



Case Summary Baucau District Court January 2019

Affirmation: 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 District Court

1. Total cases monitored by JSMP: 28

Article	Case Type	Number of cases
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 characterised as domestic violence and types of offences categorised as domestic violence	14
Article 154 of the PC	Mistreatment of a spouse	1
Article 177 (PC) and Articles 23 and 24 (PC)	Attempted sexual abuse of a minor	1
Articles 177 & 182 (PC)	Aggravated sexual abuse of a minor	1
Articles 172 & 182 (PC)	Aggravated rape	1
Article 178 of the PC	Sexual acts with an adolescent	1
Article 139 of the Penal Code (PC) and Articles 2, 3 and 35 (b) of the Law Against Domestic Violence (LADV)	Aggravated homicide characterised as domestic violence	1
Article 138 (PC) & Article 23 (PC) & Article 20 of the Law	Aggravated attempted homicide and using a bladed weapon	2

on Bladed weapons No. 5/2017		
Article 20 of the Law on bladed weapons No.5/2017	Bladed weapons	2
Article 259 of the PC	Aggravated property damage	2
Article 145 of the PC	Simple offences against physical integrity	1
Article 1178, Article 1171, Article 1180 (CC) in conjunction with 1237 of the Indonesian Civil Code	Dispute concerning property rights using the common claims procedure	1
Total		28

2. Total decisions monitored by JSMP: 14

Type of decision	Number
Prison sentence (Article 66)	2
Suspension of execution of a prison sentence (Article 68 of the PC)	8
Suspension of execution of a prison sentence (Article 68 of the PC) and civil compensation	1
Fine (Article 67 of the PC)	2
Acquittal	1
Validation of reconciliation agreement	1
Total	15

3. Total ongoing cases based on JSMP monitoring: 13

B. Descriptive summary of decisions handed down in cases that were monitored by JSMP:

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

Case No. : 0036/18. MNMNT
Composition of the Court : Single Judge
Judge : Afonso Carmona
Prosecutor : Luis H. Rangel da Cruz
Public Defender : Jose M. Guterres
Decision : 5 months in prison, suspended for 1 year

On 4 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AS who allegedly committed the offence against his nephew in Manatuto District.

Charges of the public prosecutor

The public prosecutor alleged that on 17 July 2018, at 2.45pm, the defendant told the victim to go to sleep, but the victim refused, so the defendant slapped the victim once on his cheek and kicked the victim once on his left leg.

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 Article 2, 3, 35 and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant completely confessed all of the facts set out in the indictment. The defendant stated that he has reconciled with his nephew, regretted his actions and since the incident the defendant has not hit the victim. The defendant also stated that he was a first time offender.

The public prosecutor requested for the court to disregard the victim's statement because the defendant confessed to all of the facts in the indictment.

Final recommendations

The public prosecutor stated that the defendant confessed all of the facts in the indictment, which means the defendant, committed the crime against the victim, who is a dependent of the defendant. The prosecutor reiterated that it is necessary to prevent crimes of domestic violence from reoccurring and communities also need to understand that children should not be educated with violence. For this reason he requested for the court to impose a prison sentence of 4 months, suspended for 1 year.

The defence stated that the defendant confessed all of the facts set out in the indictment, regretted his actions, and has reconciled with the victim. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven and all of the mitigating circumstances, namely that the defendant confessed, regretted his actions, has reconciled with victim, was a first time offender, the court imposed a prison sentence of 5 months against the defendant, suspended for 1 year, and ordered the defendant to pay court costs of US\$20.

2. Crime of aggravated property damage

Case No.	: 0212/14. PDBAU
Composition of the Court	: Panel
Judges	: José Gonsalves Afonso Carmona Hugo da Cruz Pui
Prosecutor	: Luis H. Rangel da Cruz
Public Defender	: Jose M. Guterres

Decision : 2 years in prison, suspended for 2 years

On 10 January 2019, the Baucau District Court announced its decision in a crime of aggravated property damage involving the defendant Francisco P. Carvalho who allegedly committed the offence against the Manatuto Health Centre, in Manatuto Sub-District, Manatuto District.

Charges of the public prosecutor

The public prosecutor alleged that on 23 March 2014, at 12.30am, the defendant had a traffic accident and suffered an injury so his family took him for treatment at the Manatuto Health Centre. Because the health professionals were not able to treat the defendant promptly, the defendant smashed three windows at the health centre and caused minor damage valued at US\$100.

The public prosecutor alleged that the defendant violated Article 259 of the Penal Code on the crime of aggravated property damage that carries a maximum penalty of 2 - 8 years in prison.

Presentation of evidence

During the trial the defendant completely confessed to all of the facts in the indictment. The defendant stated that he repaired the windows that he damaged, and he regretted his actions, and was a first time offender.

The witness Recardina Bento Gomes was a nurse at the Manatuto Health Centre and testified that when the incident occurred she and another nurse were on duty and when the defendant arrived the witness was attending to another patient who was in a very serious condition. Suddenly the witness heard the sound of glass breaking and when she looked over she saw three broken windows, which have since been replaced by the defendant.

Final recommendations

The public prosecutor maintained the facts set out in the indictment and based on the production of evidence stated that the defendant was guilty of committing the crime of aggravated property damage, because this was a public facility and is dedicated to the ill and as a patient the defendant should have waited patiently. Based on the witness testimony, the witness was attending to another patient who was in a very serious condition. Therefore the public prosecutor requested for the court to use its discretion to convict the defendant.

