



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
Suai District Court
2 August 2018

The courts need to evaluate and consider all relevant circumstances and structural and social challenges in rape cases before making a decision

The courts need to evaluate and consider all relevant circumstances and structural and social challenges in rape cases before making a decision in such cases.

In the context of Timor-Leste, particularly in rural communities, most people face structural and social/cultural challenges and a range of limitations regarding how they access accurate and appropriate information when they have a problem. Furthermore, because they have limited knowledge about the regular functioning of the formal justice system and the technical requirements, normally it is not easy for them to understand such matters.

JSMP is concerned that on 22 June 2017 the Suai District Court acquitted the defendant DM in a rape case against AdS aged 17 after finding that the defendant's actions did not fulfil the requirements of Article 172 of the Penal Code on rape that occurred four times in 2017 in Bobonaro District.

“This decision poses a substantial risk and undermines the best interests of society because it will encourage the defendant to carry out the same behaviour in the future. This also sends a message to the public that a married person who has some sexual experience can take advantage of the social ignorance and vulnerability of a victim to satisfy his sexual desire without accepting any consequences and responsibilities for the act he has committed,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

“This decision will also make it even easier because it will provide an opportunity to other potential offenders to commit similar irresponsible acts, because they will have learned about the weaknesses and failures from these judicial decisions”, he added.

Rua Beco Lakateu, Aldeia Manu fuik,
Suku Colmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275
Telefone: 3323883
www.jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp
Twitter: @JSMPtl

The court needs to presume that for a girl aged 17 who is living in a rural area with a low and limited level of education in a community where most people do not have an adequate level of education and knowledge; it will be a major challenge for her to immediately find the necessary information to support her case.

This decision shows that the courts favoured and placed more trust in the defendant because he stated that the sexual intercourse was based on consent, and was not accompanied by threats and violence. The victim maintained her position that the sexual intercourse was accompanied by threats during and after the incident and the defendant used threats (knife) before and after committing the crime. In this case there were no other witnesses to reinforce and prove the statements of the defendant and victim who both maintained and defended their positions.

The court also used the results of cross-examination where the defendant tried to challenge the victim by saying that if the intercourse was accompanied by threats and violence why did the victim always go with the defendant when he invited her. The defendant also asked why the victim did not make a complaint after the first incident to avoid any further intercourse which happened on four occasions and caused the victim to fall pregnant. However, the court did not have any other facts or evidence to prove that the argument of the defendant was true.

The court also found that this problem occurred when the victim became pregnant and her family tried to resolve the matter in accordance with East Timorese culture but the defendant tried to avoid this problem, and therefore the victim and her family made a complaint against the defendant. JSMP believes that these considerations are not relevant because normally when problems occur in rural communities the first approach is to find a traditional resolution involving the families. This does not mean that they ignore criminal procedures, because they actually don't have adequate knowledge about how to deal with their problem in accordance with the requirements of the formal justice system.

Even though the court advised the victim to sue the defendant through civil proceedings to get the defendant to provide alimony for their child, JSMP still considers this decision inappropriate and very risky because it sends a negative message to society and paves the way for other potential offenders to commit similar crimes in the future.

In cases of a sexual nature it is extremely important to ensure that the relevant elements and circumstances are given consideration, to ensure that these decisions contribute to protecting the common good and public order. JSMP believes that the court should at least apply a penalty with additional obligations to educate the defendant and society to deter similar cases from occurring in the future.

JSMP observed that during the examination of evidence and cross-examination the victim maintained that the intercourse was accompanied by threats and violence. The defendant also acknowledged that the sexual intercourse occurred and said that he regretted his actions. These facts should have been a reference point for the court to decide not to completely acquit the defendant from this crime.

JSMP is concerned because this decision will encourage others to take advantage of loopholes in the applicable penal code to continue committing similar crimes in the future against adolescent girls. The court should have the ability to foresee, and the wisdom to assess, the potential impact of its decisions to ensure protection for victims and to protect the common good in society.

This trial was presided over by a panel of judges comprising Florensia Freitas, Nasson Sarmento and Samuel da Costa Pacheco. The Public Prosecution Service was represented by Ricardo Leite Godinho and the defendant was represented by a private lawyer, Gaspar Ferreira Gusmão.

For more information, please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP
E-mail: luis@jsmp.tl
www.jsmp.tl