



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Case Summary
The Suai District Court
July 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 the trial process at the Suai District Court

1. Total number of cases monitored by JSMP: 22

Article	Case Type	Total
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)	5
Article 154 of the PC	Mistreatment of a spouse	2
Article 177(1) and Article 182(a) of the Penal Code	Aggravated sexual abuse of a minor	3
Article 177 (1)	Sexual abuse of a minor	3
Article 179 (PC)	Sexual abuse of a person incapable of resistance	2
Article 172 of the PC	Rape	1
Article 172 (PC) and Articles 23, 24 (PC)	Attempted rape	1

Article 145 (PC)	Simple offences against physical integrity	1
Articles 1757, 1761 and 1871 of the Civil Code	Exercise of parental power and alimony for children	3
Article 140 of the PC	Manslaughter	1
Total		22

2. Total number of decisions monitored by JSMP: 16

Type of decision	Total Number
Prison sentence (Article 66 of the PC)	3
Suspension of execution of a prison sentence (Article 68 of the PC)	7
Acquitted	2
Endorsed Agreement	3
Internment	1
Total	16

3. Total number of cases adjourned based on JSMP monitoring: 4

Reason for adjournment	Total Number
The defendant and the victim did not attend even though they had been notified	3
Could not establish a panel of judges	1
Total	4

4. Total number of cases processed based on JSMP monitoring: 2

B. Description of the trial proceedings and decisions in these cases

1. Crime of mistreatment of a spouse

Case Number : 0007/16.ANHTU
Composition of the Court : Panel
Judges : Álvaro Maria Freitas, Argentino Luísa Nunes and Benjamin Barros
Prosecutor : Ricardo Godinho
Defence : Manuel Amaral
Decision : Prison sentence of 2 years, suspended for 3 years

On 9 July 2019 the Suai District Court announced its decision in a case of mistreatment of a spouse involving the defendant BCA who allegedly committed the offence against his wife in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 27 May 2016, at approximately 10am, the defendant and the victim argued about the defendant's salary because he did not give all of his salary to the victim. Therefore, at 2pm the victim told the defendant's mother to teach the defendant how to give money to the victim. When he heard the victim's statement to his mother, the defendant took a one metre long piece of pipe and struck the victim four times on her head which caused an injury and heavy bleeding. When the defendant committed this act the victim was holding their child who was only two months old.

The defendant also took a machete to slash the victim but did not manage to do so because the defendant's mother (BdJ) stopped him and took the machete from the defendant. The defendant took a piece of wood and struck the victim on her back. Then the defendant took the piece of pipe with the intention of striking the victim but did not manage to do so because the defendant's mother and a student from SOLS took the pipe from the defendant and told the victim not to report it to the police. Therefore, the victim carried their child and made a complaint to the OPS (Village Police Office) and then made a complaint to the Hatudu PNTL Police Station. The Hatudu PNTL took the victim in a patrol car for treatment at the Hatudu Health Centre and when she came back, the victim stayed with her parents in Suai District.

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

Presentation of evidence

During the trial the defendant acknowledged all of the facts in the indictment and promised not to beat the victim again, even though the victim and their child were living with the victim's parents in Suai and she was with another man.

Also, the victim confirmed the facts set out in the indictment and also confirmed the statement of the defendant that the victim was with another man.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim based on the testimony of the victim and the defendant. The public prosecutor also stated that the defendant in his capacity of husband should have protected the victim, but in fact the defendant assaulted the victim who was holding their baby aged just two months old. Therefore the public prosecutor requested for the court to impose a prison sentence against the defendant, with a lengthy suspended sentence, befitting the seriousness of the crime committed by the defendant.

Meanwhile, the public defender requested for the court to impose an appropriate penalty against the defendant because he confessed all of the facts in the indictment and collaborated with the court. The defendant also regretted his actions and promised not to reoffend in the future even though the victim has married another man.

Decision

After evaluating the facts produced during the trial the court found that the defendant took a one metre long piece of pipe and struck the victim four times in the head and took a machete with the intention of slashing the victim but did not manage to do so because the defendant's mother (BdJ) stopped him and took the machete from the defendant. The court also found that the defendant took a piece of wood and struck the victim on her back and took the pipe and was going to strike the victim again but the defendant's mother and a student from SOLS took the pipe from the defendant.

Based on all of the evidence and all of the circumstances, the court concluded this matter and sentenced the defendant to 2 years in prison, suspended for 3 years, and ordered the defendant to pay court costs of US \$20.

2. Crime of aggravated sexual abuse of a minor¹

Case Number	: 0015/15.BBBBV
Composition of the Court	: Panel
Judges	: Alvaro Maria Freitas, Argentino Luísa Nunes and Naason Mário Armindo Marques Doutel
Prosecutor	: Ricardo Godinho
Defence	: Manuel Amaral
Decision	: Internment for three years

On 16 July 2019 the Suai District Court announced its decision in a case of sexual abuse of a minor involving the defendant DN who allegedly committed the offence against the victim, a minor of just 7 years of age in Covalima District.

