



CASE SUMMARY | GENDER BASED VIOLENCE

July 2013

In July 2013 the Women's Justice Unit (WJU) conducted further monitoring of cases involving gender based violence in three jurisdictions, namely the Dili, Baucau and Suai district courts.

In relation to this monitoring period JSMP observed 22 cases. 8 cases were tried at the Dili District Court, 6 cases at the Suai District Court and the other 8 cases at the Baucau District Court.

From these 22 cases, 13 involved simple offences against physical integrity characterized as domestic violence, 2 cases of rape, 2 cases of aggravated rape, 2 cases of sexual abuse of a minor, 1 case of sexual assault, 1 case of attempted rape and 1 case of maltreatment against a spouse.

In most of these cases prison sentences were handed down, however they were suspended sentences, except in 2 cases of incest where the two courts court handed down a prison sentence of 16 and 18 years respectively. In several cases fines and admonishments were handed down. Nevertheless, in two cases involving the sexual abuse of a minor the defendants were acquitted because of a lack of evidence.

JSMP agrees that the court can only imprison a person if the elements of a crime have been proven in accordance with the law and the discretion of the judge. However, JSMP also encourages the courts to use more sensitive approaches to handling cases involving minors, so that the minors feel comfortable and safe based on their age and capacity in order to be involved in, and to understand the processes taking place.

JSMP observed a case of sexual abuse against a minor registered as Case No. 178//2012/TDDIL at the Dili District Court, whereby it appeared that the court did not display a sufficient degree of care to use the available mechanisms to obtain evidence in the aforementioned case. In the aforementioned case the court applied the 'confrontation' or 'cross-examination' approach regarding the testimony of the underage victim and the defendant who was the biological father of the victim. JSMP believes that this approach and technique did not ensure that the victim was secure and comfortable, specifically relating to the age and the psychological capacity of the child to enable the child to avoid feeling under pressure when speaking before the court.

JSMP hopes that in the future the court will be more sensitive in handling similar circumstances so that victims who are minors feel safer when testifying before the court.

The following information summarizes each of the cases tried by the courts:

1. Crime of simple offence against physical integrity, characterized as Domestic Violence, Case No. 153/Crm.S/2013TDB

Judge : Jose Gonçalves
Public Prosecutor : Pascasio de Rosa Alves
Public defender : Rui Manuel Guterres
Conclusion : Defendant sentenced to 6 months imprisonment, suspended for 1 year

On 10 July 2013 the Baucau District Court conducted a hearing to read out its decision in a case involving simple offences against physical integrity characterized as domestic violence. In this matter the court sentenced the defendant to 6 months imprisonment; however the sentence was suspended for 1 year.

The public prosecutor alleged that on 17 June 2010, at approximately 12.00 in Wailili, Baucau, the defendant FIM grabbed the victim MFF by the arm and then slapped the victim twice in the vicinity of her right eye and kicked the victim in the back causing her to fall to the ground.

This case allegedly occurred because after washing some clothes the victim did not hang them out to dry and the victim just left to go to the home of her parents in law. This made the defendant angry and he took two pairs of pants that were hanging on the line and threw the clothes into the garden.

When the victim came home and saw the clothing that she had washed lying in the garden she asked who had thrown the clothes there and the defendant became angry and hit the victim. The aforementioned actions injured the victim's toes and hand when she fell on the ground.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial, the defendant admitted all of the facts set out in the indictment however he stated that he regretted his actions and that they have reconciled and now they are living together.

Pursuant to these facts the court decided to hand down a sentence of 6 months imprisonment to be suspended for 1 year.

2. Crime of maltreatment against a spouse - Case No. 54/Crm/2013/TDB

Judges : Afonso Carmona, Jose Gonsalves and Angela Faria
Belo (international)
Public Prosecutor : Pascasio de Rosa Alves
Public Defender : Rui Manuel Guterres
Conclusion : Defendant sentenced to 2 years, 6 months' imprisonment, suspended for 3 years, and ordered to pay court costs of \$ 30.

On 9 July 2013 the Baucau District Court conducted a hearing in a case of maltreatment against a spouse involving the defendant JS and the victim SRX, in Beasu, Viqueque.

The public prosecutor alleged that on 5 July 2012 the defendant took the victim to attend a SISCA program to receive treatment. After the treatment the defendant asked the victim to travel with him on his motorcycle so they could return to their home in Rai Mean. However the victim did not want to go because she still felt dizzy. Therefore the defendant picked up the victim and forced her to get on the back of the motorcycle. The victim fell from the motorcycle and then he slapped the victim twice on her right cheek and twisted the victim's arm.

