



Press Release
Dili Court of First Instance
20 November 2024

JSMP demands for the courts to assess and consider the relevant facts and circumstances in cases of a sexual nature before making a decision

On 8 November 2024 the Dili Court of First Instance acquitted the defendant in a case of aggravated sexual acts with an adolescent characterized as domestic violence due to a lack of evidence. This case involved the defendant SB and his niece aged 15 in Ermera Municipality.

JSMP demands for the courts to thoroughly evaluate and consider the relevant and associated facts and circumstances in cases characterized as sexual assault to ensure that decisions in such cases provide justice to vulnerable groups.

“JSMP believes that this case involved a number of crimes that meant it was possible for the defendant to be charged with a joinder of crimes, if the prosecutor had have adequately explored and assessed the sequence of events, relevant facts and circumstances in this case”, said Mr. Casimiro dos Santos, Acting Executive Director of JSMP.

In cases of rape the injured party often faces a range of cultural and structural challenges including psychological pressure, social stigma, and a range of trauma because of the relationship of unequal power in the family and society. In addition to concerns regarding the ability and knowledge of injured parties to provide evidence and meet the technical formalities in accordance with the law, there are also other relevant concerns that need to be considered.

The courts need to be sensitive to the social reality in Timor-Leste that must be reflected in their decisions so that they have credibility and are respected in society. The courts and judicial authorities should not just simply decide complex cases on a single piece of evidence to make conclusions about what has happened in these cases. JSMP hopes that the prosecutor in charge will do everything possible and appeal this decision to the Court of Appeal to ensure that the injured party receives justice.

There were a number of relevant facts that the court needed to examine properly – before the court could conclude that this crime did not happen in order to acquit the defendant;

1. In this case the injured party consistently stated that the defendant had threatened her or always threatened to kill her if she made a complaint or told anybody and the prosecutor and the court failed to evaluate the relevant history and circumstances in this case.

2. The prosecutor was aware and admitted that the crime did take place, however did not sustain this argument to set out strong and thorough charges to convince the panel of judges to make a fair decision in favor of the injured party.

3. The prosecutor and the court did not assess the facts in the statement of the injured party who said that she had no problem with the defendant and that the defendant provided for them after her father passed away. The court should have questioned and analyzed the facts that came from the statement of the injured party who said that the defendant took care of her and provided for her and paid for her schooling, and to date she had no problem with the defendant, however why would she make a false allegation against the defendant, when there is no reason and no basis.

4. JSMP is also concerned why the court considered the results of a DNA test as the only evidence to acquit the defendant, whilst the injured party maintained her stance during investigations and the examination of evidence before the court. JSMP understands that this DNA evidence has more relevance in investigating paternity, rather than the criminal case.

5. JSMP believes that even though the DNA result was negative, this does not mean that the defendant did not commit the alleged crime. The facts show that the defendant took advantage of his authority to commit a range of abuse against the injured party. Actually, the prosecutor should have considered charging the defendant with a joinder of crimes because there were threats, abuse and rape (Article 172 of the PC) with aggravation pursuant to Article 173.1 (a) and (d).

In this case the public prosecutor alleged that at some time in September 2016 the defendant's wife and the mother of the injured party went to a cultural ceremony in the mountains and all of the defendant's children went with the injured party to school. When the injured party returned from school the defendant followed her into the bedroom and told her "I don't give you food for free". Then the defendant used force to remove the injured party's clothes and pushed her on to the bed and had sexual intercourse with the injured party. At that time the injured party felt pain and screamed, however the defendant threatened her by saying "If you scream I will kill you!" This assault caused the injured party to suffer a lot of bleeding from her vagina, however she remained silent because the defendant threatened to kill her if she told another person. The injured person felt that her thighs were sore and she couldn't walk, therefore she slept in her bedroom until late in the afternoon. When the defendant's children came home from school and asked her why she was lying down and wouldn't get up, and she responded that she was sick.

At some time in October 2016 the defendant and the injured party were home alone, and the defendant told the injured party to sweep the floor inside the house and when she was sweeping in the defendant's bedroom he suddenly emerged from behind the door and she was shocked and ran out but the defendant grabbed her by the arm and forced her to remove her clothes and used force to have sexual intercourse with the injured party. During these incidents the injured party did not tell her mother and aunty because she was afraid. The defendant and the injured party continued to have sexual intercourse as wife

and husband when none of the family members were at home and the sexual intercourse happened regularly until the injured party became pregnant.

After discovering that the injured party was pregnant, the family members asked her about this pregnancy, and she said that the defendant had gotten her pregnant. The injured party gave birth to a baby girl when she was aged 15.

The public prosecutor alleged that the defendant violated Article 178 of the Penal Code on sexual acts with an adolescent and Article 182. 1 (b) of the Penal Code on aggravation. During the trial the defendant denied all of the facts set out in the indictment and said that he never committed any offences against the injured party. The defendant stated that when the father of the injured party passed away, the injured party and her mother started living together with the defendant, and the defendant and his wife provided for them, which included paying for the injured party's schooling. The defendant attested and stated that he never committed any offences against the injured party.

Meanwhile the injured party confirmed all of the facts in the indictment and stated that she only had sexual intercourse with the defendant and never had sexual intercourse with another man. The injured party also stated that she did not tell her mother and her aunty because she was afraid, because the defendant threatened to kill the injured party.

The witnesses testified that they did not see this incident. However, when the injured party became pregnant the witnesses asked her about it and the injured party said that her uncle (the defendant) was the father of the child in her womb, so they made a complaint to the police.

In 2018 the court tried this case and took a blood sample from the child of the injured party and blood, saliva and hair from the defendant to have a DNA test performed in Portugal and the results of this test were negative (the injured party's baby belonged to another man, and not the defendant).

In his final recommendations the public prosecutor stated that during the examination of evidence the defendant denied all of the facts in the indictment, and the results of the DNA test also indicated that the injured party's baby belonged to another man. However, the prosecutor believed that the defendant did have sexual intercourse with the injured party because the injured party clearly stated that to date she only had sexual intercourse with the defendant and never had sexual intercourse with another man. Therefore, the public prosecutor requested for the court to use its discretion.

The defence stated that there was insufficient evidence and the DNA test indicated clearly that the baby of the injured party did not belong to the defendant. The defendant also attested in court that he never committed any offences against the injured party. The defence said that there was no evidence, and therefore requested for the defendant to be acquitted from this crime.

After evaluating all of the facts, the court concluded that there was insufficient evidence to convict the defendant because he totally denied the facts set out in the indictment, even though the injured party confirmed the facts set out in the indictment. In addition, the witnesses presented by the prosecutor did not witness this incident and the DNA test was negative, therefore the court decided to acquit the defendant from this crime.

This case was registered by the court as Case No. 0105/17 ERSIK. The announcement of the decision was presided over by the panel of judges: Ana Paula Fonseca, Ersilia de Jesus and José Gonçalves. The prosecution was represented by Ricardo Godinho and the defendant was represented by a private lawyer, namely Manuel Gonçalves.

For more information, please contact:

Casimiro dos Santos

Acting Executive Director of JSMP

Email: casimiro@jsmp.tl

Telephone: (+670) 33238883/77257466

Website: <https://jsmp.tl>

info@jsmp.tl