



Case Summary
The Dili District Court
September 2018

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 Dili District Court

1. Total cases monitored by JSMP: 21

Article	Case Type	Number of cases
Article 145 of the Penal Code (PC) as well as Articles 2, 3, 35(b) and 36 of the Law Against Domestic Violence	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 and Article 36 on domestic violence as a public crime)	9
Article 172 of the PC	Rape	1
Article 178 of the PC	Sexual acts with an adolescent	1
Articles 177, 178, 23 and 141 of the PC	Sexual abuse of a minor, sexual acts with a with an adolescent and attempted termination of pregnancy	1
Articles 163, 164 & 303	Aggravated human trafficking, and forgery of documents or technical report	1
Article 3 of Indonesian Law No. 31/1999 on the	Abuse of power and economic participation in business	1

Rua Beco Lakateu, Aldeia Manu fuik,
Suku Colmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275

Telefone: 3323883 | 77295795

www.jsmp.tl

info@jsmp.minihub.org

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

Eradication of Crimes of Corruption		
Articles 274 & 297 of the PC	Abuse of power and intentional mismanagement	1
Articles 295, 275 & 297 of the PC	Embezzlement, negligent mismanagement and abuse of power	1
Articles 138, 23 & 138 of the PC	Homicide and attempted homicide.	1
Articles 139 (a & e)	Aggravated homicide	1
Article 211 of the PC	Prohibited weapons	1
Article 145 of the PC	Simple offences against physical integrity	2
Total		21

2. Total decisions monitored by JSMP: 8

Type of penalty	Number of cases
Prison sentence	1
Prison sentence with civil compensation	1
Suspension of execution of a prison sentence (Article 68 of the PC)	1
Suspension of execution of a prison sentence (Article 68 of the PC)	5
Total	8

4. Total ongoing cases based on JSMP monitoring: 13

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

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

Case No. : 0177/17.DICMR
Composition of the Court : Single judge
Judge : Francisca Cabral
Prosecutor : Bartolomeu de Araujo
Public Defender : Afonso Gomes
Type of penalty : 3 months in prison, suspended for 1 year

On 3 September 2018 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant CG who allegedly committed the offence against his wife in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 13 October 2017, at approximately 9am, a person purchased a pig belonging to the defendant and the victim at a cost of US\$ 500. After the person left the victim asked the defendant to give her half of the money from the sale of the pig, but the defendant did not want to share the money and told the victim *“You have no right to the money from the sale of the pig, and where have you been all this time”*. Then they argued and pushed each other and ended up in the dining room. When they were pushing each other the victim grabbed the money from the sale of the pig from the defendant's pocket. The defendant extended his arm and struck the victim in the eye which caused a lot of pain.

In addition, the defendant punched the victim many times on the upper part of her left and right arms and used force to snatch the money from the victim's hands and gave it to their oldest son. The defendant told their son to take the money outside. When the victim ran after their son, the defendant took a piece of firewood and threw it at the victim but missed.

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 (a), 35 (b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant acknowledged that he and the victim argued about the money from the sale of the pig. The defendant stated that he extended his arm and struck the victim in the eye because the victim used force to take the money from the defendant's pocket.

The defendant denied that he punched the victim many times and stated that the victim bit his hand. In addition, the defendant stated that previously the victim and the defendant had a problem and the victim went to stay with her uncle and abandoned the defendant and their children.

The victim confirmed the facts set out in the indictment and stated that the defendant punched her three times and she felt embarrassed. The victim confirmed that she bit the defendant's hand because the defendant had pushed her. The victim also stated that after this problem the victim stayed with her uncle but now they have reconciled and she is living together with the defendant as husband and wife.

Final recommendations

The prosecutor said that the defendant committed the assault against the victim which caused the victim to suffer bruising to her hand, however the defendant denied hitting her, and therefore the prosecutor requested for the court to send the defendant to prison for two months, suspended for one year.

The public defender requested for the court to uphold justice for the defendant because the defendant regretted his actions against the victim and now he is living together with the victim and victim is six months pregnant.

Decision

After evaluating the facts produced during the trial, the court found all of the facts proven. The court found that the defendant argued with the victim and they fought over money from the sale of their pig and the defendant extended his arm and struck the victim in the eye which caused the victim to suffer severe pain.

The court also found that the defendant punched the victim three times in the arm which caused swelling. Based on facts that were proven, the court sentenced the defendant to 3 months in prison suspended for 1 year and ordered him to pay court costs of US\$ 20.

2. Abuse of power and economic participation in business¹

Case No.	: 2045/10.PDDIL
Composition of the Court	: Panel
Judges	: Jacinta Correia, Ana Paula Fonseca, Eusebio Xavier Victor
Prosecutor	: Lidia Soares and Rogerio Viegas
Public Defender	: Juvinal Yanes and Manuel Sarmento
Type of penalty	: 3 years in prison, suspended for 5 years, against the defendant LL and 2 years in prison, suspended for 3 years, against the defendant HMG.