These acts injured the victim's arm and she was treated at the Baucau hospital. After the incident the defendant and the victim reconciled and were living together as husband and wife. Approximately four months later on 19 October 2012 the defendant and the victim argued again and the defendant hit the victim in the face causing her to suffer bleeding from her eye.

During the trial the defendant stated that all of the facts alleged against him were true.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to four years imprisonment.

On the other hand the public defender requested for the court to reduce the sentence recommended by the public prosecutor because during proceedings the defendant cooperated and he is the sole breadwinner of the family.

After examining the facts and hearing the final recommendations of the public prosecutor and the public defender, the court concluded this case and sentenced the defendant to 2 years 6 months imprisonment, however it was suspended for 3 years, and he was ordered to pay court costs of \$30.

3. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No. 73/Crm.S/2013/TDB

Judge	: Afonso Carmona
Public Prosecutor	: Pascasio de Rosa Alves
Public Defender	: Rui Manuel Guterres
Conclusion	: 6 months imprisonment, suspended for 1 year and ordered to pay court costs of \$ 20.

On 10 July 2013 the Baucau District Court conducted a hearing in a case involving simple offences against physical integrity characterized as domestic violence. This case involved the defendant JG who allegedly committed the offence against his wife CC on 7 September 2012 in Viqueque District.

The public prosecutor alleged that on 7 September 2012 at 10 am the victim asked the defendant to go to Ratahu Sub-Village. However the defendant did not want to go and the victim took two

children to go to Ratahu. At that time the defendant followed her from behind and caught up with them at the river. The defendant punched the victim twice on the shoulder and kicked her twice on the side and grabbed her hair and threw her to the ground. The victim was afraid and ran home but the defendant followed her and continued to kick and punch her.

These acts caused the victim to suffer a black eye and bruising and pain all over her body.

The public prosecutor charged the defendant with violating Article 145 of the Penal Code on simple offences against physical integrity as well as Article 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts charged by the public prosecutor and the defendant regretted his actions and stated that he would not repeat such acts in the future against his spouse or against any person. After hearing the testimony of the defendant, the court then proceeded to hear the final recommendations.

In his final recommendations the public prosecutor requested for the court to punish the defendant with a fine of US\$ 90. This recommendation was made based on the income of the defendant who has a monthly income of between US\$ 15 and US\$ 20.

The public defender requested for the court to apply a lenient sentence against the defendant with consideration to the mitigating circumstances established during the trial.

Based on the aforementioned evidence the court concluded this case and sentenced the defendant to 6 months imprisonment, however it was suspended for 1 year and he was ordered to pay court costs of \$ 20.

4. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No. 76/Crm.S/2013/TDB

Judge	: Afonso Carmona
Public Prosecutor	: Pascasio de Rosa Alves
Public Defender	: Rui Manuel Guterres
Conclusion	: 6 months imprisonment, suspended for 1 year

On 10 July 2013 the Baucau District Court conducted a hearing in a case involving a simple offence against physical integrity characterized as domestic violence. This case involved the defendant KHN who allegedly committed the offence against his spouse EA on 4 July 2012 in Viqueque District.

The public prosecutor alleged that on 4 July 2012 the defendant saw the victim hitting their children so the defendant snatched the piece of wood that was being used by the victim to hit their children and hit the victim on her body until the piece of wood broke. The defendant also pushed the victim over, stomped on her foot and twisted her arm.

These acts caused the victim to suffer a bruised arm, pain on her side and leg.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts charged by the public prosecutor against the defendant, regretted his actions, and stated that they have reconciled and he will not reoffend against his wife or against another person.

Because the defendant admitted all of the facts, the court proceeded to hear the final recommendations from the public prosecutor.

In his final recommendations the public prosecutor requested for the defendant to be sentenced to 3 months jail, to be suspended for 1 year. This recommendation was based on the facts revealed during the trial, with consideration to the fact that the defendant had cooperated with the court and that his economic circumstances were very unfavorable.

The public defender requested for the court to apply a lenient sentence because the defendant had cooperated with the court and asked the court to consider the mitigating factors discovered during the trial.

After hearing the final recommendations from the parties, the court concluded the matter and sentenced the defendant to 6 months imprisonment to be suspended for 1 year.

5. Crime of simple offence against physical integrity, characterized as Domestic Violence.

Case No. 207/Crm.S/2012/TDB

Judge	: Jose Gonçalves
Public Prosecutor	: Baltazar Ramos
Public Defender	: Rui Manuel Guterres
Conclusion	: Defendant sentenced to 5 months imprisonment, suspended for 1 year

On 10 July 2013 the Baucau District Court conducted a hearing in a case involving a simple offence against physical integrity characterized as domestic violence. This case involved the defendant FR and the victim FFR (his niece). This case allegedly occurred on 18 July in Venilale Sub-District, Baucau District.

