



## Press Release

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### **JSMP believes that it is inappropriate to replace a charge of aggravated rape with the crime of sexual abuse against a disabled person**

JSMP believes the decision of the Suai District Court in a case of sexual abuse against a disabled victim that was decided on 5 March 2019 was inappropriate because the replacement of the original charge resulted in a very lenient penalty against the convicted person even though the court knew that the victim was very vulnerable due to physical and psychological disabilities.

The court failed to explore and consider the relevant facts in this case, and imposed a penalty of only five years in prison. This penalty is not appropriate or proportional to the severity of this crime.

If the court maintained Article 172 of the Penal Code on rape and Article 173 (letra c) of the Penal Code on aggravation, as set out in the charges of the public prosecutor, and assessed the facts and the circumstances appropriately, the court could have ensured a proportional and commensurate sentence in this case. This is because the crime of aggravated rape carries a sentence of 5-20 years in prison. The crime of sexual abuse of a person incapable of resistance carries a sentence of between 4-12 years in prison.

Based on these provisions (Art. 172 and 173 c) the court could have imposed a sentence proportional to the victim's suffering because the defendant took advantage of the situation and the vulnerability of the victim for his own satisfaction. In addition, the defendant is a family member who is supposed to protect the victim, rather than committing a crime against the victim.

"This case indicates there are serious problems with the sensitivity of judicial actors in cases involving disabled persons. JSMP believes that judicial actors need training on cases involving disabled persons and gender based violence, so they can gain in-depth knowledge about these types of cases," said the Acting Director of JSMP, Casimiro dos Santos.

There were extraordinary facts and circumstances in this case and the court should have carefully and prudently assessed these facts including the fact that the victim suffered from physical and psychological disabilities, and the abuse was committed by a defendant who was related to the victim and the defendant took advantage of the victim's vulnerabilities.

The facts produced during the trial show that the crime was consummated. Although the defendant did not continue with the act, this was not because he was aware that he (the defendant) should not have had sexual intercourse with the victim who suffers from a range of

physical and psychological conditions and limitations. But rather, the defendant saw that the victim was bleeding when he committed the act against her.

JSMP does not believe that a person suffering a range of conditions and limitations such as the victim could have had sufficient capacity/understanding and conscience to provide consent to have sexual intercourse freely and willingly. As stated in the indictment of the public prosecutor, after this incident the victim felt unsafe and was upset. This manifested itself in the form of depression and trauma, because the victim cried in front of her two younger siblings and told them immediately about the incident. In normal circumstance if a person decides willingly and freely to give consent to have sexual intercourse then that person would never want to reveal that sexual intercourse to another person.

The court should have evaluated and considered all of the facts and the circumstances before changing the charge. The court should have also presented an expert pursuant to Article 149 and Article 150 (2) of the Criminal Procedure Code to explain or confirm the existing medical report to help contribute evidence to strengthen the conviction of the judges because the defence expressed doubt about the findings of this medical report.

Previously, the public prosecutor had alleged that on 16 October 2017 the defendant went to the victim's home to be with the victim's parents to participate in a cultural ceremony with some family members who are neighbours of the victim. The defendant was with the victim's parents because the uncle of the defendant's wife is the father of the victim. After participating in the ceremony the defendant went back to the house and saw the victim sitting with her two younger siblings in the front room. The defendant gave US\$ 0.50 to the victim's two younger siblings and told them to purchase cigarettes at a kiosk that was located approximately 20 metres away.

After the victim's two younger siblings left, the defendant closed the front door and the defendant started removing his clothing and approached the victim who was sitting down and then he laid the victim down on the cement floor and had sexual intercourse with the victim who suffers physical and psychological disabilities. The victim cried and screamed but the defendant covered her mouth so she couldn't make any noise and the defendant told the victim that he wanted to have sexual intercourse with her. When he was having sexual intercourse the defendant saw that the victim was bleeding from her genitals, so the defendant left the victim and ran away from the victim's house.

When the victim's two younger siblings returned from the kiosk, they saw the victim crying. The victim told them about the defendant's behaviour and they immediately told their parents. As a consequence of the defendant's actions the victim suffered an injury to her genitals and was traumatised.

The public prosecutor alleged that the defendant violated article 172 of the Penal Code on rape and Article 173 (c) of the Penal Code on aggravation upon an unconscious or incapable person. During the trial the defendant denied some of the allegations that he gave US\$0.50 to the victim's younger siblings to purchase cigarettes. The defendant stated that he had sexual intercourse with the victim but with the consent of the victim.

The defendant added that they each removed their clothing but when the defendant had sexual intercourse with the victim, the defendant saw that the victim felt pain so he did not continue having sexual intercourse with the victim. However the defendant put his fingers inside the victim's genitals for two minutes and the defendant saw blood on his fingers. Therefore the defendant put his clothes back on and returned to the cultural ceremony. Then after several minutes the defendant heard the victim's family who were looking for him to beat him up because the victim was crying incessantly.

The public prosecutor stated that the defendant was guilty of committing the crime based on the facts set out in the indictment, namely that the defendant took advantage of the victim's incapacity and vulnerability because of her physical and psychological limitations. Therefore the public prosecutor requested for the court to apply a prison sentence of 16 years, but if the court was to decide otherwise, then the public prosecutor requested a sentence of 12 years in prison.

The public defender requested for the court to believe the defendant's statement that he did not have sexual intercourse with the victim, but only put his fingers inside the victim's genitals. The defence also challenged the medical report because it did not mention bleeding or an injury to the victim's genitals.

The defence stated that the defendant's actions were attempted rape. Therefore the defence requested for the court to replace the charge of aggravated rape with Article 23 of the Penal Code on attempt and to consider the extraordinary mitigating circumstances and the defence requested a suspended prison sentence.

After hearing all of the evidence produced during the trial, the court changed the charge from aggravated rape to the crime of abuse sexual of a person incapable of resistance (179 of the Penal Code).

The court found that the defendant had sexual intercourse with the victim but did not manage to do so because the victim felt pain. However, then the defendant put his fingers inside the victim's genitals which caused bleeding and the victim suffers from physical and psychological disabilities. The defendant's actions caused the victim to suffer pain to her genitals and she was traumatised. Based on these facts and considerations, the court concluded this matter and sentenced the defendant to five (5) years in prison.

This case was registered by the court as Case No. 0019/17. BBATB and this case was presided over by a Panel of Judges comprising Argentino Luisa Nunes, Álvaro Maria Freitas and Benjamin Barros. The Public Prosecution Service was represented by Ricardo Godinho Leite and the defendant was represented by Public Defender Manuel Amaral.

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