Charges of the Prosecutor

The public prosecutor alleged that in the afternoon on an unspecified date in November 2015 the victim and her two young siblings went to bathe in the Tolba-Bobonaro river. When they were returning home from the river the defendant called out to the victim to go with the defendant to catch prawns in the river. Therefore, the victim went with the defendant back to the river and the victim's two younger siblings went back home by themselves. When they got to the river the defendant removed all of his clothing and started catching prawns with the victim. After they caught some prawns the defendant continued bathing and the victim sat on a rock watching the defendant bathing.

When he finished bathing the defendant put on his clothes and approached the victim and told the victim to remove her clothing to have sexual intercourse with the defendant. However, the victim did not want to remove her clothes. The defendant demanded for the victim to remove her

¹ JSMP did not monitor the examination of evidence and final recommendations in court.

clothes and the victim still refused. Therefore, the defendant removed the victim's clothes and told the victim to lie down on the rock and then the defendant rubbed his sexual organs on the victim's sexual organs.

The prosecutor charged the defendant with violating Article 177.2 of the PC on sexual abuse of a minor which carries a penalty of 5 to 20 years in prison and for violating Article 182 (1a) of the PC on aggravation because the victim was aged less than 12.

Decision

After evaluating all of the facts, the court found that at the river the defendant told the victim to remove her clothes to have sexual intercourse with the defendant. However, the victim did not want to remove her clothes. The defendant demanded for the victim to remove her clothes and the victim still refused. Therefore, the defendant removed the victim's clothes and told the victim to lie down on the rock, then the defendant rubbed his sexual organs on the victim's sexual organs.

The court found that two days later the victim told her mother about this incident. Then the victim's parents asked the defendant and the defendant admitted his behaviour. This case was resolved in accordance with East Timorese culture and the defendant's family gave US\$50 to the victim's family and promised to give a pick and a traditional cloth (*tais*) to the victim's family.

The court also found that the defendant got polio at a young age and a doctor stated that a person suffering from polio would not understand what was going on, and would also not understand the difference between right and wrong. In relation to the defendant's condition, the court referred to the testimony of the witness who is the father of the defendant and the doctor who has been treating the defendant to date. The doctor also recommended for the defendant to continue receiving treatment to recover from his condition.

Pursuant to Article 21 of the Penal Code on psychological disorders and Article 93 of the Penal Code on the assumption that the defendant should be given appropriate treatment, the court decided to intern the defendant in Tibar for three years and the defendant was not required to provide civil compensation such as a traditional cloth (*tais*) and a pig that the defendant had promised to give to the victim and her family.

3. Case of civil exercise of parental authority and alimony for children

Case Number	: 0020/18.CVTDS
Composition of the Court	: Single Judge
Judge	: Florencia Freitas
Prosecutor	: Ricardo Godinho (representing the child)
Defence	: Albino de Jesus Pereira (private lawyer)
Decision	: Withdrawal of complaint

On 18 July 2019 the Suai District Court attempted conciliation in a case of civil exercise of parental authority and alimony for children involving the plaintiff MdJ and the respondent CdS and the respondent GdO who are the plaintiff's parents, in Same District.

Initial petition

This petition was made pursuant to Articles 1757 - 1762 and Article 1782 of the Civil Code on the exercise of parental authority and Articles 1804 - 1805 of the Civil Code on alimony for children.

During the attempted conciliation the parties entered into an agreement regarding alimony for the child, residence of the child and a visiting schedule.

The Respondent CdS agreed that on the first day or fifth day of every month he would give US\$25 for the child through the respondent GdO who is the mother of the child and the money would be given at the house. In addition, the respondent agreed to also provide a sack of rice and 5 litres of oil every month.

In relation to the residence and visiting schedule, the two parties agreed that the child would live with the mother of the female respondent and on the weekend the male respondent would take the child out for recreation and the child would stay at the male respondent's home and would be brought back on Monday. On holidays the two respondents would split their time for the duration of the holidays.

Final recommendations

The prosecutor representing the child requested for the court to endorse the agreement made by the two respondents. Also, the defence asked for the court to endorse this agreement.

Decision

Based on the agreement made by the two parties regarding residence, and visiting schedule, the court concluded this matter and endorsed the agreement.

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

Case Number	: 0051/15.ANANV
Composition of the Court	: Single Judge
Judge	: Samuel da Costa Pacheco
Prosecutor	: Napoleão Soares da Silva
Defence	: Fransisco Caetano Martins
Decision	: 3 months in prison, suspended for 1 year

On 19 July 2019 the Suai 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 her husband in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 21 September 2015, at approximately 8:00am, the male victim and the female defendant argued about taking their child who had a sore stomach to the child's grandmother who has a special touch. During the argument the male victim slapped the female defendant on her cheek and took a piece of wood and struck the female defendant three times on her stomach and right leg. Therefore, the female defendant took a machete from the

kitchen and slashed the male victim in the forehead which caused heavy bleeding. The male victim received treatment at the Ainaro Health Centre.

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

Presentation of evidence

During the trial the female defendant confessed all of the facts set out in the indictment and stated that she regretted her actions. The female defendant understood that slashing her husband was a crime. The female defendant also stated that they have reconciled, and she promised not to repeat such acts against the victim in the future and the female defendant continued to provide treatment to the victim for his injury.

The victim maintained all of the facts in the indictment but stated that they have reconciled. The victim also confirmed that the defendant continued to treat him for his injury.