The public prosecutor alleged that on 18 July 2012 the defendant heard a conversation between the victim and her friend in the home. At that time the defendant heard the victim's friend ask if he could touch her body.

Then the victim went to the spring to fetch some water. The defendant followed her and asked why her friend had asked to touch her body.

After asking that question the defendant then punched the victim in the nose causing it to bleed then he kicked the victim twice in the knees and dragged her to the ground and as a result the victim hurt her knee.

These actions caused the victim to suffer injuries to her mouth, a blood nose and she was treated at the Baucau hospital for 2 months.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts charged by the public prosecutor against him, regretted his action and also stated that he is responsible for his niece and what he did was the result of him not feeling happy with his niece's behavior.

Based on these mitigating circumstances the court decided to sentence the defendant to 5 month's jail, suspended for 1 year.

6. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No. 142/2013/TDD.

Judge	: Edite Palmira dos Reis
Public Prosecutor	: Mateus Nessi, replacing Oscar Silva Tavares
Public Defende	: Leonídio Marques
Conclusion	: Ordered to pay a fine of \$100 and court costs of U\$ 10.

On 8 July 2013 the Dili District Court concluded a trial involving a case of domestic violence and ordered the defendant RG to pay a fine for committing the offence against his spouse AE. This case allegedly occurred on 1 May 2013 in Cristo Rei Sub-District, Dili District.

The public prosecutor alleged that on 1 May 2013, at approximately 8.30 pm, the defendant hit the victim twice on the forehead and chest, choked the victim and caused the victim to suffer pain in her chest.

This case allegedly occurred because the defendant accepted calls from someone else and turned off the phone when he saw the victim. The victim asked the defendant about the phone calls but the defendant was quiet and didn't provide any clarification. Therefore, the victim grabbed the defendant's jumper and the defendant pushed the victim into the house and committed violence against the victim. The public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding simple offences against physical integrity as well as Article 35 (b) of the Law Against Domestic Violence.

During the trial the defendant only confirmed some of the facts alleged against him and denied the rest. However the defendant did not clarify to the court which facts were true and which were not. Because there was uncertainty about these facts, the court sought further clarification from the victim.

The victim explained that all of the facts were true. The victim also stated that the defendant did not stay at the house for more than a month. When asked about this, the defendant stated that he worked in the district.

In his final recommendations the public prosecutor requested for the court to sentence the defendant with a fine. The public defender requested for the court to acquit the defendant because the defendant had stated that he did not commit any violence against the victim. Therefore, a fine would not be relevant in this case.

After the court examined the facts revealed during the trial, the court decided to sentence the defendant to a fine of \$100 and to be paid at a rate of U\$ 1 each day, including court costs of US\$ 10.

**7. Crime of simple offences against physical integrity, characterized as Domestic Violence.
Case No. 156/2013/TDD**

Judge : Jacinta Correia da Costa
Public Prosecutor : Nelson Carvalho
Public Defenders : JuvinalYanes Freitas and Leonidio Marques
Conclusion : 6 months imprisonment, suspended for 2 years

On 29 July 2013 the Dili District Court concluded a case involving simple offences against physical integrity characterized as domestic violence and sentenced the defendant to 6 months imprisonment, suspended for 2 years. This case involved the defendant SFE who allegedly committed the offence against his spouse NB in Ermera District.

The public prosecutor alleged that on 25 May 2011 at 10 am the defendant hit the victim twice on her left cheek and kicked her once on her back causing her to fall to the ground. These actions caused the victim to suffer bleeding to her left ear. This case allegedly occurred because the defendant requested money from the victim to buy cigarettes but there was no money.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 (b) of the Law Against Domestic Violence.

During the trial the defendant admitted and confirmed all of the facts set out in the charges. The victim also testified to the court that after the incident they were separated for one month. However they were able to settle the matter in accordance with customary procedures on 21 January 2012. In this process the defendant apologized and gave a piece of traditional cloth (*tais*) to the victim and promised not to reoffend in the future.

In his final recommendations the public prosecutor requested for the court to apply a suspended sentence against the defendant with the consideration that the defendant and the victim have reconciled and were living together again.

The public defender requested for the court to impose a punishment that does not prejudice the freedom of the defendant.

Based on these facts the court concluded the matter and sentenced the defendant to 6 months imprisonment, suspended for 2 years.