The public defender stated that the defendant confessed all of the facts set out in the indictment, regretted his actions, was a first time offender, and the defendant used his own initiative to repair the windows he had damaged. Therefore the public defender requested for the court to provide justice to the defendant.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment of the prosecutor. Based on all of the facts that were proven, the court sentenced the defendant to 2 years in prison, suspended for 2 years.

3. Crime of simple offences against physical integrity characterised as domestic violence

Case No. : 0056/18. BCSIC
Composition of the Court : Single Judge
Judge : Jose Quintão
Prosecutor : Luis H. Rangel da Cruz
Public Defender : Jose M. Guterres
Decision : 6 months in prison, suspended for 1 year

On 16 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant CDS who allegedly committed the offence against his wife in Baucau District.

Charges of the public prosecutor

The public prosecutor alleged that on 28 September 2018, at 11.00, the defendant and the victim argued because the victim was selling cassava for just US\$2.00. The defendant requested for the victim to give the US\$2.00 to the defendant, but the victim only gave him US\$1.00, so the defendant took a vegetable knife and stabbed the victim in her right bicep which caused the victim to suffer a small injury and bleeding to her bicep. The defendant then took a jerry can filled with water and threw it on the back of the victim which caused her to fall to the ground. The defendant also pushed all of the food on the table on to the floor.

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.

Presentation of evidence

During the trial, the defendant stated that all of the facts alleged by the prosecutor were true. The defendant stated that he used a small knife that was not sharp and stabbed the victim in the bicep which caused an injury and bleeding to her bicep. The defendant and the victim started their life together in 1982 and have nine children. This was his first offence against the victim. The defendant is a farmer and has no fixed monthly income. The defendant also stated that he has reconciled with the victim, regrets his behaviour and since the incident the defendant has not hit the victim.

The victim confirmed all of the facts in the indictment and stated that the defendant took a knife to stab her and caused a small injury and the victim received treatment at the Wailili Health Centre. The victim also stated that since they have been living together this was the first time the defendant has committed an offence against the victim and since this incident the defendant has not hit the victim.

Final recommendations

The prosecutor stated that the defendant confessed all of the facts in the indictment and these facts were confirmed by the victim. However, to deter the defendant from committing such crimes against the victim in the future, the public prosecutor requested for the court to sentence the defendant to 6 months in prison, suspended for 1 year.

The public defender stated that the defendant confessed to all of the facts in the indictment, and the defendant and victim have been together for a long time and have nine children, and this was the defendant's first offence against the victim, and he regretted his actions, and has reconciled with the victim. Therefore the public defender requested for the court to provide justice to the defendant.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven and all of the mitigating circumstances, namely that the defendant confessed, regretted his actions, and has reconciled with the victim, the court imposed a prison sentence of 6 months against the defendant, suspended for 1 year.

4. Crime of simple offences against physical integrity characterised as domestic violence

Case No.	: 0006/18. VQLLT
Composition of the Court	: Single Judge
Judge	: Jose Escurial
Prosecutor	: Domingos Goveia Barreto
Public Defender	: Sidonio M. Sarmento
Decision	: 3 months in prison, suspended for 1 year

On 16 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant CS who allegedly committed the offence against his wife in Viqueque District.

Charges of the public prosecutor

The public prosecutor alleged that on 9 May 2018, at 6pm, the defendant returned from playing soccer and the defendant told his son to get two jerry cans of water so he could have a shower. However, his son did not get them and the defendant had to go and get them and the defendant got some boiled water so he could have a shower. The victim saw the defendant and said something to him and they argued, and then the defendant took a jerry can full of water and threw it at the victim's head and she fell to the ground and suffered pain and swelling to her head and she received treatment at the Lakluta Health Centre.

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 Article 2, 3, 35 and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant confessed all of the facts in the indictment. The defendant stated that when the victim fell to the ground her family immediately contacted an ambulance to take her to the health centre and the police took the defendant to the police station and he was detained for 24 hours and then he went home. The defendant also stated that he regretted his actions and has reconciled with the victim. The defendant and the victim started their life together in 2010 and have four children. The defendant was a first time offender and promised not to offend against the victim in the future.

The victim confirmed all of the facts in the indictment and stated that after this incident the victim received treatment and medication at the Lakluta Health Centre, and when the defendant was released from police detention he immediately reconciled with the victim and since then the defendant has not hit the victim.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim based on the defendant's testimony. Therefore the public prosecutor maintained the charges and requested for the court to impose a prison sentence of 3 months, suspended for 1 year against the defendant.

The public defender stated that the defendant confessed all of the facts set out in the indictment, regretted his actions, and when he was released from police detention he used his own initiative to immediately reconcile with the victim, and he was a first time offender Therefore the public defender requested for the court to impose a lenient penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant committed the crime based on the facts set out in the indictment, and based on the facts that were proven and all of the mitigating circumstances, namely that the defendant confessed, regretted his actions, has reconciled with victim, and is a first time offender, the court imposed a prison sentence of 3 months against the defendant, suspended for 1 year.

5. Crime of simple offences against physical integrity characterised as domestic violence

Case No.	: 0064/18.PNSIC
Composition of the Court	: Single Judge
Judge	: José Gonsalves
Prosecutor	: Luis H. Rangel da Cruz
Public Defender	: Antonio Fernandes
Decision	: Fine

On 22 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JdC who allegedly committed the offence against his wife in Lautem District.

