



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
Dili District Court
11 January 2018

Court sentences defendant to four years in prison for the crime of sexual abuse of a person incapable of resistance

JSMP: this decision is not proportionate to the circumstances of the victim who is disabled

On 4 January 2018 the Dili District Court sentenced the defendant to 4 years in prison in a case of sexual abuse of a person incapable of resistance. The court found that the defendant was guilty of committing the crime against the victim who was vulnerable and suffered a physical disability to her arms and legs and is also a mute.

“JSMP believes that the defendant should have been given a heavier sentence because the victim was vulnerable and disabled,” said the Executive Director of JSMP Luis de Oliveira Sampaio”.

The Public Prosecution Service charged the defendant for violating Article 179 of the Penal Code on sexual abuse of a person incapable of resistance who is unconscious or incapable, and vulnerable particularly by virtue of illness, physical or mental deficiency, taking advantage of said situation, which is punishable with 4 to 12 years imprisonment.

4 years in prison represents the minimum sentence of the abstract penalty provided for in Article 179 of the Penal Code and this penalty does not reflect the vulnerability of the victim as a disabled person. This decision does not protect the victim and will make it possible for others to continue violating other disabled people in the future. Actually, the court should have taken a firmer stance against the defendant to deter similar crimes from happening in the future.

JSMP encourages the Court to consider the relevant circumstances of the victim including physical conditions and social circumstance before making a decision. In such cases it is crucial to include compensation for the victim.

The court found that the defendant was working as a carpenter at the victim's home. On 28 February 2017 at 21:30pm the victim who was aged 17 and her mother were sitting on the veranda. The defendant grabbed the victim and said he was going to watch television. After some time the older brother of the victim (HdS) went outside and saw the defendant having sexual relations with the victim in the grass.

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The court also found that when the defendant committed this act the defendant was heavily drunk because he had drunk two bottles of alcohol, 12 cans of beer, one large bottle of palm wine, and thinner mixed with palm wine. Even though the defendant was heavily drunk the Court found that the defendant knew what he was doing.

The court found the defendant guilty based on witness testimony from the mother of the defendant and the defendant's older brother as well as the defendant's confession that he committed the crime but he was heavily drunk.

During the final recommendations the prosecutor recommended for the court to sentence the defendant to 7 years in prison, even though the defendant expressed regret, and did not know what he was doing because he drank a lot of alcohol and was under the influence. The defence requested for the Court to acquit the defendant because the defendant was heavily drunk and did not know what he was doing.

This case was registered with the Court as Case No. 0048/17.ERSIC, and the trial was presided over by Jacinta Correia (representing a panel of judges). The Public Prosecution Service was represented from Alfonso Lopes and the defendant was represented by public defender João Henrique de Carvalho.

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