



Case Summary
The Dili District Court
January 2019

Affirmation: The following case summaries set out the facts and the proceedings of cases before the court based on JSMP's independent monitoring, and the testimony given by the parties before the court. This information does not reflect the opinions of JSMP as an institution.

JSMP strongly condemns all forms of violence, especially against women and vulnerable persons. JSMP maintains that there is no justification for violence against women.

A. Summary of the trial process at the Dili District Court

1. Total cases monitored by JSMP: 51

Article	Case Type	Total
Article 145 of the Penal Code (PC) as well as Articles 2, 3, 35(b) and 36 of the Law Against Domestic Violence	Crime of simple offences against physical integrity characterized as domestic violence	21
Article 145 of the Penal Code (PC) as well as Articles 2, 3, 35(b) and 36 of the Law Against Domestic Violence and Article 157 of the PC	Crime of simple offences against physical integrity characterized as domestic violence and the crime of threats	1
Article 154 of the PC as well as Articles 2, 3, 35(a) and 36 of the Law Against Domestic Violence	Crime of mistreatment of a spouse	8
Article 145 of the PC	Crime of simple offences against physical	2

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	integrity	
Article 146 of the PC	Crime of serious offences against physical integrity	1
Articles 138 and 23, 24 & 138 of the PC	Crime of homicide and attempted homicide and punishability of attempt	1
Articles 23 & 138 of the PC	Crime of attempted homicide	1
Article 171 of the PC	Crime of Sexual Coercion	1
Article 172 of the PC	Crime of Rape	1
Article 173 of the PC	Crime of aggravated rape	1
Article 202.2, Articles 188, 194, 270 & 267	Crime of violating the rule of law, crime of criminal association, crime of abuse of signals or uniform, crime of extortion, crime of aggravated fraud	1
Article 252 of the PC	Crime of aggravated larceny	3
Articles 251 & 258 of the PC	Crime of larceny and property damage	1
Article 271 of the PC	Crime of simple receipt of stolen goods	1
Article 267 of the PC	Crime of aggravated fraud	1
Article 297 of the PC	Crime of embezzlement	1
Articles 267 & 297 of the PC	Crime of aggravated fraud and abuse of power	1
Articles 299, 295 & 303 of the PC	Crime of economic participation in business, crime of embezzlement and crime of forgery of documents	1
Articles 297, 295 & 306	Crime of embezzlement, abuse of power and use of another person's identification document	1
Article 1770 (Civil Code)	Acts with validity depending on court authorization	1
Articles 1757 – 1761, 1871 of the Civil Code	Case of civil exercise of parental authority and alimony for children	1

Total	51
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2. Total decisions monitored by JSMP: 24

Type of penalty/decision	Total
Suspension of execution of a prison sentence (Article 68 of the PC)	9
Prison sentence (Article 66 of the PC)	3
Suspension of execution of a prison sentence (Article 68 of the PC) with rules of conduct (Article 70 g) of the PC	2
Fine (Article 75 of the PC)	4
Acquittal	4
Acknowledging children as legitimate heirs	1
Endorsement of agreement	1
Total	24

3. Total ongoing cases based on JSMP monitoring: 27

B. Descriptive summary of decisions handed down in cases that were monitored by JSMP:

1. Crime of simple offences against physical integrity characterized as domestic violence

Case No. : 0040/18.DICMR
Composition of the court : Single Judge
Judge : Maria Modesta
Prosecutor : Bartolomeu de Araújo
Public Defender : Joana Cristina Pinto
Decision : 5 months in prison, suspended for 1 year

On 7 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant EdSO who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 4 January 2018, at approximately 1am, in Pantai Kelapa, Dili, the defendant and the victim argued because their children went to sleep without a mosquito net. During the argument the defendant took the victim's Samsung telephone and smashed it. Then the defendant took his Samsung telephone and threw it but it did not smash.

The defendant became angry and punched the victim once on her right cheek, kicked her three times in the back, once on her right arm and once on her leg. The defendant then punched the victim three times in the back and the defendant took a helmet and struck the victim in the head.

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, 35 (b) and Article 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant confessed to all of the facts set out in the indictment and stated that he committed the assault against the victim because their children were sleeping without a mosquito net because the victim went to gamble at a neighbour's house and did not shut the window. The defendant also acknowledged that he smashed the victim's telephone because he saw the victim send a SMS to another man. After committing the assault the defendant was going to go out on a motorcycle and the victim grabbed him tightly so the helmet hit the victim in the head. In the morning the defendant went home and saw that the victim's face was swollen. The defendant stated that after this incident the defendant and the victim have been living together.

The victim also confirmed all of the facts set out in the indictment and confirmed the statement of the defendant that after this incident they reconciled, and they continue to live together as husband and wife. In addition, the defendant stated that he did not hit the victim again.

Final recommendations

The public prosecutor found the defendant guilty of committing the crime in accordance with the charges. During the trial the defendant confessed all of the facts in the indictment, and these were also confirmed by the victim. The defendant regretted his actions, was a first time offender and after this problem they continued to live together. However, the public prosecutor stated that as a husband the defendant is supposed to protect his wife. Therefore to deter the defendant from committing such acts in the future the prosecutor requested for the court to impose a suspended prison sentence on the defendant based on the crime committed by the defendant.

The public defender stated that the defendant regretted his actions and promised that in the future he would not commit any crimes against the victim. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating the facts that were proven during the trial, the court concluded the matter and found the defendant guilty of committing the crime against the victim and sentenced the defendant to 5 months in prison, suspended for 2 years.

2. Crime of aggravated larceny

Case No. : 0337/18.DICMR
Composition of the court : Panel
Judges : Edite Palmira, Jumiati Freitas and Sribuana da Costa
Prosecutor : Reinato Bere Nahak
Public Defender : João de Carvalho
Decision : Acquittal

On 8 January 2019 the Dili District Court announced its ruling in a case of aggravated larceny, involving the defendant Agustino Neno Salu and the victim Josefina Nifu Abi as well as the defendant's cousin the victim Domingos Kolo, which allegedly occurred in Dili District.

Charges of the public prosecutor

On 28 May 2018 the defendant and his wife Maria Imelda Colo went to the home of the victim and her husband Domingos Toni Salu because they were going to exhume a skeleton and take it to Oecusse. When the defendant arrived the victim told them that they had changed it to the next day because other family members had not arrived yet. However the defendant and his wife did not return home because the defendant wanted to go through some of the victim's belongings in the bedroom. After the defendant returned to his home, less than one hour later the victim went into the bedroom with the intention of getting some money to buy some vegetables. However, when she opened up the cupboard the victim saw that US\$2,480 was gone. The victim had just received this money from a person who had purchased the victim's house and when she received the money the defendant was also present. Therefore the victim immediately rang the defendant to ask for her money because there was nobody else at the house, only the defendant, and the defendant's wife was with the victim's husband.

The public prosecutor alleged that the defendant violated Article 252.1 of the Penal Code on aggravated larceny that carries a maximum penalty of 2-8 years in prison.

Presentation of evidence

Before the court, the defendant rejected all of the facts set out in the indictment. The defendant stated that at that time he and his wife went to the victim's house because the victim rang the defendant to exhume the skeleton of the victim's son to take the skeleton to Oecusse District. The defendant and the victim are related because the victim's husband is the defendant's cousin. However, at that time the defendant did not know about this money or where it was kept. The

defendant did not open the victim's cupboard because the defendant was with victim's husband in the bedroom. At that time the victim gave US\$300 to the defendant to pay the defendant for laying some tiles. The defendant only found out about the victim's missing money when the victim rang him when he had returned home.

The victim confirmed all of the facts set out in the indictment and stated that she believed that the defendant took the money because at that time there was no other person in their house. The defendant went in and out of the bedroom and went through some of the belongings in the bedroom. The defendant also knew about the victim's money that she had just received for the sale of their house because when she received the money the defendant was also present.

When the victim rang the defendant, on that same night the defendant went to the victim's house and told the victim to go to a clairvoyant based on a traditional East Timorese belief that maybe the deceased had taken the money. On the next day they went to a clairvoyant in Ermera and it was suggested that the money was gone and that it had not been taken by the deceased, but rather by somebody in the house.

The other victim, who is the husband of the first victim, stated that at that time he was in the house but in the afternoon he went to work. The victim also stated that he suspected that the defendant took the money because the defendant went in and out of the victim's bedroom. This victim did not suspect the defendant's wife because the defendant's wife did not go into their bedroom.

Final recommendations

The public prosecutor stated that all of the facts had been proven, because the defendant and his wife were in the house. In addition, the victim stated that the defendant's wife never went into the bedroom and the victim's husband was only at home for half of the day. The defendant knew about the money because he was there when the victim received the money from the sale of her house.

The public defender stated that the facts set out in the indictment were not proven because there were no concrete facts showing that the defendant committed this crime. The victim's statement was not based on any facts and she did not witness it and no other person witnessed it, and it was only the victim's conclusion or that she suspected that the defendant had stolen the money. In addition, the defence also gave consideration to the circumstances of 'suspicion', and there was the likelihood that the victim's husband could also be suspected.

Decision

The court concluded this matter and found that the defendant was not guilty of committing this crime based on the facts produced during the trial. The court found that that there were no facts

to convince the court that the defendant was guilty because the facts revealed during the trial were only based on the allegation of the victim and not because the victim witnessed the defendant committing this crime. Based on all of these considerations, the court decided to acquit the defendant from these charges.