Charges of the public prosecutor

The public prosecutor alleged that on 7 April 2018, at 12.00 midday, the defendant and the victim argued because the victim posted a photo of the defendant naked on facebook, so the defendant punched the victim four times on her shoulder, punched her once in the stomach, slapped her once on the cheek and struck the victim three times in the head with a helmet which caused the victim to fall to the ground and to suffer pain.

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 Article 2, 3, 35 and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant stated that the victim posted a photo of the defendant naked and a video via facebook and many people accessed it, and this made the defendant embarrassed and angry, so the defendant grabbed the mobile phone from the victim's hand. That is why the helmet he was holding struck the victim in the head. The defendant confessed to the other facts, and also stated that he was a first time offender and since this incident the defendant and the victim have been living separately.

The victim confirmed that the defendant committed the crime against her. In relation to the photo and video the victim stated that this was the victim's photo and video and not the defendant's, and the victim sent it to another man because she was concerned about the defendant's behaviour and that the defendant would leave her in the future.

Final recommendations

The public prosecutor stated that the defendant had been proven guilty of committing the crime against the victim based the confession of the defendant. The public prosecutor argued that the defendant should have tried to find a way to resolve the problem, and should not have used violence to resolve it. The defendant committed the crime against the victim who was powerless to react against the defendant. Therefore the public prosecutor requested for the court to order the defendant to pay a fine.

The public defender also requested for the court to order the defendant to pay a fine based on the defendant's financial capacity, because during the production of evidence the defendant confessed, regretted his actions and now is separated from the victim.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven, the court concluded this matter and ordered the defendant to pay a fine of US\$ 90 to be paid in daily instalments of US\$ 1.00 for 90 days. The court also imposed an alternative penalty of 60 days in prison if the defendant does not pay this fine.

6. Crime of simple offences against physical integrity

Case No.	: 0010/18. BCBQI
Composition of the Court	: Single Judge
Judge	: Jose Escurial
Prosecutor	: Luis H. Rangel da Cruz
Public Defender	: Lino Lopes (Private Lawyer)

Decision : 6 years in prison, suspended for 1 year, and civil compensation

On 8 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity involving the defendant Santina Trindade who allegedly committed the offence against Emerenciana Guterres, her neighbour, in Baucau District.

Charges of the public prosecutor

The public prosecutor alleged that on 29 September 2018, at 12.00 midday, the defendant and the victim argued because the defendant's goat ate the victim's vegetables that were in a plastic tub. The defendant became angry and slapped the victim once on the cheek, punched the victim once in the mouth and the victim's false teeth were knocked out and one of the victim's real teeth was knocked out and she suffered heavy bleeding. The defendant then punched the victim once on her cheek and the victim suffered pain and swelling.

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.

Presentation of evidence

During the trial the defendant stated that her goat ate the victim's vegetables, and if the victim had have asked her for compensation the defendant would have paid it, but the victim swore at the defendant so the defendant became angry and slapped the victim on her cheek and knocked out her false teeth. After this incident the defendant regretted the incident and went looking for the victim to seek reconciliation, but the victim didn't want to. The defendant was a first time offender and has no fixed monthly income.

The victim stated that when this incident occurred the victim was in the kitchen and the victim swore, but did not direct it at anyone. When the incident occurred many goats ate the victim's vegetables that were in a plastic tub. Suddenly the defendant went into the kitchen and slapped and punched the victim once in the mouth and knocked out three of the victim's false teeth and also knocked out one of the victim's real teeth.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim, even though during the presentation of evidence the defendant denied some of the facts in the indictment, but the victim confirmed these facts. Therefore the public prosecutor requested for the court to impose a fine against the defendant and order her to pay US\$50 civil compensation to the victim.

The public defender requested for the court to impose a fair penalty against the defendant, however the public defender did not agree with the recommendation of the prosecutor to impose

a fine, because the defendant did not have any financial capacity. However, the public defender agreed with the prosecutor's request for compensation. The public defender emphasised that the defendant had the good will to reconcile with the victim, but the victim refused.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven the court concluded this matter and imposed a prison sentence of six months, suspended for 1 year, and ordered the defendant to pay US\$50 civil compensation to the victim that must be paid within a month.

7. Crime of simple offences against physical integrity characterised as domestic violence

Case No. : 0009/17.BCBCV
Composition of the Court : Single Judge
Judge : Ersilia de Jesus
Prosecutor : Luis H. Rangel da Cruz
Public Defender : Jose M. Guterres
Decision : 6 months in prison, suspended for 1 year

On 22 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JBdS who allegedly committed the offence against his wife in Baucau District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 12 January 2017, at 3.00pm, the defendant took a rock and threw it at the victim's head and caused the victim to suffer an injury and heavy bleeding. The victim was treated at the Baucau Health Centre and received two stitches.

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.

Presentation of evidence

During the trial the defendant fully confessed the facts set out in the indictment. The defendant stated that when the incident occurred he was drunk. The defendant regretted his actions, has reconciled with the victim and promised that in the future he will not commit a crime against a family member or other person, and he was a first time offender.

The victim maintained all of the facts in the indictment but stated that since the incident the defendant has not hit her.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim based on the confession of the defendant and the statement of the victim. The prosecutor emphasised that crimes of domestic violence continue to increase and men are most often the perpetrators of these crimes. For this reason the public prosecutor requested for the court to

impose a prison sentence of 6 months, suspended for 1 year, and to order the defendant to pay court costs.

