



Case Summary
Baucau District Court
December 2019

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 trials at the Baucau District Court

1. Total number of cases monitored by JSMP: 6

Article	Case Type	Total Number
Article 145 of the Penal Code (PC) and Articles 2, 3 and 35 (b) of the Law Against Domestic Violence (LADV)	Simple offences against physical integrity characterized as domestic violence (Article 2 on the concept of domestic violence, Article 3 on family relationships, Article 35 on different types of domestic violence and Article 36 on domestic violence as a public crime)	3
Article 717 of the PC	Sexual abuse of a minor	1
Article 146 (PC) and Article 20.1 of Law No. 5/2017	Serious offences against physical integrity and use of a bladed weapon	1
Article 259 of the PC	Aggravated property damage	1
Total		6

2. Total decisions monitored by JSMP: 5

Types of penalties	Total Number
Prison sentence (Article 66)	1
Fine (Article 67)	3
Suspension of execution of a prison sentence (Article 68 of the PC)	1
Total	5

3. Total cases adjourned based on JSMP monitoring: 0

4. Total ongoing cases based on JSMP monitoring: 1

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

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

Case Number	: 0038/19. BCSIC
Composition of the Court	: Single Judge
Judge	: José Quintão Soares Celestino
Prosecutor	: Ambrósio Rangel Freitas
Defence	: Antonio Fernandes
Decision	: Fine of US\$ 15.00

On 10 December 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant SAR who allegedly committed the offence against his wife in Baucau District.

Charges of the Prosecutor

The public prosecutor alleged that on 11 June 2019 at 15.45pm the defendant slapped the victim twice above the left eye. Prior to this assault, the defendant and the victim argued about changing their child's clothing.

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 confessed all of the facts set out in the indictment, the defendant also stated that he regretted his actions. The defendant also stated that he has reconciled with the victim in front of the two families and until now he has not reoffended. The defendant was a first time offender and promised not to repeat his behaviour in the future. The defendant works as a window repairer with a monthly income of approximately US\$200.00.

In addition, the victim reinforced the facts set out in the indictment and confirmed that she has reconciled with the defendant and until now the defendant has not hit her again.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim (his wife) who the defendant is supposed to protect. Even though they have reconciled, the defendant still needs to be convicted. Therefore, the public prosecutor requested for the court to impose a fine to be paid within 60 days with daily instalments of US\$0.50, including an alternative penalty of 40 days in prison if the defendant does not pay this fine.

Meanwhile, the defence requested for the court to impose a fair sentence against the defendant based on the mitigating circumstances, namely that the defendant was a first time offender, the defendant has not reoffended, the defendant works as a window repairer and is the breadwinner of the family.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim twice about the left eye. Based on these proven facts, including the mitigating circumstances such as the defendant confessed, regretted his actions, has not reoffended, and was a first time offender, the court concluded the matter and ordered the defendant to pay a fine of US\$15.00 with daily instalments of US\$0.50 for 30 days. If the defendant does not pay this fine then he will be sent to prison for 20 days as an alternative punishment.

2. Crime of using a bladed weapon and crime of simple offences against physical integrity

Case Number	: 0005/19. VQWTL
Composition of the Court	: Panel
Judges	: Florencia Freitas, Ersilia de Jesus and José António de Jesus Escurial da Silva Faria
Prosecutor	: Domingos Gouveia Barreto
Defence	: Grigório Maria Lourdes de Lima
Decision	: Single penalty of 4 years in prison

On 10 December 2019 the Baucau District Court announced its decision in a case of using a bladed weapon and serious offences against physical integrity involving the defendant Alexandrino Alegria who allegedly committed the offence against Abrão Soares (his brother-in-law) in Babulu Village, Uatulari Sub-District, Viqueque District.