Final recommendations

The public prosecutor stated that the defendant's behaviour fulfilled the elements of the crime of simple offences against physical integrity based on the statement of the defendant and the confirmation provided by the victim. Therefore the prosecutor requested for the court to impose a lengthy suspended prison sentence against the defendant.

The defence stated that the defendant confessed all of the facts set out in the indictment, regretted her actions, and has reconciled with the victim. The defendant also promised not to repeat her behaviour against the victim in the future. The defendant also confirmed that she continued to provide treatment to the victim for his injury. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant took a machete and slashed the victim on the forehead which caused an injury and heavy bleeding. The court also found that before the defendant committed this crime the victim slapped the defendant and took a piece of wood and struck the defendant on the stomach. Based on the facts that were proven, the court concluded the matter and sentenced the defendant to 3 months in prison, suspended for 1 year.

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

Case Number	: 0051/16.ANANV
Composition of the Court	: Single Judge
Judge	: Samuel da Costa Pacheco
Prosecutor	: Napoleão Soares da Silva
Defence	: Fransisco Caetano Martins
Decision	: 5 months in prison, suspended for 1 year

On 24 July 2019 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AdA who allegedly committed the offence against his wife in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on the afternoon of 18 November 2016 the victim requested money to buy some things for their child but the defendant took a piece of firewood and struck the victim on the back. Then the defendant kicked the victim twice in the stomach. These acts caused the victim to feel afraid and traumatised so the victim immediately made a complaint at the Ainaro Police Station. The case file included a medical report from the Ainaro Health Centre.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial, the defendant used his right to remain silent. However the victim confirmed all of the facts set out in the indictment, namely that the defendant used a piece of wood to strike the victim four times on the back and kicked the victim four times in the stomach. The victim added that they have reconciled.

Final recommendations

The public prosecutor stated that the defendant had been proven guilty of committing the crime against the victim based on the testimony of the victim who suffered violence. Therefore, even though the defendant and the victim have reconciled and the defendant has not hit the victim again, in order to deter the defendant from repeating such acts in the future, the public prosecutor requested for the court to convict the defendant based on the provisions of Article 145 of the Penal Code.

The public defender requested for the court to impose a fair and adequate penalty against the defendant because the defendant has reconciled with the victim and has not hit the victim again.

Decision

After evaluating the facts that were proven during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment, namely he used a piece of firewood to hit the victim four times in the back and kicked the victim twice in the stomach. Based on the facts that were proven and the mitigating and aggravating circumstances, the court sentenced the defendant to five months in prison, suspended for 1 year.

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

Case Number	: 0004/15.CVFT
Composition of the Court	: Single Judge
Judge	: Florencia Freitas
Prosecutor	: Ricardo Godinho
Defence	: Nerio da Costa Xavier (private lawyer)
Decision	: 6 months in prison, suspended for 1 year

On 24 July 2019 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant JB who allegedly committed the offence against her son (JM) in Suai District.

Charges of the Prosecutor

The public prosecutor alleged that on 14 April 2015 at approximately 10pm defendant was looking for her US\$40 that she had placed inside a book and put inside a box. Because she couldn't find it the defendant approached the victim who was sleeping on the veranda and grabbed his leg to wake him up. When the defendant woke the victim up, the victim was startled and he kicked the defendant on her right cheek which caused the defendant to fall up against the wall. The defendant did not accept the victim's behaviour and took a machete sheaf and struck the victim once on the back which caused an injury and heavy bleeding. The victim received treatment at the Fatululik Health Centre. A medical report and photographs from the Police-VPU were also attached to this case file.

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

The defendant completely confessed all of the facts in the indictment, regretted her actions and was a first time offender. The defendant was aware that using a machete sheaf to strike a person is not proper behaviour. The defendant also stated that as a mother she has been providing treatment to the victim for his injury and looking after the victim and his younger siblings since her husband died.

Meanwhile the victim confirmed the facts set out in the indictment and stated that the victim apologised to him, as his mother. In addition, the victim reinforced the statement of the defendant that the defendant has been looking after the victim and his younger siblings since the victim's father passed away.

Final recommendations

The public prosecutor stated that the defendant assaulted the victim. Even though the defendant regretted her actions and was a first time offender, to deter the defendant from reoffending against the victim, the public prosecutor requested for the court to sentence the defendant to prison, with the sentence suspended.

The public defender considered the mitigating circumstances, namely the defendant confessed the facts set out in the indictment, and also regretted her actions, was a first time offender and the defendant was looking after the victim and his younger siblings by herself. Therefore the public defender requested for the court to impose a fair penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant had taken a machete sheaf and struck the victim on the back which caused an injury and bleeding. Based on the facts that were

proven, the court concluded the matter and sentenced the defendant to 6 months in prison, suspended for 1 year.

