



Case Summary
The Dili District Court
January 2021

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 number of cases monitored by JSMP: 39

Articles	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 (DV) and Article 36 on domestic violence as a public crime)	21
Article 171 of the PC	Sexual coercion	2
Article 285 of the Indonesian Penal Code	Rape	1
Article 155 of the PC & Articles 2, 3, and 35 of the Law Against Domestic Violence	Mistreatment of a minor	1
Article 145 of the PC & Articles 2, 3, and 35 (b) of Law Against	Simple offences against physical integrity characterized as domestic violence (Article 2	1

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Domestic Violence and Articles 174, 183 of the PC	on the concept of domestic violence, Article 3 on family relationships, Article 35 on different types of domestic violence (DV) and Article 36 on domestic violence as a public crime), sexual exploitation of a third party and public disclosure of private information	
Article 225 of the PC	Failure to fulfill an obligation to provide food assistance	1
Articles 303 and 304 of the Penal Code	Forgery of documents or technical report and aggravated forgery	1
Articles 295 and 319 of the Penal Code	Misappropriation of public assets, Mismanagement of public funds	1
Article 297 of the PC	Abuse of power	1
Articles 274, 295, 303, 304 of the PC	Intentional mismanagement, Misappropriation of public assets, Forgery of documents or technical report and aggravated forgery	1
Article 267 of the PC	Aggravated fraud	1
Article 151 of the PC	Reciprocal offences against physical integrity	1
Article 145 of the PC	Simple offences against physical integrity	3
Article 138 of the PC	Homicide	1
Article 140 of the PC	Manslaughter	1
Articles 145 of the PC & Use of bladed weapon - Article 2.1 (f) and Article 20 of Law No. 5/2017	Simple offences against physical integrity and use of a bladed weapon	1
Total		39

2. Total decisions monitored by JSMP: 16

Type of decision	Article	Number of Decisions
Suspension of execution of a prison sentence	Article 68 of the PC	6
Fine	Article 67 of the PC	3
Prison sentence	Article 66 of the PC	1
Admonishment	Article 82 of the PC	1
Suspension of execution of a prison sentence and rules of conduct	Articles 68, 70(g) of the PC	1
Endorsed agreement	Article 216 of the CPC	3
Statute of limitations	Article 78 (3) of the Indonesian Penal Code	1

Total		16
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3. Total cases adjourned based on JSMP monitoring: 0

4. Total number of ongoing cases based on JSMP monitoring: 23

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

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

Case Number : 0246/20.PDDIL
Composition of the Court : Single Judge
Judge : José Gonçalves
Prosecutor : Gostavo da Silva
Defence : Sergio Dias Quintas
Decision : 3 months in prison, suspended for 1 year

On 8 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AdR who allegedly committed the offence against his son JdR in Dili District.

Charges of the Prosecutor

The public prosecutor alleged that on 4 August 2020, at 4pm, at their house the victim was helping the defendant make a kitchen and suddenly the defendant punched the victim twice in the back and slapped the victim once on his left cheek. The defendant also took a piece of wood and struck the victim four times on his left leg and struck the victim once on the forehead. These acts caused the victim to suffer pain to his body where he had been struck by the defendant.

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

Examination of evidence

During the trial the defendant acknowledged that he took a piece of wood and struck the victim four times on his right and left arms. Regarding the allegations that he punched the victim twice in the back, slapped the victim once on his left cheek and took a piece of wood and struck the victim four times on his leg and forehead, the defendant said that this was not true. The defendant also stated that after the beating the victim's mother took the victim for treatment at hospital. The defendant stated that he did not ask about the victim's condition

because the defendant saw that he was fine. The defendant also stated that after this incident they immediately reconciled, he regretted his actions and he was a first time offender.

The victim confirmed the facts set out in the indictment and added that the defendant hit the victim because the victim removed the kitchen door that didn't need to be removed but after this incident they immediately reconciled.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing all of the alleged offences, even though the defendant tried to deny some of the facts, the victim confirmed these facts, therefore to prevent such crimes from occurring in the future, the public prosecutor requested for the court to apply a prison sentence of four months, suspended for one year.

The defence stated that the defendant acknowledged his actions, regretted these actions, was a first time offender and the defendant has a very limited income, therefore the defence agreed with the request of the public prosecutor for a prison sentence of four months, suspended for one year.

Decision

After evaluating the facts that were produced during the trial, the court found that the defendant punched the victim twice in the back, slapped the victim once on his left cheek and took a piece of wood and struck the victim four times on his left leg and struck the victim once in the forehead.

Based on the facts that were proven and consideration of the mitigating circumstances, namely that the defendant regretted his actions, was a first time offender, and has reconciled with the victim, the court concluded this case and imposed a prison sentence of 3 months against the defendant, suspended for 1 year.

2. Crime of simple offences against physical integrity

Case Number	: 0015/17.LIBZT
Composition of the Court	: Single Judge
Judge	: Evangelino Belo
Prosecutor	: Bemvinda da Costa do Rosario
Defence	: Estaque Pereira Guterres
Decision	: Prison sentence of 1 year, suspended for 1 year and 6 months

On 14 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant Flaviano

dos Santos who allegedly committed the offence against his neighbour Domingos Borges in Liquica District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 30 August 2017 the defendant punched the victim once on his right ear and pushed the victim who fell to the ground. Prior to this assault, the victim spoke inappropriately to the defendant's father, so the defendant and the victim argued and the defendant committed the assault.

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.

Examination of evidence

During the trial the defendant confessed all of the facts set out in the indictment, the defendant also stated that he regretted his actions. The defendant also promised that in the future he would not commit any further crimes.

Also, the victim confirmed all of the facts in the indictment and also stated that prior to this incident there was a misunderstanding between the victim and the defendant's father and this problem has been resolved. However one week later the defendant struck the victim and the victim did not know why the defendant struck him. The victim added that after this incident there were no further problems between them.

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 based on the confession of the defendant and the confirmation provided by the victim. Therefore, even though the defendant confessed, regretted his actions and promised not to repeat his actions, in order to deter the defendant from committing an offence against the victim or other person in the future, the public prosecutor requested for the court to impose a prison sentence of one year against the defendant, suspended for four years.

The public defender stated that the defendant confessed, regretted his actions and promised not to reoffend in the future, therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts produced during the trial, the court found that the defendant punched the victim once on his right ear and pushed the victim who fell to the ground. Based

on the facts that were proven and consideration of the mitigating circumstances, namely that the defendant confessed, regretted his actions, and promised not to reoffend in the future, the court concluded this case and imposed a prison sentence of 1 year against the defendant, suspended for 1 year and 6 months.

