otherwise.

Rape is punishable by imprisonment for 7 (seven) to 10 (ten) years and a fine of CFAF 600,000 (six hundred thousand) to CFAF 2,000,000 (two million)";

Whereas O.I. has acted with discernment in view of the fact that, through his behaviour, he condoned the rape committed by his companions and that he himself filmed the circumstances subsequent to this crime; whereas it should be noted that the violence of a certain barbarity that followed the rape reveals the dangerous personality of O.I.; whereas,

however, it should be emphasized to his advantage that he is a minor and he is a first-time offender;

Whereas, consequently, he should be condemned to an actual prison term of 30 (thirty) months and a suspended fine of CFAF 600,000 (six hundred thousand);

B / Civil claims

Whereas the victim O.R. and her legal representative did not appear at the misdemeanour hearing; whereas civil claims should be reserved;

C/ Seals

Whereas according to article 214-23 of the Penal Code, "confiscation is mandatory for objects deemed to be dangerous or harmful by law or regulation, or whose possession is illegal, whether or not such property is the property of the convicted person." In view of the prejudicial nature to the victim of the images contained in the accused's telephone and in view of the dangerous nature of the dagger seized, it is necessary to order the confiscation of these seals prior to their destruction";

C-COSTS

Whereas under article 473 of the Code of Criminal Procedure, the accused person found guilty is also ordered to pay the costs; Whereas, in this case, O.I. has been found guilty of the acts alleged against him; Whereas, consequently, he should be ordered to pay the costs;

UPON THESE GROUNDS

The Juvenile Judge, ruling in chambers following full trial of a criminal matter in first resort;

- Reclassifies the acts of rape alleged against O.I. as an accomplice to rape and declares him guilty;
- In repression, sentences him to 30 (thirty) months actual prison term and a suspended fine of CFAF 600,000 (six hundred thousand);
- Reserves civil claims;
- Orders the confiscation of sealed evidence No. 01 and No. 02 containing a dagger and a cell phone prior to their destruction;

➤ Condemns O.I to pay the costs;

Thus acted, judged and pronounced publicly by the
Juvenile Judge of Bobo-Dioulasso on the
aforementioned days, months and years and signed:

The President

The Court Registrar