



**Press Release**  
**Suai District Court**  
**09 November 2020**

**The prosecutor should choose the right article before charging a defendant for the crime of rape committed by a family member**

The prosecutor should choose the right articles before charging a defendant for committing rape in the family sphere, or against a relative. This will ensure that sentencing reflects the seriousness of the crime.

JSMP's requests relates to the charges of the prosecutor in a case of rape allegedly committed by a grandfather (the defendant) against his grandchild (victim) aged 19 who was staying temporarily at the defendant's house because the victim's grandmother was sick and her daughter had taken the grandmother to stay with her so she could consult a doctor. This case was tried by the mobile court in Bobonaro District on 21 October 2020.

In this case the prosecutor only charged the defendant for the crime of rape pursuant to Article 172 of the Penal Code (PC) but did not charge the defendant with Article 173 (a) of the Penal Code on aggravation. Article 173 (a) of the Penal Code states that the sexual offence is aggravated if the perpetrator commits an abuse of authority arising from a family relationship, ward, or guardianship, or hierarchical, economic or labor-related dependence. In this case the perpetrator or defendant was related to the victim, because the defendant was the grandfather of the victim. Therefore, the actions of the defendant should be aggravated pursuant to Article 173 (a) of the Penal Code.

"The prosecutor should choose the right articles to ensure that the charges are sound, so that the court can hand down a fair and appropriate decision," said the Executive Director of JSMP, Ms. Ana Paula Marçal.

The public prosecutor alleged that on 23 September 2018, in the evening, the defendant told the victim to sleep with the defendant in his bedroom, but the victim did not want to. Then at 7am on 25 September 2020, when the victim was getting ready to go to school, the defendant called out to her and said "*The two of us need to go to the plantation*", but the victim responded that she had to go to school. The defendant continued to pressure the victim, so the victim told the defendant to go to the plantation, and she would go later.

The defendant did not go to the plantation and told the victim to get the meat that was hanging in the defendant's bedroom to make some food. The victim went into the defendant's bedroom to get the meat, but the defendant followed her from behind and

forced the victim to have sexual intercourse. When the sexual intercourse was taking place, the victim lied to the defendant that someone was coming, so the defendant jumped up and ran outside. The victim took advantage of the situation and ran away and told her parents about this incident.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape that carries a maximum penalty of 5-15 years in prison.

JSMP recommends for the prosecutor to request for the court to also apply Article 173 (a) of the Penal Code on aggravation. However, if the prosecutor does not make such a request, then JSMP recommends for the panel to include the aforementioned article before deciding this case, to consider the actions of the defendant were aggravated, in order to hand down a fair sentence that reflects the seriousness of this crime.

This case was registered by the court as Case Number 0022/18 BBCLC and proceedings will continue on 23 November 2020, at the Suai District Court.

The trial of this case was presided over by a Panel of Judges comprising Jose Maria de Araujo, Nasson Mário Armindo Marques Doutel and Benjamin Barros. The Public Prosecution Service was represented by Rafael Jeronimo Gusmão, and the defendant was represented by Angelmo Pinto from the Office of the Public Defender.

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