3. Crime of simple offences against physical integrity

Case No. : 0439/17.DICMR
Composition of the court : Single Judge
Judge : Jose Maria de Araujo
Prosecutor : Bartolomeu de Araújo
Defence : Francisco Antonio da Conceição de Araújo Almeida
Henrique Saturnino Alves de Cruz (private lawyer)
Decision : Fine of US\$ 450.00

On 12 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity involving the defendant Manuel da Cruz who allegedly committed the offence against the victim Anop Rishim (Indian citizen) in Dili District.

Charges of the public prosecutor

On 19 August 2017, at 11am, the victim Anop Rishim and his son went to Timor Plaza. It was alleged that when the victim was walking around the shops the defendant walked over to the victim and used his shoulder to slam into the victim and then he punched the victim once on the left side of his head, once in the shoulder and the victim lost consciousness and fell to the ground. These acts caused the victim to suffer pain and swelling to his head, an injury and bleeding to his mouth and pain to his shoulder and he was taken to hospital for treatment.

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.

Presentation of evidence

During the trial, the defendant used his right to remain silent. The victim confirmed the charges that the defendant punched him many times in the head and once in the shoulder and once in the ear and he suffered heavy bleeding from the mouth. The victim also stated that as a result of the defendant's behaviour the victim could not eat properly for three days and he went to India for treatment because he felt dizzy and he suffered painful headaches.

The witness Abraham Grigório de Araújo, who is a radiology professional (person who takes x-rays), testified that based on results of the victim's x-ray, the victim did not suffer a fractured skull. Regarding the reason why the victim lost consciousness, the expert stated that this was

because the defendant punched the victim many times in the head and the victim became groggy and fell to the ground.

When CCTV footage was checked, it was discovered that the victim and his daughter came out of a shop and when they were close to the door, the defendant cut across from the right side and was bent over on one side of the victim and the defendant's left shoulder struck the victim's right shoulder. Then the defendant continued to walk out the front of the shop, but the victim turned around to walk after the defendant and yelled out and when the defendant turned around the victim pushed the defendant hard in the chest and then the defendant responded by punching the defendant three times in the face and this caused the victim to fall to the ground.

After seeing the CCTV footage, the judge asked the defendant if he had any training in boxing because the defendant punched with great force like a boxer. However, the defendant chose not to remain silent and responded that he had never attended any boxing training but his reaction was spontaneous because the victim yelled and suddenly pushed him. The defendant acknowledged that he collided with the victim's shoulder but at that time there were many people close together and the defendant did not think there was a problem so he continued walking into a shop, but suddenly the victim turned around and pushed the defendant.

Final recommendations

The public prosecutor stated that the defendant had been proven guilty of all of the facts outlined in the indictment based on the testimony of the victim and the evidence shown on the CCTV footage. It is true that they had an argument and pushed each other, but the defendant's reaction was very bad and he punched the victim many times and the victim fell down and suffered an injury to his head and mouth. The defendant's behaviour has caused the victim to suffer headaches up until now. Therefore the public prosecutor requested for the court to impose a suspended sentence against the defendant.

The public prosecutor also requested for the court to initiate proceedings against the victim because the victim made allegations against the prosecutor in this case as well as the Public Prosecution Service in a letter he sent to the President of the Republic. In this letter to the President of the Republic the victim alleged that the prosecutors were unprofessional and that they conspired with the defendant to disadvantage the victim and discontinue his case.

The defence stated that after looking at the CCTV footage, it can be concluded that the victim made false statements against the defendant, that the defendant collided with the victim's daughter so the victim became angry and called out to the defendant and the defendant responded by assaulting him. In reality the CCTV footage showed that the defendant was walking and accidentally collided with the victim, but the victim responded by shouting and followed the defendant and pushed the defendant. The victim also falsified a photo of the

defendant which was given to the court and showed that the defendant was a boxer weighing 200 kilograms. In the end the defendant stated that he has never been involved in boxing.

Therefore the public defender requested for the court to impose a lenient penalty against the defendant. The public defender also requested for proceedings to be initiated against the victim for the crime of making a false statement and providing defamatory false information because he made a number of false statements against the defendant to the media as well as a letter of complaint against the public prosecution service.

After hearing from the parties the court considered the request of the public prosecutor to start investigating the victim in relation to the victim's statement against the prosecutor in this matter but did not accept the request of the defence in relation to initiating proceedings against the victim for the crime of making a false statement and providing defamatory false information.

Decision

The court found the defendant guilty of the facts set out in the indictment based on the defendant's statement, the confirmation of the victim and the CCTV footage. The court found that the defendant punched the victim once on the left side of the head, punched the victim once on the shoulder and once on the ear and this caused the victim to lose consciousness and fall to the ground and he was treated in hospital.

The court concluded this matter and ordered the defendant to pay a fine of US\$ 450 to be paid within 75 days, or the defendant will have to serve 90 days in prison as a substitute for this fine. The court also ordered the defendant to pay court costs of US\$ 100.

4. Crime of mistreatment of a spouse characterised as domestic violence

Case No.	: 0203/16.DICMR
Composition of the court	: Panel
Judges	: Euzébio Xavier Victor, Maria Solana da Conceição Fernandes and Ivan Patricínio Antonino Gonsalves
Prosecutor	: Bartolomeu de Araújo
Defence	: Humberto Alves
Decision	: Acquittal

On 14 January 2019 the Dili District Court announced its decision in a case of mistreatment of a spouse involving the defendant MT who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on the morning of 16 April 2016 the defendant went to the victim's home in Hudi-laran. When the defendant arrived at the house the victim told the

defendant *“Get out of this house, I don't want to see you here again.”* However, the defendant did not want to leave so they pushed each other until they reached the gate. Then the defendant insulted the victim by saying *“You are so ugly, the only reason anyone is with you is because you have used black magic”*. The victim said that because of this she expelled the defendant from the house and the defendant went to the home of the local village chief.

On the same day at 12pm the victim went to get their cook at the house because the victim believed that their cook was the intermediary between the defendant and a woman known as SN. At 3pm the victim picked up their cook and together with the victim's younger sister, nephew and niece went to the home of SN in Kampung Baru. When they arrived the victim saw the defendant's car parked at the home of SN.

The victim stopped the car and went into the home of SN. The victim saw the defendant sitting inside. The victim greeted the defendant by saying that *“Is this how it is?”* The victim told the defendant *“From 2010 you have said I'm ugly, that I'm a whore, now come back and we will resolve our problem for good.”* After hearing the victim's words, the defendant walked out of the house onto the veranda and asked the victim ... *“Anything else? Let's get divorced, whore, servant!”* Then the defendant and the victim continue to argue and grappled with each other. The victim also told the defendant that previously when they got together they made an agreement that if one day one of them did the wrong thing then he or she would leave the house without taking anything.

When the victim and the defendant argued, SN came out of the home and chased the victim saying *“...get out, get out, get out, you don't respect me...!”* The victim told SN *“Should I respect you, I saw my husband pick you up in my car, and squeeze your breasts, and you think I should respect you?”*

Then the victim and SN where going to punch each other, but the defendant stopped them and got in between them. However, the defendant punched the victim twice in the forehead and the defendant's fingernails scratched the victim on her right eyebrow.

These acts caused the victim to suffer pain to her forehead, an injury to her eyebrow and also affected the victim's psychological state because the defendant always swore at her.

In addition, the public prosecutor also alleged that while they were living together the defendant always insulted and swore at the victim.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse that carries a prison sentence of 2 years to 6 years prison as well as Articles 2, 3 and 35 (a) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the examination of evidence the defendant chose the right to remain silent. Meanwhile, the victim did not attend the court because now the victim is overseas.

The witness AdJ, who is the younger sister of the victim, testified that on 16 April 2016 the victim and the witness went to SN's house. The victim got out of the car and told the defendant to return home but the defendant did not want to. The witness saw the defendant and the victim go together to the back of the house so the witness did not see the assault committed by the defendant against the victim.

Decision

After evaluating the facts produced during the trial, the court found that the victim and the defendant are husband and wife. At that time, the victim found the defendant at SN's house. However, the Court did not find that the defendant and the victim struck each other at SN's house.

The court did not find enough evidence because the defendant chose the right to remain silent, the victim did not attend and the witness did not witness the assault. Based on these considerations the court acquitted the defendant from the charges of the prosecutor.

5. Acts with validity depending on court authorization

Case No.	: 0096/18.CVTDD
Composition of the court	: Single Judge
Judge	: Sribuana da Costa
Prosecutor	: Bartolomeu de Araújo
Decision	: Children deemed to be legitimate heirs

On 15 January 2019 the Dili District Court held a trial in a civil case involving Acts with validity depending on court authorization for the deceased Joaquim Mualequi and four children, namely Daniel da Costa, Gabriel da Costa, Cosme Peregrina and Arnaldinho da Costa, in Liquica District.

Initial petition

In 2018 the deceased Joaquim Maulequi passed away and was survived by four children who were the result of his union with Luisa da Costa. At the time of his death the deceased was a staff member of the Ministry of Education and had US\$4,000 in Mandiri Bank. The four heirs could not access this money because bank procedures state that a death certificate needs to be issued by the court to decide if they are entitled to this money.