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

Case Number : 0076/20 DICMR
Composition of the Court : Single Judge
Judge : Álvaro Maria Freitas
Prosecutor : Angelina Saldanha
Defence : Sergio Dias Quintas
Decision : 2 months in prison, suspended for 2 years

On 15 January 2021 the Dili 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 wife in Dili District.

Charges of the Public Prosecutor

The public prosecutor alleged that on 12 February 2020, at 10am, the defendant and the victim were at home and the defendant told the victim to borrow some money to fix the taxi driven by the defendant so he could make some money, but the victim did not want to. Therefore the defendant and the victim argued and the victim ran to her brother's house. At the same time, the defendant followed the victim called out for the victim to come home, but the victim did not want to, so the defendant punched the victim once above her right eye which caused pain, injury and bleeding.

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(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant confessed to all of the facts set out in the indictment, the defendant also stated that this was the first time he had offended against the victim. The defendant also stated that the taxi did not belong to him, but the owner of the taxi went to the mountains and entrusted the taxi to the defendant to look for passengers to sustain his family but at that time the taxi needed repairs. Therefore, the defendant told the victim to borrow some money to fix the taxi. The defendant also stated that after this incident the victim made a complaint to the police and then returned home and reconciled with the defendant. The defendant also promised not to repeat his behavior in the future.

Also, the victim confirmed the facts set out in the indictment and stated that the taxi driven by the defendant was given to the defendant by the victim's brother so he could support himself and the victim, but the taxi needed repairs so the defendant told the victim to borrow US\$200.00 so he could fix the taxi, but the victim was not brave enough and did not want to borrow someone's money because there would be interest to pay. The victim also confirmed the statement of the defendant that this was the first time that the defendant had hit the victim and after making a complaint to the police, they immediately reconciled and the defendant also works to support his family.

Final recommendations

The prosecutor stated that during the examination of evidence the defendant confessed all of the facts in the indictment and these facts were confirmed by the victim. However, to avoid such crimes in the future, not just against the victim, but against the community in general, the public prosecutor requested for the court to apply an appropriate punishment against the defendant.

The defence had no objection and agreed with the recommendation of the public prosecutor because the defendant confessed and acknowledged the acts he committed against the victim.

Decision

After evaluating all the facts, the court found that the defendant punched the victim once above her right eye. Based on the facts that were proven and consideration of the mitigating circumstances, namely that the defendant confessed, this was the first time that he hit the victim, and he promised not to reoffend in the future, the defendant provides for their seven children and does not earn enough money, so the court concluded this case and imposed a prison sentence of 2 months against the defendant, suspended for 2 years.

4. Crime of simple offences against physical integrity

Case Number	: 0223/20.NFDIL
Composition of the Court	: Single Judge
Judge	: Zulmira Auxiliadora B. da Silva
Prosecutor	: Osorio de Deus
Defence	: Marçal Mascarenhas
Decision	: Validating withdrawal of complaint

On 15 January 2021 the Dili District Court attempted conciliation for the crime of simple offences against physical integrity involving the defendant Octavio de Jesus who allegedly committed the crime against the victim Efivania Noronha Guterres, who is his neighbour, in Dili Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 9 May 2020, at 9:30am, the defendant went to his friend's house in Kampo-Alor and the defendant parked his car behind the victim's car. When the victim and her friend FGP got out of the car to talk to the side of the road the defendant yelled out to the victim "*Hey tomboy, are you the one selling my wife*". The victim asked the defendant "*Who is your wife?*" And the victim pointed to her friend who was walking next to her and said to the defendant "*Is this your wife?*". The victim's friend said "*He is not my husband.*" Therefore the victim said to the defendant "*You must be crazy pointing at people*".

When he heard the victim's statement, the defendant ran over and punched the victim's car many times and his hand struck the victim on her left shoulder and when the victim lifted her leg the defendant's hand struck the victim on her right calf. The defendant also threatened to kill 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.

Examination of evidence

Before progressing to the presentation of evidence, pursuant to Article 262 of the Criminal Procedure Code on attempted conciliation, the judge may seek to reach conciliation between the defendant and victim.

During this attempted conciliation the victim wanted to reach an amicable agreement with the defendant but asked the defendant not to repeat such behaviour in the future against the victim or other person. The defendant agreed with the victim's request and expressed regret for his actions and promised not to repeat such acts in the future. Based on this agreement the victim requested for the court to withdraw her complaint against the defendant.

Final recommendations

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

Decision

Based on the amicable agreement between the two parties and the request of the victim to withdraw the case, the Court decided to validate the settlement.

5. Crime of failure to fulfill an obligation to provide food assistance

Case Number : 0004/20 ERLET
Composition of the Court : Single Judge
Judge : Ana Paula Fonseca
Prosecutor : Simão Brites Seixas

Defence : José da Silva
Decision : 11 months in prison, suspended for 2 years, with rules of conduct

On 18 January 2021 the Dili District Court, through the mobile court in Ermera Municipality, announced its ruling in a case of failure to fulfill an obligation to provide food assistance involving the defendant FM who allegedly committed the offence against his child, in Ermera Municipality.

Charges of the Prosecutor

The public prosecutor alleged that in 2019 the victim was pregnant to the defendant but the victim's family did not know. The victim only told her parents and relatives including the defendant when she was seven months pregnant but the defendant did not want to take responsibility for the unborn child.

Previously, two years earlier on 4 May 2017, the victim received a phone call from the defendant who she did not know and they spoke over the telephone and eventually agreed to start a romantic relationship. The victim also twice asked the defendant about his marital status, but the defendant did not respond. Because the defendant did not respond the victim believed that he was single.

Then on 5 May 2017 the victim went from Dili to visit her parents in Ermera and did not tell the defendant. The victim was travelling on a truck and when she arrived at the road leading to her parent's house, the defendant was waiting at the place where the truck stops and contacted the victim so they two of them could meet up. The victim also received telephone calls from the defendant, and they met up, talked and walked together to the victim's house for an hour.

When they were walking the victim asked the defendant *"Are you single or married?"* and the defendant said that he loved the victim. But victim asked again and the defendant said he would marry the victim. Therefore, they kept walking and the defendant hugged the victim, but victim pushed his arm away and said *"Don't do that"*, but the defendant said *"Why are you afraid. I want to hug you because I am going to marry you"*. After the defendant said this, he threw the victim on the ground, removed the victim's clothes and had sexual intercourse. After having sexual intercourse the defendant told the victim that *"if you marry another man you will die and that man will not have you"*.

