



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

## Press Release

### The Dili District Court

7 February 2018

**It is highly probable that a knife can seriously endanger a person's life:  
JSMP requests for the Public Prosecution Service to appropriately consider the weapons  
used to commit a crime before drafting an indictment**

On 18 December 2017 the Dili District Court found the defendant MdC guilty for committing the crime of simple offences against physical integrity characterized as domestic violence against his wife, and sentenced him to 1 year in prison suspended for 2 years and six months. In addition the court also applied rules of conduct requiring the defendant to periodically report to the court once a month for 5 months.

The public prosecutor alleged that on an unspecified date in February 2017 at approximately 3:30pm the defendant took a knife and tried to stab the victim but the victim's older sister grabbed the knife from the defendant. However, the defendant then slapped the victim twice on her right and left cheek and choked the victim with great force.

In addition to assaulting his wife, the defendant also took a piece of wood and smashed a large bucket valued at US\$12.00, a large frypan valued at US\$8.00, a dishrack valued at US\$15.00, a plastic chair valued at US\$3.50 and a window valued at US\$35.00

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.

“It is important to understand that this crime involved a sharp weapon in the form of a knife which has a high probability of posing a serious risk and threat to the victim's life or could take the victim's life”, said the Executive Director of JSMP, Luis de Oliveira Sampaio.

“We can imagine the potential outcomes in this case if the older sister of the victim was not there when the incident occurred”, he added.

JSMP believes that the way the defendant smashed the goods in front of the defendant when he was unable, or failed, to achieve his intention of committing the crime against the victim because he was impeded by the victim's older sister, shows that the defendant lost control. This act also gave a strong indication that the defendant had a strong desire to kill or pose a serious threat to the victim's life.

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To date JSMP has observed that when the Prosecution formulates the facts of crimes in their indictment they are always more focused on the final outcome of the crime committed by a defendant. The Prosecution often ignores the facts and important elements such as how the defendant committed the crime and the potential outcome that could have occurred if the defendant was not impeded. The prosecutor needs to ensure that charges in cases of domestic violence correspond with the seriousness of the crime committed by the defendant and can allow the court to provide fair justice to the victim and to prevent similar crimes from occurring in the future.

JSMP believes that Article 145 of the Penal Code which was used by the prosecutor is not relevant to the crime committed by the defendant. This is because the defendant took a knife to try and stab the victim, however the victim's older sister grabbed the knife from the defendant. This act impeded the defendant from carrying out his intention and was not the result of the defendant's own conscience.

Actually, the Prosecution should have charged the defendant for violating Article 23 and Article 138 of the Penal Code on attempted homicide because the defendant intended to kill victim or tried to kill or endanger the victim's life.

If the prosecution selects the most appropriate charge it will allow the judge to impose a sentence that the defendant deserves, and will protect the victim from such a crime and educate the defendant that domestic violence is a serious crime.

Article 23 of the Penal Code states that *"A crime is attempted whenever the person who has decided to commit it initiates its execution by undertaking, wholly or in part, the acts objectively required to cause the result, which fails to take place only for reasons beyond the control of the perpetrator."*

Meanwhile Article 138 of the Penal Code on attempted homicide states that any person who kills another person is punishable with 8 to 20 years imprisonment.

JSMP believes that in this case the defendant intended to kill the victim, but the defendant failed to achieve his intention because of reasons other than his own desire, rather, because he was impeded by the victim's older sister. We can imagine if he was not impeded during the incident then the defendant would have carried out his intention and clearly would have endangered the life of the victim.

As JSMP has highlighted many times, the prosecutor has an important role in ensuring that the relevant facts are included in the charge and must select the most appropriate provisions in this case. The prosecutor must carefully evaluate the relevant facts in cases of domestic violence so that the court can convict a defendant in accordance with the seriousness of the crime committed by the defendant.

During the trial the defendant confessed all of the facts set out in the indictment, expressed remorse for his actions and was a first time offender. The victim maintained and reinforced the facts set out in the indictment.

In the final recommendations the public prosecutor stated that the defendant had been proven guilty of committing the crime against the victim based the confession of the defendant and the confirmation provided by the victim. For this reason the prosecutor requested for the court to impose a prison sentence of 1 year, suspended for 2 years.

The public defender requested for the court to impose a fair penalty against the defendant because the defendant confessed all of the facts set out in the indictment, regretted his actions, and was a first time offender.

This case was registered with the court as Case No. 0019/17. DINFT The trial was presided over by single judge Antonio Helder. The prosecution was represented by Alfeu da Silva and the defendant was represented by Public Defender Marcia Sarmiento.

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