Pursuant to Article 126 of the Civil Code, the Prosecutor is the representative of these children, and the prosecutor requested for the court to issue an instruction to the bank to provide the money to these heirs.

Presentation of evidence

The court assessed the marriage certificate and baptism certificates of the deceased and the children and then heard from the former wife of the deceased who has married another man, but is still responsible for the children.

The court also requested for the paternal grandfather of the children to look after them, and to specifically ensure that the former wife of the deceased will use the money to look after the children.

Final recommendations

The public prosecutor requested for US\$2,000 to be given to the representative of the children, namely their mother, to use to pay for their schooling and alimony. Meanwhile the other US\$2,000 should be placed in a separate bank account and only given to the children when they reach 17 years of age and should be divided between the four of them.

Decision

After considering all of the facts, the court concluded this case and agreed with the request of the prosecutor to give US\$2,000 to the mother of the children. The court ordered for the other US\$2,000 to be put into a new bank account in the names of the four heirs to be given to them when they reach 17 years of age.

6. Crime of aggravated larceny

Case No.	: 0089/18.PNSIK
Composition of the court	: Panel
Judges	: Albertina da Conceição das Neves Maria Solana Conceição Fernandes and António do Carmo
Prosecutor	: Bartolomeu de Araújo
Defence	: Humberto Alves
Decision	: 1 year in prison, suspended for 2 years

On 15 January 2019 the Dili District Court conducted a hearing to announce its decision in a case of aggravated larceny involving the defendant Odete Antonia Britos who allegedly committed the offence against the victim Lidia Solaste de Sousa, in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 9 May 2018 at approximately 8am the defendant took out some money from the BNU bank via an ATM at Timor Plaza.

On 10 May 2018 the victim went to meet with an officer from BNU (Ms. Getty Asis) to inform the officer that on 25 April 2018 she left her card behind in an ATM machine at the Government Palace. After receiving this information Ms. Getty Asis followed this up and discovered that on 9 May 2018 a person used the victim's ATM card to withdraw US\$ 1,000 from the BNU bank in Timor Plaza. This person (the defendant) withdrew money on five occasions, amounting to US\$ 200 on each occasion.

On 15 May 2018 at 12:57pm the victim received a phone call from a BNU officer calling the victim to look at CCTV footage showing the person who took the victim's money from the BNU account. Then the victim saw the CCTV footage, and there were two people, a woman and a man, who took the victim's money from the BNU ATM at Timor Plaza. After seeing the CCTV footage the victim immediately recognised the defendant based on the shirt, pants and helmet the defendant was wearing, because the defendant works at the victim's house as an employee of the victim. At that time the victim asked the BNU officer to make a copy of the CCTV image regarding this incident, and the bank managed to make a copy for the victim.

On 21 May 2018 the victim summoned the defendant Odete Antonia Britos and said to her “*I saw you on the CCTV footage and I know you took the money,*” and the victim responded “*It is true that I took your money.*”

On 22 May 2018 the defendant gave US\$1,000 back to the victim. The defendant knew the victim's PIN number for the ATM card because the victim always wrote her PIN number on some notes that she kept in her car.

After this incident the victim did not want to take the defendant to court because the defendant gave the money back to the victim, but authorities from the bank made a complaint to the police.

The public prosecutor alleged that the defendant violated Article 252 of the Penal Code on aggravated larceny that carries a maximum penalty of 2-8 years in prison.

Examination of evidence

During the trial the defendant confessed all of the facts set out in the indictment, the defendant also stated that she regretted her actions. The defendant was a first time offender and gave back all of the money that she had taken. The defendant had no intention of taking money from the ATM but she tried it out because she has never taken money from the ATM. The victim confirmed the facts set out in the indictment including confirming the statement of the defendant that the defendant gave the victim's money back. The victim also forgave the defendant and after this incident the defendant no longer worked for the victim.

Final recommendations

The public prosecutor found the defendant guilty of committing the crime of aggravated larceny based on the statement of the defendant which was also confirmed by the victim. The defendant regretted her actions, and gave back the money to the victim. The victim forgave the

defendant, and therefore the public prosecutor requested for the court to impose a suspended prison sentence against the defendant.

The public defender requested for the court to impose a lenient penalty on the defendant, because the defendant regretted her actions and gave back the money to the victim.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment, because the victim took money from the ATM. The defendant gave back the money to the victim so the court concluded this matter and sentenced the defendant to 1 year in prison, suspended for 2 years.

7. Crime of aggravated fraud

Case No. : 0243/14.DICMR
Composition of the court : Panel
Judge : Zulmira Maria Auxiliadora, Ana Paula Fonseca and
Eusebio Xavier Victor
Prosecutor : Napoleão da Costa
Defence : Manuel Sarmiento
Decision : Acquittal

On 16 January 2019 the Dili District Court announced its ruling in a case of aggravated fraud involving the defendant Saturnino dos Santos and the victim Sheila Amalia, that allegedly occurred in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that in 2014 the defendant sold a Toyota Avanza car to Budi Setiawan for US\$ 15,000 using the victim's name Sheila Amalia who was the supervisor of Budi Setiawan at his workplace. However, after using it for a month when the victim took this car to pray at the Annur Mosque, the car owner Inur Yan suddenly came with the police and confiscated the car and stated that the car belonged to Inur Yan and went missing in Indonesia. The owner of the car Inur Yan proved this with the GPS that he had installed inside the car.

The public prosecutor alleged that the defendant violated Article 267 of the Penal Code on aggravated larceny that carries a maximum penalty of 3-10 years in prison.

Presentation of evidence

Before the court, the defendant rejected all of the facts set out in the indictment. The defendant showed original documents in the name of an Indonesia citizen who sold the car (not the name of the victim). The original documents changed the name from the seller to the defendant including

a stamp for tax paid at the Mota-ain border, in Maliana District. The defendant did not know that the car had been stolen.

The victim is an Indonesian citizen and the court did not know his whereabouts because he has returned to Indonesia. Therefore the prosecutor asked to consider the victim's statement made during the investigative phase.

The witness Budi Setiawan testified that he purchased the car from the defendant to give it to the victim. However, he did not know that the defendant was selling a stolen car, because the defendant gave him full documentation and the car was sold for US\$15,000. However, when the victim had been using the car for less than a month the car owner, who was an Indonesian citizen, came with police from Comoro Station to take the car because they said they found out from the GPS installed in the car. The victim, witness and car owner spoke to each other at the Indonesian embassy and agreed that they would not ask for money from the car owner but that the case would be dealt with by the court to pursue the defendant.

At this opportunity the prosecutor requested for the court to consider the victim's statement made before the Public Prosecution Service.

Final recommendations

The public prosecutor requested for the defendant to be acquitted because he believed that the defendant had no knowledge that the car had been stolen. The defendant proved his statement by producing original documents under his name as the car owner before selling it to the victim. Therefore, even though the car owner could prove that it was his car, there was no proof that the defendant had stolen the car from the car owner.

The public defender agreed with the request of the prosecutor to acquit the defendant because it was not the defendant who had stolen the car.

Decision

After evaluating all of the facts, the court found the defendant not guilty of committing the crime set out in the indictment. The court acknowledged that the car belonged to the car owner who had made a claim, but it was not proven that the defendant had stolen the car from the car owner. Therefore the court stated that the defendant had no obligation to give back US\$15,000 to the victim. Based on all of these considerations, the court decided to acquit the defendant from these charges.

8. Case of civil exercise of parental authority and alimony for a child

Case No. : 0209/18 CVTDD

Composition of the court : Single Judge

Judge : Eusebio Xavier Victor
Prosecutor : Bartolomeu de Araujo (representing the child Fatima
Carvalho Moniz Soares)
Decision : Endorsement of agreement

On 16 January 2019 the Dili District Court conducted a trial to attempt conciliation in a case of exercise of parental power and alimony for a child, involving Peregrina Carvalho Moniz and the child Fatima Carvalho Moniz Soares as plaintiffs, and Inacio Isac Soares as the respondent, in a case that allegedly occurred in Dili District.

Attempted conciliation

Pursuant to Article 385 of the Criminal Procedure Code the court attempted conciliation between the parties regarding the exercise of parental power based on Articles 1757 - 1761 of the Civil Code and alimony for children based on Article 1871 of the Civil Code.

During the attempted conciliation the parties entered into an agreement regarding alimony for the child and a schedule for visitation rights.

During this attempted conciliation the parties made an agreement on alimony for the child and an agreement on the residence of the child and visits to see the child. The respondent agreed to put US\$200 per month into the child's bank account. The respondent agreed to increase this amount of alimony in the future if the child's needs increase. The respondent also agreed to cooperate with the plaintiff to look after the child (take the child for treatment and to purchase medicine) if the child is sick. In addition, the two parties agreed for the child to live with her mother Peregrina Carvalho Moniz but on the weekend or on holidays the respondent can take the child to his house and bring her back in the afternoon.

Final recommendations

The public prosecutor requested for the court to endorse the agreement entered into by the parties regarding alimony for the child, the residence of the child and the visiting schedule.

Decision

Based on the agreement for alimony, residence, and visiting schedule entered into by the parties, the court concluded this matter and endorsed the agreement.