On 13 September 2018 the Dili District Court announced its decision in a case of economic participation in business involving the defendant Lucia Lobato as the Minister of Justice and the defendant Helena Madeira Gomes as the Director of the National Directorate for Prison Services and Social Reinsertion, Ministry of Justice, in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that the two defendants conspired by collaborating to gain an advantage from a rehabilitation project of rooms at the Gleno prison in 2007. The two defendants caused the State to suffer a loss of US \$ 406,000.

¹ The court adjourned the trial many times because the whereabouts of witnesses were unknown. The prosecution and defence asked for time to respond to an instruction from the court to produce new facts and a request to amend the charges in relation to Indonesian law. The first new fact was the transfer of 55 prisoners from Baucau Prison to Dili Prison. The court also gave consideration to the ill health of the defendant, which was a new fact.

The prosecution stated that the two defendants came up with a plan for rehabilitating Gleno Prison using single source procurement which was not included in the 2007 budget plan. The single source procurement for the rehabilitation of Gleno Prison was done three times and the total budget was US\$ 500,000.

The prosecution also alleged that the project had no design, no Bill of Quantity (BoQ) and was not known by technicians from the Ministry of Public Works including verification of the design and rehabilitation process. Therefore, the two defendants violated Decree-Law 10/2005 on the Judicial Regime for Procurement which states that when the value of a project is higher than US \$100,000 a competitive public tender must be used. When a project uses single source procurement, justification must be provided about the why this project is urgent.

Also, the prosecution alleged that there were strong indications that the defendant Lucia Lobato also conspired with the *United General Construction* company because she was suspected of being related to the company owner.

The prosecution alleged that the two defendants violated Article 299 of the Penal Code on economic participation in business that carries a prison sentence of 3-15 years. The prosecution also recommended for the defendants to pay civil compensation to the State totalling US\$500,000.

Presentation of evidence

During the trial the defendant Helena Madeira stated that she signed an additional payment request for the two companies responsible for this project, however she signed it because administration demanded it and she didn't really know the contents of the request.

The defendant also stated that she had no knowledge about the tender process, because the Ministry of Finance is responsible for these matters, and the defendant placed her signature because there was an instruction that the budget for the rehabilitation of Gleno Prison had been approved.

The defendant Lucia Lobato stated that she prepared the request for the rehabilitation of Gleno Prison in Ermera District because at that time there were too many prisoners in Baucau Prison and the prison was in poor condition. Therefore she made the request for the rehabilitation of Gleno Prison to move the prisoners there. This request was approved by the Ministry of Finance and the Ministry of Justice also had knowledge about the single source procurement. The defendant rejected that she benefitted from the project because all payments were made by the treasurer directly into the company's bank account.

In relation to losses suffered, the defendant stated that from the time that the rehabilitation was completed, she never received any complaint about the project, and there was no evaluation of the project showing that the quality was poor. On the contrary, as the result of the defendant's rehabilitation effort, the Gleno Prison is in good condition and no further rehabilitation has been done until now.

The defendant also denied being related to the owner of the *United General Construction* company and never had a prior meeting to discuss anything with this company.

The witnesses Julio Soares and Agapito Mendonça, who were prison guards at Dili Prison, testified that at time Baucau Prison was not able to provide good conditions for prisoners because it was in a poor state and was overcrowded. Given these conditions, the Government through the Ministry of Justice, had a plan to move the prisoners to another prison and the Minister of Justice at that time, the defendant Lucia Lobato, suggested to move the prisoners to Gleno Prison. However, in the end the prisoners were not moved to Gleno Prison but rather to Dili Prison.

The witnesses Miguel dos Santos and Jiram Anak Usang, who are the owners of the *United General Construction* Company, did not attend the court because their whereabouts were unknown so the court did not hear from these two witnesses and decided to give consideration to the statement from the witness Miguel dos Santos that was made before the Public Prosecution Service who testified that the defendant Lucia Lobato rang him to verify that the Gleno Prison required urgent attention. Then the defendant ordered the company to prepare a design and Bill of Quantity (BoQ) for the defendant for the urgent rehabilitation of the Gleno Prison.

Before progressing to final recommendations the court requested for the charges to be amended from Article 299 to Article 3 of Indonesian Law No. 31/1999 on the Eradication of Crimes of Corruption, because the crime occurred before the Timor-Leste Penal Code was in force.

The prosecution had no objection to the request from the court to amend the charges, however the defence did not agree and objected to having the charges amended because the Indonesian Law made it possible for the defendants to be given a lifelong sentence.

Final recommendations

The prosecution stated that the facts set out in the indictment had all been proven based on the statement of the witness and other documents that the two defendants conspired to prepare a plan for the rehabilitation of Gleno Prison using single source procurement that was not included in the 2017 budget plan. The single source procurement for the rehabilitation of Gleno Prison was done three times with a total budget of US\$ 500,000.