In 2019, when the victim moved from Dili to Ermera, the victim and the defendant again had sexual intercourse and they stayed together in 2019 until the victim became pregnant but the defendant did not want to take responsibility.

The public prosecutor alleged that the defendant violated Article 225 of the Penal Code on failure to provide food assistance that carries a maximum penalty of 3 years in prison or a fine.

Examination of evidence

During the trial the defendant confessed to all of the facts in the indictment and stated that they liked each other and were together from 2017 to 2019, but the victim's family did not accept their relationship therefore when the victim was pregnant and when she gave birth the defendant did not give her anything. The defendant also stated that before he was with the victim, he already had a wife and eight children but he was willing to take responsibility for the victim's child.

The court did not require the victim's statement because the defendant confessed all of the facts in the indictment.

Final recommendations

The public prosecutor stated that the defendant acknowledged the baby who was nine months old was his child, and this crime relates to the best interests of the minor. Also, the defendant promised to take responsibility for the minor, or his child, therefore the public prosecutor requested for the court to establish a monthly amount of money that the defendant has to pay for his child.

Also, the defence stated that the defendant confessed to his actions and acknowledged that the minor was his child and he was willing to take responsibility. Therefore, the defence requested for the court to establish a monthly amount in accordance with the defendant's economic circumstances.

Decision

After evaluating all of the facts produced during the trial, the court found that the defendant has sexual intercourse with the victim and when the victim became pregnant the defendant did not want to take responsibility for the minor, or their child. Also, the court considered the aggravating circumstances that the defendant lied to the victim by saying he was single so the victim wanted to live with the defendant, but he actually had a wife and eight children. Also, the defendant's confession was not an expression of regret.

Based on the facts that were proven and all of the aggravating circumstances, the court concluded this matter and sentenced the defendant to 11 months in prison, suspended for two years, and applied rules of conduct for the defendant to periodically report once a month for 11 months to the Public Prosecution Service in Gleno. In relation to establishing an amount of alimony, the court requested for the victim to submit a complaint through the civil law process.

6. Crime of simple offences against physical integrity

Case Number : 0142/19.DIDIL

Composition of the Court : Single Judge

Judge : Maria Solana da Conceição Fernandes

Prosecutor : Hipólito Exposto Martins Santa
Defence : Joana Christina Pinto
Decision : Endorsing an agreement

On 18 January 2021 the Dili District Court attempted conciliation in a case of simple offences against physical integrity involving the defendant Duarte da Costa who allegedly committed the offence against the victim José Soares dos Santos, his neighbour, in Dili District.

Charges of the Prosecutor

The public prosecutor alleged that on 23 July 2019, at 11:30 pm, the victim came home from work and arrived at his house and saw that the gate was shut and locked with a padlock, so the victim called out to his daughter to open the gate, but there was no key because the key to the gate was with the defendant. Therefore, the victim told his daughter to get a piece of steel so the victim could prise open the gate. When he heard this the defendant came out of the house and opened the gate and said to the victim “*Where have you been, seeing that you are just coming home now?*”. The victim said “*I have been working to support my family.*” The defendant responded to the victim and said “*What work do you do late at night?*”. Then the defendant grabbed the victim by the throat, pushed the victim into the gate and punched the victim once in his chest which caused the victim to fall to the ground and then the victim immediately made a complaint to the police.

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.

Examination of evidence

Before progressing to the presentation of evidence, pursuant to Article 262 of the Criminal Procedure Code on attempted conciliation, the judge may seek to reach conciliation between the defendant and victim.

During this attempted conciliation the victim wanted to withdraw the complaint and forgive the defendant and asked the defendant not to repeat such behaviour in the future against the victim or other person. The defendant agreed with the request of the victim and apologised to the victim and promised not to commit such acts against the victim in the future. Based on this agreement the victim requested for the court to withdraw the complaint against the defendant.

Final recommendations

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

Decision

Based on the amicable agreement between the two parties and the request of the victim to withdraw the case, the Court decided to validate the settlement.

7. Crime of reciprocal offences against physical integrity

Case Number : 0750/ 19 DICMR
Composition of the Court : Single Judge
Judge : Evangelino Belo
Prosecutor : Ivonia Guterres
Defence : José Guterres
Decision : Validating withdrawal of complaint

On 20 January 2020 the Dili District Court attempted conciliation in a case of reciprocal offences against physical integrity involving the female defendant NJA and the male defendant JDJ who are husband and wife, which occurred in Dili District.

Charges of the Public Prosecutor

The prosecutor alleged that on 28 December 2019, at 1.00pm, at their home the two defendants argued because the female defendant suspected the male defendant of having a relationship with another woman. When they were arguing the female defendant started packing her things to go to Ermera and used the key to a cupboard and tried to strike the male defendant many times in the face, however he put up his hand and the key scratched his hand. The female defendant also scratched his face and neck which caused an injury and bleeding. Then the female defendant took a plate made of stone and threw it at him, but he moved out of the way.

The public prosecutor alleged that the female 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(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the female defendant stated that they have been living together as husband and wife since 2014, and they have one child, and the female defendant provides for the family. The female defendant also stated that on the day of the incident she packed up her things to go to Ermera and smashed the drawer to the child's cupboard because the male defendant transferred money to a woman in Kupang, and when the male defendant graduated from the Universidade da Paz, the male defendant did not tell her so she felt upset because he did not treat her properly as his wife.

The female defendant also stated that when they were arguing the male defendant assaulted her first, because he punched her once in the mouth, punched her once in the shoulder, choked her and threw her on the ground. Because she was assaulted by him the female

defendant scratched his cheek and neck with the intention of making him let her go, but he continued to choke her. The male defendant only let her go when his two younger siblings pulled him away. Then the female defendant went into the lounge room, took a plate made of stone and said to the male defendant "*from now on our household is destroyed like this plate*", then she threw the plate on the ground and it smashed, but she did not throw it at the male defendant. Since this incident the female defendant and male defendant have been separated.

Also, the male defendant also stated that during this incident the female defendant and male defendant fought because the female defendant suspected the male defendant of having a relationship with another woman. At that time the female defendant took the key to the drawer from the cupboard to strike the male defendant in the face but struck the male defendant on his hand because he put up his hand. Because he was assaulted by the female defendant, the male defendant grabbed both of her arms and threw her on a mattress and then sat on top of her. When he was sitting on her the male defendant was still holding both of her arms and then he let her go when his two younger siblings pulled him away. The male defendant added that he followed her into the guest room and choked her. When he choked her the female defendant scratched his left cheek which caused an injury. The male defendant also confirmed the statement of the female defendant that he punched her in the mouth and the shoulder.