9. Crime of mistreatment of a spouse

Case No. : 0253/13.PNSIC
Composition of the court : Panel
Judges : Euzébio Xavier Victor, Ana Paula Fonseca and Zulmira
Auxiliadora B. da Silva
Prosecutor : Bartolomeu de Araújo
Defence : Pedro Aparição

Decision : 2 years in prison, suspended for 3 years

On 18 January 2019 the Dili District Court announced its decision in a case of mistreatment of a spouse involving the defendant CFG who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on an unknown day and month in 2013 the defendant and the victim were in a car travelling from Metiaut towards Kampung Baru so they could purchase meat at EDS. While they were driving, without any provocation, the defendant punched the victim many times on her right shoulder. Because she felt pain and even though the car was still moving the victim and her child jumped out of the car.

In 2014 the victim and the defendant went to eat at the home of the victim's parents. There was a misunderstanding between the defendant and victim because the defendant was going to visit his sick mother in Australia. The defendant stood up and pushed the victim into a wall and swore at the victim very badly. In the same year (2014) the defendant waited for the victim every day at her work place. In that location the defendant threatened and swore at the victim which caused her to feel unsafe and the victim resigned from her job.

Then the defendant went to meet the victim's parents and he apologised and promised that he would not repeat this behaviour. The victim's father took the defendant to make an oath at Santo António in Manatuto. Because the defendant had taken the oath the victim returned to live with the defendant at the home of the defendant's father in Fatuhada. However, the defendant continued to assault the victim and punched the victim four times in the cheek, took a piece of wood and struck the victim in the head many times and yanked the victim's arm and threw her on the bed.

In April 2016, at their home, the defendant swore at the victim and said “*You are not allowed to get someone to work here. Your only job is to cook and to stay in the kitchen. That is all!*” The victim was heavily pregnant and left their home to go and live with her parents.

These acts caused the victim to suffer pain, swelling and bruising to her right shoulder, and pain and swelling to her cheek and head. Also, the victim felt psychologically unstable because the defendant always swore at her.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse that carries a prison sentence of 2 years to 6 years prison as well as Articles 2, 3 and 35 (a) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the production of evidence the defendant denied all of the facts alleged against him and stated that while the defendant and victim were living together the defendant never physically assaulted the victim. The defendant added that the victim is a person with a sensitive character and every time the defendant spoke in a loud voice the victim felt like the defendant was angry with the victim.

Meanwhile, the victim confirmed the facts set out in the indictment and stated that while they were living together as husband and wife the defendant always physically assaulted her. The defendant also constantly put psychological pressure on the victim because the defendant often swore at the victim if they argued. Therefore, the victim could no longer accept the defendant's behaviour and decided to make a complaint to the police. The victim also stated that while they have been living together the victim never felt happy.

The witness FCA, who is the older brother of the victim, testified that when the incident occurred in Fatuhada, the defendant rang the witness and said "*Come and get your younger sister because I have given her a sound beating*". The witness was sitting with his friends at the beach and immediately called his parents and asked them to look after the victim.

Also, the witness added that he saw the defendant's driver take a truck and transported all of the victim's clothes and her child's clothes and dumped them at their house. The witness did not have any knowledge about the other incidents.

Final recommendations

The public prosecutor believed the statement of the victim because the victim had to deal with these problems. Based on these considerations, the public prosecutor maintained the charges and stated that the defendant was guilty of committing the crime of mistreatment against the victim. Therefore the public prosecutor requested for the court to impose a suspended sentence of three years prison against the defendant.

The public defender requested for the court to acquit the defendant from the charges because the defendant never hit the victim or mistreated the victim. The defence believed that the victim had made up the accusations.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime of mistreatment against the victim. Based on this evidence, the court sentenced the defendant to 2 years in prison, suspended for 3 years, and ordered the defendant to pay court costs of US \$300.

10. Crime of simple offence against physical integrity characterized as domestic violence

Case No. : 0106/18 DIBCR
Composition of the court : Single Judge
Judge : Zulmira A. Barros da Silva
Prosecutor : Bartolomeu de Araújo
Defence : Afonso Gomes Fatima
Decision : 6 months in prison, suspended for 1 year and 6 months with rules of conduct

On 21 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant MLM who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The prosecutor alleged that on 10 May 2018 at 10:00am the defendant and the victim argued and the defendant yanked the victim's arm and punched the victim once in the head. Then he punched the victim once above the left eye which caused swelling and an injury, as well as pain to the victim's arm. Before this assault the victim told the defendant to hold their child because the victim was washing clothes but the defendant did not pick up their child and the child started crying. When the victim heard their child crying the victim became angry at the defendant and they argued and the assault occurred.

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.

Presentation of evidence

During the examination of evidence the defendant stated that he did not punch the victim in the head but slapped the victim twice above the eye, which had previously been red and swollen (eye infection). The defendant added that perhaps the victim's eye was injured and bleeding because of his fingernails. Therefore after the defendant slapped the victim and saw the victim's eye bleeding, the defendant immediately took the victim to the Becora Health Centre for treatment. After returning from the Health Centre the victim's brothers were angry at the defendant and expelled the defendant from the home and made a complaint to the police. This was the first time that the defendant had hit the victim and stated that he regretted his actions.

The victim confirmed the facts set out in the indictment of the prosecutor and confirmed the defendant's statement that previously the victim's eye was swollen and red because of an eye infection. After the incident the defendant took the victim for treatment at the Becora Health Centre.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime in accordance with the facts alleged in the indictment. The public prosecutor requested for the court to impose a prison sentence of 30 days suspended for one year to educate the defendant not to repeat such acts against the victim because the defendant and the victim are living together.

The public defender considered that even though the defendant was found guilty of committing the crime against victim, the defendant had confessed, regretted his actions, has reconciled with victim and is the breadwinner, therefore the public defender requested for the court to impose a lenient penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant had extended his arm and made contact with the victim's arm which resulted in pain. The defendant was also found to have struck the victim once in the head and punched the victim above the left eye which resulted in swelling and an injury.

The court considered the mitigating circumstances such as the defendant had confessed, regretted his actions and reconciled with the victim. The court also considered the aggravating circumstances such as the defendant beat his wife who he was supposed to protect and the courts continue to deal with a large amount of crimes of domestic violence. Based on these considerations the court concluded the matter and sentenced the defendant to 6 months in prison, suspended for one year and 6 months. The court also applied rules of conduct that the defendant is obliged to report to the court once a month for one year.

11. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0282/18.DICMR
Composition of the court	: Single Judge
Judge	: Ivan José Suritay Patrocínio Antonino Goncalves
Prosecutor	: Nelson de Carvalho
Defence	: Juvinal Yanes Freitas
Decision	: 2 months in prison, suspended for 1 year

On 22 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant FdA who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 15 May 2018, at 12:30pm, the victim went back to their rented accommodation for lunch. When she arrived home the defendant was already there. The victim asked the defendant to pay back US\$300 that he had borrowed from another person. They

argued and the defendant told the victim that the defendant would not pay for the victim's needs in the future. Therefore the victim told the defendant to go back to his former wife so the defendant punched the victim twice in the head and caused pain. The defendant freely committed this behaviour based on his own desire and intention, and the defendant knew very well that punching a person in the head would cause pain.

The prosecutor alleged that the defendant committed the crime of domestic violence in the form of simple offences against physical integrity as set out in Article 2. 2(a), 3(b) and 35(b) of the Law Against Domestic Violence and Article 145 of the Penal Code which carries a prison sentence of 3 years or a fine.

Presentation of evidence

During the examination of evidence the defendant partially confessed to his actions and stated that he did not punch the victim in the head but slapped her once on the right cheek and slapped her once on the left cheek. The defendant also stated that he was a first time offender and regretted his actions and is still living with the victim.

Also, the victim confirmed the statement of the defendant that he did not punch the victim, but rather slapped the victim on her right cheek and once on her left cheek. The victim also confirmed the statement of the defendant that he had only hit her once, and had apologised and reconciled with the victim.

Final recommendations

The public prosecutor stated that the defendant committed the crime of domestic violence against his wife, and therefore the public prosecutor requested for the court to issue an admonishment against the defendant and to order him to pay court costs. The public defender requested for the court to consider all of the circumstances, in order to impose a fair sentence against the defendant.

Decision

After evaluating the facts produced during the trial, the court found all of the facts proven. Based on the facts that were proven, the court sentenced the defendant to 2 months in prison, suspended for 1 year, and also ordered the defendant to pay court costs of US\$ 10.

12. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0009/18.DIMTN
Composition of the court	: Single Judge
Judge	: Ivan José Suritay Patrocínio Antonino Goncalves
Prosecutor	: Pedro Baptista
Defence	: Joana Christina Pinto

Decision : Fine of US\$ 90.00

On 22 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant LFR who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 8 August 2017 the defendant borrowed US\$ 7,000 from the Banco Nacional Comercio Timor-Leste (BNCTL). On the same day at approximately 2pm the victim asked for the BNCTL bankbook from the defendant to have a look, but he refused to give it to the victim. The victim took it from the defendant's motorcycle to have a look and the victim saw a credit amount of US\$7,000, but the defendant had only given US\$5,000 to the victim. The defendant and victim argued about this, and on 11 June 2018, because the victim had been constantly asking about the credit, the defendant became angry and punched the victim once in the back of the head and threw all of the victim's clothes outside.

