



Press Release
Dili District Court
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Prosecutors need to select the appropriate provisions for crimes of domestic violence based on the seriousness and the circumstances of each crime

Prosecutors need to select the appropriate provisions for crimes of domestic violence based on the seriousness and the circumstances of each crime to ensure that each crime is charged in a way that is reflective and proportional to the actions of the defendant.

It is crucial to assess the elements and nature of each crime based on its complexity and the potential risk of each case based on a thorough assessment before determining the type of crime and articles used to charge a defendant.

On 20 September 2018 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant RdS who allegedly committed the offence against his wife in Dili District.

The prosecutor alleged that on 7 January 2018, at approximately 10 am, the defendant pulled the victim's hair and pushed her into the bedroom. The defendant threw the victim on the bed, sat on top of her and choked the victim. The defendant took a machete and tried to strike the victim but missed because the victim knocked the machete away. The defendant took a piece of wood and struck the victim twice on her right leg which caused redness and pain. The victim jumped down from the bed and ran away but the defendant took a knife and tried to stab the victim but missed because the victim knocked the knife away.

Also, the defendant choked the victim and held her against a wall and then took a machete and tried to strike the victim again but the victim knocked the machete away. Prior to the incident, the defendant suspected that the victim was with another man and they started arguing.

On 8 January 2018 at 6.30am the defendant grabbed the victim by the throat and threw the victim on the ground and she lost consciousness. Previously, the defendant and the victim were struggling over a secondary school certificate that the victim was holding so she could go to look

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for work and the victim told the defendant that she did not want to go back to the defendant. The defendant did not agree with the victim looking for work, so he committed these assaults against the victim.

These acts caused the victim to suffer redness and pain to her neck and leg and the victim received treatment at Pradet and stayed at a shelter for three days.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3 (a), 35 (b) and 36 of the Law Against Domestic Violence.

“These charges lack substance and have resulted in injustice for the victim because the prosecutor has failed to select the appropriate article to charge the crime that has great potential to pose serious risks and threats against the victim's life because the defendant tried to kill the victim through his acts and the way he attacked the victim,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

During the trial the defendant fully confessed to the facts and the victim maintained the facts set out in the indictment.

Also, in the final recommendations the prosecutor maintained the charges and requested for the court to apply a suspended prison sentence against the defendant. Also the defence requested for the defendant to be given a lenient suspended sentence.

On 4 October 2018 the court found the defendant guilty of committing the crime against the victim based on the facts set out in the indictment. Based on the aforementioned facts, the court sentenced the defendant to 3 months in prison, suspended for 1 year, and ordered the defendant to pay court costs of US\$10.

JSMP is very concerned with the prosecutor's assessment and reasoning in this case. The prosecutor did not properly analyse the facts and impact of the defendant's actions on the victim. In this case, the defendant used bladed weapons, namely a machete and a knife, that could have caused serious injury or ended the victim's life. JSMP believes that the prosecutor needs to be aware that the instruments used by the defendant to commit this crime had major potential to pose risks and threats to the victim's life. These acts committed by the defendant were serious crimes and serious offences against the victim's physical and psychological health and the defendant clearly showed that he had strong intent to injure or commit a serious offence against the victim.

The defendant's actions did not achieve the intended result (were incomplete) or the crime was not consummated, not because the defendant stopped himself from continuing the acts so that he would not achieve the intended result, but rather because of the victim's efforts to defend himself from the defendant's aggression and assault.

The prosecutor should have charged the defendant with the crime of attempted homicide pursuant to Article 23 and Article 138 of the Penal Code. When the correct crime is charged, the judges are able to impose a sentence that befits the seriousness of the crime, guarantee justice for the victim and protect the victim from this crime and educate the defendant that domestic violence is a serious crime.

As JSMP has highlighted many times, the prosecutor has an important role in ensuring that the relevant facts are included in the charge and must select the most appropriate provisions in each case. The prosecutor must thoroughly assess the relevant facts in cases of domestic violence before submitting a charge to the court, so the court can impose a sentence befitting the seriousness of the committed by the defendant.

JSMP also requests that before making a decision that courts should thoroughly analyse the case, as well as the facts proven during the trial, in order to introduce the most relevant and appropriate article befitting the seriousness of the case.

This case was registered by the court as Case No. 0010/18-DIBCR. The trial was presided over by Judge Albertina Neves. The Public Prosecution Service was represented by Alfonso Lopes and the defendant was represented by public defender João de Carvalho.

To obtain more information, please contact:

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