Charges of the Prosecutor

The public prosecutor alleged that on 18 March 2019 the defendant was intoxicated and returned home and when he arrived home he felt hungry. However, when the defendant was getting ready to cook some food he saw that there was no water available for cooking. Therefore, the defendant disconnected the electricity to their house even though his mother-in-law was ill (*stroke*). The defendant's wife was unhappy with his behaviour and she argued with the defendant and took her mother to a neighbour's house. Previously, there was water flowing but nobody was home because the defendant and his wife were hulling rice.

The victim was talking with a friend and his friend told him about the defendant's behaviour. Therefore, the victim went to the defendant's house and saw that his mother was not in the house. The victim was unhappy and argued with the defendant. The victim threw two stones at the defendant and struck him on the left cheek and back. The defendant took a knife that was hanging near the front door and stabbed the victim on the left side of his stomach, and it pierced through to the right side. The victim received treatment at the Uatulari Health Centre, Viqueque Hospital, because he could not be evacuated to the Guido Valadares National Hospital in Dili.

The public prosecutor alleged that the defendant violated Article 146 of the Penal Code on serious offences against physical integrity that carries a maximum penalty of 2-8 years in prison in conjunction with Article 2.1b and Article 20.1 of Law No. 5/2017 on bladed weapons.

Presentation of evidence

During the trial the defendant stated that all of the facts alleged by the prosecutor against him were true and he stated that the victim had thrown stones at him and one stone had struck him above the eye and caused an injury and bleeding and another stone had struck him on the back. Therefore, the defendant defended himself by taking a knife and stabbing the victim. However, the defendant did not know which part of victim's body was stabbed because it was dark. The defendant also stated that now he is in pre-trial detention and he regretted his actions. The defendant was also a first time offender and he requested for the families to reconcile because the victim is his brother-in-law.

The victim stated that he went to the defendant's house to turn on the electricity but when he arrived at the defendant's house the victim did not see his mother so he argued with the defendant. Meanwhile, in relation to him initiating the incident by throwing stones at the defendant, the victim confirmed the defendant's statement, but the victim did not know which

part of the defendant's body was struck because it was dark. The victim added that after he threw stones at the defendant, the defendant suddenly grabbed a knife and stabbed the victim in the stomach. The victim received treatment at the Uatulari Health Centre, Viqueque Hospital, and was referred to the Baukau Regional Hospital and then referred to the Guido Valadares National Hospital.

The witness Juliana da Silva, who is the victim's older sister and the wife of the defendant, testified that the witness did not fill up the water because it was in the afternoon and when the water was flowing the witness was hulling rice. In the evening, when the defendant returned home and saw that there was no water, they argued and the defendant turned off the electricity. Therefore the witness decided to take her mother to a neighbour's house and not long after the witness heard the victim and the defendant arguing but she did not see the victim throw stones at the defendant and also did not see the defendant stab the victim.

Final recommendations

The public prosecutor stated that the defendant did not use a knife to stab the victim in legitimate self-defence but rather with the intention of stabbing the victim. On this basis the public prosecutor stated that the defendant committed the crime as alleged by the public prosecutor. Therefore, the public prosecutor requested for the court to impose a sentence of three years imprisonment against the defendant for committing the crime of serious offences against physical integrity and three years imprisonment for the crime of using a bladed weapon. The public prosecutor requested for the court to accumulate these two penalties and impose a single sentence of three years six months in prison against the defendant.

The public defender requested for the court to apply an appropriate punishment against the defendant because the defendant stated that the victim had thrown stones at him and the victim had approached the defendant. Therefore in order to defend himself the defendant took a knife and stabbed the victim. However, the defendant did not know which part of victim's body was stabbed because it was dark.

Decision

After evaluating all of the facts, the court found that the defendant used a knife to stab the victim once on the left side of his stomach that pierced through to the right side of his stomach. Based on the proven facts, and also with consideration of the mitigating circumstances in this case, namely that the defendant confessed, regretted his actions, has not reoffended against the victim and was a first time offender, the court convicted the defendant for committing the crime of serious offences against physical integrity and imposed a sentence of three years imprisonment, and for the crime of using a bladed weapon the court imposed a sentence of three years imprisonment. The court accumulated these two penalties and imposed a single sentence of four years in prison.