7. Crime of mistreatment of a spouse

Case Number : 0024/15.BBBLB
Composition of the Court : Panel
Judges : Álvaro Maria Freitas, Argentino Luísa Nunes and Benjamin Barros
Prosecutor : Ricardo Godinho
Defence : Fransisco Caetano Martins
Decision : Prison sentence of 3 years, suspended for 5 years

On 24 July 2019 the Suai District Court announced its decision in a case of mistreatment of a spouse involving the defendant MAM who allegedly committed the offence against his wife in Bobonaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 26 November 2015 at approximately 10am the defendant returned home drunk and shouted out to the victim using rude language telling the victim to bring him some rice. When she heard the defendant yelling out for the rice the victim put some rice in a bowl and placed it on the table. Then victim called out to the defendant to eat the rice but the defendant came over and tipped the rice out and smashed the bowl on the table. Because she was afraid, the victim ran behind the house but the defendant chased her and choked her twice. Then the victim ran into the Mautura forest and used this opportunity to look after their buffalo.

At 4pm the defendant grabbed a machete and followed the victim to Mautura. When he got there the defendant told the victim that she had gone to the forest to look for another man to have sexual intercourse. However, the victim said that she ran into the forest because she did not want to argue with the defendant. When he heard the victim's words the defendant punched the victim once in the nose which caused an injury and heavy bleeding.

Previously, on the morning of an unspecified day in November 2015 the defendant and the victim argued about dowry practices and the defendant punched the victim twice in the left eye which caused swelling and bruising. In addition, in June 2015 the defendant suspected that the victim was having a romantic relationship with another man and he slapped the victim twice on her left and right cheek which caused swelling and pain.

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

Presentation of evidence

During the trial the defendant partially confessed to the facts set out in the indictment and stated that he was not drunk and did not choke the victim. Meanwhile the defendant

acknowledged that he tipped the rice out and threw the plate on the ground and said bad things to the victim. The defendant also acknowledged that he struck the victim in the nose but the defendant denied that he used a machete. Regarding the allegation that he struck the victim when they argued about dowry practices, the defendant stated that he did not punch her, but rather he slapped the victim once on her right cheek. The defendant also added that he regretted his actions, promised not to repeat his actions in the future and to date the defendant has been providing for the victim and their four children.

The victim confirmed the facts set out in the indictment and stated that when the defendant gets drunk the defendant always hits the victim and mistreats her. However, after since this incident the defendant has not hit the victim again.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime against the victim based on the testimony of the victim who confirmed the facts set out in the indictment. The public prosecutor also stated that as a husband the defendant should have protected the victim, as his wife and the mother of his children. Therefore the prosecutor requested for the court to impose a lengthy suspended prison sentence against the defendant.

The public defender requested for the court to impose an appropriate penalty against the defendant because the defendant confessed to some of the facts in the indictment, regretted his actions, collaborated with the court and promised that he will not repeat such acts in the future. The defendant has four children, has reconciled with the victim, the defendant is the breadwinner of the family and has time to improve his behaviour.

Decision

After evaluating the facts produced during the trial, the court found that the defendant assaulted the victim based on the facts set out in the indictment, even though the defendant denied some of the facts, the victim maintained the facts set out in the indictment. Based on the facts that were proven, and consideration of the relevant aggravating and mitigating circumstances, the court sentenced the defendant to 3 years in prison, suspended for 5 years.

8. Crime of sexual abuse against a minor

Case Number	: 0003/18.ANHTU
Composition of the Court	: Panel
Judges	: Samuel da Costa Pacheco, Florencia Freitas Naason Mário Armindo Marques Doutel
Prosecutor	: Ricardo Godinho
Defence	: Fransisco Caetano Martins
Decision	: 15 years in prison

On 24 July 2019 the Suai District Court announced its decision in a case of sexual abuse of a minor involving the defendant AdC who allegedly committed the offence against the victim, a minor aged 13 years and 9 months in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that the defendant and the victim were in a romantic relationship and on 30 August 2017 the defendant contacted the victim and told the victim to meet him at the Aiasa river. At that location the defendant and the victim had sexual intercourse. Then on 1 September 2017 at approximately 8:00am at the Aiasa river the defendant and the victim had sexual intercourse for the second time. On 5 September 2017 at approximately 12 midday, at the same location, the defendant and the victim had sexual intercourse for the third time. Then on 7 September 2017 at approximately 10am the defendant and the victim had sexual intercourse for the fourth time at the same location. On 10 September 2019, at an unknown time, at the Aiasa river, the defendant and the victim had sexual intercourse for the fifth time (last time).

Then on an unknown date in November 2017 the victim's mother suspected that the victim was pregnant. Therefore, the victim's mother asked the victim about her menstruation and the victim told her mother that she had not menstruated for three months. In addition, the victim also told her mother that the defendant had gotten her pregnant. When she heard this the victim's mother made a complaint to the police.

The public prosecutor alleged that the defendant violated Article 177 of the Penal Code on the sexual abuse of a minor that carries a maximum penalty of 5-20 years in prison.

Presentation of evidence

During the trial, the defendant used his right to remain silent. The victim confirmed the facts set out in the indictment and stated that they met each other over the phone and the defendant always contacted victim to ask her to have sexual intercourse until she became pregnant.

Final recommendations

The public prosecutor stated that although the defendant chose to remain silent, the defendant was still guilty of committing the crime against the victim based on the testimony of the victim who confirmed the facts. Therefore, the public prosecutor requested for the court to impose a sentence for each of these crimes and to accumulate the sentences and determine a penalty befitting the seriousness of the crimes.

Meanwhile, the public defender requested for the court to convict the defendant with an appropriate penalty with consideration that the sexual intercourse was based on consent because the defendant and the victim were in a romantic relationship.