The public defender stated that the defendant confessed all of the facts set out in the indictment, regretted his actions, has reconciled with the victim, and was a first time offender. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven and all of the mitigating circumstances, namely that the defendant confessed, regretted his actions, has reconciled with victim, was a first time offender, the court imposed a prison sentence of 6 months against the defendant, suspended for 2 years, and ordered the defendant to pay court costs of US\$20.

8. Crime of simple offences against physical integrity characterised as domestic violence

Case No.	: 0056/17. MNMNT
Composition of the Court	: Single Judge
Judge	: Jose Escurial
Prosecutor	: Domingos Goveia Barreto
Public Defender	: Jose M. Guterres
Decision	: 30 days in prison, suspended for 1 year

On 23 January 2018 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant PS who allegedly committed the offence against her husband, in Manatuto District.

Charges of the public prosecutor

The public prosecutor alleged that on 29 September 2017 at midnight the victim was asleep in their bedroom and suddenly the defendant entered the bedroom and got up on the bed and grabbed the victim's face and grabbed the victim's throat and caused the victim to suffer redness and pain and the victim made a complaint to the police and received treatment at the Manatuto Health Centre.

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 (b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant confessed all of the facts in the indictment. The defendant stated that they established a family in 1989 and this was the first time that the defendant committed an offence against the victim and to date the defendant and victim have never fought. The defendant regretted her actions and stated that after the incident they have been fine.

The victim confirmed all of the facts in the indictment and stated that after the event he reconciled with the defendant and the defendant has not hit him again.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim, and the defendant had no reason to commit the assault against the victim. For this reason the prosecutor requested for the court to impose a impose prison sentence of 4 months against the defendant, suspended for 1 year.

The public defender requested for the court to impose a fair penalty against the defendant with consideration that while they were living together over a long period of time this was the first time that the defendant committed an offence against the victim and there was no clear motivation behind the incident, and the defendant regretted her actions and has reconciled with the victim.

Decision

After evaluating all of the facts, the court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven and all of the mitigating circumstances, namely that the defendant confessed, regretted her actions, has reconciled with victim, and was a first time offender, the court imposed a prison sentence of 30 days against the defendant, suspended for 1 year.

9. Crime of Simple offences against physical integrity characterised as domestic violence

Case No.	: 0131/18. BCBCV
Composition of the Court	: Single Judge
Judge	: Jose Escurial
Prosecutor	: Luis H. Rangel da Cruz
Public Defender	: Jose M. Guterres
Decision	: Fine

On 23 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant FJA who allegedly committed the offence against his wife in Baucau District.

Charges of the public prosecutor

The public prosecutor alleged that on 16 October 2018 at 9pm the defendant and the victim argued because the defendant sent a message to another woman who the victim suspected was the defendant's mistress. Therefore the victim said to the defendant "Are you making money for us, or wasting the money on calling another woman." Then the victim went into the bedroom and went to sleep. Not long after, the defendant entered the bedroom and kicked the victim once on her back and kicked the victim once on the left side of her stomach.

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.

Presentation of evidence

During the trial the defendant confessed all of the facts in the indictment and stated that there was a clear reason behind the incident, but the defendant promised in the future that he would not have a relationship with another woman and would not commit any other crimes against the victim. The defendant is a driver and earns a monthly salary of US\$200. The defendant regretted his actions, and has reconciled with the victim. The victim confirmed all of the facts in the indictment of the prosecutor and stated that after the incident they immediately reconciled and the defendant has not hit the victim again.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim based on the confession of the defendant and the statement of the victim. The prosecutor also stated that there are many cases of domestic violence being tried by the courts on a daily basis. Therefore to prevent such crimes from happening in the future, the public prosecutor requested for the court to impose a fine against the defendant in accordance with his financial capacity.

The public defender requested for the court to impose a fair penalty against the defendant with consideration of the mitigating circumstances, namely the defendant has three children who need their father to help look after them. The defendant confessed, regretted his actions, has reconciled with victim, and promised not to have a romantic relationship with another woman and will not reoffend against the victim in the future.

Decision

After evaluating all of the facts, the court found that the defendant committed the crime based on the facts set out in the indictment. Based on the facts that were proven, the court ordered the defendant to pay a fine of US\$ 30 to be paid in daily instalments of US\$ 1.00 for 30 days, as well as court costs of US\$ 10. The court also imposed an alternative penalty of 20 days in prison if the defendant does not pay this fine.

10. Crime of simple offence against physical integrity characterised as domestic violence

Case No.	: 0125/18.BCBCV
Composition of the court	: Single Judge
Judge	: Hugo da Cruz Pui
Prosecutor	: Gustavo A. M. da Silva
Public Defender	: Gregorio de Lima
Decision	: Prison sentence of 1 year, suspended for 1 year and 6 months

On 23 January 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AFX who allegedly committed the offence against his wife in Baucau District.

Charges of the public prosecutor

The public prosecutor alleged that on 28 September 2018, at 8.00pm, the defendant punched the victim once on the left side of her head, grabbed her hair, spun her around, pushed and threw the victim on the bed. The victim felt pain and screamed so the defendant let her go, but then the defendant scratched her and caused an injury. After the incident the victim received treatment at the Baucau Referral Hospital.

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 Article 2, 3, 35 and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant stated that on 28 September 2018, at 8pm, the defendant and the victim argued because the victim did not want to help out with a funeral event. The defendant also stated that now he is no longer living with the victim because the victim's parents would not allow it and the defendant left the home and now they are separated.

