

A hasty reading might suggest that the Beninese judge wanted to encourage the legislature to allow polygyny and polyandry side by side, in order to ensure constitutional compliance. Such a view would be wrong because, through its laconic reasoning, the Court rather seems to want to proceed with realism. Without it being explicit, the decision rendered on December 23, 2002 led in fact to the abolition of polygamy, forcing the legislature to opt for monogamy.¹¹⁸

INFANTICIDE

Judgment N° 216 of December 13, 2005
Niger Republic, Court of Appeals of Niamey

COURT HOLDING

The Court finds that the accused H. A. did not obtain an abortion and is guilty of infanticide, and that there is insufficient proof to establish that her mother is guilty of complicity in infanticide.

Summary of Facts

The allegations against Ms. H. A. date back to December 23, 2002, when a brigade of the police force was informed of an act of infanticide committed by Ms. H. A. The investigation formally established certain elements, notably the fact that Ms. H. A. had given birth. Her arrest led the defendant (Ms. H. A.) to admit a pregnancy of seven months. She nevertheless declared that one night, she felt discomfort followed by bleeding of the genitals, out of which came blood clots that she wrapped in plastic and buried in a hole that she had dug.

The investigations also led to the indictment of Ms. F. B., the mother of Ms. H. A., for complicity in infanticide, despite both women's denials. The mother had denied any knowledge of the crime, or even of her daughter's pregnancy, though the village head claimed to have told her about the pregnancy and testified that even though the mother was not there, she had participated in the commission of the crime (in some way not specified in the decision).

Issues

1. Whether the facts alleged against Ms. H. A. constitute abortion or infanticide; and
2. Whether Ms F. B. is guilty of complicity in infanticide

Decision of the Court

Being a criminal trial, the Court endeavoured to identify the three elements constituting the offence.

The legal element lay in the requirements of sections 186, 237, 240, and 243 paragraph 2 of the Penal Code of Niger, punishing acts of infanticide. Based on the investigation, the Court established the acts attributed to Ms. H. A. By analyzing together different elements of the investigation,

Ms. H. A.'s own statements, and medical expertise, the Court concluded that she had indeed given birth after nine months of a pregnancy which had progressed full term. Consequently, it could not have been an abortion.

Regarding the finding of the element of intent, the Court proceeded by cross-checking the recognised facts to characterise the infanticide: an unwanted pregnancy conceived outside of wedlock (which constituted the motive); childbirth alone without seeking assistance despite the risks involved; burial of the body of the newborn by the accused, even though burial should be done by men and according to established practices; and refusal to show the child's body in order to prevent officials from ascertaining the facts. The addition of all these elements leads the Court of Appeals of Niamey to consider the indictment of Ms. H. A. for the crime of infanticide to be appropriate.

However, with regards to Ms. F. B., accused of complicity in infanticide, the Court, basing itself on elements of the investigation, requalifies the facts alleged in the infraction of not reporting a crime. This requalification results from the observation of the weakness of the evidence of complicity.

Significance

This ruling illustrates the judge's delicate work in reaching an outcome in a family case raising social issues in an environment that is barely open to the outside world. Some facts as described by the Court are puzzling. However, the Court of Appeals was able to decide in law by specifically identifying the real legal issues raised by the case. Based on the evidence from the investigation, the Court ruled out abortion, highlighting precisely the distinction between abortion and infanticide: infanticide is the killing of a newborn child, while abortion is exercised only on the fetus. The Court's approach is also complemented and supported by expertise, both medical and psychological, regarding the accused.