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, 35 (b) and Article 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant confessed that he took out US\$7,000 and only gave US\$5,000 to the victim. The defendant kept the remaining US\$2,000 for schooling as well as for himself and his child from his former wife. The defendant added that the victim asked to see his BNCTL bankbook and the victim wanted him to give all of the money to her. The defendant denied punching the victim on the back of the neck and said he had only pushed the victim and did not throw the victim's clothes outside, but had put them on the bed. The defendant also stated that after this incident the defendant and the victim separated. Therefore the defendant stated that he just wants to provide for his two children from the victim but does not want to take the victim back.

Meanwhile the victim confirmed all of the facts in the charges, namely that the defendant punched her once on the back of the neck, and threw out her clothes, and after this incident the victim left the house and has been living with her parents until now. The defendant hit her because the victim kept asking the defendant for his BNCTL bankbook because the defendant did not give all of the money he had borrowed to the victim, and only gave US\$ 5,000 and did not give the other US\$ 2,000 to the victim.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime in accordance with the facts alleged in the indictment. Even though the defendant had previously denied some of the facts, the victim confirmed all of the facts in the indictment, and after this incident they separated. The defendant also just wanted to look after his two children from the victim. The defendant expressed regret, was a first time offender, has 8 children, namely two from the victim and six from his first wife. However, to deter the defendant from committing any further crimes in the future, the public prosecutor requested for the court to sentence the defendant to 6 months in prison, suspended for 1 year.

The public defender stated that the defendant regretted his actions and promised that in the future he would not commit any crimes against the victim. Therefore the public defender requested for the court to impose a fair and appropriate penalty against the defendant.

Decision

After evaluating the facts produced during the trial, the court found all of the facts in the indictment proven, based on the testimony of the victim and the partial confession of the defendant. Based on the facts that were proven, the court ordered the defendant to pay a fine of US\$ 90 through daily instalments of US\$ 1.00 for 90 days. If the defendant does not pay this fine then he will be sent to prison for 60 days as an alternative punishment. The court also ordered the defendant to pay court costs of US\$ 10.

13. Crime of simple offence against physical integrity characterized as domestic violence

Case No.	: 0009/18.DIMTN
Composition of the court	: Single Judge
Judge	: Maria Solana da Conceição Fernandes
Prosecutor	: Nelson de Carvalho
Defence	: José da Silva
Decision	: 3 months in prison, suspended for 1 year

On 23 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant DdR who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 25 August 2016 the victim took some sweets to sell at the Metinaro School. After selling the cakes the victim returned home and the defendant took a jar that the sweets were in and struck the victim twice in the head, which caused an injury and bleeding. The victim received treatment at the Metinaro hospital.

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, 35 (b) and Article 36 of the Law Against Domestic Violence.

Presentation of evidence

The defendant confessed to all of the facts in the indictment and the defendant stated that he was invited by the local authorities to attend a meeting to talk about land. However, the victim returned home late after selling the sweets so the defendant did not go to the meeting because he had to look after the children. The defendant added that the victim left home to sell sweets at 7am and returned at 4pm. The defendant expressed regret, has reconciled with the victim, and after this incident the defendant did not hit the victim again.

The victim also confirmed all of the facts set out in the indictment and confirmed the statement of the defendant that after this incident they reconciled, and they continue to live together as husband and wife.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim, because during the examination of evidence the defendant confessed all of the facts, demonstrated his regret and has reconciled with the victim. Also, after this incident the defendant did not hit the victim again and they continued to live together as husband and wife. To generally deter the defendant from committing further acts against the victim in the future the prosecutor requested for the court to issue an admonishment against the defendant.

The public defender agreed with the request of the prosecutor to issue an admonishment against the defendant, because the defendant regretted his actions, has reconciled with the victim and after the incident the defendant did not hit the victim again.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven during the trial, the court concluded the matter and sentenced the defendant to 3 months in prison, suspended for 1 year.

14. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0258/18. PDDIL
Composition of the court	: Single Judge
Judge	: Edite Palmira dos Reis
Prosecutor	: Bartolomeu de Araújo
Defence	: Juvinal Yanes Freitas

Decision : Effective prison sentence of 1 year

On 23 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant MNdS who allegedly committed the offence against his wife LMdC in Dili District.

Charges of the public prosecutor

The prosecutor alleged that on 24 June 2018 the defendant sent a message to the victim saying that the unborn child in the victim's stomach was not his. After seeing this message on 25 June 2018 at 6am the victim went to the defendant's house in Becora. When she arrived at the defendant's house the victim saw the defendant with another woman sleeping in the bedroom, so the victim became angry and stomped on the defendant's shoulder, and the defendant woke up and he slapped the victim once on her left cheek, bent both of the victim's hands backwards and threw her on a mattress and kicked the victim once in the stomach. This act caused the victim to suffer pain to her cheek, both hands and stomach.

The public prosecutor also alleged that the defendant committed such crimes on many occasions against his first wife and his second wife (the victim).

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, and 35(b) of the Law Against Domestic Violence.

Presentation of evidence

The defendant told the court that he did not send a message to the victim as outlined in the indictment. The defendant added that perhaps the defendant's first wife sent this message, because on that evening the defendant's first wife was staying at the defendant's home.

The defendant confessed that he became angry and slapped the victim on the cheek, bent her two hands backwards and threw her on a mattress and kicked her in the stomach because the victim stomped on the defendant's shoulder. However, the defendant regretted his actions and promised not to repeat these acts in the future. The defendant also confirmed that some previous cases had been decided, and some had not yet been decided.

The victim stated that the defendant's message said that the victim's unborn child was not his. Therefore at 6am the victim went to the defendant's house to ask the defendant about this message. However, when the victim arrived at the defendant's house, the victim found the defendant with another woman sleeping in the defendant's bedroom. The victim became angry and stomped on the defendant's shoulder. The victim also confirmed that the defendant slapped

the victim once on her left cheek, bent both of her hands backwards, threw her on a mattress and kicked the victim once in the stomach.

The victim added that before they got married the defendant told the victim that he was unmarried but after they got married the victim found out that the defendant already had a wife and the defendant's first wife lived in Matadóru.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim based on the facts set out in the indictment. The defendant also committed these offences regularly against the victim and his first wife. The defendant had been involved in some cases that had been decided and was serving a suspended sentence, but he still committed the crime against the victim. To ensure that the defendant does not repeat such act in the future against the victim or any other person, the prosecutor requested for the court to impose a prison sentence of 1 year.

The public defender requested for the court to consider the mitigating circumstances such as the fact that the defendant confessed, regretted his behaviour and the defendant is the breadwinner and therefore the public defender requested for the court to impose a fair and lenient sentence.

Decision

The court found that on 25 June 2018 at 6am the defendant slapped the victim on the cheek, bent her two hands backwards, threw her on a mattress and kicked the victim in the stomach. The defendant committed these acts against the victim when the victim asked him about a message that she received on her telephone saying that her unborn child was not the defendant's. The defendant was also found guilty of committing these crimes regularly against his first wife and the victim.

Based on the facts that were proven and after considering all of the circumstances associated with this crime the court concluded the matter and imposed an effective prison sentence of one year against the defendant.

15. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0226/18 PDDIL
Composition of the court	: Single Judge
Judge	: Antonio Helder do Carmo
Prosecutor	: Bartolomeu de Araújo
Defence	: Manuel Sarmento
Decision	: 3 months in prison, suspended for 2 years

On 23 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant CdA who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that 5 June 2018, at 2pm, the defendant suspected the victim of being with another man. They argued and the defendant punched the victim once above the eye, and punched the victim once in the mouth, kicked the victim twice in the back and kicked the victim once in the leg. These acts caused swelling and pain to the victim's eye, mouth and back.

Previously on 18 May 2018, at 3.30pm, the defendant pulled the victim's hair, punched the victim twice on the shoulder and kicked the victim twice on the right leg. The defendant suspected the victim of being with another man so they argued and the assault took place.

Also, on 26 April 2018 the defendant punched the victim once in the back, punched the victim once in the cheek and kicked the victim on her left leg for the same reason. The defendant freely committed this crime based on his own volition and knowing that such behaviour is against the law.

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.

Presentation of evidence

During the trial the defendant partially confessed to the facts set out in the indictment that he committed the crime that occurred on 5 June 2018, at 2pm, but he rejected the other facts. The defendant stated that he committed these acts because when victim's telephone rang the victim moved away from the defendant before she would answer the phone. When the defendant asked the victim who called her, the victim always said nobody.

Meanwhile the victim stated that the defendant did not hit her but just pulled her hair. In relation to the other accusations, the victim said that they were false and that the victim lied because the defendant always suspected the victim of having a romantic relationship with another man.

Before hearing final recommendations the court asked the prosecutor to investigate the victim because the victim made a false statement during the investigative process to the prosecutor.

Final recommendations

The public prosecutor stated that in cases of domestic violence often the only evidence is the statement given by the victim. The victim can help the prosecutor to discover the facts, but in

this case the victim denied the facts that she had previously reported to the prosecutor. However, because the defendant partially confessed, the prosecutor stated that some facts were proven and requested for the court to impose a fine of US\$45 against the defendant to be paid within 90 days.

Meanwhile, the public defender disagreed with the charges of the prosecutor because the victim told the court that the defendant only pulled her hair and did not hit her and the other facts did not occur or the victim lied because the defendant always suspected the victim of having a relationship with another man. Also, the defendant only partially admitted some of the facts and rejected other facts. For this reason the public defender requested for the court to acquit the defendant from these charges.