The victim confirmed all of the facts in the indictment and stated that the defendant left the house on his own accord and not because the victim's parents told him to leave.

The witness FFH, who is the mother of the victim, testified that on 28 September 2019, at 8pm, the witness was in the bedroom and heard the victim crying and she called out to the witness saying that the defendant was hitting her. Therefore, the witness came out of the guest room and saw the defendant pull the victim's hair, spin her around and throw her on the bed. The witness had no knowledge about other facts. The witness said that the defendant was not told to leave by the witness, but rather by the victim's father.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim, and even though the defendant denied all of the facts in the indictment, the victim and witness confirmed these facts. The prosecutor further stated that the defendant showed no remorse, because previously the defendant also committed the same crime against the victim, which was registered as Case No: 0036/18 BCBCV*. In that case the court issued its decision and imposed a prison sentence of two months, suspended for one year. Therefore the public prosecutor requested for the court to use its discretion to convict the defendant.

The public defender requested for the court to impose a suspended sentence against the defendant to ensure that the defendant will not commit any more crimes against the victim or other person in the future.

* JSMP analysis of the court's decision is available at http://jsmp.tl/wp-content/uploads/PrhanarukPenaBAUCAU_TETUM.pdf

Decision

After evaluating all of the facts, the court found that the defendant committed the crime based on the facts set out in the indictment. The court also found that the defendant had a criminal record and showed no regret, so the court concluded this matter and sentenced the defendant to 1 year in prison, suspended for 1 year and 6 months, and ordered the defendant to pay court costs of US\$40.

11. Dispute concerning property rights using the common claims procedure

Case No.	: 0078/18 CVTDB
Composition of the court	: Single Judge
Judge	: Antonio Fonseca
Legal Representative of the Plaintiff	: Grigorio de Lima
Legal Representative of the Respondent	: Sidono M. Sarmento
Decision	: Validation of reconciliation agreement

On 24 January 2019 the Baucau District Court conducted a hearing to attempt conciliation in a dispute over property (land) using the common claims procedure involving the plaintiffs Adelino H. Da Silva and Maria Soares against the respondents Abel do Santos and Isabel de Cravalho, that allegedly occurred in Manatuto District.

Initial petition

The plaintiffs claimed that they purchased a piece of land measuring 197 x 3 M² from Mr. Joaquim Soares and his family on 3 March 1990 during the Indonesian occupation, and therefore they believe that they are the owners of this property (land), which is located in Uma Sau Sub-Village, Aiteas Village, Manatuto Sub-District, Manatuto District. The boundaries of this land are as follows: northern boundary with the public road, southern boundary with Mr. Francisco Soares Bitin, eastern boundary with Mr. Mariano Bonifasio do Rego and western boundary with the plaintiffs.

At some time in January 1990 the Indonesian Government, through the Manatuto District authority, issued an announcement to all communities to organise land documents or certificates through the land and property department, therefore the plaintiffs and Mr. Joaquim Soares registered the land and the plaintiffs became the owners of this land based on a land certificate.

In 1999 Timor-Leste experienced a conflict and violence in relation to the referendum for the independence of Timor-Leste, and the situation became inflamed and the plaintiffs tried to protect their own lives and the lives of their family members, so they ran away and hid in the jungle and left their property or house and land together with the relevant documents. At that time the plaintiffs house and goods, which included relevant certificates and documents were burned and destroyed by the Indonesian military.

On 27 October 2005 Mr. Mario Santana Ximenes, who is the plaintiff's uncle, and also the brother in law of the respondent, went to the plaintiffs' house and asked them to open the road leading to the respondents' house. At that time they agreed to temporarily open the road to the respondents' house which was 197m long and 3m wide and the plaintiffs agreed with this

request. At that time Mr. Joaquim Soares asked the respondents to give US\$ 400 as a sign of appreciation/compensation to the plaintiffs. However the money was not given when they agreed to provide access via this road.

Between 2007 and 2013 the respondents only gave 5 sacks of unhusked rice to the plaintiffs and each sack was worth US\$ 10. However, in November 2014 the respondents told the plaintiffs that they would provide the remaining amount in cash because they did not harvest any rice during those years. After several years on 8 January 2015 the respondents and their family started making problems or arguing with the plaintiffs, therefore on 7 February 2015 the plaintiffs decided to give back the respondents' money at the respondents' house.

At some time in October 2015 the respondents started building their house, so the plaintiffs raised the unresolved issue regarding road access. After this issue was raised the respondents gave US\$ 200 to the plaintiffs and said that they would pay the remaining money in the future when they have some money.

Legal basis for the initial petition

The plaintiff submitted a petition based on the aforementioned grounds via his legal representative pursuant to Article 1178, Article 1171 and Article 1180 of the Civil Code as well as Article 1237 of the Indonesian Civil Code against the respondent.

Initial Trial/Hearing

During this hearing the respondent stated that he paid the remaining \$200 at the Manatuto Police Station but he did not mention/indicate the date, month and year. However, the plaintiff also confirmed the statement of the respondent that the respondent had paid the remaining \$200 at the Manatuto Municipality Police Station.

Attempted conciliation

The plaintiff requested for the respondent to further increase the payment to \$1,500 to gain permanent access to the road leading to the respondents' house. However the respondent requested for the court to consider increasing the amount to US\$1,000, which together with the US\$400 that had already been paid would amount to a combined total of US\$1,400. The respondent also requested to the plaintiff, via the court, for the US\$1,000 to be paid in two instalments. The first instalment would be paid on 10 February 2019 and the second on 10 March 2019 through a court clerk at the court.