Decision

After evaluating all of the facts, the court found that the defendant had sexual intercourse five times with the victim who was a minor aged 13 years and 9 months old (based on her birth certificate), at the Aiasa river. The court found that the defendant and the victim were in a romantic relationship and met each other over the phone. Based on the evidence the court imposed a 6 years prison sentence for each crime with and the court accumulated these sentences and imposed a single prison sentence of 15 years against the defendant.

9. Case of civil exercise of parental authority and alimony for children

Case Number : 0009/19.CVTDS

Composition of the Court : Single Judge
Judge : Naason Mário Armindo Marques Doutel
Prosecutor : Napoleão Soares da Silva (representing the minor)
Defence : Sergio Lobo (private lawyer)
Decision : Withdrawal of complaint

On 24 July 2019 the Suai District Court attempted conciliation in a case of civil exercise of parental authority and alimony for children involving the plaintiff MdS aged 18, AdS aged 14 and EdS aged 11, and the male respondent FRdS and the female respondent FdS who are the parents, in Suai District.

Initial petition

The male respondent FRdS and female respondent FdS got married in June 2000 and have three children. However, since 2010 the male respondent has not provided for his children. During the period when the male respondent neglected his children the minor AdS lived with the older sister of the female respondent, SA. Meanwhile the other two minors, MdS and EdS, were living with the female respondent's older sister, AA.

The male respondent FRdS is the chief of the laboratory at a hospital in Dili with a monthly salary of US\$590.00 and he is capable of providing for his children.

The respondents did not recognise the exercise of parental authority for the children, in particular regarding custody, food support and visiting schedule so a judicial intervention was required to secure the appropriate regime.

This petition was made pursuant to Articles 1757 - 1782 of the Civil Code on the exercise of parental authority and Articles 1804 - 1805 of the Civil Code on alimony for children.

Presentation of evidence

During the trial the male respondent via his lawyer agreed to provide alimony every month for his children totalling US\$125.00 starting from July 2019, and from January 2020 onwards the male respondent will increase this amount to US\$150.00 every month. This money will be transferred via the bank account of MdS. In relation to visiting the minors, the two parties agreed for the children to visit the male respondent on school holidays and public holidays.

Final recommendations

The public prosecutor representing the minors requested for the court to endorse this agreement, because the two parties agreed on the visiting regime for the children and alimony that will start in July 2019. In addition, the defence also requested for the court to endorse this agreement.

Decision

Based on the agreement made by the two parties relating to the needs of the minors, the court concluded this matter and endorsed this agreement.

10. Crime of Rape

Case Number : 0019/17.CVZML

Composition of the Court : Panel
Judges : Argentino Luisa Nunes, Alvaro Maria Freitas and Benjamin Barros
Prosecutor : Ricardo Godinho
Defence : Manuel Amaral
Decision : Acquitted

On 29 July 2019 the Suai District Court announced its decision in a case of rape involving the defendant VC (member of PNTL) who allegedly committed the offence against the victim AS aged 20 in Suai District.

Charges of the Prosecutor

The public prosecutor alleged that on 30 July 2017, at 09:00am, the defendant was riding a motorcycle back from Zumalai and stopped in front of the victim's house. The defendant asked the victim about her older sister and older brother, and the victim said that victim her brother had taken her sister to work. Because the victim's older brother and older sister were not there the defendant told the victim to make him some coffee. When the victim went inside the kiosk to boil some water, the defendant also followed the victim into the kiosk. Inside the kiosk the defendant grabbed the victim's arm and pushed the victim inside the room and forced the victim to have sexual intercourse. The victim was going to scream but the defendant threatened the victim and told her not to scream. In addition to feeling afraid because of the threats, the victim also felt afraid because the defendant put his pistol on the bed.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape that carries a maximum penalty of 5-15 years in prison.

Presentation of evidence

During the trial the defendant partially confessed to the facts and stated that he was returning from Zumalai and stopped in front of the victim's house with the intention of asking about the victim's older sister who is his work colleague (member of the PNTL). However, because the victim said her older sister was not there, the defendant went home. The defendant denied that he took his pistol and told the victim to make a coffee and used threats to have sexual intercourse.

In addition, the victim also denied the facts set out in the indictment and stated that at that time the defendant and the victim had been in a romantic relationship for two months. Therefore when the defendant stopped their relationship the victim felt dissatisfied and lied to the police. In relation to the medical report that mentioned a mark on the victim's hymen, the victim said that this was not the result of the defendant's actions but the result of her relationships with another man who now is her husband.

Final recommendations

The public prosecutor requested for the court to acquit the defendant because in addition to his denial of the facts, the victim herself also denied all of the facts in the indictment and stated that the allegations set out in the indictment were lies. The victim made the complaint because she was not satisfied with the defendant's behaviour when he ended their relationship. Therefore the defence also requested for the court to acquit the defendant because the allegations were lies and the medical report presented evidence that related to the victim's relationship with another man who is now her husband.

Decision

After evaluating the facts produced during the trial, the court did not find that the defendant and victim were in a romantic relationship, did not prove that the defendant made threats and also did not prove that the defendant forced the victim to have sexual intercourse. Because the facts were not proven, the court acquitted the defendant from the charges.