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

Case Number : 0049/19. BCBCV
Composition of the Court : Single Judge
Judge : José Quintão Soares Celestino
Prosecutor : Bartolomeu de Araújo
Defence : Antonio Fernandes
Decision : Fine of US\$ 30.00

On 11 December 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant PFdCB who allegedly committed the offence against his wife in Baucau District.

Charges of the Prosecutor

The public prosecutor alleged that on 14 April 2019, at 10:30am, the defendant and the victim argued because the defendant rang another woman. Therefore the defendant took an empty bucket that was used to store fried snacks and threw it at the victim and struck her in the right side of the stomach which caused pain. The defendant also took an empty jar of chili 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 confessed the facts set out in the indictment of the prosecutor and stated that two weeks after this incident the defendant apologised to the victim and reconciled with the victim. The defendant stated that he has five children from this relationship that started in 1989 and this was the first time that the defendant had hit the victim. The defendant stated that he regretted his actions, was a first time offender, and promised not to reoffend in the future against the victim. The defendant makes bricks and has a monthly income of US\$500.00.

In addition, the victim confirmed the facts set out in the indictment and also confirmed the statement of the defendant, namely that the defendant apologised to the victim, they reconciled on 21 April 2019 and until now he has not hit the victim again. In addition, the victim also confirmed the defendant's statement that they got together in 1989 and they have five children.

Final recommendations

The public prosecutor stated that victim did not agree with the defendant's behaviour because he had disrespected the victim (his wife). The public prosecutor stated that even though the defendant and the victim have reconciled, it is still necessary to provide general deterrence to other members of the community so that they know that domestic violence is a crime and perpetrators will be punished. Therefore, the public prosecutor requested for the court to impose a fine to be paid within 60 days via instalments of US 50 cents per day, including an alternative penalty of 40 days in prison if the defendant does not pay this fine.

Meanwhile, the defence requested for the court to consider the defendant's admission of the facts, and that the defendant regretted his behaviour, has reconciled with the victim and is a first time offender. Therefore, the public prosecutor 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 took an empty bucket and threw it at the victim striking the victim on the right side of the stomach. The court also found that the defendant took an empty jar and threw it at the victim but missed. Based on this evidence and the mitigating circumstances, namely that the defendant was a first time offender and has reconciled with the victim, the court imposed a fine of US\$30.00 against the defendant to be paid via daily instalments of US\$1.00 for 30 days, and the court also ordered the defendant to pay court costs of US\$10.00. If the defendant does not pay this fine, then the defendant will have to serve a prison sentence of 20 days as an alternative penalty.

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

Case Number	: 0006/19. BCBQI
Composition of the Court	: Single Judge
Judge	: José Quintão Soares Celestino
Prosecutor	: Bartolomeu de Araújo
Defence	: Sidónio Maria Sarmento
Decision	: 6 months in prison, suspended for 1 year

On 13 December 2019 the Baucau District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant HdR who allegedly committed the offence against his wife in Baucau District.

Charges of the Prosecutor

The prosecutor alleged that on 17 March 2019 at 12:00 midday the victim saw a photo on the defendant's laptop of the defendant with another woman. Therefore, they argued and the

defendant threw the victim on the ground and took a metal chair and struck the victim once on her right hand and took the light from a vehicle and threw it at the victim and struck her on her left shoulder.

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 stated that all of the alleged facts were true and stated that after this incident the victim has been living with her parents until now. However, if the victim wants to return home, the defendant is ready to accept her because they have four children. The defendant also stated that he regretted his actions, this was the first time that he has struck the victim and he promised not to repeat such actions in the future, even though they are been living separately until now.