After hearing the statement of the two defendants, the prosecutor requested for the court to amend the charges from article 145 of the Penal Code to Article 151 of the Penal Code on reciprocal offences against physical integrity because the two defendants fought with each other. The male defendant confessed that the female defendant scratched him because he first assaulted her. Also, the male defendant confirmed that he choked her and then she scratched his cheek and throat.

Based on the statements made by the two defendants, the prosecutor said that these acts did not fulfil the requirements of the crime of simple offence against physical integrity but rather fulfilled the requirements of the crime of reciprocal offences against physical integrity which carries a sentence of 2 years in prison or a fine. Because this crime was not characterized as domestic violence, the prosecutor requested for the court to attempt conciliation.

The defence also agreed with the prosecutor's request to amend the charges from Article 145 of the Penal Code to Article 151 of the Penal Code.

Pursuant to Article 262 of the Criminal Procedure Code the court attempted conciliation between NJA and JDJ. During this attempted conciliation they wanted to withdraw their complaints.

Final recommendations

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

Decision

Based on the amicable agreement between the two parties and the request of NJA and JDJ to withdraw the case, the Court decided to validate the settlement.

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

Case Number : 0114/20 DICMR
Composition of the Court : Single Judge
Judge : Ana Paula Fonseca
Prosecutor : Ivonia Guterres
Defence : Juvinal Yanes
Decision : Fine of US\$60.00

On 25 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant RMM who allegedly committed the offence against his wife in Dili District.

Charges of the Public Prosecutor

The prosecutor alleged that on 3 March 2020, at 11pm, the defendant pushed the victim onto the bed, twisted her arms backwards and struck her head against the wall. These acts caused the victim to suffer pain to her head and dizziness. Prior to this assault, the victim asked for the defendant's mobile phone, but the defendant did not want to give it, so the defendant and the victim argued and 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 as well as Articles 2(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant stated that the facts set out in the indictment were true and added that after the victim asked for the mobile phone, the victim walked over and was holding on to the door and the defendant pushed the victim's arm with force and the victim fell on to the bed. The defendant also stated that previously when they argued the victim always damaged things in the home, so the defendant did not want to give his mobile phone to the victim. The defendant acknowledged that his behaviour was not good, he was a first time offender and they have reconciled.

Also, the victim confirmed all of the facts in the indictment and also confirmed the defendant's statement that the victim always smashes things when there is a problem because she can't control her anger. The victim also stated that in 2018, the defendant struck the victim, but the victim did not make a complaint.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime against the victim based on the confession of the defendant and the confirmation of the victim, however to deter such crimes from occurring in the future, the prosecutor requested for the court to impose a prison sentence of one year against the defendant, suspended for two years.

The public defender requested for the court not to restrict the freedom of the defendant and to impose a fine, because the defendant confessed to all of the facts in the indictment, was a first time offender and after this incident there were no further problems between them.

Decision

After evaluating the facts produced during the trial, the court found that the defendant pushed the victim on to the bed, twisted her arms backwards and struck her head against the wall. Based on the facts that were proven, and with consideration of the mitigating circumstances, namely the defendant confessed, and was a first time offender, the court ordered the defendant to pay a fine of US\$60 to be paid in instalments of US\$0.50 per day for 120 days. The court also imposed an alternative penalty of 80 days in prison if the defendant does not pay this fine.

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

Case Number	: 0332/19 DIDIL
Composition of the Court	: Single Judge
Judge	: Ana Paula Fonseca
Prosecutor	: Ivonia Guterres
Defence	: Humberto Alves
Decision	: Fine of US\$180.00

On 25 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant GMP who allegedly committed the offence against his wife in Dili District.

Charges of the Public Prosecutor

The prosecutor alleged that on 27 December 2020, at 09:00am, the defendant punched the victim twice on the back of the neck which caused pain but the victim did not receive treatment. Prior to this assault, the defendant left their house for one week, and did not come home and did not tell the victim, so the defendant and the victim argued and 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 as well as Articles 2(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant confirmed the facts set out in the indictment and stated that at that time the defendant was looking for work and obtained work as a security guard in Delta. When he was there the defendant wanted to contact the victim to let her know, but his mobile phone wasn't working so he did not contact the victim and after a week he returned home. The defendant also stated that when the defendant came home the defendant gave money to the victim, but the victim did not accept it and swore at the defendant. Therefore, the defendant assaulted the victim, but the defendant stated that he regretted his actions, this was the first time he hit the victim, he has reconciled with the victim and they have continued to live together as husband and wife.

The court did not require the statement of the victim because the defendant completely confessed all of the facts in the indictment.

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 therefore the prosecutor asked for the court to sentence the defendant to 6 months in prison, suspended for 1 year.

Meanwhile, the defence requested for the court to impose a fair penalty against the defendant based on the mitigating circumstances, namely that the defendant confessed the facts, was a first time offender, has reconciled with the victim, and is the breadwinner of the family.

Decision

After evaluating all of the facts, the court found that the defendant punched the victim twice on the back of her neck. Based on the facts that were proven and the mitigating circumstances, namely that the defendant confessed the facts, this was the first time that he assaulted the victim, and has reconciled with the victim, therefore the court concluded the matter and ordered the defendant to pay a fine of US\$180.00, in daily instalments of US\$2.00 for 90 days. The court also fixed an alternative punishment of 60 days in prison if the defendant does not pay the fine.

10. Crime of Rape¹

¹ Please refer to JSMP Press Release entitled "Proceedings in criminal case of rape are discontinued because of the statute of limitations": <https://jsmp.tl/wp-content/uploads/Prosedimentu-kriminal-extinge-ba-krime-violasaun-seksual-tanba-preskrisaun-Fevereiru-2021.pdf>

Case Number : 2588/10 PDDIL
Composition of the Court : Panel
Judges : Argentino Nunes, José Goncalves, Álvaro M. Freitas
Prosecutor : Benvinda do Rosario
Defence : João de Carvalho
Decision : Acquitted the defendant due to statute of limitations

On 26 January 2021 the Dili District Court announced its decision in a case of aggravated rape characterized as domestic violence involving the defendant OG who allegedly committed the crime against his stepdaughter in Aileu District.

Charges of the Public Prosecutor

The prosecutor alleged that the defendant was the victim's stepfather. The defendant's wife or victim's mother died on 12 September 1999 when the victim was aged fourteen (14). The defendant has four children, and the victim was his fifth child (four girls and one boy). Because in the home there is only one room and one bed, the defendant and his children sleep together.

