



Press Release
The Dili District Court
13 October 2020

JSMP believes the court should not have asked the parties to confront each other just because the defendant denied the facts, when a medical report was provided in a case involving domestic violence

JSMP believes it was not appropriate for the courts to instruct the defendant and victim to confront each other just because the defendant denied the facts, when a medical report was provided.

JSMP has taken this stance in relation to a trial that took place on 5 October 2020 in a case of simple offences against physical integrity characterized as domestic violence registered as case number 0035/20.DIBCR involving the defendant JdC and the victim AMR (his wife). During the trial the presiding judge asked the parties to confront each other just because the defendant denied all of the facts in the indictment, even though the victim maintained these facts, which were reinforced by a medical report that stated that the victim suffered pain and swelling to the parts of the body where she had been struck and an injury to her right arm and left arm because the defendant had grabbed her.

“JSMP is concerned with such practices because confrontation should take place when there are contradictory statements made by the parties about some of the facts¹. However, in this case the confrontation took place because the defendant denied all of the facts, even though the victim confirmed the facts and had a medical report, which is an authentic written document, that has probatory value² in comparison with the statement of the defendant³,” said the Executive Director of JSMP, Ms. Ana Paula Marçal.

JSMP is concerned that such circumstances are made even worse in some cases when the defendant and the victim deny the facts, even though a medical report is available.

In this case, JSMP believes that if the court had any doubts about the statements made by the defendant or victim, the court should have sought confirmation from the

¹ Article 140 of the Criminal Procedure Code on confrontation

² Article 134 of the Criminal Procedure Code on types of written documents

³ Article 117 of the Criminal Procedure Code on general rules regarding defendant testimony

competent party who had the legal responsibility to produce the medical report to make a statement on its authenticity, and the probative effect of an authentic document can only be challenged on the basis of forgery⁴.

JSMP is also concerned that the court might have reached its conclusion based on how the parties have acted during the confrontation, because every person will act differently according to their own circumstances, especially victims in cases of domestic violence, who mostly suffer significant depression as the result of psychological or physical violence, that sometimes can make them unable to confront a defendant, even though they are telling the truth. JSMP hopes that the court will use its right to assess⁵ and carefully consider the facts that emerge during the presentation of evidence.

In this case, in addition to the aforementioned concerns, JSMP is also concerned that the presiding judge asked about the economic dependence of the victim and the defendant who were living separately because of their work. JSMP hopes that the presiding judge asked this question with the intention of finding out if the two parties have been fulfilling their role of providing food assistance to the family. Rather than categorising this crime, because Article 3 on the family from Law No. 7/2010 Against Domestic Violence clearly states that cases involving spouses or former spouses, who have previously been or who are currently in an intimate relationship, shall be characterized as domestic violence without considering if they are economically dependent or not.

In this case, the public prosecutor alleged that the defendant and the victim were living together as husband and wife in 2017. On 24 February 2020 the victim was working as a nurse at the Viqueque Municipality Hospital, and accompanied a patient from the Viqueque District Hospital to the Guido Valadares National Hospital in Dili. In the afternoon the victim rang the defendant at their house in Hera and asked him to pick up the victim but the defendant said that there was no fuel for the motorcycle so the victim went home on a mini-bus. When she arrived at home the victim and the defendant argued, then the defendant followed the victim into the bedroom and kicked her twice in the stomach and chest. The defendant pushed the victim against the wall and used both hands to choke her, so the victim grabbed at the defendant's hands and shirt and he then let go of her. However, the defendant kicked the victim once on the back of her neck, and grabbed both of her arms. The defendant's actions caused the victim to suffer pain and swelling to the places where she was struck.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3, 35 and 36 of the Law Against Domestic Violence.

During the trial the defendant stated that all of the facts in the indictment were incorrect because in fact it was the victim who grabbed the defendant by the shirt and ripped it

⁴ Article 139 of the Criminal Procedure Code on forgery

⁵ Article 142 of the Criminal Procedure Code on probative value

and scratched the defendant's hands. The defendant also stated that on 23 February 2020, the victim rang the defendant to pick her up, but the defendant could not go because there was no fuel for the motorcycle and the defendant didn't have any money. When the victim arrived home on the minibus the victim said a lot of things and hid the defendant's police uniform so the defendant could not go to work.

