

Case Summary

The Baucau Court of First Instance

January 2023

Statement: The following case summaries set out the facts and the proceedings of cases before the court based on JSMP's independent monitoring, and the testimony given by the parties before the court. This information does not reflect the opinions of JSMP as an institution.

JSMP strongly condemns all forms of violence, especially against women and vulnerable persons. JSMP maintains that there is no justification for violence against women.

A. Summary of the trial process at the Baucau Court of First Instance

1. Total number of cases monitored by JSMP: 16

Articles	Case Type	Total Number
Article 145 of the Penal Code (PC) and Articles 2, 3 and 35 (b) of the Law Against Domestic Violence (LADV)	Simple offences against physical integrity characterized as domestic violence (Article 2 on the concept of domestic violence, Article 3 on family relationships, Article 35 on different types of domestic violence (DV) and Article 36 on domestic violence as a public crime)	3
Article 139 of the PC & Articles 2, 3, and 35 (b) LADV	Aggravated homicide characterized as domestic violence	2
Article 177 of the PC	Sexual abuse of a minor	1
Article 262 of the PC, Article 258 of the PC and Article 157 of the PC	Alteration of property boundary markings, property damage and threats	1
Article 227 of the PC, Article 20 (1), Article 2 (2 f) of the Law on Bladed Weapons	Failure to provide assistance and law on bladed weapons	1
Article 139 (PC), articles 2, 3, and 35 (b) (LADV) & Article 20 (1), article 2 (2 f)	Aggravated homicide characterized as domestic violence and use of a bladed weapon	1

of the Law on Bladed Weapons		
Article 146 of the PC & Article 20 (1), Article 2 (2 f) of the Law on Bladed Weapons	Serious offences against physical integrity and use of a bladed weapon	1
Article 157 of the PC & Article 20 (1), Article 2 (2 f) of the Law on Bladed Weapons	Threats and using a bladed weapon	1
Article 145 of the PC	Simple offences against physical integrity	1
Article 146 (e) of the PC & Article 145 of the PC	Serious offences against physical integrity, and simple offences against physical integrity	1
Article 146 (a) of the PC & Article 19, Law on Bladed Weapons	Serious offences against physical integrity, use of a device for firing darts	1
Article 138 of the PC, 139 of the PC, 23 of the PC and 24 of the PC	Attempted homicide, and aggravated homicide	1
Articles 259 of the PC & Article 157 of the PC	Aggravated property damage and threats	1
Total		16

2. Total decisions monitored by JSMP: 5

Type of decision	Articles	Total Number
Prison	66 of the Penal Code.	1
Suspension of execution of a prison sentence	68 of the PC	3
Endorsing withdrawal of complaint	262 of the Criminal Procedure Code	1
Total		5

3. Total cases adjourned based on JSMP monitoring: 0

4. Total ongoing cases based on JSMP monitoring: 11

B. Short description of the trial proceedings and decisions in these cases

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1. Crime of simple offences against physical integrity characterized as domestic violence

Case Number : 0055/19. LASIC
Composition of the Court : Single Judge
Judge : Jumiaty Maria Freitas
Prosecutor : Bartolomeu de Araújo
Defence : Sidonio Maria Sarmento
Decision : Prison sentence of 1 year, suspended for 1 year

On 23 January 2023 the Baucau Court of First Instance announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant YDC (absent) who allegedly committed the offence against his wife in Lautem Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 6 July 2019, at 4pm, the defendant used a knife to threaten the victim. Prior to this assault the defendant suspected the victim of having a romantic relationship (adultery) with another man.

Then on 7 July 2019, at 8:00am, the defendant slapped the victim five times in the head which caused pain and swelling. Prior to this assault the defendant suspected the victim of having a romantic relationship (adultery) with another man.

The 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.

Examination of evidence

During the examination of evidence the court did not hear the statement of the defendant, because the defendant was absent.

Also, the victim confirmed all of the facts in the indictment and stated that after the incident they reconciled. In 2020, the defendant left the home and has been with another woman since then. This case occurred because the defendant suspected the victim of being with another man.

Final Recommendations

The public prosecutor stated that during the examination of evidence, the defendant was not present, but the victim maintained the facts set out in the indictment even though they are separated, however the prosecutor requested for the court to convict the defendant with a prison sentence of three months, suspended for one year, to prevent the defendant from committing any further crimes in the future.

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The defence requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim five times on the head. Regarding the crime of threats the victim previously withdrew the complaint at the public prosecution service.

Based on all of the facts that were proven, the court concluded the matter and sentenced the defendant to 1 year in prison, suspended for 1 year.