On an unknown date in November 2001 at 7pm when the defendant's other children were sound asleep, the defendant asked the victim to have sexual intercourse, but the victim said no. In the morning the victim started to tell her 4 younger siblings and they all walked together to tell their uncles, but the defendant followed the victim and her younger siblings and threatened them by saying *"You can't tell anything to your uncles, because if you do I will kill all of you"*. When they heard this, the victim and her younger siblings were afraid so they returned to their house.

One week later at 11pm when all of the victim's younger siblings were asleep the defendant threatened to kill the victim if she did not have sexual intercourse with the defendant. The defendant's threats made the victim feel very afraid. The defendant used force to remove the victim's pants, but the victim rejected him and pulled up her pants. The defendant continued to use force and eventually had sexual intercourse with the victim until he ejaculated. The defendant's actions caused the victim to suffer pain to her sexual organs and bleeding.

The defendant raped the victim 8 (eight) times in their house until the victim became pregnant. The victim's teacher at her school found out about the victim's condition and informed the victim's family and they took the victim for a consultation at the health centre. During this consultation it was confirmed that the victim was pregnant. Then the victim also told her teacher and her family that the stepfather was the one who got her pregnant. The victim had a son but after one year her child passed away. The actions of the defendant made the victim feel afraid, embarrassed, sad, traumatised and also, she fell behind with her studies.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape which carries a sentence of 5 – 15 years in prison, Article 173 (a) of the Penal Code on aggravation which carries a sentence of 5 – 20 years in prison, in conjunction with Articles 2(b), 3(c), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant stated that he was the victim's stepfather. At that time he threatened the victim to have sexual intercourse but only once because at that time he lost his mind. The defendant also stated that his actions were wrong and illegal, and the defendant wanted to resolve the matter, but it has not yet been resolved. The defendant also said that the victim has already established a family.

Meanwhile, the victim confirmed the facts set out in the indictment and added that the first incident occurred in a plantation. In that location the defendant threatened to kill the victim with a machete if she didn't have sexual intercourse with him. Then, the defendant pushed the victim into the plantation and removed her clothes and laid her down on the ground and had sexual intercourse with the victim who suffered bleeding and pain to her sexual organs.

The victim also stated that after about four days when they were all sound asleep the defendant quietly removed the victim's pants and had sexual intercourse with the victim. The victim stated that she did not scream because she was afraid of the threats that the defendant had made previously. The defendant had sexual intercourse with the victim 8 times until she became pregnant, but the victim didn't know what time and what date. The victim stated that her teacher told the sub-village chief and the sub-village chief told the victim's aunties and uncles to summon the victim and ask about the incident and take her for a test at the health centre. After this consultation the victim found out that she was pregnant.

The victim also stated that after her baby passed away, they resolved this matter in accordance with local tradition and the defendant provided compensation in the form of three buffaloes and US\$500.00. The victim married another man and has four children who are grown up. In addition, the defendant is an old man so the victim forgave him and the defendant did not want the defendant to go to prison.

The court decided to not to hear testimony from witnesses because the defendant confessed and the victim also confirmed all of the facts.

Final recommendations

The prosecutor stated that the defendant only stated that he threatened the victim and forced her to have sexual intercourse once in the dry river bed. Because she was afraid the victim just went along with it. Also, the victim was brought up by the defendant and he looked after her and provided for the victim, when the victim's mother died the victim felt that her younger siblings were still young so she wanted to look after them. During the trial, the defendant

expressed his sincere regret and confessed that it occurred only once. Therefore, pursuant to Article 56 of the Penal Code on extraordinary mitigating circumstances and other mitigating circumstances, namely the defendant provided compensation in the form of three buffaloes and US\$500.00, the defendant confessed and fixed the family relationships, therefore the prosecutor requested for the court to impose a prison sentence of 20 years.

The public defender requested for the court to carefully consider the matter and issue a fair decision because the defendant confessed that he had sexual intercourse with the victim who was his stepdaughter. The defendant also stated that he only had sexual intercourse once, and not 8 times and the victim forgave the defendant and did not want the court to punish the defendant because the defendant is an old man. The victim has established a family and all of her children are grown up. Also, this problem has been resolved and the defendant provided compensation in the form of three buffaloes and US\$ 500.00.

Decision

After evaluating all of the facts, the court found that the defendant threatened and forced the victim to have sexual intercourse twice, once in the dry river bed and once in the home, even though the victim stated that the defendant had sexual intercourse eight times but the court decided that the defendant had sexual intercourse with the victim twice because the victim did not provide details about the time and date of the incidents.

However, the court noted that this case occurred in November 2001, therefore the court amended the charges from Article 172 and Article 173 (a) of the Timor-Leste Penal Code to Article 285 of the Indonesian Penal Code because this case occurred on 2001 and at that time the Indonesian Penal Code was still being used.

Pursuant to Article 78.3 of the Indonesian penal code, criminal proceedings for crimes punishable with a prison sentence of more than 3 years will be voided after twelve (12) years. This case occurred in November 2001 and was registered with the Public Prosecution Service in 2010 however the prosecutor handing this case finalised the charges and sent the indictment to the court in 2019. Pursuant to Indonesian law the court acquitted the defendant because this case exceeded the statute of limitations (it expired in 2013).

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

Case Number	: 0133/20 DIDIL
Composition of the court	: Single Judge
Judge	: Maria Solana
Prosecutor	: Luis Hernani Rangel
Defence	: José da Silva
Decision	: Fine of US\$45.00

On 26 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JXS who allegedly committed the offence against his daughter LGS in Dili Municipality.

Charges of the Prosecutor

The prosecutor alleged that on 27 June 2020, at 1am, the defendant slapped the victim three times on her right cheek, dragged the victim from the house and left her to sleep outside until the morning. Prior to this assault, the victim rang her uncle and the defendant took the phone from the victim and the defendant and the victim argued and the defendant assaulted 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 as well as Articles 2(a), 3(c), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant totally confessed to the facts set out in the indictment that he slapped the victim on her right cheek three times and dragged her out of the room to the guest room and the victim slept in the guest room, not outside the house. The defendant stated that he became angry and slapped the victim because he told the victim to go and buy some vegetables, but she did not want to. The defendant also stated that he regretted his actions and has reconciled with the victim.

Also, the victim confirmed the facts set out in the indictment and confirmed also the statement of the defendant that the victim slept in the guest room, but they have reconciled and the defendant sometimes visits the victim in Hera because the victim is staying with her uncles in Hera.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime of simple offences against the physical integrity of the victim who the defendant is supposed to protect. Also, the victim is a minor. Therefore, the defendant's actions were serious, and the public prosecutor requested for the court to impose a prison sentence of four months against the defendant.