The prosecution also stated that this project had no design, no Bill of Quantity (BoQ) and technicians from the Ministry of Public Works had no knowledge of it, and there was no verification of the design of the rehabilitation process. The prosecution stated that the two defendants violated Decree-Law No.10/2005 on the Judicial Regime for Procurement which states that if a project is more than US\$ 100,000 in value then a public tender must be held, and when Single Source procurement is used for a project, it is necessary to provide justification why the project is urgent.

The prosecution added that in this case the two defendants failed to provide any justification why they decided to use single source procurement. The prosecution disagreed with the testimony of witnesses who were prison guards at Gleno Prison that the prison needed to be rehabilitated urgently because it was going to receive prisoners from Baucau Prison. In the end, the prisoners from Baucau Prison were not relocated to Gleno Prison but rather they were moved to Becora Prison in Dili.

Therefore, the prosecution stated that the defendant Helena was guilty because she signed a contract for rehabilitation with the two aforementioned companies. The prosecution discovered that the owner of one of the two companies that won the tender was the cousin of the defendant Lucia Lobato.

Based on all of these facts the prosecution requested for the court to convict the two defendants for committing the crime of economic participation in business on three occasions, and each charge carries a prison sentence of 5 years, for a total sentence of 15 years. The prosecution requested for the court to sentence each defendant to 7 years in prison. In addition, the prosecutor requested for the court to order the two defendants to pay civil compensation of US\$406,000.

The defence requested for the court to acquit the defendant Lucia Lobato from the charges of the public prosecutor, because the rehabilitation of Gleno Prison was urgent because at that time the Baucau Prison was in poor condition and was full. However, in the end another decision was taken not to move the prisoners to Gleno Prison, but rather to Dili Prison, and this was not the defendant's responsibility, because the decision was made by the Directorate of Prisons. The defence also disagreed with civil compensation because in reality the money was used for the rehabilitation of the prison and there was no proof showing that the two defendants conspired to share money with each other or to obtain an advantage from the two companies that won the tender.

The defence requested for the court to acquit the defendant Helena Gomes from the charges of the public prosecutor because she was not competent to make a decision about the tender. The

defendant signed the contract for this project, but only because the Ministry of Finance had given approval to carry out this project.

Decision²

After evaluating all of the evidence that was presented, the court proved some of the charges of the public prosecutor, namely that the defendant Lucia Lobato made a request for the first phase of rehabilitation of the Gleno Prison (5 blocks) totalling US\$133,739.85 because Gleno Prison was in poor condition and was full. However, the court found that this was unreasonable because the prisoners were not moved to Gleno Prison but rather to Becora Prison. The court also found that the defendant Lucia Lobato spoke directly with the *United General Construction* company about the rehabilitation of Gleno Prison. In addition, the court also found that the rehabilitation of Gleno Prison was not verified by the Ministry of Public Works because it had no knowledge of the project.

The court did not find that the defendant Lucia Lobato was related to the owner of the *United General Construction* company.

In relation to the defendant Helena, the court found that the defendant signed a payment request for the rehabilitation of Gleno Prison by the *United General Construction* company for items coinciding with the first phase totalling US\$ 92,167.20. Actually, the defendant had the competence to stop this project but she did not do so.

The court found that the actions of the two defendants disadvantaged the State because the project was approved using single source procurement. The two phases of rehabilitation were for the same items with a long interval in between. Therefore, the court found that there was no logic for this expense and it benefitted the companies.

Based on the facts that were proven in accordance with Article 3³ of Law No. 31/1999 on the Eradication of Crimes of Corruption, and the mitigating circumstances that the defendant was ill, the court concluded the matter and sentenced the defendant Lucia Lobato to three years in prison, suspended for five years and ordered her to pay civil compensation of US\$ 124,862.59 and also sentenced her to pay court costs of US\$ 200. The court sentenced the defendant Helena Madeira

² The prosecution lodged an appeal with the Court of Appeal because it did not agree with the sentence imposed against the defendants and felt that the amount of civil compensation was too low.

³ Any person with the intent of benefitting himself or another person or cooperation, misuses his authority, opportunity, or other means available due to his position or status that could result in losses to State funds or the economy of the country, is punishable with a lifelong prison sentence or a minimum of 1 (one) year in prison or maximum of 20 (twenty) years in prison and/or a minimum fine of 50,000,000 (fifty million) rupiah or a maximum fine of 1,000,000,000 (one billion Rupiah)

to two years in prison, suspended for three years and ordered her to pay civil compensation of US\$ 92,167.20.