8. Crime of simple offence against physical integrity, characterized as Domestic Violence, Case No. 176/2013/TDD

Judges : Edite Palmira dos Reis and Paulo Duarte Texeira (international).
Public Prosecutor : Nelson Carvalho
Public Defender : Olga Barreto Nunes
Conclusion : Settlement validated

On 17 July 2013 the Dili District Court conducted a hearing in a case of domestic violence committed by the defendant MM against his spouse LM in Fatubolu Village, Ermera District.

The public prosecutor alleged that on 13 May 2010 at approximately 12am the defendant choked the victim, hit her once on the cheek and kicked her in the stomach, pulled her hair and threw her to the ground.

This incident occurred because the father in law of the defendant expelled them from the house, then the next morning after he returned from the market the defendant and his child left first and the victim followed them and caught up with them at the river and they had an argument.

The public prosecutor charged the defendant for violating Article 154 of the Penal Code regarding maltreatment against a spouse. However the court believes that this case allegedly occurred before the Law Against Domestic Violence came into force, so that the panel of judges changed the charge to Article 145 of the Penal Code regarding simple offences against physical integrity.

During the trial, the defendant testified that some facts that were correct and some facts were incorrect. In particular the defendant denied that he had choked the victim. However on the other hand the victim maintained her statement and stressed that the facts laid out in the prosecutor's indictment were true.

In his final recommendations the public prosecutor considered the fact that the parties have reconciled and that the victim wanted to withdraw her complain so they requested for the court to validate their settlement. The public defender requested for the court to acquit the defendant.

After the court heard from the public prosecutor and the public defender, the panel of judges decided to validate the settlement in this case and acquit the defendant from all charges.

9. Crime of simple offence against physical integrity, characterized as Domestic Violence, Case No. 0424/2012/TDD

Judge : Jose Maria de Araujo
Public Prosecutor : Vicente Brites
Public Defender : Fernando da Conceição
Conclusion : 6 months imprisonment, suspended for 1 year

On 9 July 2013 the Dili District Court concluded a case involving simple offences against physical integrity characterized as domestic violence and sentenced the defendant to 6 months imprisonment, suspended for 1 year. This case involved the defendant MX who allegedly committed the offence against his spouse AdS in Dili District.

The public prosecutor alleged that in 2012 the defendant hit the victim in the head and chased her and threatened her with a hammer.

This case allegedly occurred because the defendant sold their dog and the victim did not agree and argued with the defendant.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 (b) of the Law Against Domestic Violence.

During the trial the defendant admitted to the court that the facts set out in the prosecutor's indictment were true. The defendant regretted his actions and promised not to reoffend in the future.

Considering that the defendant admitted the facts as charged and expressed remorse, the court suggested to the public prosecutor that it was not necessary to hear the testimony of the victim, however the public prosecutor argued that this case allegedly occurred in the domestic sphere so therefore it was necessary to clarify to the victim about the procedure and the character of the crime. During the investigation before the public prosecutor, the victim asked to withdraw her complaint and this was noted in the victim's interview record.

In his final recommendations the public prosecutor requested for the court to hand down an admonishment against the defendant. The public defender asked the court to hand down a fair punishment against the defendant.

Based on the evaluation of the facts during the trial the court then sentenced the defendant to 6 months imprisonment, suspended for 1 year.

10. Crime of rape, Case No. 630/2012/TDD

Judge	: Jose Maria de Araújo (representing a panel of judges)
Public Prosecutor	: Ivonia Maria Guterres
Public Defender	: Laura Valente Lay
Conclusion	: Sentenced to 16 years imprisonment.

On 22 July 2013, the Dili District Court sentenced the defendant to 16 years imprisonment for committing the crime of aggravated rape against his step daughter. This case involved rape characterized as incest because it involved a family member. Incest is the crime of rape involving a family member whereby a person has authority in the family and the victim is reliant on that person. This crime is also characterized as domestic violence because the defendant was the step-father of the victim and they were living together.

The public prosecutor alleged that the defendant committed rape against the victim on two occasions. First on 13 September 2011 and secondly on 14 December 2011, and as a result the victim became pregnant.

The public prosecutor charged the defendant with violating Article 178 of the Penal Code regarding sexual abuse of a minor, however the court amended Article 172 to Article 173 (d) of the Penal Code on aggravated rape as well as Article 35 (b) of the Law Against Domestic Violence.

The defendant admitted to the court that all of the charges were true and the victim testified that all of the facts were true*.

11. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No. 60/2013/TDB

Judge : José Gonçalves
Public Prosecutor : Baltazar Ramos
Public Defender : Rui Manuel Guterres
Conclusion : Ordered to pay a fine of US\$ 45

On 31 July 2013 the Baucau District Court read out its decision in a case involving the crime of domestic violence. This case involved the defendant MdC who allegedly committed the offence against the victim JS in Baucau District.

The public prosecutor alleged that on 29 November 2011, at approximately 7.00, the defendant hit the victim on her back and hit her twice in the left eye and pushed her to the ground. This incident occurred because the victim went to her grandmother's house without the knowledge of the defendant.

The court considered that the facts set out in the indictment were proven in accordance with Article 145 of the Penal Code regarding simple offences against physical integrity as well as Article 35 (b) of the Law Against Domestic Violence.

Therefore, the court concluded the matter and ordered the defendant to pay a fine of \$45 to be paid at a rate of 50 cents per day for 90 days. If the defendant does not pay the fine then he will be sent to prison for 60 days.

12. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No. 57/2012/TDB

Judge : José Gonçalves
Public Prosecutor : Baltazar Ramos

* Please refer to the stance of JSMP in its press release issued 25 Juli 2013 entitled: "Court hands down sentence of 16 years imprisonment against defendnat in case of incest", JSMP webiste: www.jsmp.tl

Public defender : Rui Manuel Guterres
Conclusion : Defendant sentenced to 3 months imprisonment, suspended for 1 year

On 31 July 2013 the Baucau District Court conducted a hearing in a case involving simple offences against physical integrity characterized as domestic violence and sentenced the defendant to 3 months jail, suspended for 1 year. This case involved the defendant MS who allegedly committed the offence against the victim AF (his spouse) in Viqueque District.

The public prosecutor alleged that in 2011 the victim left home for five months because the defendant smashed all of the chairs in the home. When the victim returned to their home the defendant hit the victim in the back, slapped and pushed her over.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding simple offences against physical integrity.

After examining the facts revealed during the trial the court was convinced that the defendant had committed the crime of simple offences against physical integrity as charged against him.

Based on the aforementioned facts, the court handed down a sentence of 3 months imprisonment that was suspended for 1 year.

13. Crime of simple offence against physical integrity, characterized as Domestic Violence, Case No. 24/2012/TDB

Judge : José Gonçalves
Public Prosecutor : Baltazar Ramos
Public Defender : Rui Manuel Guterres
Conclusion : Defendant sentenced to 3 months imprisonment, suspended for 1 year.

On 31 July 2013 the Baucau District Court conducted a hearing in a case involving simple offences against physical integrity characterized as domestic violence. This case involved the defendant CdS who allegedly committed the crime against his spouse AV. During the hearing the court concluded the matter and sentenced the defendant to 3 months imprisonment, however the sentence was suspended for 1 year. This case allegedly occurred on 30 November 2011 in Lospalos District.

The public prosecutor alleged that on 30 November 2011 the defendant argued with the victim and the defendant slapped, punched and kicked the victim once. As a result the victim suffered pain and bruising to her arm. The incident occurred because the defendant suspected the victim of having a relationship with another man.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding simple offences against physical integrity.

After examining the facts revealed during the trial the court was convinced that the defendant had committed the crime of simple offences against physical integrity as charged against him.

Based on the aforementioned facts, the court handed down a sentence of 3 months imprisonment that was suspended for 1 year.

14. Crime of aggravated rape, Case No. 97/2013/TDB

Judges : Angela B. Virgilio, Afonso Carmona and José Gonçalves
Public Prosecutor : Baltazar Ramos
Public defender : Gregório de Lima
Conclusion : Sentenced to 18 years imprisonment.

On 31 July 2013 the Baucau District Court handed down a sentence of 18 years imprisonment against the defendant for committing the crime of aggravated rape against his daughter.

The court was convinced that the defendant committed rape against the victim on two occasions, namely on 28 November 2012 and 26 December 2012. This crime is characterized as incest and domestic violence because the defendant was the father of the victim.

The public prosecutor charged the defendant for violating Article 172 of the Penal Code on rape as well as Article 173 (a) of the Penal Code on aggravated rape.

During the trial the defendant admitted to the court that all of the charges were true and the victim also stated that the facts were true.

After examining the facts relating to this case the court concluded the matter and sentenced the defendant to 18 years imprisonment[†].

15. Crime of sexual abuse of a minor, Case No. Case No. 352/2012/TDD

Judge : José Maria de Araujo
Public Prosecutor : Mateus Nessi
Public Defende : Lino Lopes (private lawyer)
Conclusion : Sentenced to 9 years imprisonment

On 25 July 2013 the Dili District Court conducted a hearing in a case involving the sexual abuse of a minor committed by the defendant MM against his female student SdC. This case allegedly occurred di Dili District.