The public defender requested for the court to impose a lenient penalty because the defendant confessed the facts, has reconciled with the victim and was a first time offender.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim three times on her right cheek, dragged her outside and left her to sleep in the guest room.

Based on the facts that were proven, and consideration of all of the circumstances associated with this crime, the court concluded this process and ordered the defendant to pay a fine of US\$ 45 to be paid in daily instalments of \$ 1.00 for 45 days. The court also imposed an alternative penalty of 30 days in prison if the defendant does not pay this fine.

12. Crime of Sexual Coercion

Case Number : 0017/20.DIDIL
Composition of the Court : Panel
Judge : José Goncalves, Álvaro M. Freitas and Argentino L. Nunes
Prosecutor : Ricardo Leite Goudinho
Defence : Marçal Mascarenhas
Decision : Prison sentence of 2 years and 6 months, suspended for 3 years

On 26 January 2021 the Dili District Court conducted a hearing to announce its decision in a case of sexual coercion involving the defendant AdS who allegedly committed the offence against the victim JB, in Dili Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 12 January 2020, at 6:30 pm, the defendant was drinking alcohol in front of the victim's kiosk and when the defendant saw the victim walk to the bathroom he called out to her but the victim did not hear him. Suddenly the defendant fell over into the bathroom and this made the victim afraid and she was shaking, the victim was going to scream but the defendant used his left hand to cover the victim's mouth and used his right hand to grab the victim's chest.

The defendant was shocked and let go when he heard the victim's older sister CdC call out to the victim. The victim started screaming loudly and asked her older sister and cousin for help. The victim's older sister and cousin saw the defendant in the bathroom, so her cousin asked him what he was doing in the bathroom, and when she saw that the victim was not wearing clothes the victim's cousin got a towel to cover the victim's body. Then the victim's older sister said to the defendant "*You are despicable. I should slap you.*" Then the defendant responded to the victim's sister by saying "*Slap me if you are brave enough.*" After he said this the defendant ran away and the victim's older sister rang the victim's older brother who lives in Tasitolu to tell him that the victim had a problem. Then the victim's older brother came to the scene and went with the victim to make a complaint to the police.

The public prosecutor alleged that the defendant violated Article 171 of the Penal Code on sexual coercion that carries a maximum penalty of 2-8 years in prison.

Examination of evidence

During the trial the defendant stated that when the incident occurred the defendant was heavily intoxicated because he had drunk 4 jerricans of alcohol each containing 5 litres. When the defendant was walking he fell over into the bathroom where the door was only closed with a stone. The defendant denied that he called out to the victim and at the incident was not 4:30 pm. However, the defendant acknowledged that he saw the victim walk to the bathroom to have a shower but after that he didn't know because he was heavily intoxicated. The defendant only knew that he fell over, stood up and went home to sleep.

Also, the defendant stated that he did not hear the victim scream. Regarding the harsh words said by the victim's older sister, the defendant did not say if this was true or not. The defendant also stated that the victim made a complaint because the victim was upset. The defendant and the victim were in a romantic relationship, but the victim only found out that the defendant had a wife, so she was upset and made up the facts about the incident and made a complaint to the police.

The victim maintained all of the facts in the indictment and stated that the defendant is a neighbour and they were not in a romantic relationship. The defendant's behaviour traumatized the victim, and made her afraid, shaking and she nearly fainted. The victim added that the defendant was startled and took his hand away from the victim's mouth and chest when the defendant heard the victim's older sister call out. Therefore, the victim also took the opportunity to scream and ask for help.

The witness CdC, who is the older sister of the victim, testified that at the time of this incident she was with her cousin cutting up some vegetables inside the house and they heard a sound from the corrugated iron in the bathroom, so they yelled out to the victim "*What are you doing? What was that noise coming from the corrugated iron in the bathroom?*" The victim also yelled out asking for help. The witness kicked the door to the bathroom and saw the defendant inside the bathroom and the victim was not wearing any clothes. The witness took a towel and gave it to the victim so she could cover her body. The witness added that at the time of the incident she saw that the victim was afraid, shaking and nearly fainted.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime of sexual coercion against the victim based on the testimony of the victim and the witnesses. Therefore even though the defendant stated that he did not know what he did against the victim because he was heavily intoxicated, the public prosecutor requested for the court to impose a prison sentence of years against the defendant, including civil compensation for the victim.

The public defender requested for the court to carefully consider the matter because the defendant only acknowledged that he fell over into the bathroom, whereas regarding the allegations that he covered the victim's mouth and squeezed her chest the defendant said he didn't know, therefore the public defender stated that there was not enough evidence to convict the defendant. Also, the public defender stated that the testimony from other parties raised doubt. For this reason, the public defender requested for the court to acquit the defendant from these charges.

Decision

After evaluating all of the facts, the court found that the defendant was intoxicated and fell over into the bathroom and the victim was inside. The court also found that the defendant covered the victim's mouth and touched the victim's chest. The court found these charges proven based on the statements of the victim and witness.

Based on the facts that were proven and consideration of all of the circumstances, the court concluded the matter and sentenced the defendant to 2 years and six months in prison, suspended for 3 years. The court did not impose civil compensation as requested by the Public Prosecution Service because the Public Prosecution Service did not establish the amount of compensation. The court also revoked the coercive measures in the form of pre-trial detention that the defendant has been serving for one year.

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

Case Number	: 0031/20 ERSIC
Composition of the Court	: Single Judge
Judge	: Ivan José Suritay Patrocínio Antonino Gonçalves
Prosecutor	: Simão Brites Seixas
Defence	: Estaque Pereira
Decision	: 6 months in prison, suspended for 1 year

On 28 January 2021 the Dili District Court, through the mobile court in Gleno, conducted a trial in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JBS who allegedly committed the offence against his wife in Ermera Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 12 May 2020, at an unspecified time, the defendant went to call out to the victim at the home of the victim's mother, but the victim's mother did not allow the victim to go home because she was afraid that the defendant would hit the victim.

Then on an unspecified time, on Thursday 14 May 2020, the defendant was intoxicated and came back to the home of his parents in law. When he got there the defendant dragged the victim and punched the victim once in the head and pulled the victim's hair. The victim's mother intervened and the three of them fell to the ground and the victim's mother suffered an injury to her body.

On 16 May 2020, at 7pm, the defendant went to play billiards at his friend's house and the victim was sleeping at her mother's house. On the next day the victim went to have a shower and the defendant followed the victim to the bathroom and ordered the victim to make some coffee, but the victim said "*Wait a minute. Sit down and I will make some coffee and I will bring it to you*", but the defendant did not want to and punched the victim once on her left hip, punched the victim once on her ear and punched the victim once in the back. These actions caused the defendant to suffer pain to her hip, ear and back. However, the victim did not receive any treatment.