3. Crime of prohibited weapons

Case No. : 0420/13. PDDIL
Composition of the Court : Panel
Judges : Jose Maria de Araújo, Francisca Cabral and Maria Solana
Prosecutor : Nelson de Carvalho
Defence : Casilda Ximenes (private lawyer)
Type of penalty : 1 year in prison, suspended for 1 year

On 17 September 2018 the Dili District Court announced its decision in a case of prohibited weapons involving the defendant Natalina Brites who allegedly committed the offence against the State in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 16 December 2013 at 9am in Audian a joint operations team from the PNTL and the Ministry of Commerce and Industry carried out an operation on shops selling fireworks in Dili. The joint operation was based on an instruction from the Prime Minister because fireworks are considered to be explosive materials and it is illegal to sell them.

At that time the operations team conducted a search at the defendant's shop. The team found that the defendant was selling 12 boxes of super jumbo fireworks with a total of 133 items and the team immediately confiscated them. The police prepared the following report on these materials:

- Six boxes containing 11 fireworks, totalling 66;
- Three boxes containing 10 fireworks, totalling 30;
- Two boxes containing 13 fireworks, totalling 26;
- One box, containing 11 fireworks, totalling 11.

The public prosecutor alleged that the defendant violated Article 211 of the Penal Code on prohibited weapons that carries a maximum penalty of 2-6 years in prison.

Presentation of evidence

During the trial the defendant totally confessed that as a trader she was selling these fireworks but she did not know that it was illegal to sell them. The defendant promised not to repeat her actions in the future.

Final recommendations

The public prosecutor stated that the crime occurred because the defendant confessed that she was selling the fireworks as stated in the indictment. Therefore the prosecutor requested for the court to carefully consider the defendant's actions to uphold justice for the defendant.

The defence requested for the court to issue an admonishment against the defendant because she is a trader selling goods to make a living. The defence argued that the defendant was selling fireworks because she had no knowledge that the law prohibited the sale of explosives including fireworks.

Decision

After evaluating all of the facts, the court found the defendant guilty of selling 113 fireworks based on the facts set out in the indictment of the public prosecutor. Based on all of the facts that were proven and the relevant circumstances, the court sentenced the defendant to 1 year in prison, suspended for 1 year.

4. Crime of homicide and attempted homicide⁴

Case No.	: 0165/17. DINFT
Composition of the Court	: Panel
Judges	: Eusebio Xavier Victor, Jacinta Correia da Costa and Ana Paula Fonseca
Prosecutor	: Antonio Tavares
Defence	: Rui M. Guterres and Manuel Gonsalves (private lawyers)
Type of penalty	: Effective prison sentence of 13 years, prison sentence of 3 years, suspended for 5 years, and acquitted

On 17 September 2018 the Dili District Court announced its decision in a case of homicide and attempted homicide involving the defendants Rudy Celeste Amaral, Natalino F. da Costa Pereira, Cristovão Mendonca, Bernadino dos Santos, Frederico Quintão Pereira and Simão Magno de Deus and the victims João Tomas and Adelino Alves, in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that 3 October 2017 at approximately 8.00pm the defendants had a problem with some youths from Temporal Sub-Village and Posto Penal Sub-Village, in Lahane Oriental village. At the time of the incident the defendant Rudy Celeste from Postu Temporal Sub-Village used an air rifle to shoot the victim João Tomas in the thigh which caused an injury and he also shot the victim Adelino Alves in the chest which caused heavy bleeding and the victim fell to the ground. Then the victim Adelino fell down and another defendant from Postu Temporal Sub-Village, namely the defendant Natalino F. da Costa Pereira, struck the victim in the head with a piece of wood and the defendant Bernadino dos Santos threw a rock at the victim's head and the defendant Cristovão Mendonca beat the victim on the back of the neck with a piece of iron. Also, the defendant Frederico Quintão Pereira threw a rock at the victim's

⁴JSMP did not manage to observe the final recommendations of the parties because at that time JSMP was observing another important case that was being tried at the court.

chest and the defendant Simão Magno de Deus took a piece of steel pipe and struck the victim in the head.

These acts caused the victim to suffer serious injuries and he was immediately taken to the Guido Valadares National Hospital but upon arrival at the hospital the victim passed away.

The prosecutor alleged that the defendants violated Article 138 of the Penal Code on homicide that carries a prison sentence of 8 to 20 years and also alleged that the defendant Rudy Celeste violated Articles 23 and 138 of the Penal Code on attempted homicide.

Presentation of evidence

During the trial the defendant Rudy totally confessed to the facts set out in the indictment of the public prosecutor and stated that he shot the victims with an air rifle because at that time the victims were with some youths from Posto Penal Sub-Village and they assaulted some young people from the Postu Temporal Sub-Village. In relation to the involvement of the other five defendants, the defendant Rudy stated that he had no knowledge, because at that time many people were running around in all directions.

The defendants Natalino, Cristovão and Bernadino denied that they threw stones and beat the victim Evalino, however they were running around at the time of the incident. Also, the defendants Frederico and Simão denied the facts set out in the indictment of the prosecutor and stated that at the time of the incident they were at their respective homes and only heard about the incident from their neighbours so they didn't know about it and were not involved.

