

REPUBLIC OF MALI
In the Name of the People of Mali

**SUPREME COURT OF MALI
JUDICIAL DIVISION**

Criminal Bench

APPEAL No.05 OF 17th MARCH 2008

JUDGMENT No.144 of 3rd NOVEMBER 2008

NATURE:

Rape

THE SUPREME COURT

In its ordinary public session on Monday, the third of November of the year two thousand eight, before:

Mr Mamadou Baba TRAORE, Advisor,
PRESIDENT

Mr Etienne KENE, Advisor at the Court,
Member;

Mr Sanzana COULIBALY, Advisor at the Court, Member,

In the presence of the Attorney General **Cheickna D. KAMISSOKO**,
as State Prosecutor;

With the assistance of Maitre **TOURE Baby**,
Registrar;

Delivered the judgment which reads as follows:

ON THE APPEAL:

by Diakaridia COULIBALY aka Diaki, driver, domiciled in Baco-Djikoroni, Bamako, acting in his name and on his own behalf, appellant, on the one hand;

AGAINST:

The State Prosecution, Boubacar Diarra DIAKITE, Farima DIAKITE and Judgments No.50 and 51 of 12th March 2008 of the Trial Chamber of the Assizes Court of Bamako, respondents, on the other hand;

On the report by Mr. Coulibaly Sanzana, Advisor, and the written submissions of Advocate General Seydou A. DIOP and oral submissions of Attorney General Cheickna D. KAMISSOKO;

Having deliberated in accordance with the law;

ON THE FORM

By Certificate No.38 of 17th March 2008, Diakaridia COULIBALY aka Diaki lodged an appeal for annulment against Judgments No.50 and 51 passed on 12th March 2008 by the Assizes Court of Bamako;

However, by an undated letter addressed to the President of the Supreme Court and registered under number 1141 of 10 July 2008, he declared discontinuance of his appeal;

This should therefore be officially acknowledged.

FOR THESE REASONS

THE COURT

ON THE FORM

Receives the appeal

ON THE SUBSTANCE

Acknowledges the discontinuance by the appellant of his appeal;

Leaves costs at the charge of the State;

Thus done, adjudged and publicly pronounced on the day, month and year above-stated.

AND SIGNED BY THE PRESIDENT AND THE REGISTRAR

N o 50_/JUDGMENT
Of: 12th March 2008

CASE:

The State

v.

Diakaridia COULIBALY aka Diaki

Charged with Rape

ASSIZES COURT OF BAMAKO

SENTENCE

ORDINARY PUBLIC SESSION OF 12th MARCH 2008

The Court of Appeal of Bamako, sitting in the courthouse of the said town in ordinary public session on the Twelfth of March of the year Two Thousand and Eight, in criminal matters, before:

Mohamadou BAKAYOKOP, Advisor at the Court of Appeal of Bamako,
PRESIDENT

M'père DIARRA, Advisor at the Court,
Boya DEMBELE : President of the Court of First Instance of Ségou; **MEMBRES**

Adama KEITA)
Mrs TOURE Maïmouna Kati)ASSESSORS Mrs KAMISSOKO Aminata ldy Watt)
Moussa Niamba YALCOUE)

In the presence of Mr **Niambe KEKE** Deputy State Prosecutor at the Court of First Instance of Kati; **State Prosecution:**

With the assistance of Maitre **KONTAGA Kondjo TRAORE**
Registrar at the said Court; **REGISTRAR**

DELIVERED THE FOLLOWING JUDGMENT

THE COURT

Having regard to Judgment No.211 of the Indictment Division of the Court of Appeal of Bamako on the 31st of July 2007 referring, to the Assizes Court:

Diakaridia COULIBALY aka Diaki: Born around 1977 in Bamako, son of Dembélé and of Sitan DABO, driver, domiciled in Baco-djicoroni, bachelor, father of a child of Malian nationality, has not done his military service, and is without conviction;

Charged with Rape

Committal Order of 28th June 2006;

Having regard to the order of arrest issued against the above-named persons and inserted in the referral judgment;

Having regard to the declaration of the Assize Court on this day finding the accused, in majority, guilty as charged;

Having regard to the declaration of the same Court on this day finding, in majority, that there exist mitigating circumstances in favour of the accused.

HAVING HEARD the State Prosecutor in his submissions on the application of sanctions to the facts declared undisputed by the Court and upheld against the accused;

HAVING HEARD the defender of the accused and the accused himself who spoke last to the Court in his defence;

Having deliberated in accordance with the law;

WHEREAS the facts declared established by the Assizes Court in relation to the accused are defined and punished by Article 226 of the Penal Code;

Having regard to the said Article, together with Articles 346, 363.631 of the Criminal Procedure Code and 728 of the Social, Commercial and Civil Procedure Code, which read as follows:

ARTICLE 226 OF THE PENAL CODE: - Any act of sexual penetration, whatever its nature, committed on another person by violence, coercion, threat or surprise constitutes rape.