Decision

The court found that the defendant committed the assault against the victim on 5 June 2018. Meanwhile the victim denied her prior statement given to the prosecutor that she only argued with the defendant and that the defendant did not hit her.

Based on the facts that were proven and after considering all of the circumstances associated with this crime, the court concluded the matter and sentenced the defendant to three months in prison, suspended for two years, and also ordered the defendant to pay court costs of US\$15. The court also decided not to give the defendant a criminal record because the victim made up many of the accusations and the defendant is a public servant. This consideration was based on Article 100 of the Criminal Procedure Code on decisions not to be entered in a certificate of criminal record.

16. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0348/18 DICMR
Composition of the court	: Single Judge
Judge	: Zulmira A. Barros
Prosecutor	: Bartolomeu de Araújo
Defence	: Rui Manuel Guterres
Decision	: Fine of US\$ 30

On 24 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant BW who allegedly committed the offence against her husband in Dili District.

Charges of the public prosecutor

The prosecutor alleged that on 26 June 2018, at 11pm, the defendant rang the victim to tell him to come home because it was late at night. The victim answered the call from the defendant and

told her that he was hanging out with his friends. However, not long after the victim arrived home and they argued. The defendant pushed the victim onto the sofa, grabbed the victim's throat and took a piece of steel from on top of the cupboard and struck the victim on the shoulder. These acts caused the victim to suffer injuries to his throat, shoulder and the victim's gold necklace was broken.

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.

Presentation of evidence

During the examination of evidence the defendant stated that she argued with the victim because the victim got drunk and returned home late at night. The defendant also stated that after they argued the victim pushed the defendant on the sofa and the victim put his finger in the defendant's mouth. Therefore the defendant scratched the victim. However, the victim rejected other charges that she took a piece of steel and struck the victim on his shoulder. The defendant added that they are separated because the victim was going to take another wife.

Meanwhile the victim confirmed the facts set out in the indictment of the prosecutor and confirmed that they are separated even though they are still living together in one house, with one person staying on the top floor and the other on the bottom floor.

Final recommendations

The court found the defendant guilty of committing the crime against the victim based on the facts set out in the indictment. However, because the defendant partially confessed, regretted her actions and they are now separated, the public prosecutor requested for the court to sentence the defendant to 30 days in prison, suspended for a year.

The public defender requested for the court to acquit the defendant from the charges because the defendant committed this crime in legitimate self-defence. The victim pushed the defendant onto a sofa and put his fingers in the defendant's mouth.

Decision

The court found that the defendant grabbed the victim's throat and took a piece of steel and struck the victim on the shoulder and caused an injury. These facts were proven based on the partial confession of the defendant and the confirmation of the victim including a photo in the case file.

Based on the facts that were proven, the court concluded this matter and ordered the defendant to pay a fine of US\$ 30 to be paid in daily instalments of \$ 0.50 for 60 days. The court also imposed an alternative penalty of 40 days in prison if the defendant does not pay this fine.

17. Crime of simple receipt of stolen goods

Case No. : 0074/16.ERATB
Composition of the court : Panel
Judges : Ana Paula Fonseca and Francisca Cabral and Eusébio
Xavier Victor
Prosecutor : Osorio de Deus
Defence : Sebastião Amado de Almeida
Decision : 1 year in prison, suspended for 1 year

On 25 January 2019 the Dili District Court announced its ruling in a case of simple receipt of stolen goods involving the defendant Basilio Bani Siga de Araújo and the victim Abrão Moniz Barreto that allegedly occurred in Ermera District.

Charges of the public prosecutor

The prosecutor alleged that on 18 October 2018 at 5am the victim went to check on his two buffalo that were tied up near his house. When he got to the place where his buffaloes were tethered the victim saw that they were no longer there. The victim went looking for his two buffaloes all the way to Batumanu Sub-Village and the victim found some footprints. The victim followed the footprints to the traditional market in Malabe Sub-Village, but the victim did not find his buffaloes. Then the victim met with his friend Francisco on the road. The victim asked Francisco about the two buffaloes and Francisco told the victim to seek information about these buffaloes in Lete-foho.

On 24 February 2016 the victim went looking for his buffaloes in Lete-foho and met a man named Xisto and the victim asked about the buffaloes. Mr. Xisto told the victim that a man named Basilio had sold two buffaloes to him three or four days before. The buffaloes were sold for US\$350 each, therefore the total was US\$700. Mr. Xisto took the victim to see the buffaloes he had purchased and the victim saw that they were indeed his buffaloes and the victim took his two buffaloes back.

The prosecutor alleged that the defendant violated Article 252. 1 (a) of the Penal Code on aggravated larceny, regarding moveable property belonging to another party which is of economic value, which carries a sentence of 2 – 8 years in prison.

Presentation of evidence

During the examination of evidence the defendant denied the charge that he stole the victim's two buffaloes. The defendant stated that he purchased the two buffaloes from two unknown persons who were taking the two buffaloes to be sold at the Malabe market in Letefoho. The defendant stated that he purchased these two buffaloes for US\$ 500 and the defendant sold them on to Mr. Xisto for US\$700 but Mr. Xisto had not yet handed over the money to the defendant. Suddenly the defendant was contacted by Mr. Xisto saying that the owner of the buffaloes had taken them back. The defendant added that he lost his US\$500 because he purchased the two buffaloes from some unknown people.

The victim stated that he went looking for these two buffaloes all the way to Letefoho and received information that the defendant had taken the victim's two buffaloes and sold them to Mr. Xisto. The victim stated that he recognised the buffaloes because they had ear tags and marks on their ears.

After the examination of evidence the charges were amended from the crime of aggravated larceny to Article 271 of the Penal Code on simple receipt of stolen goods because the prosecutor did not believe that the defendant had stolen the two buffaloes. In reality the defendant had purchased the buffaloes from unknown persons who had stolen them and sold them on to the defendant.

Decision

The court found that the defendant committed the crime of simple receipt of stolen goods because the defendant purchased the buffaloes cheaply and did not find out who was the real owner. The defendant should have been suspicious of the two unknown persons because they were selling the buffaloes very cheaply and not for the standard market price. Based on these considerations, and after carefully considering all of the circumstances, the court concluded this matter and sentenced the defendant to 1 year in prison, suspended for 1 year.

18. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 0094/17.LIBZT
Composition of the court	: Single Judge
Judge	: Ana Paula Fonseca
Prosecutor	: Bartolomeu de Araújo
Defence	: Manuel Sarmiento
Pena	: Prison sentence of 1 year and 4 months, suspended for 3 years

On 25 January 2018 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant IMdS who allegedly committed the offence against his wife in Liquica District.

Charges of the public prosecutor

The public prosecutor alleged that on 21 September 2017 at approximately 8pm the victim was angry at the defendant because he took their son to gamble on a roulette wheel. The victim and the defendant argued and the defendant became angry and grabbed the victim by her hair and punched the victim once on the back of her neck which caused the victim to strike her forehead on a wall and she suffered heavy bleeding. The defendant then pushed the victim to the ground and she suffered an injury and bleeding.

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, 35 (b) and Article 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial, the defendant used his right to remain silent. The victim confirmed all of the facts in the indictment and after this incident the defendant compensated the victim's family with US\$ 100 and a traditional cloth (*tais*) and the defendant has not hit the victim again.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime of domestic violence against his wife based on the victim's statement, photos from the hospital showing that the victim suffered swelling and an injury to her forehead. Previously the defendant was involved in a crime and received a suspended prison sentence. For this reason the public prosecutor requested for the court to sentence the defendant with an effective prison sentence of 8 months.

The public defender requested for the court to consider the circumstances surrounding this crime. However, the public defender objected to the application of an effective prison sentence, because this will impact on the defendant's job as a public servant. Also, the defendant did not commit this crime whilst serving his suspension. Therefore the public defender requested for the period of suspension to be extended.

Decision

After evaluating the facts that were proven during the trial, the court concluded the matter and sentenced the defendant to 1 year and four months in prison, suspended for 3 years. The court also ordered the defendant to periodically report to the court once a month for 1 year and ordered him to pay court costs of US\$ 40.

19. Crime of mistreatment of a spouse

Case No. : 0047/18. PCSIC

Composition of the court : Panel

Judges : Antonio Helder do Carmo, Albertinha Neves and Maria Solana

Prosecutor : Nelson de Carvalho
Defence : Miguel Fernandes (trainee lawyer)
Decision : Prison sentence of 2 years and 6 months, suspended for 2 years and 6 months

On 28 January 2019 the Dili District Court announced its decision in a case of mistreatment of a spouse involving the defendant GC who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 18 March 2018, when the defendant and the victim were returning from mass, the defendant showed the victim that his shoe was cracked and he said that he showed her so she would be aware of it. After the defendant showed his shoe to the victim, the defendant and the victim argued and the defendant slapped the victim once on her right cheek and caused pain.

Previously on 16 March 2018, at 5pm, the defendant took some money in order to buy some fish for resale but the defendant didn't actually buy any fish, and paid money that he owed to his friend. When the defendant returned home the victim asked about the money but the defendant said that he gave some money that he owed to his friend. Therefore, they argued and the defendant slapped the victim once on her left cheek and he went to kick the victim. The victim told the defendant "*You have no shame. So many people can see us arguing like this*". Therefore the defendant did not kick the victim.