2. Crime of simple offences against physical integrity characterized as domestic violence

Case Number	:	0012/20.LALMR
Composition of the Court	:	Single Judge
Judge	:	Maria Modesta Viera
Prosecutor	:	Ambrósio Rangel Freitas
Defence	:	Germano Guterres Ramos
Decision	:	Prison sentence of 1 year, suspended for 1 year

On 23 January 2023 the Baucau Court of First Instance announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AC (the husband), MC (the father in law) no MLdG (brother in law) and the victim MF, which allegedly occurred in Lautem Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 10 October 2020, at an unspecified time, the defendant AC slapped the victim once on her right cheek, the defendant MC twisted the victim's arm and the defendant MLdG grabbed the victim twice around her neck. Prior to this assault, the defendant and the victim argued because the victim asked the defendant AC to use credit to get some coffee and sugar from the kiosk, but the defendant did not want to, so the assault occurred.

Examination of evidence

During the trial the defendant MLdG stated that the victim and the defendant AC argued about their child and they were pulling their child back and forth so the defendant knocked the victim's arm away, and did not choke the victim.

The defendant AC confessed all of the facts set out in the indictment, and said after the incident they reconciled, he regretted his actions and was a first time offender.

The defendant MC confessed all of the facts set out in the indictment, and said after the incident they reconciled, he regretted his actions and was a first time offender.

Also, the victim confirmed all of the facts in the indictment and stated that after the incident she reconciled with the defendants.

Final Recommendations

In the charges the prosecutor said that the defendants were guilty of committing the crime against the victim, even though the defendant MLdG tried to deny all of the facts in the indictment, however the defendants MC and AC confessed all of the facts in the indictment and the victim provided confirmation. Therefore, the public prosecutor requested for the court to impose a prison sentence of six months against the defendant, suspended for one year.

The defence stated that the defendant MLdG only made a statement about his actions and the defendants AC and MC totally confessed to all of the facts in the indictment, regretted their behaviour, they have reconciled with the victim and the defendants were first time offenders, therefore the defence requested for the court to impose a lenient penalty on the defendants.

Decision

After evaluating all of the facts, the court found that the defendant AC slapped the victim once on her right cheek, the defendant MC twisted the victim's arm and the defendant MLdG choked the victim twice.

Based on the facts that were proven and consideration of the mitigating circumstances, namely that the two defendants confessed, were first time offenders, regretted their actions, and have reconciled with the victim, the court concluded this case and imposed a prison sentence of 1 year against the defendants, suspended for 1 year.

3. Crime of sexual abuse against a minor

Case Number	: 0005/19. LALRO.
Composition of the Court	: Panel
Judges	: Maria Modesta, Jumiaty Maria Freitas and Evangelino Belo
Prosecutor	: Nelson de Carvalho
Defence	: Sidonio Maria Sarmento
Decision	: 8 years in prison

On 25 January 2023 the Baucau Court of First Instance announced its decision in a case of sexual abuse of a minor involving the defendant JH and the victim (aged 12 years and 1 month), that allegedly occurred in Lautem Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 23 May 2019, at 09:00am, the victim was home alone and the defendant went to her home to ask the victim to go to the defendant's house, so

the victim went to the defendant's house because they always go around together and sometimes the victim plays at the defendant's house. When the victim got to the defendant's house the defendant told the victim to go inside the house and to go into the defendant's bedroom. The defendant followed the victim and had sexual intercourse with the victim. Then the defendant told the victim to put her clothes back on. The victim was crying and she ran to her parents who were at the cemetery. The victim had not yet reached the cemetery and she met with the witness FF and the victim told the witness about the incident. After the victim told her story, the witness contacted the victim's parents but did not go inside and when the victim's parents came back from the cemetery the witness told the victim's parents to make a complaint to the police.

Previously, on an unspecified day and month in 2019 the defendant also had sexual intercourse with the victim.

The public prosecutor alleged that the defendant violated Article 177.1 of the Penal Code on the sexual abuse of a minor that carries a maximum penalty of 5-20 years in prison.

Examination of evidence

During the trial, the defendant denied all of the facts in the indictment, even though the defendant acknowledged that they are neighbours, and on 23 May 2019, the defendant went to prepare a grave from 09:00am until 6:00pm, together with the witnesses TP and AP. The defendant is married and has five children.

The victim confirmed all of the facts in the indictment and stated that also that previously on an unspecified day and month during 2019 the defendant also had sexual intercourse with the victim, however the victim did not tell her parents, because she was afraid.

The witness FF, who is the victim's cousin, testified that at that time she went to separate corn kernels and she saw the victim crying, therefore the witness asked the victim to tell her about what the defendant did, so that the witness could immediately contact the victim's mother and father but she didn't go in and the witness asked the victim to go to her house and when the victim's parents came back from the cemetery the witness told the victim's parents about what had happened.

