



Press Release
Dili District Court
20 March 2019

The court failed amending charges in favour of defendant

The Dili District Court acquitted the defendant FFG from a case of aggravated rape against a victim aged less than 15 years old. The court found that the defendant's behaviour did not fulfil the elements of the crime of aggravated rape as charged by the public prosecutor. The hearing to announce this ruling took place on 12 March 2019.

JSMP believes that Article 178 of the Penal Code (PC) is the relevant article in this case. Article 178 of the PC states that even if victims consent to sexual acts, when their age is between 14 and 16, the laws considers them to be inexperienced.¹

JSMP believes that that even though the acts of the defendant did not fulfil the elements of the crime of aggravated rape because there was no force, threats and the victim was not unconscious, the sexual acts still occurred when the victim was under 16 years of age, meaning that the victim was inexperienced in sexual relations.

When the court amended the charge to Article 178 of the PC, the Court still had the option of pursuing an alternative punishment and imposing a penalty on the defendant commensurate with his behaviour to avoid him from committing such acts in the future, rather than totally acquitting the defendant in this case. The court should have amended the charge based on Article 274 of the Criminal Procedure Code² because the victim was aged less than 15.

¹ Article 178 of the Penal Code on Sexual Acts with an Adolescent states that any person who, being an adult and apart from situations provided in this section, practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.

² Article 274 of the Criminal Procedure Code on changing legal qualification states that where the court believes that the facts contained in the indictment must have a legal qualification different from the one stated therein, even though this results in an increase in the maximum limit of the applicable penalty, the court shall report it to the public prosecutor and the defender, giving them, if requested, a deadline for preparing their procedural position.

"JSMP requests for the court to engage in rigorous and thorough analysis of all of the facts produced and revealed during the trial and to apply the appropriate article to ensure a fair decision for the victim and also to ensure that the court complies with its obligations in accordance with the law", said the Director of JSMP Luis de Oliveira Sampaio.

In this case the public prosecutor alleged that the defendant violated Articles 172 and 173 (d) of the Penal Code on an aggravated rape against the victim who was aged less than 17, which carries a sentence of between 5 - 15 years in prison.

During the production of evidence the defendant confessed that he had sexual intercourse with the victim based on consent on three occasions and on the last occasion it took place inside a vehicle and caused the victim to become pregnant. The defendant argued that he knew that the victim was a juvenile but did not know that having sexual intercourse with a minor was a crime. The victim declined to make a statement to the court in relation to the facts.

In her final recommendations the public prosecutor requested for the court to give careful consideration to deciding the matter based on the facts produced during the trial and she did not mention a specific penalty in her final recommendations. The public defender requested for the court to uphold fair justice against the defendant because the defendant confessed, regretted his actions, and the sexual intercourse was based on the consent of the victim, and the defendant was also a first time offender.

JSMP believes that the prosecutor failed because she did not submit a request to amend the charge to the court, when it became apparent during the production of evidence that the incident occurred based on consent and without the use of force. The role of the public prosecutor is to defend victims, so the prosecutor needs to consider and analyse all of the circumstances and have a very good understanding of the provisions relevant to the facts produced during the trial to ensure protection for victims.

JSMP is also concerned because the Court failed to identify which provisions were relevant in this case after finding new facts during the examination of evidence. The court found that there was no evidence that the defendant committed the rape against the victim (because there was no use of force or threats) and the intercourse was based on the consent of the victim. In addition, the court found that the trial of this case was unfounded. Based on these considerations the court acquitted the defendant from the charges of the prosecutor.

JSMP is very concerned because the court decided to acquit the defendant who had sexual intercourse with a minor aged less than 15 and caused the victim to become pregnant. This decision will not educate the defendant and the community in general.

This case was registered by the court as Case No. 0002/17. PDDIL. This case was presided over by a panel of judges comprising Antonio Helder, Maria Solana, and Ivan José Suritay Patrocinio Antonio Gonsalves. The public prosecution service was represented by Ivonia Maria Guterres

and the defendant was represented by Marcal Mascarenhas from the Office of the Public Defender.

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