



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

Suai District Court

25 January 2018

JSMP requests for the Public Prosecution Service to charge the defendant based on the seriousness of the crime in a case of domestic violence involving a victim who was heavily pregnant

On 15 December 2017 the Suai District Court found the defendant FRC guilty of committing simple offences against physical integrity characterized as domestic violence against his wife who was six months pregnant, and imposed a prison sentence of six months suspended for 1 year as well as court costs of US\$20.

The public prosecutor alleged that on 13 August 2016 at 08.30am the defendant punched the victim once on her right shoulder, pulled the victim's hair and this caused the victim to fall to the ground and the defendant continued to hold the victim on the ground by the back of her neck. When the incident occurred the victim was six months pregnant and as a consequence of the assault the victim had to stay in hospital for one night.

The public prosecutor charged the defendant with violating 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) and 35(b) of the Law Against Domestic Violence.

“The prosecutor needs to ensure that charges in cases of domestic violence correspond with the seriousness of the crime committed by the defendant and can allow the court to provide fair justice to the victim and to prevent similar crimes from occurring in society,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

JSMP believes that Article 145 of the Penal Code which was used by the prosecutor is not relevant to the crime committed by the defendant. This is because the victim was pregnant and the incident posed a grave danger to her life. As a result of this act the victim had to stay in hospital for one night.

Normally a pregnant woman encounters all sorts of psychological pressure, and violence like this can harm her physical and psychological health which can endanger her life as well as the life of her baby. There is a large body of research that shows that psychological harm poses a greater risk to pregnant women than physical harm. The defendant knew or it is fair to assume that he knew that his behaviour could harm the victim's physical and emotional health and could also additional serious effects on the baby inside the victim's womb.

For this reason, in this case the prosecutor should have applied Article 146 (e) of the Penal Code on serious offences against physical integrity that endangered the victim's life.

Article 146 (e) of the Penal Code on serious offences against physical integrity states that "Any person who causes harm to the body or health of another person with the purpose of: ...e) endangering the life of said person, is punishable with 2 – 8 years imprisonment.

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 this case. The prosecutor must carefully evaluate the relevant facts in cases of domestic violence so that the court can convict a defendant in accordance with the seriousness of the crime committed by the defendant.

During the trial the defendant confessed all of the facts set out in the indictment, the defendant also stated that was a first time offender, has reconciled with victim, regretted his actions, and promised not to commit any crimes against the victim. The victim confirmed and maintained the facts set out in the indictment of the public prosecutor.

In her final recommendations the public prosecutor considered that the defendant had been found guilty of committing the crime against the victim based on the facts set out in the indictment and requested for the court to sentence the defendant to six months in prison, suspended for one year.

The defence requested for the court to impose a fair penalty because the defendant confessed, regretted his actions and was a first time offender.

This case was registered with the court as Case No. 0007/16.MFSIC. The trial was presided over by single judge Florensia Freitas. The public prosecution service was represented by Napoleão Soares da Silva and the defendant was represented by public defender Francisco C. Martins.

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