The victim João Tomas confirmed the facts that before the victim was shot he was with Adelino (deceased) and Deonísio dos Santos drinking coffee and eating instant noodles at the Taibese Market. João Tomas added that not long longer after they heard someone striking some metal and yelling out "*people are attacking!*" The victim stated that the three of them ran in different directions and the victim ran down to the road and found the defendant Rudy holding an air rifle and therefore he ran back. When he arrived at the fish market the victim was shocked to see that his leg was bleeding and a bullet was stuck in his thigh. Therefore the victim ran back home.

The victim Adelino was shot and died at hospital, and the victim João stated that he only heard about the death the following morning. In relation to the involvement of the other five defendants, the defendant João stated that he had no knowledge.

The witness Deonísio dos Santos confirmed part of the testimony of the victim João Tomas that they were at the Taibesi Market and heard someone say "*people are attacking*". So they ran in different directions and when they reached the main road the witness saw the defendant Cristovão drag a machete on the ground and shout "kill...kill!" The witness also testified that he

saw the defendant Rudy holding an air rifle and was standing in front of a kiosk. Therefore the witness was afraid and ran to the Posto Penal Sub-Village area and not long after the witness heard that the victim Adelino had been shot. The witness went to see the victim at his uncle's house. At that time the witness saw a lot of blood coming from the victim's mouth and then they took the victim to the National Hospital but when they arrived he passed away.

The witness also stated that he did not see the other defendants beat or stone the victim Adelino because the witness ran away from the scene.

The witness Tomas Alves, who is the father of the victim Adelino, testified that at that time of the incident he was asleep. The witness' son woke him up and told him that people were beating the victim Adelino. Therefore the witness got up and went to the scene. When he arrived at the scene the witness saw that the victim Adelino was suffering an injury to his chest, swelling to the back of his neck and bleeding from his nose and mouth. On that evening the witness and some of the victim's friends took the victim to hospital but when they arrived the victim had passed away. The witness added that at the hospital he heard that his son had been shot by the defendant Rudy.

Decision

After evaluating all of the facts the court found that the defendant Rudy Celeste Amaral committed the crime of homicide against the victim Adelino Alves because he used an air rifle to shoot the victim and took the life of the victim. The court also found that the defendant Rudy Celeste Amaral committed the crime of attempted homicide because he shot the victim João Tomas in the thigh.

In addition, the court found that the defendants Natalino Pereira, Cristovão Mendonsa and Bernadino dos Santos, provoked the defendant Rudy to get the air rifle and shoot the victim Adelino Alves and the victim João Tomas which caused the victim Adelino to die and the victim João suffered an injury. In relation to the defendants Frederico Pereira and Simão de Deus, the court did not find that they were involved in this crime.

Based on the facts that were proven, the court sentenced the defendant Rudy Celeste Amaral to 12 years in prison for the crime of homicide and sentenced him to three years in prison for the crime of attempted homicide. The court accumulated the penalties and sentenced the defendant Rudy Celeste Amaral to a single penalty of 13 years in prison.

The defendants Natalino Pereira, Cristovão Mendonsa and Bernadino dos Santos, were sentenced by the court to three years in prison, suspended for five years. The defendants Frederico Pereira and Simão de Deus were acquitted from the charges by the court.

5. Crime of sexual acts with an adolescent

Case No. : 0142//15. PCSIC
Composition of the Court : Single judge
Judge : Sribuana da Costa
Prosecutor : Osorio de Deus
Public Defender : Pedro Aparicio
Type of penalty : 2 years in prison, suspended for 2 years

On 21 September 2018 the Dili District Court conducted a hearing to announce its decision in a case of sexual acts with an adolescent involving the defendant RdC and the victim who was aged 14 and a half, in Ermera District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 29 August 2015 the defendant and victim went to participate in the celebration of a marriage involving their family. During the party the defendant asked the victim to go back home with him on a motorcycle. At 2.00am the defendant and the victim arrived home and the defendant told the victim to wait at the defendant's bedroom window and the defendant went to open the main door and went inside. Although the victim did not want to, the defendant forced her, so the victim went into the defendant's bedroom through the window. When the victim entered the bedroom the defendant quickly locked the door. Then the defendant removed the victim's clothes and had sexual intercourse with the victim. The defendant continued to have sexual intercourse four times with the victim until 5.00am. After the sexual intercourse the defendant threatened the victim so she would not tell anyone about the incident.

Previously, on an unspecified date in 2015, the victim was living in the defendant's house so she could attend middle school. One week later the defendant forced the victim to go into the bedroom of the defendant's younger sibling that was empty and the defendant pushed the victim onto the bed and the defendant removed his pants and the victim's pants and had sexual intercourse with the victim. These acts caused the victim to suffer bleeding from her sexual organs. The victim tried to scream but the defendant covered her mouth and threatened her so she would not tell anyone else. While the victim was at the defendant's house the defendant had sexual intercourse with the victim seven times and the last time occurred on 29 August 2015 when they returned from the aforementioned marriage ceremony.