[†]Please refer to JSMP Press Release 7 Augustus 2013 in relation to this case to see the stance of JSMP on its website: www.jsmp.tl

The public prosecutor charged the defendant with committing sexual violence against the victim who was aged 13. The indictment stated in 2012 that the defendant summoned the victim and her older brother to the river to look for mystical objects. After the defendant and the victim climbed the mountain the defendant grabbed the victim's breast removed her clothing with force and had sexual intercourse. His actions caused the victim to suffer injury to her sexual organs.

The public prosecutor charged the defendant for violating Article 177 of the Penal Code regarding the sexual abuse of a minor; however the court changed the charge to Article 182.1 of the Penal Code regarding aggravation.

After examining the facts and all of the circumstances the court concluded the matter and sentenced the defendant to 9 years imprisonment.

16. Crime of rape, Case No. 114/PEN/2013/TDS

Judges : Costansio Baros Basmery, Pedro Raposo de Fiquieredo (international),
Florença Freitas.
Public prosecutors : Felisminio Cardoso and Benvinda da Costa Rosario
Public Defenders : Marçal Mascarinas and João Henrique (public defender)
Conclusion : Adjourned to hear the final decision on 6 August 2013

On 24 July 2013 the Suai District Court conducted a mobile court and tried a case involving rape. This case involved the defendant AN and the victim RdR (deceased) from Soru-kraik, Ainaro District.

The public prosecutor alleged that in 2007 the defendant called the victim into the room and threatened her with a knife and laid the victim on the bed and committed sexual violence and caused the victim to suffer a lot of bleeding.

After the incident the victim was afraid and told the defendant that she wanted to return home to her parents house in Soru-kraik Ainaro. When she returned home the victim told her family and the community leader. The defendant was a leading member of "KALUR" (Clandestine Movement for Freedom). This group was established to motivate young people to attend training in Osnako-Mandelu.

As a result of his actions the public prosecutor charged the defendant with violating Article 172 of the Penal Code on rape.

During the trial the defendant denied all of the facts contained in the public prosecutor's indictment and stated that the charges were not true. The defendant only confirmed that it was true that he organized for young people, including the victim, to go to Osnako.

The parents of the victim testified that the victim returned from Osnako-Mandelu and told them that the defendant had raped her. Therefore, the family and local community leaders summoned the defendant from Osnako to settle the matter, but the defendant did not want to cooperate. After that the family and Sub-Village Chief handed the matter over to the police.

The local community leader testified that he received information about the incident from the victim and her parents when they made a complaint. A PNTL member who appeared as a witness testified that he found out about the incident after the victim and her family made a complaint.

The defendant is now aged 42 and has three wives. His first wife has 10 children, his second wife has 11 children and his third wife has 5 children. The defendant is a farmer. Two wives of the defendant live in Soru-kraik and his first wife lives in Osnako-Mandelu. The defendant has been in temporary detention in prison since the beginning of 2013.

In his final recommendations the public prosecutor maintained the facts and stated that the actions of the defendant were very serious. Therefore, he requested for the court to sentence the defendant to at least 10 years imprisonment.

The public defender argued that in accordance with the principles of adversary law, sentencing can only be carried out based on the material evidence produced through the statements of the parties and witnesses. The public defender believed that the court did not have a clear position and was in doubt.

Moreover the public defender argued that according to the principle of “*induvioproreo*” when the judge/court is in doubt the court must acquit the defendant from the crime of which he is charged. However, if the court decides otherwise the court can convict the defendant.

After hearing the final recommendations from the public prosecutor and public defender the court adjourned the trial to read out its decision on 6 August 2013, at approximately 9am at the Suai District Court.

17. Crime of simple offence against physical integrity, characterized as Domestic Violence. Case No. 87/PEN/2013/TDS

Judge : Florencia Freitas
Public Prosecutor : Beinvinda da Costa
Public Defender : MarcalMascarinhas
Conclusion : Ordered to pay a fine of \$30 and court costs of U\$10.

On 25 July 2013 the Suai District Court conducted a mobile court and heard a case characterized as domestic violence and ordered the defendant to pay a fine. This case involved the defendant AS who committed the crime of maltreatment against his spouse PN in Manufahi District.

The public prosecutor alleged that on 8 May 2012 the defendant hit the victim in the forehead which caused bleeding, bruising and pain. This assault caused the victim to undergo treatment at the hospital.