The witness JRN, who is the victim's mother, testified that when she returned from the cemetery the witness FF told her about the defendant's actions, and the witness also said that before she went to see people preparing the grave she saw the defendant sitting on the road near the home of the witness, and the witness did not go to the cemetery but she went to a relative's house and then she went to the cemetery, and when she arrived at the cemetery it was lunchtime and the witness saw that the defendant was already at the cemetery.

The witness TP is not related to the defendant and the victim, and the witness stated that upon arrival at the place where the grave was going to be prepared, the witness saw the defendant when they had lunch.

The witness AP is not related to the defendant and the victim, and the witness stated that upon arrival at the place where the grave was going to be prepared, the witness saw the defendant when they had lunch.

Final Recommendations

The public prosecutor stated that during the examination of evidence the defendant totally denied all of the facts in the indictment, however the victim confirmed all of the facts in the indictment and the witnesses also testified that they only saw the defendant at the cemetery when they had lunch, therefore the prosecutor concluded that the defendant had sexual intercourse with the victim and then went to the cemetery. The defendant's actions made the victim feel ashamed therefore the defendant needs to accept the consequences of his actions. For this reason, the prosecutor requested for the court to impose a prison sentence of 15 years against the defendant.

The defence stated that based on the evidence produced during the trial, the defence requested for the court to trust the statement of the defendant that he did not commit the act against the victim. Therefore the defence requested for the court to acquit the defendant from this crime, or for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the victim arrived at the defendant's house and the defendant told the victim to go inside the house and to go into the defendant's bedroom. The defendant followed the victim and had sexual intercourse with the victim. After he had sexual intercourse with the victim, the defendant told the victim to put her clothes back on. It was also proven that on an unspecified day and month in 2019 the defendant also had sexual intercourse with the victim.

Based on the facts that were proven and consideration of the mitigating circumstances, namely that the defendant was a first time offender, the court concluded this case and imposed a prison sentence of 8 years against the defendant.

4. Crime of alteration of property boundary markings, threats and property damage

Case Number	:	0007/20.BCBCV
Composition of the Court	:	Single Judge
Judge	:	Evangelino Belo
Prosecutor	:	Bartolomeu de Araújo
Defence	:	Antonio Fernandes
Decision	:	Validating withdrawal of complaint

On 30 January 2023 the Baucau Court of First Instance presided over a trial to attempt conciliation for the crime of alteration of property boundary markings, threats and property damage involving the defendants Vicenti Fernandes, Diamantino Hernesto Soares and the victim Abarao Guterres de Oliveira, which allegedly occurred in Tirilolo Village, Baucau Villa Administrative Post, Baucau Municipality.

Charges of the Prosecutor

The prosecutor alleged that on 24 November 2018 the victim and authorities from Buibau Village went to measure the land boundaries of the defendant's plantation in Lutu-mutu RSS Sub-Village, however after two weeks the defendant removed all of the stakes that the authorities and the victim had placed along the aforementioned land boundaries and the defendant Vicenti planted bananas near the eaves of the victim's house.

Then on 16 July 2022 the defendant Diamantino threatened the victim when the victim went to give food to his pigs in the pigpen.

On 7 August 2022 the defendant Diamantino threw stones at the victim's house and some corrugated iron was damaged.

The public prosecutor alleged that the defendants violated Article 262 of the Penal Code on alteration of property boundary markings that carries a maximum penalty of 1 year in prison or a fine as well as Article 258 of the Penal Code on property damage that carries a maximum penalty of three years in prison or a fine and Article 157 of the Penal Code on threats that carries a maximum penalty of 1 year in prison or a fine.

Process of attempted conciliation

Before progressing to the presentation of evidence, pursuant to Article 262.1 of the Criminal Procedure Code on attempted conciliation, the judge requested an attempt to reach conciliation between the defendants and the victim.

During this attempted conciliation, the victim wanted to reconcile with the defendants and the defendants also agreed to this request.

Final Recommendations

The prosecution and defence accepted the amicable agreement between the two parties and requested for the court to settle this process to withdraw the complaint.

Decision

Based on the amicable agreement between the two parties and the request of the victim to withdraw the complaint, the court concluded this matter and validated the settlement between the parties.

5. Crime of unlawful practice of martial arts and failure to provide assistance

Case Number : 0056/18.MNMNT
Composition of the Court : Single Judge
Judge : Jumiaty Maria Freitas
Prosecutor : Ambrósio Rangel Freitas
Defence : Gil Amaral (private lawyer)
Decision : 1 year in prison, suspended for 1 year for the defendants MO, AdS and PS, and a prison sentence of 2 years suspended for 2 years for the defendant CS.