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 confessed that he had sexual intercourse with the victim but did not use force or threats. The defendant stated that the sexual intercourse was based on the consent of the victim because they were in a romantic relationship.

The victim confirmed the facts set out in the indictment of the prosecutor but stated that previously she was in a romantic relationship with the defendant. The victim added that while they were in a romantic relationship the defendant always had sexual intercourse with the victim but used force and threatened to beat or kill the victim if she told anyone else. The victim also stated that the two families came together to discuss this case and the parents of the defendant did not agree for him to take the victim as his wife.

Final recommendations

The public prosecutor stated that the defendant committed sexual acts with an adolescent as alleged in the indictment. For this reason the prosecutor requested for the court to impose a prison sentence of 3 years, suspended for 5 years, against the defendant.

On the other hand the public defender requested for the court to acquit the defendant from the charges of the public prosecutor. However, if the court was to decide otherwise, then the public defender requested an appropriate penalty to be imposed against the defendant. The public defender made this request because the sexual relations occurred based on consent between the defendant and the victim on occurred on seven occasions so the acts did not meet the elements of the crime of sexual acts with an adolescent.

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, but based on consent. The court did not prove that the defendant threatened to beat or kill the victim and did not prove that he used force or covered the victim's mouth when he had sexual intercourse with the victim because the victim confirmed that she was in a romantic relationship with the defendant.

Based on these considerations, and after carefully considering all of the circumstances, the court concluded this matter and sentenced the defendant to 2 years in prison, suspended for 2 years.

6. Crime of serious offences against physical integrity

Case No.	: 0221/17. DICMR
Composition of the Court	: Single judge
Judge	: Francisca Cabral
Prosecutor	: Benvinda do Rosario
Public Defender	: Joana Cristina Pinto
Type of penalty	: Fine of US\$ 120

On 24 September 2018 the Dili District Court announced its decision in a case of simple offences against physical integrity involving the defendant Selina Izak who allegedly committed the offence against the victim Wilson Lobator Ximenes, aged 7, who was her student, in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that on the morning of 3 March 2017 the defendant struck the victim in the head with a wooden ruler 50cm in length, which caused an injury and bleeding. At that time the victim was studying mathematics and the defendant told the victim and the other students to go outside and collect some rocks so they could learn how to count. When the victim and the other students came back inside to the classroom the defendant told the students to sit quietly so she could give an explanation. While she was providing the explanation the victim and a friend were grabbing each other, so the defendant committed the assault against the victim.

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

Before proceeding to the examination of evidence the court attempted conciliation between the defendant and the victim but this was unsuccessful because the father of the victim (representing the victim) wanted the case to proceed.

During the trial the defendant confessed to striking the victim with a wooden ruler because the victim was very naughty and making noise when the defendant was explaining the subject. The defendant added that about twenty minutes later the victim and his friends told the defendant that the victim was bleeding from his head. The defendant immediately got some ointment to put on the victim's injury. The defendant stated that she regretted her actions and promised not to reoffend in the future.

The victim confirmed the facts set out in the indictment of the public prosecutor and confirmed that the defendant cleaned the blood from his head and rubbed some ointment on the injury.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime of simple offences against the physical integrity of the victim, but because defendant confessed, regretted her actions and promised not to reoffend, the prosecutor requested for the court to apply an appropriate punishment against the defendant.

The public defender also requested for the court to impose a fair and just penalty against the defendant. The public defender considered the mitigating circumstances such as the defendant confessed, regretted her actions, was a first time offender and promised that not to repeat such actions in the future.

Decision

The court found that the defendant committed the crime of simple offences against physical integrity according to the facts set out in the indictment. Based on these proven facts, including the mitigating circumstances such as the defendant confessed, regretted her actions and promised not to reoffend, the court concluded the matter and ordered the defendant to pay a fine of US\$120 in daily instalments of US\$0.50 for 240 days. If the defendant does not pay this fine then she will be sent to prison for 160 days as an alternative punishment. The court also ordered the defendant to pay court costs of US \$10.

7. Sexual abuse of a minor, sexual acts with a with an adolescent and attempted termination of pregnancy

Case No. : 0217/16. ERREM
Composition of the Court : Panel
Judges : Ana Paula Fonseca, Jacinta Correia and Dr. Eusébio Xavier Victor
Prosecutor : Osorio de Deus
Public Defender : Manuel Goncalves
Type of penalty : 13 years in prison and compensation of US\$1,500

On 25 September 2018 the Dili District Court conducted a hearing to announce its decision in a case of sexual abuse of a minor, sexual acts with an adolescent and attempted termination of pregnancy involving the defendant GdS who allegedly committed the offence against the victim DS aged 13 in Ermera District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 9 October 2012, at approximately 2.00pm, the defendant went to the victim's house and asked the victim's parents for the victim to stay at the defendant's house. The defendant asked the victim to stay with him to cook for the people working on cleaning up the defendant's plantation so he could plant corn and other crops.