This case allegedly occurred because when the defendant returned from work his lunch was not ready. Therefore, the defendant became angry and threw down the telephone and the defendant

and the victim had an argument which resulted in the defendant committing violence against the victim.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial, the defendant admitted all of the facts and his testimony matched the testimony of the victim. However the defendant also testified that they have reconciled and there have been no further problems and the defendant regretted his actions.

The defendant is a security guard who is paid \$140 and is responsible for 4 very young children.

In his final recommendations the public prosecutor concluded that all of the facts had been proven and therefore requested for the court to hand down a fine.

The public defender admitted that all of the alleged facts proved the commission of the crime, however the defendant receives a wage that is not sufficient to provide for his family, therefore he requested for the court to hand down a suspended sentence against the defendant.

Based on the existing facts and recommendations of the parties, the court ordered the defendant to pay a fine of \$ 30 and at a daily rate of 50 cents. In addition, the court also ordered the defendant to pay court costs of US\$ 10.

18. Crime of simple offence against physical integrity, characterized as Domestic Violence – Case No.144/PEN/2013/TDS

Judge : ConstancioBarosBasmeri
Public Prosecutor : Beinvinda da Costa
Public Defenders : MarcalMascarenhas and João Hendrique
Decision : Defendant sentenced to 6 months imprisonment, suspended for 1 year

On 25 July 2013 the Suai District Court through its mobile court handed down a 6 month prison sentence for domestic violence; however it was suspended for 1 year. This case involved the defendant DGX who allegedly committed the crime against his wife. This case allegedly occurred in Lesu-Hatudu, Ainaro District.

The public prosecutor alleged that on 27 April 2013 the defendant punched and kicked the victim once on the thigh. Therefore the victim became angry and took a piece of steel and hit the defendant, however while they were wrestling over the piece of steel it fell and hit the victim in the eye causing an injury and bleeding.

This case allegedly occurred because the defendant stood on the foot of the victim and the victim was not happy or did not except it and complained a lot.

The public prosecutor alleged that the defendant violated Article 145 in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial, the defendant admitted all of the facts and his testimony matched the testimony of the victim. However the defendant and the victim told the court that they have reconciled, are living together, have two children and work as farmers to provide for their children.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 6 months imprisonment, to be suspended for 1 year.

The public defender agreed with the public prosecutor to suspend the prison sentence, however he requested for the court to hand down a 6 month prison sentence to be suspended for 6 months.

Therefore, the court sentenced the defendant to 6 months imprisonment; however the sentence was suspended for 1 year.

19. Crime of Sexual Abuse – Case No. Case No.144/PEN/2013/TDS

Judges : Pedro Raposo de Fiquieredo (international), ConstansioBarosBasmery, Florencia Freitas.
Public Prosecutors : Felisminio Cardoso (international) and Benvinda da Costa Rosario
Public Defenders : MarcalMascarenhas and João Hendrique
Conclusion : Defendant sentenced to 2 years 2 months imprisonment, suspended for 4 years.

On 26 July 2013 the Suai District Court conducted a mobile court and handed down a suspended sentence against the defendant who allegedly committed the crime of Sexual Abuse against the victim NdC in Leolima Hatudu-Ainaro.

The public prosecutor alleged that on 13 August 2012 the defendant held the hand of the victim however the victim let go and ran away. The defendant chased the victim and the victim fell down and then the defendant sat on the victim. However the victim continued to try and run away from the defendant and bit the finger of the defendant causing an injury and the victim managed to escape the grasp of the defendant. The defendant threw stones at the victim until she got home and threatened to burn her home the next night.

The public prosecutor charged the defendant for violating Article 171 of the Penal Code on the crime of Sexual Coercion.

During the trial the defendant admitted all of the facts set out in the charges. It was true that the defendant held the hand of the victim, threw stones at the victim, sat on the victim's back and threatened to burn down her house. However at the same time, the defendant expressed remorse for his actions.

In his final recommendations, based on the facts revealed during the trial, the public prosecutor requested for the court to convict the defendant. The public defender argued that the defendant had admitted his guilt, demonstrated remorse, cooperated during proceedings and that these were mitigating circumstances for the defendant. Therefore he requested for the court to apply a suspended sentence against the defendant.

Pursuant to these facts and because the criminal offence committed by the defendant encompassed the crime of making threats and attempted sexual coercion, the court handed down a sentence of 2 years jail, however it was suspended for 4 years. The court also prohibited the defendant from approaching the victim during this period.