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(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant testified that all of the charges were true. The defendant also stated that two days after the most recent incident they reconciled and as the son in law the defendant provided compensation in the form of one buffalo and one *belak* (traditional necklace), and a pig and a *tais* (traditional cloth) was given in accordance with local custom. The defendant stated that this was the first time that he hit the victim, and they had no further problems, the defendant regretted his actions and promised not to repeat these acts in the future.

Meanwhile, the victim stated that during the first incident the defendant punched the victim once on her hip, once on her ear and once on her back. During the second incident the defendant punched the victim once in the head and pulled the victim's hair, so the victim's mother intervened and did not allow the defendant to take the victim home because during the first incident the defendant hit the victim at the home of the victim's mother. The victim also confirmed the defendant's statement that they have reconciled, the defendant provided compensation in the form of one buffalo and one *belak* (traditional necklace) to the victim's family and the victim's family gave one pig and a *tais* (traditional cloth) to the defendant. Also, the victim stated that the defendant was the breadwinner of their family.

The court decided not to hear witness testimony because the defendant totally confessed to the facts and the victim also confirmed the facts.

Final recommendations

The public prosecutor stated that the defendant totally confessed to all of the facts in the indictment, therefore the public prosecutor requested for the court to amend the charges from one count of simple offences against physical integrity to two counts, because the defendant committed the crime on two occasions. The defendant's acts fulfilled the elements of Article 145 of the Penal Code because he tried to justify his actions because he was intoxicated and he carried out his intent to hurt the victim, therefore the public prosecutor requested for the court to impose a prison sentence of six months for each crime and for a single prison sentence of 10 months to be imposed, suspended for one year.

The public defender stated that the public prosecutor's recommendation of a 10-month prison term was too severe. Therefore, the public defender requested for the court to consider the mitigating circumstances, namely the defendant confessed to the facts and he acknowledged and regretted his behaviour and resolved the problem in accordance with East Timorese custom.

Decision

After evaluating all of the facts, the court found that during the first incident the defendant punched the victim once on her hip, once on her ear and once on her back. The court also found that during the second incident the defendant punched the victim once in the head and pulled the victim's hair. Based on the facts that were proven and consideration of all of the mitigating circumstances, namely that the defendant confessed, the case was resolved in accordance with East Timorese custom, he regretted his actions and has not committed any further crimes, the court concluded this matter and imposed a prison sentence of six months against the defendant, suspended for one year.

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

Case Number	: 0221/20 DICMR
Composition of the Court	: Single Judge
Judge	: Argentino L. Nunes
Prosecutor	: Luis Hernani Rangel
Defence	: Rofino Moniz (qualified court officer)
Decision	: 4 months in prison, suspended for 1 year

On 29 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant BAT who allegedly committed the offence against his wife in Dili Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 08 May 2020, at 10:00pm, the defendant slapped the victim once in the head, kicked the victim once in the back and the victim fell to the ground and wet herself. Prior to this assault, the victim was frying some chicken and she wanted to go to the toilet, so she called out to the defendant and asked him to watch over the chicken, but the defendant did not do so and the chicken was burnt. The defendant became angry towards the victim and assaulted her. The public prosecutor also alleged that previously the defendant regularly committed crimes against the victim, but the victim did not lodge a complaint.

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(a), 3(c), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant partially confessed to the facts and stated that he only slapped the victim once in the head but did not kick the victim in the back. The defendant also stated that after this incident the victim did not want to live with the defendant and started a relationship with another man. The defendant added that during the time they were together this was the first time that the defendant assaulted the victim.

The victim confirmed all of the facts in the indictment and stated that all together the defendant had assaulted her on three occasions, but the victim only made a complaint relating to this incident. The victim also stated that she was with another man, because after this incident the defendant left the home to go and live with his younger siblings and did not come back to the victim so the victim started a relationship with another man.

Final recommendations

The prosecutor stated that the defendant was guilty of committing the crime of simple offences against physical integrity based on the facts set out in the indictment, and even though the victim is with another man, it is necessary to deter such crimes from happening in the future, so the prosecutor requested for the court to impose a prison sentence of four months against the defendant, suspended for one year.

The public defender requested for the court to consider the mitigating circumstances, and to apply an appropriate and fair penalty.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim once in the head and kicked the victim once in the back which caused the victim to fall to the ground and wet herself. The public prosecutor also stated that the defendant regularly committed

similar crimes against the victim, but the victim did not lodge a complaint. Based on the facts that were proven, including consideration of all of the circumstances, the court sentenced the defendant to 4 months in prison, suspended for 1 year.

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

Case Number : 0018/19 DICMR
Composition of the Court : Single Judge
Judge : Argentino Nunes
Prosecutor : Luis Hernani Rangel
Defence : Laura V. Lay, replaced by Geanini Daus (qualified Judicial officer)²
Decision : Penalty of admonishment

On 29 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant DdC who allegedly committed the offence against his wife in Dili Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 10 January 2019, at approximately 12pm, the defendant slapped the victim twice on her right cheek and twice on her left cheek. The defendant also punched the victim five times about the eye, punched the victim three times in the back, took a key and struck her in the head and kicked the victim once on her side. When the defendant committed this assault, the victim was two months pregnant. These acts caused the victim to suffer pain to her right and left cheeks, her back, side, an injury above her eye and a lot of blood came out and her head was split and there was heavy bleeding. The victim went for treatment at the Comoro Health Centre but did not obtain a medical report therefore no medical report was attached to the indictment.

Prior to this assault, the victim asked the defendant for money to buy vegetables, but the defendant said that there was no money, so the victim sat silently in tears. Then the victim told the defendant to find some rental accommodation to live separately, because living with parents (relatives) is not good. When he heard the victim's comments the defendant angrily told the victim "*I will call your brothers and ask them to take you back to Oecusse,*" and then he assaulted the victim.

² The defence was represented by a qualified person because the public defender assigned to this matter was attending to another case.

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(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant stated that some of the facts were true and some facts were not true. The defendant stated that the problem did not occur because the victim asked the defendant for money but because she went out without asking so the defendant's parents admonished her so the victim told the defendant to find some rental accommodation but the defendant said they can't live separately because there was no money. The defendant also stated that after the defendant responded to the victim, the defendant went and sold some coconuts. Not long after the victim took their child and followed the defendant to the place where he was selling coconuts, so the defendant became angry and told the victim and their child to go home and the defendant immediately followed the victim home.