Rape is punishable by five to twenty years' imprisonment and optionally one to five years of banishment.

If the rape occurred with the help of several persons or on the person of a child under fifteen years of age, the offender shall be sentenced to twenty years, banishment of five to twenty years,

and the judge may not, after upholding the existence of mitigating circumstances, reduce the sentence below five years of imprisonment.

If the rape occurred with both aggravating mitigating circumstances provided in the preceding paragraph, the penalty shall be life imprisonment.

If the guilty persons are the ascendants of the person on who the rape was committed, if they are those who have authority over her, or if they are responsible for her education, supervision or if they are employees of the above-mentioned persons, there shall be no probation accompanied with the sentence.

ARTICLE 346 OF THE CRIMINAL PROCEDURE CODE:

Conviction is rendered by a simple majority. However, on the question of mitigating circumstances, any decision unfavourable to an accused person who faces the death penalty shall be formed by a majority of at least five votes;

ARTICLE 363 OF THE CRIMINAL PROCEDURE CODE:- The accused person found guilty will pay costs to the civil claimant;

ARTICLE 631 OF THE CRIMINAL PROCEDURE CODE:

Sentences imposed by Criminal Courts shall be executed in accordance with provisions currently in force;

ARTICLE 725 OF THE SOCIAL, COMMERCIAL AND CIVIL PROCEDURE CODE:

Imprisonment for debt is regulated as follows:

- 2 to 10 days for debts between 100,000 to 500, 000 Francs
- 11 to 20 days for debts between 500,000 to 1.000.000 Francs
- 21 to 90 days for debts above 1.000.000 Francs

Pursuant to the legal provisions above-mentioned and transcribed:

SENTENCES

Diakaridia COULIBALY aka Diaki to 5 years imprisonment

Also orders the accused to pay the costs under this ruling.

Thus done, adjudged and publicly pronounced by the Trial Chamber of this Assizes Court on the day, month and year above-stated.

AND SIGNED BY THE PRESIDENT AND THE REGISTRAR

Following the signatures Approved for stamping and registration.

Registered on 12th June, 2008.
Vol- 2 Fol 38 No 436 Bulletin No.230
The Registration Inspector
Signed illegible
For official certified true copy
Bamako, the 12th of June 2008
THE CHIEF REGISTRAR

[Signature and stamp here]

BABA MAMADOU TRAORE

REPUBLIC OF MALI
In the Name of the People of Mali

COURT OF APPEAL OF BAMAKO

EXTRACT OF THE MINUTES OF THE REGISTRAR OF THE COURT OF APPEAL OF
BAMAKO

No 2111/ Judgment of 31/ 7/ 2007

JUDGMENT REJECTING RELEASE FROM CUSTODY, ON INDICTMENT AND
REFERRAL TO THE ASSIZES COURT

Case:

The State

v.

Diakaridia COULIBALY aka Diaka

Charged with

Rape

INDICTMENT DIVISION

SESSION OF 31st JULY 2001

The Indictment Division of the Court of Appeal of Bamako, sitting in the courthouse of the said city, in its session on the Thirty-First of July of the year Two Thousand and Seven, before:

Messrs:

Aliou Badara NANACASSE, Advisor at the Court of Appeal of Bamako,

PRESIDENT;

Tiekoura SAMAKE;

Mahamane Agaly MAIGA ;

Advisors at the Court of Appeal of Bamako;

MEMBRES

With the assistance of Maitre KONATE Mariam KANTE Registrar at the Court;

In the presence of Mr Souleymane COULIBAL, Advocate General at the Court of Appeal of Bamako, **STATE PROSECUTOR**;

Passed the following judgment:

THE COURT

Having regard to the case file of the proceedings against:

Diakaridia COULIBALY aka Diaki: Born around 1977 in Bamako, son of Dembélé and of Sitan DABO, driver, domiciled in Baco-djicoroni, bachelor, father of a child of Malian nationality, has not done his military service, and is without conviction;

Charged with rape.