The victim maintained the facts in the indictment and stated that until now she has not reconciled because of the defendant's behaviour.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim and actually the defendant gave a good explanation about this photo to the victim, and he was not angry and did not assault the victim. The victim also confirmed the allegation that the defendant committed the assault against the victim as set out in the indictment. For this reason the public prosecutor requested for the court to impose a prison sentence of 3 months, suspended for 1 year.

Meanwhile, the defence requested for the court to impose a lenient sentence against the defendant based on the mitigating circumstances, namely that the defendant was a first time offender, the defendant has not reoffended, the defendant is the breadwinner for his immediately family as well as his extended family who live in a remote area.

Decision

After evaluating all of the facts, the court found that the defendant threw the victim on the ground and took a metal chair and struck the victim once on the right hand and took the light from a vehicle and threw it at the victim and struck her on her left shoulder. In addition, the court also found that the defendant and the victim have not yet reconciled. Based on the facts that were proven and with consideration of all of the mitigating circumstances in this case, namely that the defendant confessed, regretted his actions, has reconciled with victim and was a first time

offender, the court imposed a prison sentence of 6 months against the defendant, suspended for 1 year, and ordered the defendant to pay court costs of US\$20.

5. Crime of aggravated property damage

Case Number : 0046/18. VQWCB
Composition of the Court : Panel
Judges : José António de Jesus Escurial da Silva Faria, Florencia
José and José Quintão Soares Celestino
Prosecutor : Domingos Goveia Barreto
Defence : José Maria Guterres
Decision : 2 years in prison, suspended for 2 years against each of the defendants

On 19 December 2019 the Baucau District Court announced its decision in a case of aggravated property damage involving the defendants Atanasio Germano da Silva, Julio Martinha Pinto and Carlos Fernandes Pinto who allegedly committed the crime against the State of Timor-Leste (Uatukarbau PNTL Station), in Uatukarbau Sub-District, Viqueque District.

Charges of the Prosecutor

The public prosecutor alleged that on 12 December 2018, at 1am, the defendants were intoxicated and went to purchase cigarettes at a kiosk but the kiosk was closed and when they walked passed the PNTL station the defendants threw stones that struck a table where police officers Onorio and Lorenzo were on duty. Therefore, the two police officers shined their torch and saw the defendants throwing more stones at the police and they were also swearing at the police.

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

Presentation of evidence

During the trial the defendants Atanasio Germano da Silva, Julio Martinha Pinto and Carlos Fernandes Pinto stated that all of the alleged facts were true and acknowledged that they threw stones at the aforementioned police station because they had drunk litres 5 of palm wine and they were very intoxicated. The defendants also stated that they were first time offenders and regretted their actions. The defendants added that on that very same evening the police detained the defendants in the police cells.

The witness Onorio Perreira, a PNTL official, was on duty at the PNTL station and testified that he and his colleague Lorenzo were sitting at a table, and the defendants threw stones towards them, and when the witness and his colleague shined a lamp at the defendants they saw the

defendants throwing rocks at the station and the defendants were also swearing at the police officers. In relation to the behaviour of the defendants, the witness and his colleague arrested the defendants and detained them in the police cells.

Final recommendations

The public prosecutor stated that the behaviour of the defendants was serious because they threw rocks at property belonging to the State and the station that was stoned by the defendants provides services to the public. For this reason the public prosecutor requested for the court to impose a prison sentence of 2 months, suspended for 2 months.

Meanwhile, the public defender requested for the court to impose a fair penalty against the defendants because the defendants confessed, regretted their actions and were first time offenders.

Decision

After evaluating all of the facts, the court found that the defendants were intoxicated and swore at the police and threw many stones at the police station and a stone struck the table where the two police officers were on duty. Based on the facts that were proven and all of the mitigating circumstances, namely that the defendants confessed, regretted their actions, were first time offenders, the court concluded this matter and imposed a prison sentence of 2 years against the defendants, suspended for 2 years.

For more information, please contact:

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