



Press Release
The Dili District Court
02 September 2021

The court acquits defendant from charge of rape characterized as incest because it was not proven that there was force and violence
JSMP urges the Government and the National Parliament to amend the Penal Code and create a separate article on incest

On 8 August 2021 the Dili District Court announced its decision to acquit the defendant SA from the charge of rape against his daughter because the court found there was no element of force, violence and or threats.

JSMP believes that this decision has not provided fair justice to the victim and also will not have a deterrent effect on the defendant or others because the court did not thoroughly analyze the facts, the circumstances and the factors surrounding this crime.

In the aforementioned case the defendant used his right to remain silent, and the victim confirmed the essential facts, namely that the defendant and the victim had sexual intercourse however this intercourse happened because the defendant kept saying to the victim *“A man could marry you and divorce you, whereas I provide you with food and buy milk for your child, rather than you give yourself to someone else, it would be better to just give yourself to me, so the two of us can have intercourse right now.”*

“Cases characterized as incest result from an abuse of power or abuse of authority where there is a relationship of dependency and a person is ordered or threatened to engage in a sexual act. In the aforementioned case, the defendant used his power or authority as the father, the owner of the house and breadwinner to exert psychological pressure on the victim through his statement, therefore the victim had to do what the defendant wanted because the victim and her child are economically dependent on the defendant. Also, this coercive statement can be considered as a threat against the victim to do what the defendant wanted,” said Ms. Ana Paula Marçal, Executive Director of JSMP.

This case demonstrates the need for an explicit article for the crime of incest which should be applied without considering the consent of the victim or the use of violence or threats by the defendant. This is because victims are often face constant pressure (without the use of physical violence) therefore victims agree to have sexual intercourse. A victim can say clearly that they consented to incest, however the nature of the consent should be questioned when the perpetrator of the incest has considerable economic power and the victim is dependent on the defendant.

JSMP reports have spoken about incest and JSMP has stated that existing legislation to provide protection and prevent incest contains significant gaps. In particular, the legal

framework does not recognise that the concept of consent in relation to the crime of incest is problematic because victims of incest do not have the same level of power, and no consideration is given to age and to the person who commits incest. Currently, if a victim is aged less than 14 incest can only be charged when it can be proven there was violence or serious threats. Therefore, it is very important to create a specific crime for incest, whereby consent and the use of violence and threats are irrelevant.

Also, in the aforementioned case, the prosecutor alleged that the defendant was the perpetrator of the crime of rape pursuant to Article 172. 1 of the Penal Code as well as Articles 2, 3(c) and Article 35(b) of Law No. 7/2010 Against Domestic Violence.

JSMP believes that this charge was not carefully considered, because the prosecution should have charged Article 173 (a) of the Penal Code that states that through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence because the defendant was the father of the victim and the victim was economically dependent on the defendant.

Incest is an offence against social, moral and religious values and its psychological and physical impact can have serious consequences that continue for a long time. Therefore we all need to consider the issue of incest as an urgent matter that requires comprehensive consideration.

Therefore, JSMP urges the Government and the National Parliament to amend the Penal Code to include a separate and explicit article on incest to better protect victims who have no voice or power to speak up about such acts.

This case was registered by the court as Case No.0131/20 DNFT. The trial of this case was presided over by a Panel of Judges comprising Albertinha Neves and Ersiliade Jesus and Afonsa Carmona. The Public Prosecution Service was represented by Hernani Rangel and the defendant was represented by Fernando L de Carvalho.

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