Also on 14 March 2018, at 6:30am, the defendant returned from a wake and saw the victim sleeping. The defendant woke up the victim and told her that "*You still asleep at this time?*" The victim told the defendant that "*A member of your family died so you can go to the wake, but nobody from my family died so I was having a sleep*". After the defendant heard the victim's comments they argued and the defendant slapped the victim once on her right cheek and caused pain.

The public prosecutor also alleged that previously in 2012, 2015 and 2017 the defendant assaulted the victim in the same way and the cases from 2015 and 2017 were tried by the court.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on mistreatment of a spouse that carries a maximum penalty of 2-6 years in prison.

Presentation of evidence

The defendant completely confessed to the facts set out in the indictment of the prosecutor and stated that he hit the victim because every month the defendant gave all of the money he received

as a primary school teacher to the victim. But when there were household needs to be purchased the victim always said there was no money. The defendant added that if he returned home late, even though he had called to say that he was selling some fish, the victim always got angry and argued with the defendant. The defendant stated that after this incident they have been living separately and every month the defendant has been giving US\$200 to the victim for their children's needs.

In addition, the victim maintained and confirmed the facts set out in the indictment. The victim also confirmed the statement of the defendant that they are separated and every month the defendant gave US\$200 to the victim to pay for their children's needs.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime of mistreatment against the victim. Therefore even though the defendant and the victim are separated, in order to deter the defendant from repeating his actions in the future against the victim or another person, the public prosecutor requested for the court to impose a fair and appropriate sentence against the defendant.

The public defender stated that the defendant was guilty of committing the crime of maltreatment against the victim but the crime occurred because the victim provoked him. The public defender also stated that the defendant continued to show care for the victim because every month the defendant gave alimony for their children. Based on these considerations, as well as other mitigating circumstances, such as the defendant confessed the facts and regretted his actions, the public defender requested for the court to impose a lenient penalty on the defendant.

Decision

After evaluating all of the facts, the court found that on 14 March 2018, at 6:30 the defendant argued with the victim, and the defendant slapped the victim once on the right cheek which caused pain. The court also found that on 16 March 2018 the defendant argued with the victim and the defendant slapped the victim once on her left cheek. The court also found that on 18 March 2018 the defendant argued with the victim and the defendant slapped the victim once on her right cheek.

The court also found that in 2012, 2015 and 2017 the defendant physically assaulted the victim and the defendant committed this crime whilst serving a suspension. Based on the facts that were proven the court found the defendant guilty of the crime of maltreatment against the victim.

The court also considered all of the circumstances, especially the mitigating circumstances such as the defendant confessed, regretted his actions and the defendant also every month used his own initiative to give alimony for his children. Therefore, even though the defendant committed

this crime while on suspension, the court concluded the matter and sentenced the defendant to 2 years and six months in prison, suspended for the same amount of time, and ordered the defendant to pay court costs of US\$ 20.

The court did not revoke the suspended sentence in the previous case with the consideration that the defendant and victim are separated and the defendant used his own initiative to keep giving alimony for his children. If the court was to revoke a suspended sentence it would have implications on the wellbeing of the children because the defendant is providing for them.

20. Crime of simple offences against physical integrity characterized as domestic violence

Case No. : 0221/18 DICMR
Composition of the court : Single Judge
Judge : Fransisca Cabral Marques
Prosecutor : Bartolomeu de Araújo
Defence : Afonso Fatima Gomes
Decision : Fine of US\$ 45

On 28 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant NM who allegedly committed the offence against her husband in Dili District.

Charges of the public prosecutor

The prosecutor alleged that on 7 April 2018, at 8am, the victim was returning from his work in Ermera District and was talking to his cousin. When he was talking the victim said that the defendant was crazy. When the defendant heard the comments of the victim he took a bottle full of water and threw it at the victim's head and the defendant grabbed the victim by the throat. The defendant's actions caused the victim to suffer pain to her head and swelling and injury to her throat. The prosecutor also alleged that while they were living together the defendant constantly beat the victim but the victim never made a complaint.

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.

Presentation of evidence

During the trial the defendant confessed all of the facts set out in the indictment, the defendant also stated that she regretted her actions. The defendant also promised not to repeat her behaviour against the victim in the future. Also, the victim confirmed all of the facts set out in the indictment of the prosecutor and stated that after this incident they did not speak to each other for two weeks. The victim also stated that when the victim made a complaint to the police

about the defendant's actions she started to change her behaviour and didn't get angry all the time at the victim.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim, but because the defendant confessed, regretted her actions and has changed her behaviour, the public prosecutor requested for the court to issue an admonishment against the defendant.

The public defender also agreed with the recommendation of the prosecutor to issue an admonishment against the defendant based on the aforementioned considerations.

Decision

The court found the defendant guilty of committing the crime based on the facts set out in the indictment. The court found that these facts were proven based on the defendant's confession and the confirmation from the victim. Therefore, the court concluded this case and ordered the defendant to pay a fine of US\$ 45 through daily instalments of US\$ 0.50 for 90 days. If the defendant does not pay this fine then she will be sent to prison for 60 days as an alternative punishment.

21. Crime of simple offences against physical integrity characterized as domestic violence and the crime of threats

Case No.	: 0297/17.LIBZT
Composition of the court	: Single Judge
Judge	: Ana Paula Fonsica
Prosecutor	: Osorio de Deus
Defence	: Rui Manuel Guterres
Decision	: Effective prison sentence of 1 year ¹

On 28 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JMdC who allegedly committed the offence against his wife in Ermera District.

Charges of the public prosecutor

¹ JSMP: Dili District Court for the first time imposes an effective prison sentence against the defendant in a case of simple offences against physical integrity categorised as domestic violence: <http://jsmp.tl/wp-content/uploads/PrKazuVIolensaiDomestikaPenaEFetivatinanIDA.pdf>

The public prosecutor alleged that the defendant and the victim have been living together as husband and wife since Indonesian times and they have 14 children, but 5 of their children passed away. On 16 October 2017 at approximately 10pm the defendant went to play cards at a neighbour's house and returned home to ask the victim for money to gamble. However, the victim did not give money to the defendant, so the defendant got angry and took a smouldering stick and struck the victim once on the knee and the clothes that the victim was wearing caught on fire.

Then the defendant drank some coffee and spat it in the victim's face and the defendant took a machete and chased the victim so he could stab her, but the victim fled and hid in a neighbour's house. However, the defendant also went looking for her so he could stab the victim and the victim fled and hid at the home of her eldest daughter. The defendant went to the home of their eldest daughter and said *"You can hide your mother, but in a week she will be no more."*

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, 35 (b) and Article 36 of the Law Against Domestic Violence. The public prosecutor alleged that the defendant violated Article 157 of the Penal Code on making threats with that carries a maximum penalty of 1 year in prison or a fine.

Presentation of evidence

During the trial the defendant denied all of the facts in the indictment. The defendant stated that he went to play cards at a neighbour's house, but he was not drunk and did not hit the victim with a smouldering stick, and did not drink coffee to spit it at the victim, and did not threaten the victim. The defendant also did not know why the victim left the home and went to stay at Fokupers, and he only heard this from the sub-village chief who said that their eldest daughter had made a complaint to the sub-village chief and the police.

The victim stated that the defendant went to play cards at a neighbour's house, and when he came home he was drunk and asked for money to play cards but the victim did not give him any money because she did not have any. Therefore the defendant took a smouldering stick and struck the victim twice on the knees, and as a result the victim's clothing caught on fire. The defendant also drank coffee and spat the coffee in the face of the victim. The victim was scared and fled to a neighbour's house because the defendant took a machete and chased the victim and was going to stab her.

The witness JMB, who is their eldest daughter, stated that as their daughter she felt upset to see the actions of the defendant who always hit the victim in front of the children when he was drunk. The witness also testified that sometimes the victim did not sleep in the house because she was afraid.

Final recommendations

The public prosecutor said that actually the defendant should have been charged with the crime of mistreatment of a spouse because the defendant mistreated the victim because he drank coffee and spat it in the victim's face. The victim also stated that while they were living together the defendant always assaulted the victim if he came home drunk, and hit the victim in front of the children. During the examination of evidence the defendant denied all of the charges, however the public prosecutor requested for the court to impose a prison sentence of 3 years, suspended for 4 years.

The public defender requested for the court to impose a lenient penalty against the defendant, because the defendant rejected all of the facts alleged against him, and only the victim and the witness, who was their eldest daughter, testified to the court about what was outlined in the indictment.

Decision

After evaluating the facts that were proven during the trial, the court gave more weight to the victim and the witness, who was their eldest daughter, as they testified and confirmed that the defendant constantly hit the victim. After this incident the victim wanted to separate from the defendant. Therefore the court concluded this matter and sentenced the defendant to an effective prison term of 1 year.

