



Press release
Suai District Court
20 March 2015

Suai District Court acquits defendant in case of rape characterized as incest: JSMP continues to ask for a specific provision for the crime of incest

On 12 March 2015 the Suai District Court acquitted the defendant AL who was charged by the Public Prosecutor for committing rape against his daughter who was 18 years old. This case allegedly occurred on 6 December 2014.

The court acquitted the defendant because the court believed that the actions of the defendant did not fulfill the elements of rape as set out in Article 172 of the Penal Code on rape and Article 173 on aggravation. The court considered that the defendant and the victim had sexual intercourse based on mutual consent and there was no threat or force.

Since 2012 JSMP has been recommending that incest be criminalised regardless of the consent of the victim. Incest is a crime of sexual violence that is very dangerous in the community and involves the exploitation of a position of power in the family.

“JSMP is very concerned that the court acquitted a defendant from the crime of incest just because the victim did not resist the defendant. This decision has the potential to allow for other crimes of incest to occur in the community in the future because people will not believe that incest is a crime and this is a great risk for girls in all areas,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

The public prosecutor alleged that on 6 December 2013 when the victim was asleep the defendant went into the victim’s bedroom and held the victim by the head which startled the victim and woke her up. At that time the victim asked the defendant “what are you looking for?” However the defendant answered “nothing, just go back to sleep”. After that, the defendant went out of the victim’s room. When the victim was sound asleep, the defendant went back into her bedroom and raped the victim.

Then on 7 December 2013 at 4am the defendant told his wife (mother of the victim) to go and fetch some water and the defendant used this opportunity to go into the victim’s bedroom and again commit rape against the victim. When he was finished, the defendant threatened the victim by saying “you can’t tell your mother and if you do, either you or I will die”.

The public prosecutor charged the defendant with violating Article 172 on rape and Article 173 of the Penal Code on aggravation.

During the trial the defendant denied the facts in the allegation that he threatened the victim in order to have sexual intercourse because he said there was mutual consent.

On the other hand, the victim also testified that the defendant did not threaten her when they had sexual intercourse. The victim admitted that she did not do anything when the defendant had sexual intercourse with her. The victim stated that they had sexual intercourse twice.

In mid-2014 the National Parliament asked JSMP and ALFeLa to provide commentary on proposed amendments to Article 172 of the Penal Code on rape to include a sub-section on the crime of incest.

JSMP and ALFeLa praised the parliament for wanting to ensure that the crime of incest does not consider the consent of the victim, age and if force or threats were used, and to ensure that incest is a public crime and is applicable to various members of the family, including relations between daughters and step-fathers, and relations between uncles and nieces.

JSMP and ALFeLa published a submission entitled “Improving the Penal Code to better protect women and children in Timor-Leste” which recommended that the crime of rape and incest be separated because they have different characteristics and require different evidence, as well as recommending that the crime of incest be applied to all sexual acts, and not only rape.

We all know that when a victim is subjected to sexual violence from a person who holds a position in the family, it is very difficult for the victim to tell someone else because he/she is afraid of losing their rights in the family, afraid of being subjected to coercion and of being shamed in public. Therefore, the victim often covers it up and does not tell anyone including his/her own mother. JSMP believes that if conditions and situations like this continue to happen often, it will have a significant psychological impact on the victim and will continue to protect and perpetuate the crime of incest in society.

Recently, on 16 March 2015, when the Prosecutor-General submitted his 2014 annual report to the National Parliament, he asked the National Parliament to criminalise incest regardless of the consent of the victim.

JSMP hopes that National Parliament will consider the recommendations set out in this submission and also consider what was proposed by the Prosecutor General when the annual report was submitted, because incest is a common crime.

The recommendations and complete submission referred to above can be found on JSMP’s website: <http://jsmp.tl/en/publikasaun-publications/submissions/>.

The trial was presided over by Argentino Luisa Nunes, representing a panel of judges. The public prosecution service was represented by Jose Elo and the defendant was represented by public defender Manuel Amaral.

For more information, please contact:

Luis de Oliveira Sampaio

Executive Director, JSMP

Email: luis@jsmp.minihub.org