The plaintiff agreed with this request and the willingness of the respondent to increase the amount to US\$1,000, and agreed with the proposal for the money to be paid in two instalments.

The plaintiffs also authorised the respondents to have access to the road leading to their house as established and agreed, however the length was changed from 197m to 100m and the width of 3m stayed the same.

Final recommendations

The legal representatives of the plaintiffs and respondents accepted the amicable agreement between the two parties and requested for the court to validate this agreement.

Decision

Based on the amicable agreement between the parties, the court validated this process and the amicable agreement and requested for each of the parties to meet their respective obligations based on terms they themselves agreed to before the court.

12. Crime of aggravated rape

Case No. : 0009/18.VQSIC
Composition of the court : Panel
Judges : Ersilia de Jesus
José Gonsalves
Jose Escurial
Prosecutor : Domingos Goveia Barreto
Public Defender : Antonio Fernandes
Decision : 10 years in prison

On 24 January 2019 the Baucau District Court conducted a hearing to announce its decision in a case of aggravated rape involving the defendant FP who allegedly committed the offence against the wife of his older brother in Viqueque District.

Charges of the public prosecutor

The public prosecutor alleged that on 2 March 2018 the victim was sleeping alone in her bedroom in a plantation hut that did not have any doors. The defendant was drunk and entered the bedroom and touched the hand of the victim and she woke up startled and saw the defendant who was naked and the defendant told the victim “Don't scream or I will kill you.” Then the defendant removed the victim's pants and spread her thighs and got on top of her and had sexual intercourse with the victim. After having sexual intercourse the defendant went home and the victim secretly followed the defendant, and when she saw the defendant reach his hut the victim fled and told her oldest son at her house. The case file included a medical report from the Viqueque Health Centre.

The public prosecutor accused the defendant of violating Article 172 of the Penal Code on rape and Article 182.1 of the Penal Code on aggravation.

Presentation of evidence

During the trial the defendant stated that the victim was the wife of his older brother and when the incident occurred the victim's husband was ill and was staying at the home of his son. The defendant totally denied the facts set out in the indictment and stated that on 2 March 2018 at 9pm the defendant was at his plantation hut and the victim was staying at her plantation hut. When the defendant was eating dinner and drinking some palm wine the victim suddenly called out to the defendant to go to her plantation hut. The victim said to the defendant “Fix up the ropes restraining the buffalo because two buffaloes are tangled up”. When the defendant had fixed the ropes the victim said “Are you going back already?” The defendant responded that he

was going back. Then the victim asked the defendant for some tobacco to smoke and the defendant took out some tobacco and they had a smoke, then the defendant asked the victim to go back because her child was sleeping alone in the plantation hut. However the victim said “You sleep here, because if someone comes to steal the buffalo I don’t know what I could do.” The victim added that the defendant should believe what she said. So the defendant went into the victim's hut and sat down and they talked and the defendant and the victim each removed their clothes and had sexual intercourse.

After having sexual intercourse the victim asked the defendant for US\$20 to buy some rice, but the defendant told the victim that he didn't have any money and the next day he would sell a rooster and then he would give her some money. After speaking with the victim the defendant went back to his plantation hut. Suddenly at 1am the police went to the defendant's house and arrested him.

The victim stated that the incident occurred at 9pm and the defendant was drunk and went to the victim's plantation hut and pulled on the victim's leg, removed the victim's clothing and ripped her pants and used force to have sexual intercourse with the victim. The defendant threatened the victim by saying “If you scream I will kill you and this place is far away from other people in the community.”

The victim stated that she tried to run away but the defendant grabbed her, picked her up and laid her down on a bamboo bench and had sexual intercourse with the victim. When it was over the defendant again told the victim “If you tell anyone I will come and get you and kill you”. The victim also stated that she was only able to tell her oldest son and other family members when she saw the defendant go back to his hut. Then the family members immediately contacted the OPS police who arrested the defendant at his plantation hut.

The witness AP, who is the son of the victim, testified that when the incident occurred he was with his family and they were looking after his sick father in his house and the victim was sleeping by herself at the plantation hut to look after their animals. At 1am the victim suddenly turned up and she was crying and shaking but not saying anything. The witness kept on asking and after a very long time the victim said “Your uncle raped me.” The victim then told him what the defendant had done to her and the witness sent his younger sister to tell the witness MP to contact the OPS police to go and arrest the defendant at his plantation hut.

The witness MP, who is a neighbour, testified that he was asleep at his house and the victim's daughter woke him up and told him to go to the home of AP. When the witness arrived at the victim's house he saw the victim crying and she told the witness about the problem and the witness contacted the OPS police. The witness went with the OPS police to arrest the defendant at his plantation hut.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim, even though during the production of evidence the defendant tried to defend himself by denying all of the facts. However the victim and witnesses confirmed that after this incident the victim immediately fled and told her oldest son. Then the witness MP immediately contacted the OPS

police to arrest the defendant at his plantation hut. For this reason the public prosecutor requested for the court to sentence the defendant to 12 years in prison.