11. Sexual abuse of a person incapable of resistance

Case Number : 0037/15 PDUA
Composition of the Court : Panel
Judges : Alvaro Maria Freitas, Benjamin Barros and
Argentino Luisa Nunes
Prosecutor : José Elo
Defence : Francisco Caetano Moniz
Decision : 14 years in prison

On 30 July 2019 the Suai District Court announced its decision in a case of sexual abuse of a person incapable of resistance involving the defendant MA who allegedly committed the offence against the victim MdJ, his sister in law aged 18 in Suai District.

Charges of the Prosecutor

The public prosecutor alleged that on an unspecified day in July 2018 the defendant and his wife visited his mother in law for one week. In the afternoon when the victim went to the bathroom the defendant grabbed a knife and followed the victim into the bathroom and threatened the victim to have sexual intercourse. The defendant managed to have sexual intercourse with the victim and when he finished the defendant told the victim that he would marry the victim as his second wife. Then two days later, when it was late at night, the defendant went into the victim's bedroom and forced the victim to have sexual intercourse. Then, the defendant and his wife returned to their home.

Some days later the defendant went back to the home of his mother in law and saw that she was not there, so the defendant took the victim to the river and again had sexual intercourse with the victim. As the result of the defendant's actions the victim became pregnant and gave birth to a boy.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape that carries a maximum penalty of 5-15 years in prison.

Presentation of evidence

During the trial the defendant denied the facts set out in the indictment and stated that he and his wife stayed one week at the home of his mother in law with the intention of asking his oldest sister in law to be the godmother of their child. The defendant also stated that while he was at the home of his mother in law the defendant never met with the victim because the victim's house was a long distance from where the defendant was staying. The defendant added that his mother in law blamed the defendant for this act because she was not happy that the defendant had taken all of her children to go and live with him. The victim maintained the facts set out in the indictment of the public prosecutor. The victim is deaf and dumb because she suffers from epilepsy.

Final recommendations

The public prosecutor stated that the defendant was guilty of committing the crime of rape on three occasions against the victim who suffers from epilepsy (she is deaf and dumb) even though during the presentation of evidence the defendant denied having sexual intercourse with the victim. In addition, the DNA tests showed that the defendant was the father of the victim's child. Based on these considerations and all of the relevant circumstances, the public prosecutor requested for the court to impose a prison sentence of 7 years against the defendant.

The public defender requested for the court to impose a fair penalty against the defendant because he was a first time offender.

After hearing the final recommendation, the defendant confessed that he had sexual intercourse with the victim three times, and she had a child. However, the defendant denied that he used a knife to threaten the victim. The defendant also stated that he knew the victim suffered from epilepsy.

Decision

After evaluating all of the facts, the court found that the victim suffered epilepsy since she was a child. Therefore, the court amended the charge from Article 172 of the Penal Code on rape to Article 179 of the Penal Code on the sexual abuse of a person incapable of resistance.

The court found that the defendant had sexual intercourse with the victim three times and the victim and she had a child. The court did not find evidence that the defendant used a knife to threaten the victim to have sexual intercourse. Based on the evidence and report from the hospital regarding the victim's medical condition, the court imposed a prison sentence of 8 years for each crime and the court accumulated these sentences and imposed a single prison sentence of 24 years against the defendant. From the sentence of 24 years in prison, the court decided to impose a final sentence on the defendant of 14 years in prison.

12. Crime of attempted rape

Case Number : 0067/14.ANANV
Composition of the Court : Panel
Judges : Florencia Freitas, Naason Mário Armindo Marques
Doutel and Samuel da Costa Pacheco
Prosecutor : José Elo
Defence : Domingos dos Santos (private lawyer)
Decision : Acquitted

On 31 July 2019 the Suai District Court announced its decision in a case of attempted rape involving the defendant AdC who allegedly committed the offence against his girlfriend aged 17 in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 29 September 2014, at 05:00am, the victim returned home from a party. On the way home the victim met the defendant who was waiting for the victim. The defendant pushed the victim into some long grass behind the school. Therefore, the victim asked the defendant where they were going but the defendant told her to just do what he said and he swore at the victim.

Behind the school the victim again asked the defendant what he was doing and the defendant told the victim that he was going to have sexual intercourse with the victim. When she heard the defendant's words the victim tried ringing her father but the defendant grabbed her phone and turned it off.

The public prosecutor accused the defendant of violating Article 172 of the Penal Code on rape and that carries a prison term of 5-15 years in prison as well as Articles 23 and 24 of the Penal Code on attempt.

Presentation of evidence

During the trial the defendant partially declared the facts set out in the indictment that he and the victim were in a romantic relationship for approximately one year and at that time the defendant and the victim were returning from a party and were talking on the way home. When they were talking a motorcycle suddenly appeared and they were in the headlight so the defendant and the victim ran behind the school. The defendant also stated that he had no intention to have sexual intercourse with the victim. Therefore, the defendant denied that he dragged the victim behind the school, grabbed her phone and turned it off and also denied that he asked the victim to have sexual intercourse. The defendant added that the defendant and the victim were talking from 5am until 11am.

The victim confirmed all of the facts in the indictment and stated that she and the defendant were not in a romantic relationship and they were just acquaintances. At that time the victim was

returning from a party and went to bathe at a well near the school and the defendant dragged her behind the school and asked to have sexual intercourse with the victim. The victim also confirmed that they were talking from 5am until 11am.