The victim's parents accepted the defendant's request so on the same day the victim went to the home of the defendant. At the defendant's home the victim cooked for the defendant and the people working for the defendant. On the same day at 5pm, after she finished cooking, the victim was about to return home, but the defendant did not respond and told the victim that he had asked the victim's parents for the victim to stay with the defendant. The victim stayed and

cooked dinner for the defendant. After cooking dinner the victim called on the defendant to have dinner, but the defendant told the victim to “bring the food to my bedroom”.

The victim took the food into the defendant's bedroom and the defendant grabbed the victim's hand and told the victim “you are wonderful”. The victim felt afraid and tried to get away from the defendant but she could not do so because the defendant held her tightly. The defendant threatened the victim by saying “You can't scream because it's just the two of us here now in the middle of this plantation”. Then the defendant grabbed the victim and kissed her, kissed her breasts and the defendant removed her clothes and had sexual intercourse with the victim. The victim could not scream because the defendant's house was a long distance from the homes of others in the village.

After the incident, on an unspecified date in 2013, the defendant asked the victim to cook for the defendant. The victim went there and the defendant again asked to have sexual intercourse with the victim but the victim did not want to. So the defendant asked to kiss the victim. The defendant grabbed the victim and sucked on her tongue.

Then, in 2014 (on an unspecified date), the defendant asked for the victim to stay with him to help cook for the defendant. When the victim returned from school, the defendant told the victim to massage his feet. When the defendant was massaging his feet, the defendant squeezed the victim's breasts and vagina.

In 2015 (on an unspecified date), the defendant had sexual intercourse with the victim and then in March 2015 the victim became pregnant. The defendant purchased some medicine and gave it to the victim to get rid of the baby but the victim did not want to. Then the victim decided to go home and live with her parents. When the victim was 8 months pregnant the victim told their neighbour that she was pregnant to the defendant. After hearing the victim's story, the neighbour told her parent's and they questioned the victim. The victim confirmed that she was pregnant to the defendant and the victim had not told anyone else because she was afraid that the defendant would kill her parents.

The public prosecutor alleged that the defendant violated Article 177 of the Penal Code on sexual abuse of a minor, and violated Article 178 of the Penal Code on sexual acts with an adolescent and violated Article 23 of the Penal Code on attempt and Article 141 of the Penal Code on termination of pregnancy.

Presentation of evidence

During the trial the defendant acknowledged that he had sexual intercourse with the victim but it was based on mutual consent. The defendant also stated that he had paid for the victim's school and purchased her phone and the victim always asked him for money. Therefore, the defendant felt that the victim could serve him when he wanted to have sexual intercourse. The defendant

denied that he was responsible for the victim's pregnancy, and stated that the victim was pregnant due to a relationship with another man (her boyfriend).

The victim confirmed the facts set out in the indictment and stated that at the time of the incident she was powerless to run away or scream because the house where the defendant and victim were staying was in a plantation and a long distance from other homes in the village.

The victim stated that after having sexual intercourse the defendant threatened the victim so she would not tell anyone, or otherwise the defendant would do something bad to the victim. The victim also stated that she did not tell her parents because she was afraid that the defendant would do something bad to her parents because the victim and her parents were living on the defendant's land.

The victim added that when she became pregnant, the defendant bought some medicine in Dili and gave it to the victim to take to get rid of the baby, but the victim did not take it because she was afraid and the victim decided to give birth.

A witness, who was the victim's neighbour, testified that she never knew that the victim and the defendant had intercourse, but when the victim became pregnant the witness found out. The witness said that the victim was hiding medicine with Chinese writing on it inside her clothing. Therefore the witness asked the victim about the medicine and the victim told her about the intercourse between the defendant and the victim which caused the victim to become pregnant.

The witness further testified that the victim took two pills from the aforementioned medicine and the witness obtained the rest and gave it to the police.

Final recommendations

The public prosecutor maintained the facts set out in the indictment that the sexual intercourse between the defendant and the victim took place between 2012 and 2015 and caused the victim to become pregnant. The defendant threatened the victim so she would not tell anyone about the incidents or otherwise the defendant would do something bad to the victim. Therefore the victim was afraid and didn't tell anyone else because the victim and her parents were living on the defendant's land. The defendant considered that he was entitled to the intercourse, because while the victim was living with him the victim had to meet all of his needs.

Even though the defendant denied that he was the father of the victim's child, based on the statement of the victim it was the defendant who got the victim pregnant because the victim didn't even know the man who the defendant accused of getting her pregnant. Based on these considerations, including the victim's statement, the public prosecutor requested for the court to impose a prison sentence of sixteen years against the defendant.