The public defender stated that according to the statement of the defendant, the sexual intercourse was based on consent. According to the defendant he did not threaten or force the victim, and therefore the public defender requested for the court to consider the statement of the defendant. The defendant cooperated with the court and was a first time offender. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the sexual intercourse between the defendant and the victim occurred as described in the indictment and medical report from the hospital. The court found that this crime occurred without the consent of the victim. The court also found that the defendant threatened to kill the victim if she told anyone about the incident. Based on these considerations, the court concluded this matter and sentenced the defendant to 10 years in prison.

13. Crime of sexual acts with an adolescent

Case No.	: 0004/18.MNSBD
Composition of the court	: Single Judge
Judge	: Jose Quintão
Prosecutor	: Gustavo A. M. da Silva
Public Defender	: Sidonio M. Sarmiento
Decision	: Acquitted

On 24 January 2019 the Baucau District Court conducted a hearing to announce its decision in a case of sexual acts with an adolescent involving the defendant ZBS and the victim who was aged 14 that allegedly occurred in Ermera District.

Charges of the public prosecutor

The public prosecutor alleged that on 1 August 2018 at 1am the victim was sitting around with her friends at college and then the defendant rang the victim's friend and asked to speak with the victim. The victim accepted the phone call and spoke with the defendant and the defendant asked the victim to meet him behind the college. The victim went out to meet the defendant because the nuns were all asleep. The defendant and the victim sat and talked until 3am behind the male section of the college which was empty. The defendant started to get close to the victim and held her tightly standing up against the wall and kissed the victim on the mouth and then the defendant took off the victim's shorts and underpants and pulled them down to her knees and removed the victim's blouse and bra and then the defendant took out his erect penis and rubbed it on the victim's genitals. The defendant then held and squeezed the victim's genitals until she felt pain. The defendant only stopped his behaviour when a person found them and shone a lamp on them and the defendant and the victim ran away in separate directions.

The public prosecutor alleged that the defendant violated Article 178 of the Penal Code on sexual acts with an adolescent that carries a maximum penalty of up to 5 years in prison.

Presentation of evidence

During the trial the defendant stated that at 11pm the defendant rang the victim's friend and asked to speak with the victim and the defendant asked the victim to meet him and the victim came outside and sat together with the defendant behind the college. The defendant also stated that when the incident occurred the defendant and the victim were not the only ones there, but there was another two couples who were sitting there and conversing with each other and the defendant and the victim were kissing each other. At 2.30am a person suddenly shone a lamp on them, and because they felt afraid the defendant and the victim ran away in separate directions.

On 2 August 2018 the victim's older brothers beat the defendant, so the defendant made a complaint to the police, and then the victim's older brothers also made a complaint against the defendant in relation to this case. When the victim's older brothers came back from the police station the victim sent a message via facebook (FB) to the defendant saying "My brothers made the complaint, not me". The defendant presented this message to the court, and the court printed it out and added it to the case file. The defendant also stated that he and the victim have been in a romantic relationship for more than one year from 2017 until now. The defendant is a student and his family pays for his schooling and he was a first time offender.

The victim also stated that when this incident occurred the defendant rang the victim's friend who was staying at the college and asked to talk with the victim so they could meet up and the victim went out and met the defendant, and the defendant held the victim's hand and they sat behind the male section of the college which was empty. They were not alone, but with two other couples and the other couples were involved in conversation. The defendant kissed the victim because she was his girlfriend. Suddenly a person shone a lamp on the defendant and the victim, so the defendant fled and the victim also ran inside the college. The victim's older brothers found out about this problem because the person who shone the lamp had informed them because he recognised the defendant and the victim. The victim also stated that she has been in a romantic relationship with the defendant for more than one year until now, and the victim loves the defendant and the victim sent a message via Facebook to the defendant saying "My brothers made the complaint, not me."

Final recommendations

The public prosecutor stated that during the production of evidence the defendant and the victim testified that they were kissing, because they were in love and they have been in a romantic relationship for more than one year until now. Therefore the public prosecutor requested for the court to use its discretion in this matter.

The public defender stated that the defendant and the victim were kissing as lovers, and suddenly a person shone a lamp and then they ran in opposite directions. At the time of this incident the two of them were not alone, because two other couples were there also. The victim did not make a complaint about the incident. Her older brothers beat the victim and the victim made a complaint, so the victim's older brothers also made a complaint against the defendant. The victim also acknowledged the message that she sent via FB to the defendant, and the defendant was a first time offender. Therefore the public defender requested for the court to acquit the defendant from the charges, or otherwise for the court to use its discretion to uphold justice.

Decision

After evaluating all of the facts, the court found the defendant not guilty of committing the crime against the victim based on the facts set out in the indictment of the prosecutor. Based on the statement of the defendant and the victim they have been in a romantic relationship since 2017 until now. Based on these considerations, including all of the circumstances, the court concluded the matter and acquitted the defendant from the charges.

14. Crime of attempted homicide and using a bladed weapon

Case No. : 0056/17.LASIC
Composition of the court : Panel
Judges : José Gonsalves
Afonso Carmona
Ersilia de Jesus
Prosecutor : Luis H. Rangel da Cruz
Public Defender : Jose M. Guterres
Decision : 6 years in prison

On 24 January 2019 the Baucau District Court announced its decision in a case of attempted homicide and use of a bladed weapon involving the defendant Reinaldo Dos Santos and the victim Paul Salvador Freitas, which allegedly occurred in Luro Village, Luro Sub-District, Lautem District.