The witness AA, who is the father of the victim, stated that the victim was returning from a party to end the mourning period and went to bathe at the well near the school because the victim was heading to school. However the victim came home at 11am. Therefore, the witness asked the victim why she took so long and the victim told him what the defendant had tried to do to her. After this the witness went to the home of the defendant to resolve this problem in accordance with East Timorese culture but there was no solution so the victim made a complaint to the police.

Final recommendations

The public prosecutor stated that during the presentation of evidence the defendant denied all of the facts in the indictment, however the victim confirmed the facts in the indictment. Therefore, the public prosecutor requested for the court to use its discretion to convict the defendant.

The public defender requested for the court to acquit the defendant from the charges because the defendant's actions did not fulfil the requirements of the crime of attempted rape. The public defender stated that if the defendant wanted to have sexual intercourse he didn't need to talk to the victim for six hours.

Decision

After evaluating all of the facts, the court found that the defendant and the victim were in a romantic relationship. The court also found that the defendant and the victim were returning from a party and were talking on the way home. When they were talking a motorcycle appeared and they were in the headlight so they decided to talk behind the school. The court did not prove that the defendant tried to have sexual intercourse with the victim. The court found that the defendant and the victim were talking from 5am until 11am. Based on this evidence, the court acquitted the defendant from the charges.

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

Case Number	: 0003/18.ANHTB
Composition of the Court	: Single Judge
Judge	: Argentino Luisa Nunes
Prosecutor	: Ricardo Godinho
Defence	: Fransisco Caetano Martins
Decision	: 3 months in prison, suspended for 1 year

On 31 July 2019 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant SGX who allegedly committed the offence against his wife in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 19 February 2018, at 5pm, the victim was cleaning up near a pipe that had water flowing from it. The victim's mother in law and father in law were angry with the victim because they thought the victim put some bark in the water. Therefore, the victim argued with them. When he saw this the defendant took a rock and threw it at the victim, striking her on the cheek near her eye which caused an injury and heavy 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, 3(a), 35(b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial, the defendant used his right to remain silent. The victim confirmed all of the facts set out in the indictment and stated that the defendant threw a rock at some bananas but it bounced off and hit her on the cheek near her eye. The victim received treatment at the Ainaro hospital. The defendant also stated that they have reconciled and since the incident the defendant has not hit the victim.

Final recommendations

The public prosecutor requested for the court to impose a suspended prison sentence against the defendant considering that the actions of the defendant fulfilled the elements of the crime of simple offences against physical integrity.

The public defender requested for the court to impose an appropriate penalty against the defendant considering that he did not throw the rock directly at the victim. In addition, the defendant and victim have reconciled and the defendant has not hit the victim again.

Decision

After evaluating all of the facts, the court found that the defendant took a rock and threw it at some bananas but it bounced off and struck the victim on her cheek near her eye. Therefore even though he did not throw the rock directly at her, the actions of the defendant caused the victim to suffer an injury. Based on the facts that were proven, the court concluded the matter and sentenced the defendant to 3 months in prison, suspended for 1 year.

14. Crime of simple offences against physical integrity

Case Number	: 0028/17.CVMCT
Composition of the Court	: Single Judge
Judge	: Florencia Freitas
Prosecutor	: Ricardo Godinho
Defence	: Fransisco Caetano Martins
Decision	: 5 months in prison, suspended for 1 year

On 31 July 2019 the Suai District Court announced its decision in a case of simple offences against physical integrity involving the defendant Abrão Barros who allegedly committed the offence against the victim Amélia de Jesus (neighbour) in Suai District.

Charges of the Prosecutor

The public prosecutor alleged that on 19 August 2017, at 07:20am, the defendant slapped the victim once on her right cheek, choked the victim and punched the victim once in the forehead. These acts caused the victim to suffer an injury, swelling and heavy bleeding and she fainted. The defendant committed this assault because the victim had not yet paid for timber made from palm trees costing US\$30.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine.

Presentation of evidence

During the trial, the defendant used his right to remain silent. The victim confirmed the facts set out in the indictment and stated that the defendant slapped her once on the right cheek, choked her and punched her once in the forehead. The defendant committed this assault because the victim owed him US\$ 30 for timber made from palm trees.

Final recommendations

The public prosecutor requested for the court to impose a suspended prison sentence against the defendant considering that the actions of the defendant fulfilled the elements of the crime of simple offences against physical integrity. The public defender requested for the court to impose a fair and appropriate penalty against the defendant.

Decision

After evaluating all of the facts, the court found that the defendant slapped the victim once on her right cheek, choked her and punched her once in the forehead. Based on the facts that were proven, including all of the circumstances, the court sentenced the defendant to 5 months in prison, suspended for 1 year.

15. Crime of aggravated sexual abuse of a minor

Case Number	: 0003/19.MFSIC
Composition of the Court	: Panel
Judges	: Samuel da Costa Pacheco, Florencia Freitas And Naason Mário Armindo Marques Doutel
Prosecutor	: Napoleão Soares da Silva
Defence	: Fransisco Caetano Martins
Decision	: 14 years in prison

On 31 July 2019 the Suai District Court announced its decision in a case of aggravated sexual abuse of a minor involving the defendant AdC who allegedly committed the offence against the victim ADC, a minor aged 12 years and 8 months, in Same District.

