



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
Dili District Court
21 August 2014

Court sentences defendant to 12 years in prison for case involving rape characterized as incest

On 19 August 2014 the Dili District Court conducted a hearing to announce its decision in a case involving the defendant ASE. The court sentenced the defendant to 12 years in prison after finding him guilty of committing rape against his niece in Ermera District. The court also applied preventative detention against the defendant whilst awaiting a decision carrying the full force of the law, in the event that an appeal is lodged against the decision of the court of first instance.

“This decision reflects the institutional accountability and sensitivity of the court in ensuring justice for the victim in accordance with the severity and nature of the case. However, JSMP encourages all parts of society to carry out collective efforts to prevent and reject the crime of incest in the family,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

Incest is a crime which deeply offends community values and should never be allowed for any reason. Incest is very damaging and influential on the physical and psychological development of the victim.

JSMP believes that the relevant State institutions must develop a comprehensive intervention strategy to prevent the crime of incest from becoming more prevalent in the community. This includes amending provisions in the Penal Code and a national action policy regarding the negative impact of incest and identifying the main causes of incest in order to develop an

intervention strategy that is appropriate and contextual.

The court found the defendant committed the offence three times in 2008. These acts were committed against the victim after the defendant tied the arms and legs of the victim to her bed, removed the victim's clothing and had sexual intercourse with the victim. The court also proved that the defendant had sexual intercourse with the victim who was under 17 years of age.

Then, in 2009 the defendant had sexual intercourse on two occasions with the victim, on one afternoon, when the parents of the victim were not at home.

The court considered that the facts were proven based on the admission of the defendant, the testimony of the victim and the examination record.

The public prosecutor charged the defendant with violating Article 287 of the Indonesian Penal Code on sexual relations with a person under the age of 15.

After the hearing to examine evidence the court amended Article 287 to Article 285 of the Indonesian Penal Code on rape and Article 172 of the Timor-Leste Penal Code on rape and Article 173(d) of the Timor-Leste the Penal Code on aggravation.

After evaluating the facts established during the trial the court found the defendant guilty of raping the victim on five occasions. Based on these facts, the court concluded this matter and sentenced the defendant to 12 years in prison in accordance with Article 285 of the Indonesian Penal Code, because the provisions in the Indonesian Penal Code were more favorable to the defendant.

Under the Timor-Leste Penal Code the cumulative prison sentence would have been 14 years in prison, however under the Indonesian Penal Code it was 12 years in prison. Therefore the

court handed down a single sentence of 12 years in prison pursuant to the Indonesian Penal Code and in accordance with Article 3.3 of the Timor-Leste Penal Code.

The court did not order the defendant to pay compensation to the victim and explained that compensation was up to the family, to be resolved in accordance with family traditions.

JSMP believes that the court should not have relied on the family to resolve the issue of compensation for the victim. The court should have ordered compensation together with the prison sentence, if the court considered it necessary to provide compensation to the victim.

This case was registered as Case No. Case No. 37/14.TDDIL. The hearing to announce the decision was presided over by Antonino Gonçalves. The public prosecution service was represented by Reinato Bere Nahak and the defendant was represented by public defender Manuel Exposto.

For more information, please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP
E-mail: luis@jsmp.minihub.org
info@jsmp.minihub.org
Telephone: 3323883 | 77295795
Website: www.jsmp.tl
Face book: www.facebook.com/timorleste.jsmp
Twitter: @JSMPtl