22. Crime of aggravated larceny

Case No.	: 0138/16.PDDIL
Composition of the court	: Panel
Judges	: Zulmira Auxiliadora Barros da Silva, Eusébio Xavier and Ana Paula Fonseca
Prosecutor	: Bartolomeu de Araújo
Defence	: Afonso Gomes
Decision	: 4 years in prison

On 29 January 2019 the Dili District Court conducted a hearing to announce its decision in a case of aggravated larceny involving the defendant Faustino da Costa who allegedly committed the offence against the victim Jacinta Ximenes in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 4 December 2014 the victim was riding a Mio motorcycle with the number plate F 0872 TLS to his work place (NGO ba futuro) in Comoro, Dili. When he arrived at his work place the victim stopped his motorcycle in the parking area and went in to conduct his normal activities. At lunch time when the victim came out he saw that his

motorcycle was not in the parking area. Therefore the witness made a complaint to the police. Then the police managed to locate the offender and arrested him and told the victim that a person named Faustino had stolen the motorcycle and sold it to another person for US\$800. The prosecutor also alleged that the defendant Faustino was in prison for a similar case, namely aggravated larceny and the court had imposed a prison sentence of five years.

The defendant committed this act consciously, freely, deliberately and knowing that he was taking someone else's goods, without the knowledge of the owner, as a way of benefitting himself and causing a loss to the other person. Based on the aforementioned facts and circumstances, the defendant Faustino da Costa committed the crime of aggravated larceny pursuant to Article 252.1(b) of the Penal Code.

Presentation of evidence

During the trial the defendant confessed to his actions and stated that he saw the victim park his motorcycle. The defendant acknowledged that he had the intention of taking this motorcycle when the victim went into the building and the defendant approached the motorcycle and removed its starter button and started up the motorcycle and took it to Baucau. The defendant acknowledged that he sold the motorcycle to Domingos da Luz Freitas for US\$800 (even though previously the defendant said that he sold it for just US\$300).

The public prosecutor did not require testimony from the victim because the defendant completely confessed to the facts set out in the indictment.

The witness Domingos da Luz Freitas, who purchased the motorcycle from the defendant, stated that the defendant's brother in law called the witness and told him that if he wanted to buy a motorcycle he should come over because there was a motorcycle for sale. The witness went to the home of the defendants based on the instructions given by the defendant's brother in law. When he got there the defendant showed the registration papers to the witness but the witness noticed that the registration papers were not in the defendant's name. The witness asked the defendant's brother in law about the name on the registration papers and the defendant said that it was his older sister and the defendant also told the witness that he purchased the motorcycle from his older sister for US\$800. At that time the witness gave US\$550 to the defendant and US\$250 to the older sister of the defendant whose name he did not know.

Final recommendations

The defendant confessed to all of the facts, so the public prosecutor stated that the defendant was guilty of committing the crime of aggravated larceny, even though previously the defendant denied that he sold the motorcycle for US\$800. Therefore to get the defendant to change his behaviour the prosecutor requested for the court to impose a prison sentence of five years against the defendant. The public prosecutor told the court that now the defendant is in prison serving a

sentence for a previous case of aggravated larceny that had resulted in a five year prison sentence. The defence requested for the court to impose a lenient penalty on the defendant because the defendant confessed his actions.

Decision

After evaluating all of the facts, the court found that the defendant had stolen the victim's motorcycle and sold it to another person. Based on the facts that were proven, the court concluded this matter and sentenced the defendant to 4 years in prison.

23. Crime of larceny and property damage

Case No. : 0357/15.PDDIL
Composition of the court : Single Judge
Judge : Fransisca Cabral Marques
Prosecutor : Hipolito Santa
Defence : Manuel Sarmento
Decision : Acquittal

On 30 January 2019 the Dili District Court conducted a hearing to announce its decision in a case of larceny and property damage involving the defendant João Rosario Ximenes met Filomena Barbosa, his former wife, in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 23 October 2015, at 12pm, when the victim left the home to go to the Comoro Waterfall, the defendant took advantage because the house was empty and broke the door to enter the home. The defendant took the victim's goods from inside the house such as a refrigerator valued at US\$250, a spring bed mattress valued at US\$ 240, a fan valued US\$50, frypans, plates valued at US\$50. The total value of the goods was US\$590. The defendant took these goods to the defendant's house in Taibesi. The defendant and the victim previously were married and were living together in this house but now they are separated.

The defendant acted freely and consciously, because he intended to break down the door and enter the house without permission and take the goods and this is a crime.

The prosecutor alleged that the defendant committed this crime pursuant to Article 258 of the PC on property damage which carries a maximum sentence of 3 years in prison or a fine and Article 251 of the PC on larceny which carries a maximum sentence of 3 years or a fine.

Presentation of evidence

The defendant denied all of the allegations and said he never took the goods from the victim's home. Also, the defendant stated that even though the goods that the victim was using had been

purchased by the defendant, he was not concerned because he considered that it was like a gambling loss. Therefore, the defendant was surprised when the police arrested him and told him that he had stolen the victim's goods from the house. The defendant added that the victim had not wanted to live with the defendant from 2015 onwards.

The victim confirmed the facts set out in the indictment and stated that before the defendant took the goods he rang the victim at 12pm when the victim was at the Comoro Waterfall and told the victim “*While you are out looking for men I will get the stuff and sell it*”. The victim also said she had purchased these goods after she had obtained money from selling things at the Taibesi Market.

The victim added that recently she got together with the defendant because the defendant lied by saying that he was unmarried. However, the victim found out that the defendant had a wife and five children. Therefore, the victim felt bad and decided to leave the defendant. The victim also said that while they were living together the defendant always assaulted her but she never made a complaint.

Final recommendations

The public prosecutor argued that even though the defendant denied the facts set out in the indictment, based on the victim's statement the defendant rang the victim and said he would take the goods from the victim's house and sell them. Therefore when the victim returned from the Comoro Waterfall the victim saw that the door was broken and the goods mentioned in the indictment were all missing. Therefore, the prosecutor requested for the court to decide this matter in accordance with the law.

The public defender requested for the court to acquit the defendant from the charges of the prosecutor because there was insufficient proof that the defendant committed these crimes.

Decision

After evaluating all the facts the court had some doubt because there was no way to establish the value of the objects and the victim did not witness the incident and nobody witnessed the defendant taking the goods. Therefore the court acquitted the defendant from the charges of the public prosecutor.

24. Crime of simple offences against physical integrity characterized as domestic violence

Case No. : 0340/18.PDDIL
Composition of the court : Single Judge
Judge : Maria Solana da Conceição Fernandes
Prosecutor : Nelson de Carvalho
Defence : Marçia Sarmento

Decision : 1 year in prison, suspended for 1 year

On 31 January 2019 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant ML who allegedly committed the offence against his wife in Dili District.

Charges of the public prosecutor

The public prosecutor alleged that on 19 September 2018 at approximately 11.30pm the victim was asleep in the bedroom and suddenly the defendant came in without saying anything and the defendant punched the victim twice on her left side and the victim was shocked and ran out in to the guest room. Then the defendant followed the victim into the guest room and dragged her into the bedroom because he was afraid that the victim would run outside. When she saw the defendant's reaction the victim went back into the bedroom to pack some clothes in a bag. Not long after the defendant also followed the victim into the bedroom and slapped the victim again on her left cheek, and then the victim went outside, and the defendant followed the victim outside and grabbed her arm and twisted it behind her back and kicked the victim once on her right side. At that time the victim tried to get away from the defendant and the victim went to stay at the home of the defendant's eldest brother AL which is not far from their house.

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, 35 (b) and Article 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant denied some of the facts in the indictment and stated that he only punched the victim once on her left side. The defendant said it was not true that he slapped the victim's cheek or twisted her arms behind her back, or kicked the victim on her right side. The victim fled to the home of the defendant's eldest brother, and stayed there for three days. Then the defendant asked the victim and their children to come home. The victim went home and one day later the victim and their two children left the house in Atauru and went to Dili. The defendant stated that he hit the victim because previously the victim was going to burn the defendant's Secondary School Certificate.

The victim confirmed all of the facts in the indictment, and also confirmed the defendant's statement that after three days the defendant asked her and the children to return home. After just one day the victim and their two children left the home in Atauru and went to Dili. When the victim arrived in Dili she went with her brother to make a complaint to Fokupers. The victim also stated that for two months she stayed in a Fokupers shelter. Even though they have separated the victim has forgiven the defendant.

The court had doubts about the testimony of the defendant and the victim regarding the allegation that the defendant kicked the victim on her left side, slapped her cheek, twisted her arms, kicked her on her right side so the court cross-examined the defendant and the victim.

During this cross-examination, the defendant said that he couldn't comment on these allegations because at that time he returned home drunk. Maybe it was true because the victim was sober.

Final recommendations

The public prosecutor found the defendant guilty of committing the crime in accordance with the charges. Even though previously the defendant denied some of the facts, after the court cross-examined the defendant he admitted that he did not know if he committed the assault because he returned home drunk. The defendant expressed regret, and was a first time offender. However, the public prosecutor stated that as a husband, the defendant is supposed to protect his wife. They have two children and after this problem they have been living separately. The victim went to stay with her parents in Baucau with their two daughters. Therefore to deter the defendant from committing such acts in the future, the prosecutor requested for the court to impose a suspended prison sentence against the defendant.

The public defender stated that the defendant regretted his actions and promised that in the future he would not commit any crimes against the victim. Therefore the public defender requested for the court to impose a fair and appropriate penalty against the defendant.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment and the results of the cross-examination. The court concluded this matter and sentenced the defendant to 1 year in prison, suspended for 1 year.

To obtain more information, please contact:

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