On 30 January 2023, the Baucau Court of First Instance conducted a hearing to announce its decision in a case of the unlawful practice of martial arts and failure to provide assistance involving the defendants Camilo Soares, Mario Orlando, Antonio da Silva and Paul Soares who allegedly committed the offence against the State of Timor-Leste, in Manatuto Municipality

Charges of the Prosecutor

The prosecutor alleged that on 26 September 2018, at an unspecified time, the defendant Camilo went to Kakaeuma Sub-Village, Aubion Village to inform the defendant Mario and the victim Epifanio (deceased) to provide US\$5.00 to conduct activities to validate members of IKS which would be held on 6 October 2018.

Then on 6 October 2018, at an unspecified time, the defendants Mario Orlando, Antonio da Silva and Paul Soares and the victim Epifanio (deceased) attended the place where the ceremony was to take place in ai-bubur laran in Mota Bituduk, Tuketin Sub-Village, Kribas Village, and when they got there the defendant Camilo met them and slapped the four of them and then told them to park their motorcycles in ai-bubur to participate in the ceremony, and the three defendants and the victim (deceased) did this and the defendant Camilo told them not to walk around because there was a ravine.

On that evening at 8:00pm suddenly a car passed them and the defendant Antonio da Silva yelled out and said it was the police, so the four of them stood up so they could run away and hide and the defendant Mario Orlando, the defendant Antonio da Silva, the victim Epifanio (deceased) ran away and the defendant Paul Soares was behind them because the conditions weren't very good. Suddenly the defendant Mario Orlando, the defendant Antonio da Silva and the victim Epifanio (deceased) fell down a steep ravine and as a result the defendant Mario Orlando fell down and his two legs were dislocated and his right leg was swollen and injured. The defendant Antonio da Silva fell down and his hip was displaced and he suffered swelling and the victim Epifanio (deceased) suffered a severe impact to his chest and he stopped breathing.

The defendant Mario Orlando lost a lot of blood therefore the defendant Camilo took him to a clinic, however the defendant Antonio da Silva and the victim Epifanio just stayed at the house. Then on 7 October 2018, at approximately 02:00am the victim Epifanio Herman Gomes stopped breathing and died.

The public prosecutor alleged that the defendants violated Article 227 of the Penal Code on failure to provide assistance that carries a maximum penalty of 1 year in prison or a fine and article 24.1 of the Law on Bladed Weapons.

Examination of evidence

During the examination of evidence the defendant totally confessed to all of the facts in the indictment, and stated that he was responsible for martial arts in kribas. The defendant stated that he did not take the victim Epifanio (deceased) to hospital because he asked the victim how he was, and the victim responded that he wasn't in much pain, and the martial arts group IKS gave money to the family of the deceased totalling US\$1,000.00.

The defendant Mario Orlando stated that the defendants had not yet been to the location where the ceremony was going to take place, so the defendant's friends dragged the defendants from the ravine.

The defendant Antonio da costa stated that their friends got the three of them out of the ravine and took them to the home of the defendant Camilo.

The defendant Paul Soares stated that at the time of the incident he went to watch the graduation ceremony and he said 'the four of us were wearing civilian clothes and the graduation ceremony was for new members and the four of us gave US\$5.00', and the defendant stated that he fell down the ravine because nothing had been said about this location and the defendant Antonio yelled out to the three of them but they didn't hear and they fell down the ravine.

Final Recommendations

The public prosecutor stated that the defendants were guilty of committing the crime based on the confession of the defendants, so the prosecutor requested for the court to sentence the defendants to 1 year in prison, suspended for 1 year.

The defence requested for the court to apply a fair sentence against the defendants and the defendant Camilo at that time had good intentions to take the victim to hospital but the victim said he was fine.

Decision

After evaluating all of the facts, the court found that the defendants Mario Orlando, Antonio da Silva and Paul Soares were guilty of committing the crime of illegally practicing martial

arts, and the defendant Camilo Soares committed the crime of failure to provide assistance and the crime of illegally practicing martial arts.

Based on the facts that were proven, the court also considered the mitigating circumstances, namely the defendants totally confessed to all of the facts in the indictment, gave support for the funeral of the victim, so the court concluded this matter and sentenced the defendants Mario Orlando, Antonio da Silva and Paul Soares to one year in prison, suspended for one year. Regarding the defendant Camilo Soares, the court convicted him for the crime of illegally practicing martial arts with a prison sentence of one year and six months suspended for one year, and convicted the defendant for the crime of failure to provide assistance with a prison sentence of two years, suspended for two years.. The court accumulated the sentences and applied a single penalty against the defendants Mario Orlando, Antonio da Silva and Paul Soares of one year in prison, suspended for one year and, and sentenced the defendant Camilo Soares to two years in prison, suspended for two years, and the court ordered each defendant to pay court costs of US\$10.00.

For more information, please contact:

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