The defendant added that on 24 February 2020 the defendant went to install electricity at their other house which is 50 metres from the house they were living in, and the victim rang the defendant to tell him to bring the motorcycle key and the defendant said that after he had installed the electricity he would bring it over, but the victim followed the defendant to get the key and grabbed the defendant's shirt and ripped it and scratched the defendant's hands. After scratching the defendant, the victim went home to get her clothes and left the house and until now they have been living separately.

The defendant then stated that the victim was working in Viqueque Municipality and came home once every four or five months and when she came home she would always argue with the defendant. The defendant also said that he didn't give money to the victim because they are not living together but when the victim came to Dili, the defendant bought food for them.

The defendant also said that he is a police officer and he knew that hitting someone was a crime, therefore he never hit the victim but now because of the victim's complaint the defendant has been suspended from the PNTL.

The victim maintained the facts set out in the indictment that the defendant hit her. The victim also stated that after the defendant hit the victim, the victim immediately made a complaint to the police to get treatment at hospital and a medical report was attached to the file.

The victim acknowledged that the correct dates of these incidents were 24 February 2020 and 23 February 2020, when the victim took a patient from Viqueque hospital to Dili hospital. The victim rejected the defendant's statement that the victim hid his uniform which stopped the defendant from going to work because at that time the defendant went to work and returned in the morning. But when the defendant came home, he then went and picked up his younger sibling from school and returned home in the afternoon. In the afternoon the victim told the defendant "*I can buy a motorcycle, but you can't even buy some fuel to pick me up with the motorcycle?*" Therefore the defendant went out to their other house and the victim rang him to ask for the motorcycle key but the defendant did not want to receive the call, so the victim followed the defendant and took the motorcycle key but when the victim came back the defendant followed the victim into the bedroom and committed the assault described in the indictment.

The victim added that since that time she has been living with her family and is separated from the defendant. While they were living together the victim provided for

the defendant, which included buying the land where they were living. The defendant also never visited the victim but on the weekend the victim came to Dili.

After hearing the statements of the defendant and the victim, the court said there were doubts about the statements given by the defendant and the victim because the defendant denied the facts and the victim maintained the facts set out in the indictment. The public prosecutor said that it wasn't necessary to have the parties confront each other because the medical report showed the victim's injuries and swelling because it included photographs of her injuries and swelling. However, the judge decided to proceed with confrontation to find out if the defendant hit the victim or not.

During the confrontation the defendant maintained his statement that he did not hit the victim whilst the victim said that the defendant hit her and previously the defendant had regularly hit her, but she did not make a complaint because she cared about the defendant. The defendant's actions made the victim feel afraid to go back to the defendant even though she loved him.

In closing the public prosecutor said that the defendant committed the crime based on the facts set out in the indictment because even though the defendant denied his actions, the victim maintained these facts and they were reinforced by the medical report. In this case the facts showed that the victim suffered psychological violence because the victim said she did not want to go back to the defendant because she was afraid he would hit her again. The public prosecutor also said that crimes characterized as domestic violence are not just committed by people who don't know the law, but also by those who know the law quite well. Therefore, in this case it is very important to deter the defendant from repeating his actions in the future. Based on all of these considerations the public prosecutor requested for the court to convict the defendant in accordance with the penalties prescribed for this crime.

Meanwhile, the defence doubted the statement of the victim because the defendant denied the facts. In addition, the defence also doubted the medical report because sometimes someone other than a doctor could sign a medical report. Therefore, the defence said that if the court had any doubt regarding the facts, then the defendant would need to be acquitted, however if he was found guilty, then the defence requested a lenient penalty for the defendant.

JSMP believes that the court will consider all of these concerns raised by JSMP when it announces its sentence on 14 October 2020, at 2pm.

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