Charges of the public prosecutor

The public prosecutor alleged that on 25 October 2018, at 8.30am, the victim was sitting with Miguel da Costa and Natalicio Freitas at the victim's house. Suddenly the defendant entered the victim's house with a machete and did not say anything. The victim was sitting down and facing the other way. The defendant tried to strike the victim in the head, but missed because the victim resisted with his arm and the machete struck his arm and caused an injury. Then the defendant slashed the victim on his ear and the victim suffered a large injury and heavy bleeding and then he slashed the victim in the head and caused a large injury and heavy bleeding and the victim became dizzy, fell to the ground and did not know where he was. Then a vehicle arrived and took the victim for treatment at the Luro Health Centre.

The prosecutor alleged that the defendant violated Article 138 and Article 23 of the Penal Code on attempted homicide in conjunction with Article 20 of Law No. 5/2017 on bladed weapons.

Presentation of evidence

During the trial the defendant stated that he slashed the victim, but the defendant didn't know how many times because the defendant didn't know what he was doing and the family members grabbed the defendant and tied him up and then the defendant became aware again. The defendant is a farmer and provides for his family and has nine children.

The victim confirmed all of the facts in the indictment and stated that after the defendant slashed him, the victim saw the witness NF grab the machete from the defendant's hand and the victim didn't know what happened next because the victim lost consciousness and fell to the ground and then his family members took the victim for treatment at the health centre. The victim was in

hospital for more than a week and had an injury to his left arm that required seven stitches and an injury to his ear that required eight stitches.

The witness Natalicio Freitas, who is a neighbour, testified that when this incident occurred the witness Miguel da costa and the victim were sitting together at the victim's house and suddenly the defendant entered the house and slashed the victim and the witness was shocked to see the victim bleeding. Therefore the witness ran and grabbed the defendant and took the machete, and some family members contacted the police so the defendant could be handed over to the police.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim, even though in his statement the defendant tried to avoid responsibility for the crime he committed. However, the victim and witnesses confirmed the facts and said that during the incident the defendant knew where he was. For this reason the public prosecutor requested for the court to sentence the defendant to 5 years in prison.

The public defender stated that the defendant requested for the court to give consideration to the defendant's statement that he made in the hearing because the trial did not establish a motive for this crime. If the defendant attacked with the intention to kill the victim, then the victim wouldn't be in his current condition as if nothing had happened. Therefore the public defender requested for the court to provide justice to the defendant.

Decision

After evaluating the facts produced during the trial, the court found that the defendant committed the crime against the victim, because he slashed the victim's left arm and the victim received seven stiches and he slashed the victim's ear and he received eight stitches. Base on the facts that were proven and all of the relevant circumstances, the court convicted the defendant for the crime of attempted homicide and imposed a prison sentence of 5 years, and for the crime of using a bladed weapon the court imposed a prison sentence of 4 years. The court accumulated the penalty and applied a single penalty of 6 years.

15. Crime of mistreatment of a spouse

Case No.	: 0004/18. MNNTB
Composition of the court	: Panel
Judges	: Afonso Carmona José Gonsalves Ersilia de Jesus
Prosecutor	: Luis H. Rangel da Cruz
Public Defender	: Sidonio M. Sarmento
Decision	: Prison sentence of 2 year and 6 months, suspended for 3 years

On 25 January 2019 the Baucau District Court conducted a hearing to announce its decision in a case of mistreatment of a spouse involving the defendant VL who allegedly committed the offence against his wife in Manatuto District.

Charges of the public prosecutor

The public prosecutor alleged that on 24 February 2018 the defendant and the victim argued because the defendant suspected the victim of having another man, so the defendant shoved the victim and she fell to the ground and he stood on the back of her neck.

Previously on 23 February 2018, at 8am, the defendant choked the victim and slapped the victim many times on her left cheek and pushed the victim to the ground which caused the victim to suffer pain to her back.

In 2014 the defendant took a piece of wood and struck the victim on her body until she wet herself. While they were living together the defendant always physically assaulted the victim, so the victim often thought about killing herself and she drank rat poison but did not die.

At some time in 2012 at 9am the defendant punched the victim in her forehead and caused the victim to suffer an injury and heavy bleeding.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse that carries a prison sentence of 2 - 6 years in prison as well as Articles 2, 3, 35 and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant totally confessed to all of the facts in the indictment. The defendant also knew that the victim drank rat poison after the incident on 24 February 2018. The victim and the defendant were separated for two months and then the defendant went looking for the victim to reconcile. The defendant stated that he regretted his behaviour, was a first time offender, and has reconciled with victim and since the incident the defendant has not beaten the victim.

The victim maintained all of the facts in the indictment but also stated that since the incident the defendant has not hit her. Now they are living together as husband and wife in the same house with their children.

Final recommendations

The public prosecutor maintained the charges and stated that the defendant was guilty of committing the crime against the victim based on the confession of the defendant and the statement of the victim. The prosecutor stated that this was a serious crime because since they have been together the defendant has repeatedly beaten the victim. Therefore, to deter such crimes from occurring in the future, the public prosecutor requested for the court to sentence the defendant to 2 years in prison, suspended for 2 years.

The public defender requested for the court to impose a fair penalty against the defendant because he confessed, regretted his behaviour, was a first time offender, and has reconciled with the victim.

Decision

After evaluating all of the facts, the court found that the defendant committed the crime based on the facts set out in the indictment. Based on the facts that were proven, the court concluded the matter and sentenced the defendant to 2 years and six months in prison, suspended for 3 years, and ordered him to pay court costs of US\$ 30.

For more information please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP

Email: luis@jsmp.tl

www.jsmp.tl