The defendant added that when they arrived home the victim threw some cooked rice at the defendant so the defendant slapped the victim twice on her right cheek and twice on her left cheek. The defendant took a motorcycle key and struck the victim once in the head which caused an injury and bleeding. The defendant also punched the victim once in the forehead which caused a bruise. Then the victim went and made a complaint. The defendant denied that he struck the victim five times above the eye and did not punch her in the back or kick her on her side.

The defendant then stated that after this incident the victim ran away and stayed with her brothers for one week back in Oecusse. After one week in Oecusse, their child passed away. The defendant followed the victim to Oecusse and when he got there the defendant apologised to the victim and according to custom he gave US\$400.00 to the victim's family and then they reconciled as husband and wife. The defendant stated that while they were living together this was the first time that he hit the victim, because the victim took their child to the place where the defendant was selling coconuts. After the incident there were no further problems, and as a trader the defendant has a monthly income of US\$100.00 and the defendant is the breadwinner.

Meanwhile the victim stated that they have been living together since 2014 and have four children. At that time the victim asked for money to buy vegetables but the defendant said there was no money so the victim went to her brothers without telling the defendant and when she came back her parents in law admonished the victim. Therefore, the victim told the defendant to find some rental accommodation, but the defendant said there was no money.

The victim also stated that after the defendant told her to go home from the place he was selling coconuts, the defendant followed the victim home and slapped the victim twice on her

right cheek, twice on her left cheek, took a motorcycle key and struck her once in the head which caused an injury and bleeding. Regarding the allegation that the defendant struck the victim in the forehead, the victim stated that she was not aware because she was bleeding heavily. Also regarding the allegation that the defendant punched her in the back and kicked her, the victim stated that the defendant did not commit these acts. The victim also stated that at that time the victim was pregnant therefore this made her angry.

In addition to the facts set out in the indictment, the victim stated that the defendant slapped the victim first so then she threw some cooked rice at the defendant. The defendant only came and apologised to her and followed the custom when their child passed away. The victim added that now they have reconciled and are living together as husband and wife, and this was the first time that the defendant hit the victim and the defendant is the breadwinner.

The court decided to not to hear testimony from witnesses because the defendant confessed and the victim also confirmed all of the facts, so the court had sufficient evidence.

Final recommendations

The public prosecutor stated that during the examination of evidence the defendant confessed, therefore the defendant's actions fulfilled the requirements of the crime of simple offences against physical integrity and it is necessary to deter him from committing crimes of domestic violence in the future because the defendant sells coconuts and normally carries a machete and he could strike the victim with the machete, so the public prosecutor requested for the court to impose a prison sentence of three months against the defendant, suspended for one year.

The public defender requested for the court to issue an admonishment considering that the defendant confessed that he slapped the victim twice on her right cheek and twice on her left cheek and the victim also said that the defendant did not punch her in the back or kick her on her side. Therefore, the public defender gave more weight to the defendant's statement and the circumstances, namely that this was the first time that the defendant committed an offence against the victim since 2014 when they started living together, and these acts did not occur because of the intention of the defendant, but because the victim threw some cooked rice at the defendant and then he committed the assault. Also, the public defender requested for the court not to order the defendant to pay court costs because the defendant is the breadwinner and has no fixed income.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim once on her left cheek and one on her right cheek. The defendant also took a motorcycle key and struck the victim in the head which caused an injury, swelling and pain. The court also found that the defendant committed the assault after the victim threw some cooked rice at the defendant. Based on the facts that were proven and also the mitigating circumstances, namely

this was the first time that the defendant had assaulted the victim, and after the incident the defendant did not commit any further crimes, the defendant regretted his behaviour and resolved the matter in accordance with East Timorese culture, therefore the court concluded this matter and issued an admonishment against the defendant.

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

Case Number : 0176/20 DIDIL
Composition of the Court : Single Judge
Judge : Argentino Nunes
Prosecutor : Matias Soares
Defence : Adelina Mesquita
Decision : Effective prison sentence of 3 months

On 29 January 2021 the Dili District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant FdC who allegedly committed the offence against his wife in Dili Municipality.

Charges of the Prosecutor

The public prosecutor alleged that on 9 August 2020, at 11:30 am, the defendant swore at and punched the victim once iha head. These acts caused the victim to feel afraid and she made a complaint. Previously the victim asked the defendant for money to buy vegetables but the defendant said there was no money, so the defendant committed the assault against the victim. The defendant also has six criminal records, and in the last case the defendant was given an effective prison term of one year and only recently was released from prison because he was found guilty of committing the crime of simple offences against physical integrity characterized as domestic violence against the victim in 2017.

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(a), 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Examination of evidence

During the trial the defendant stated that the facts alleged by the prosecutor were not true. The defendant stated that victim and their child made up the accusations against the defendant because they wanted to evict the defendant from the house. The defendant also stated that the defendant did not hit the victim because the defendant just got out of prison, so he knows that it is wrong to hit a person. The defendant added that the victim assaulted the defendant, kicked the defendant in his private parts.

The victim confirmed the facts set out in the indictment and stated that the defendant always threatened and hit the victim because they were competing for a place to sell lottery tickets. The victim also stated that the defendant and the victim have continued living in the same house but they haven't sleep together as husband and wife since the defendant came out of prison.

Final recommendations

Even though the defendant denied the facts alleged by the public prosecutor, the victim confirmed the facts and also the public prosecutor referred to the defendant's criminal record, as he has committed multiple offences that are still being processed, so the public prosecutor requested for the court to impose an effective prison sentence in accordance with the penalties available for this crime.

The public defender stated that the defendant had a lot of problems with the victim because they were not living in harmony, so even though the defendant did not commit violence against the victim it is possible that the victim made up a story because she wanted to evict the defendant from the house, 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 swore at and punched the victim once in the head. The court also found that previously the defendant committed seven (7) crimes, and from these seven crimes there are three (3) that are still being processed, and the other four (4) crimes have been decided including this one.

For the four crimes, one crime resulted in an effective prison sentence of one year and two months, one crime resulted in an effective prison sentence of one year. For the other two crimes, one resulted in an admonishment and the other one resulted in a prison sentence of two years, suspended for four years.

The court found all of the facts proven based on the statement of the victim because the victim presented a logical explanation, and had no intention to make up stories, whereas the defendant has a criminal record and after the incident the defendant and the victim have been living separately because their relationship is not harmonious. The court also considered the aggravating circumstances, namely that the defendant has only been free for two months but he has continued to offend against his family, meaning that he does not regret his actions, therefore the court decided that it was necessary to specifically deter the defendant. Based on these considerations, the court concluded this matter and sentenced the defendant to 3 months in prison.

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