Charges of the Prosecutor

The public prosecutor alleged that on 17 January 2019, at 2pm, the victim was returning from school and saw the defendant sitting by himself on the front veranda. The victim went inside the house and changed out of her school uniform and went to get something to eat. After eating

the victim's mother also arrived at the house after she had been gathering some firewood so the victim and her mother were talking in front of their house.

Not long after, the defendant approached his mother and suggested that they would go and spend time at their grandmother's house which was approximately 40 metres away. The defendant's mother agreed and the victim walked to her grandmother's house and her mother also followed the victim.

When they arrived at their grandmother's house the victim's uncle told the victim to eat with him. When the victim was eating the defendant called out to the victim and told her to go home and prepare some vegetables. When she heard the defendant call out, the victim's grandmother told the defendant to eat with them. However, the defendant yelled out to victim.

Because the defendant continued to call out to the victim, she felt afraid and stood up and returned home. When he saw the victim stand up to go home, the defendant walked back to the house. When she arrived home the victim went into the kitchen and asked the defendant what vegetables he wanted her to cook. The defendant told her to prepare some papaya leaves. But because there was no papaya leaves the defendant told the victim to cook some rice. After cooking some rice the victim put it on a plate and gave it to the defendant.

When the defendant was eating one of his friends came and so the defendant put down his rice and went out to meet his friend. The defendant told his friend to play some music in the bedroom and told his friend to wait there because the defendant was still eating.

After eating, the defendant saw the victim sitting on the front veranda. The defendant took a knife and called out to the victim and made the threat "*Come here, if I go over there you will die, you cannot scream or you will die*". The victim approached the defendant and the defendant spoke harshly and told the victim to go into the defendant's bedroom. The defendant was holding the knife and he spoke harshly and told the victim to remove her clothes. Because she was afraid the victim removed her clothes and sexual intercourse took place. A medical report was attached to the indictment.

The prosecutor charged the defendant with violating Article 177.1 of the PC on sexual abuse of a minor which carries a penalty of 5 to 20 years in prison and for violating Article 182 (1d) of the PC on aggravation.

Presentation of evidence

During the trial the defendant confessed that he had sexual intercourse with the victim based on the facts set out in the indictment but denied that he threatened the victim and also denied that he held a knife.

The victim confirmed the facts set out in the indictment and stated that the defendant was holding a knife and called out to the victim and told her to go into the bedroom and had sexual intercourse. The victim also stated that after this incident the victim did not go to school because she was embarrassed and now the victim is staying in a shelter and has just recently started going to school again. The victim added that the defendant and victim share the same mother, but they have different fathers.

Final recommendations

The public prosecutor stated that the defendant was guilty of having sexual intercourse with the victim who was his sister aged 12 years and 8 months. Previously, before a decision had been made on coercive measures, the defendant fled to Same, and three days later the police arrested the defendant. Based on the facts that were proven, including all of the circumstances, the public prosecutor requested for the court to sentence the defendant to 18 years in prison.

The public defender requested for the court to amend the charge from Article 177.1 to Article 177.2 because the medical report explained that the victim did not suffer bleeding to her sexual organs. Therefore, the public defender requested for the court to impose an appropriate penalty.

Decision

After evaluating all of the facts, the court found that the defendant had sexual intercourse with the victim by threatening her with a knife. The court also found that the defendant's actions caused the victim to feel embarrassed and she decided not to go to school. The victim only went back to school when she was in a shelter. In addition, the court also found that the defendant and the victim were brother and sister. Based on the facts that were proven, and after considering all of the circumstances, the court concluded the matter and sentenced the defendant to 14 years in prison.

16. Case of civil exercise of parental authority and alimony for children

Case Number	: 0064/18.CVTDS
Composition of the Court	: Single Judge
Judge	: Samuel da Costa Pacheco
Prosecutor	: Napoleão Soares da Silva (representing the minor)
Defence	: Albino de Jesus Pereira
Decision	: Withdrawal of complaint

On 31 July 2019 the Suai District Court attempted conciliation in a case of civil exercise of parental authority and alimony for children involving the plaintiff MdR and the male respondent NA and the female respondent AR who are the plaintiff's parents, in Suai District.

Initial petition

On 25 May 2018 the respondent NA neglected the female respondent and their children. Until now the children have been living together with the female respondent AR who is their mother and the female respondent AR has been looking after them.

This petition was made pursuant to Articles 1757 - 1762 and Article 1782 of the Civil Code on the exercise of parental authority and Articles 1804 - 1805 of the Civil Code on alimony for children.

Presentation of evidence

During the trial the male respondent and female respondent agreed for the children to live with the female respondent, who is their mother, and they will go to the home of the male respondent

on Saturdays and return on Sundays. The male respondent and female respondent also agreed for the male respondent to provide alimony for their children every month totalling US\$75.00.

Final recommendations and factual basis

The public prosecutor representing the minors and the defence requested for the court to endorse this agreement because the two parties agreed what was best for the children.

Decision

Based on the agreement of the two parties regarding the needs of the minors, the court endorsed the agreement.

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