20. Attempted rape, Case No. 146/PEN/2013/TDS

Judges : ConstansioBarosBasmery, Pedro Raposo de Fiquieredo (international) and Florencia Freitas.
Public Prosecutors : Felisminio Cardoso (international) and Benvinda da Costa Rosario
Public Defenders : MarcalMascarenhas and João Hendrique
Conclusion : Acquitted

On 24 July 2013 the Suai District Court conducted a mobile court and acquitted a defendant in a case of attempted rape. This crime involved the defendant LM who allegedly committed the offence against the victim LdA in Ainaro District.

The public prosecutor alleged that on 27 March 2013 at approximately 11pm the defendant used a knife to open a door with force and went into the house and tried to rape the victim.

The public prosecutor charged the defendant for violating Article 172 of the Penal Code on rape and Article 23 of the Penal Code on attempt to commit a crime.

In the aforementioned hearing the defendant used his right to remain silent. However the testimony of the victim and the witness were contradictory.

In his final recommendations the public prosecutor stated that the facts given by the victim and the witness were not the same, therefore he requested for the court to decide the matter in accordance with the applicable law.

The public defender argued that during the trial the examination of evidence did not provide sufficient facts to convict the defendant. Therefore he requested for the court to acquit the defendant.

Based on this process, and with consideration of the facts revealed during the trial and the final recommendations of the parties, the court concluded the matter and decided to acquit the defendant.

21. Crime of simple offence against physical integrity, characterized as Domestic Violence, Case No. 0060/2012/TDDIL.

Judges : Jose Maria de Araujo
Public Prosecutor : Gloria Alves (international)
Public Defender : Leonídio Marques (trainee lawyer)
Conclusion : Defendant sentenced to 6 months imprisonment, suspended for 1 year and ordered to pay court costs of \$ 10.

On 30 July 2013 the Dili District Court convicted the defendant for committing the crime of domestic violence against his spouse and sentenced him to 6 month's imprisonment, suspended for 1 year and ordered him to pay court costs of \$10.

The public prosecutor alleged that on 18 May 2012 the defendant slapped the left cheek of the victim. This case allegedly occurred because the defendant asked the victim for \$50 to pay for their children's school and the victim took the money and threw it at the defendant.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 (b) of the Law Against Domestic Violence.

During the trial, the defendant admitted all of the facts set out in the indictment so the public prosecutor requested for the proceeding to continue without the need to hear the testimony of the victim.

In his final recommendations the public prosecutor referred to the admission of the defendant regarding the facts accused against him and therefore the public prosecutor requested for the court to hand down a fine. The public defender argued that a fine would not be appropriate given the circumstances of the defendant. The defendant has 6 children, admitted all of the facts and was a first time offender, therefore the public defender requested for the court to hand down an admonishment.

Based on the facts revealed during the trial the examination of evidence the court decided to sentence the defendant to 6 months imprisonment, however it was suspended for 1 year, and the defendant was ordered to pay court costs of US\$ 10.

22. Crime of sexual abuse of a minor, Case No.178//2012/TDDIL

Judges : Antoninho Gonçalves representing a panel of judges
Public Prosecutor : José Luis Landim
Public Defender : MarcalMascarinhas
Conclusion : Acquitted

On 30 July 2013 the Dili District Court read out its final decision in a case of sexual abuse against a minor involving the defendant who was the father of the victim (his daughter).

The public prosecutor alleged that in 2010 the defendant committed sexual violence against the victim in the kitchen and then later in another room. These actions were committed when the victim was 10 years old.

During the trial the defendant denied all of the facts against him and the victim stated that the facts in the indictment were not true.

The witness who was the mother of the victim stated that she heard from the victim that the defendant committed sexual violence against her.

Because the facts were contradictory the court decided to confront the witness, the victim and the defendant. 'Confrontation, or cross examination' is one evidentiary technique used by the court

whereby a judge asked the witness and the parties to reexamine the facts or testimony given by the parties.

After the cross examination the court was still unsure therefore the court decided to acquit the defendant.

JSMP hopes that in the future the court will be more sensitive regarding the use of mechanisms and approaches that are safer and more comfortable in cases where a minor is involved in proceedings. When a minor is involved in a case as a victim or a witness, it's better for the court not to conduct a hearing in the same way as it would for an adult. The court must protect the child from all forms of trauma and apply techniques and mechanisms to obtain sufficient evidence from the minor in accordance with their age and capacity.

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For more information, please contact:

Luis de Oliveira Sampaio

Executive Director of JSMP

Email: luis@jsmp.minihub.org

info@jsmp.minihub.org

Telephone: 3323883 | 77295795

Website: www.jsmp.tl