Committal Order of 28th June 2006

Having regard to the order of transmission of the case file documents to the Attorney General at the Court of Appeal of Bamako dated 26th February 2007 by the Investigating Judge of the Court of First Instance of Municipality V of the District of Bamako;

Having regard to the written submissions of the Deputy General at the Court of Appeal of Bamako dated 12th July 2007 on the indictment of the above-named person and his referral to the Assizes Court for trial in accordance with the law;

Having heard the President in his report and the reading of the case file documents prepared by the Registrar;

Having heard the State Prosecutor in his oral submissions;

Having heard Miatre Etienne BALLO, Attorney at the Court, in his summary observations in the name and on behalf of the indicted Diakaridia COULIBALY aka Diaki

Having deliberated in accordance with the law;

Whereas the examination of the case file establishes the following events:

On the 4th of April 2006, Miss Farima DIAKITE, together with her elder sister named Maimouna, went to their orchard at Baco-djicoroni near the river. On their way back at dusk, she separated from her sister to go fetch firewood on the river bed.

Diakaridia Coulibaly, who was watching her, came up behind her, seized her and dragged by force onto the river bed. He undressed her while sexually penetrating her to satisfy his instinct, and with such excessive violence that the unfortunate Farima lost consciousness. He had sex with her like this two times. He held her in his arms until nightfall.

Meanwhile Farima's parents were concerned about her absence and launched a search for her. Their search led them to the river. When they arrived the river, they found Farima still in the arms of Diakaridia COULIBALY aka Diaki who, upon seeing them, picked up and began throwing stones towards them. They managed to overpower him and immediately carried him to the Police Station of the 4th District.

Questioned about the facts by the first investigators, Diakaridia confessed, stating that the events happened exactly as told by the victim. He reiterated the same confession when questioned by the investigating magistrate during his first appearance in the said magistrates's office. But curiously, he retracted his assertions when questioned further, stating that he had a romantic relationship with Farima about a month ago, and by coincidence he found himself with Farima at the riverside, and she invited him for a swim in the river.

Whereas such last minute denial cannot prevail on the facts established as indisputable against him; whereas in fact, it is clear from his own confession before retracting, certainly to escape criminal sanction, that he wanted to bathe in the river on the day in question with Miss Farima and that that was the place where he was arrested by the parents of the latter; whereas this story well corroborates the statements of Farima according to which she was assaulted and threatened with a knife before removing her clothes and having sexual intercourse with her; and also the medical certificate issued by the Gabriel TOURE hospital, dated 19th August 2006 undoubtedly supports this version of events; whereas from the above, rape is sufficiently established by revealing the circumstances which surrounded it, notably violence and threats made on the person of Farima, who, at the time the events occurred, was 13 years old;

Bulletin No.2 of the criminal record of the accused, although requested by the investigating magistrate, is not admitted on file. Information collected about his personality is not unfavourable to him. The expert medical certificate concludes that he suffers from no physical or mental abnormalities which could influence his criminal liability.

Having regard to the request for the release from custody formulated and presented by the accused; WHEREAS the accused continues to deny sufficiently grave facts which are however imputable to him in the light of the medical certificate on file;

Whereas no repentance is evident in his behaviour;

Whereas, moreover, he offers no guarantee of representation for the remainder of the proceedings;

Whereas, as a result, there is good reason to reject the request;

Whereas therefore, from the above, there exists sufficient evidence against Diakaridia COULIBALY aka Diaki: For having, in Bamako, on the 4th of April 2006, in any case less than ten years ago, by violence, coercion and threat, performed acts of sexual penetration on Miss Farima DIAKITE, with the circumstance that the victim was 13 years old;

WHEREAS these facts are defined and punished by Article 226 of the Penal Code, and may give rise to criminal sanctions;

Having regard to the said Article, and all the provisions of the Criminal Procedure Code particularly Article 213 thereof;

FOR THESE REASONS

Ruling in chambers:

ON THE REQUEST OF RELEASE FROM CUSTODY:

ON THE FORM

Receives the request to release from custody formulated by Diakaridia COULIBALY aka Diaki;

ON THE SUBSTANCE

Dismisses it

ON THE REGULATION:

- Declares sufficiently established against **Diakaridia COULIBALY aka Diaki** the offence of rape;
- Pronounces, accordingly, his indictment based on the facts specified and qualified above;
- Issues an arrest order against him and refers him to the Assizes Court to be tried in accordance with the law;
- Holds that he will be arrested and taken to the Detention Centre set up at the said Court;

- Authorises and orders the Chief Superintendent of the said Detention Centre to receive and keep him in custody in accordance with the law;

- Reserves costs.
- Orders the execution of this judgment at the suit of the Attorney General at the Court of Appeal of Bamako;

Thus done, adjudged and publicly pronounced by the Indictment Division of this Court of Appeal on the day, month and year above-stated.

AND SIGNED BY THE PRESIDENT AND THE REGISTRAR

Following the signatures

For official certified true copy
Bamako, 2nd August 2007

THE CHIEF REGISTRAR

Maitre KONATE Mariam KANTE