



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

Suai District Court

11 June 2015

Suai District Court ignores provisions on legitimate defense in case of homicide and sentences defendant to 10 years in prison

On 09 June 2015 the Suai District Court sentenced the defendant AS (female) to 10 years in prison after the public prosecutor recommended 12 years in prison, even though the defendant committed the aforementioned acts in self-defense. The court found the defendant guilty of committing the crime of homicide against the deceased VP on 13 December 2010, in Debos Village, Covalima District.

“JSMP believes that this decision is not fair, because the court ignored the universal provision regarding legitimate defense that could have acquitted the defendant from this case. JSMP believes that in circumstances like these any person will take possible steps to save themselves from an attack that has the potential to threaten or endanger them,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

JSMP thoughts that the reaction or response of the defendant was proportional to the attack carried out by the victim against the defendant because the victim was choking the defendant and the defendant had to do what every possible to save herself.

Article 44 of the Penal Code on legitimate defense states that “*An act constitutes legitimate defense when committed as the necessary means to repel an imminent or present unlawful attack on legally protected interests of the perpetrator or of a third party*”.

Article 45 of the Penal Code stipulates the state of justifying need, namely “*An act is not unlawful when committed as an appropriate means to avert a present danger that threatens legally protected interests of the perpetrator or of a third party, if the following requisites are met:*

a) There is significant superiority of the interest to be safeguarded in relation to the interest sacrificed; and

b) It is reasonable to impose the sacrifice of the interest of the victim, considering the nature or value of the interest endangered.

Pursuant to the two aforementioned provisions, the court should have carefully considered and evaluated the testimony of the defendant during the trial as evidence that the defendant did not intend to kill the victim. The defendant testified that she committed the aforementioned acts because the victim was choking her with force and she could not breathe and there was no other way to free herself from the attack. Therefore, JSMP believes that the defendant committed the aforementioned acts because she was forced to save herself from the attack of the victim.

The public prosecutor alleged that on 13 December 2010, the defendant used a knife to stab the victim in the armpit. These acts caused the victim to suffer a serious injury and the victim was treated at the Suai Referral Hospital. However, the victim was then referred to the Guido Valadares National Hospital, but the victim passed away on the way to Dili. This case allegedly occurred because the victim and some friends went looking to attack the older sibling of the defendant, however they did not find that person so the victim decided to attack the defendant and choked the defendant, so the defendant took a knife and stabbed the victim.

The public prosecutor charged the defendant for violating Article 138 of the Penal Code on homicide that carries a sentence of 8 - 20 years imprisonment.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 12 year's imprisonment because the defendant had been proven guilty of committing the crime of homicide. The public prosecutor also requested for the court to disregard the testimony of the defendant about legitimate defense because it did not fulfil the requirements of legitimate defense as set out in the Timor-Leste Penal Code.

Meanwhile the public defender requested for the court to acquit the defendant because she committed the aforementioned acts because she was forced to do so and it was a form of legitimate self-defense.

After examining all of the evidence established during the trial, the court concluded this process and sentenced the defendant to 10 years in prison. However, the lawyer of the defendant decided to lodge an appeal against the decision of the court in this case because he considered that the decision was not fair.

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