The public defender requested for the court to uphold justice for the defendant because the defendant is elderly and the defendant did not deny that the sexual intercourse took place between the defendant and the victim.

Decision

After evaluating all of the facts, the court found that the defendant committed the crime of sexual abuse against the victim because when the first incident occurred the victim was aged 13. The court also found that the defendant committed the crime of sexual acts with an adolescent against the victim because the sexual intercourse occurred when the victim was aged 16 and the defendant took advantage of the victim's inexperience.

In addition, the court also found that the defendant committed the crime of attempted termination of pregnancy against the victim because the defendant bought medicine and gave it to the victim to take to get rid of her baby, the victim did not take it and decided to give birth.

Based on this evidence the court sentenced the defendant to 13 years in prison and ordered him to pay compensation of US\$1,500 to the victim.

8. Crime of Rape

Case No.	: 0676/14.DICMR
Composition of the Court	: Panel
Judges	: Ivan Patrisino Antonio Gonsalves, Edite Palmira and Maria Modesta
Prosecutor	: Nelson de Carvalho
Public Defender	: Manuel Sarmiento
Type of penalty	: 3 years in prison, suspended for 3 years

On 25 September 2018 the Dili District Court conducted a hearing to announce its decision in a case of rape involving the defendant EML who allegedly committed the offence against the victim CA, his sister in law, in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 25 December 2014 at 2:30am the victim was sleeping with the defendant's three children and the defendant was watching television. At that time the defendant went to wake up the victim three times to give milk to the defendant's child. The victim woke up and saw the defendant's child holding a bottle so the victim went back to sleep. The victim had been staying with the defendants since 16 December 2014, because the defendant's wife went to a marriage ceremony in Oecusse.

At 3:00am the defendant woke the victim up and told the victim to sleep in his bedroom because there were lots of mosquitoes. The victim woke up and went to sleep in the defendant's bedroom

because she thought that the defendant would sleep outside. However, not long after, the defendant came into the bedroom and threw himself on top of the victim. The defendant grabbed the victim's shirt, and removed her clothes. The victim reacted and punched the defendant in the chin, but the defendant did not let go of the victim and kissed her and had sexual intercourse with the victim until 4:00am.

The prosecutor accused the defendant of violating Article 172 of the Penal Code on rape which carries a penalty of 5 to 15 years in prison and for violating Article 173 (a) of the Penal Code on aggravation because the victim was economically dependent on the defendant.

Presentation of evidence

During the trial the defendant stated that the sexual intercourse took place because the defendant and the victim both consented and he did not force the victim. The defendant rejected that the defendant removed the victim's clothing. According to the defendant, the victim removed her own clothing. The defendant also stated that this case was resolved in accordance with East Timorese culture and an amicable agreement between the defendant and the victim. The defendant also gave US\$1,000, one pig, a traditional cloth (*tais*) for a man and one *tais* for a woman to redress the victim's suffering.

The victim confirmed the charges of the public prosecutor and stated that the defendant's wife contacted the victim to look after the defendant's young child because the defendant's wife went to attend a marriage ceremony in Oecusse. The victim also stated that the defendant's wife and the victim are step sisters. Therefore the victim accepted when she was asked to look after the defendant's child.

The victim added that on 25 December 2014, at 4.00am, the defendant woke the victim up to prepare some milk for the defendant's child. After preparing the milk the victim went back to sleep, but the defendant told the victim to sleep in the defendant's bedroom. The victim accepted this and went into the defendant's bedroom but suddenly the defendant followed her and removed the victim's clothing and pushed the victim on to the bed and had sexual intercourse with the victim.

Then on 28 December 2014, when the defendant's father was taking breakfast to the defendant's children, the victim asked the defendant's father to take the victim to her brothers in Becora and the victim told them everything about what the defendant did to her. Then on 30 December 2014 the victim and her family made a complaint to the police.⁵

Decision

⁵JSMP did not monitor the final recommendations because the case had been adjourned many times up until the judicial recess, so JSMP was unaware of the date of the hearing.

After evaluating the facts examined during the trial, the court found that the defendant committed the crime of rape against the victim when the defendant's wife went to attend a marriage ceremony in Oecusse. Although the victim tried to react, the defendant did not let her go and had sexual intercourse with the victim. Also the court found that the defendant gave US\$1,000, one pig, a traditional cloth (*tais*) for a man and one *tais* for a woman to redress the victim's suffering. Based on this evidence, the court concluded the matter and sentenced the defendant to 3 years in prison, suspended for 3 years, and ordered the defendant to pay court costs of US \$20.

For more information, please contact:

Luis de Oliveira Sampaio

Executive Director of JSMP

Email: luis@jsmp.tl

info@jsmp.tl

Telephone:3323883