



JUSTICE UPDATE

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Three defendants fully acquitted in rape case before the Dili District Court

This Justice Update focuses on a decision handed down by the Dili District Court in a rape case against a 17 year old victim which allegedly occurred in Leogore-Suai, Cova Lima. The decision stated that the victim was raped by 3 defendants on the same day. The three defendants were charged under Article 285 of the Indonesian Penal Code which is currently applicable in Timor Leste. A panel of judges from the Dili District Court trying this case decided to fully acquit the defendants from all charges via a decision that was announced in a closed hearing on the 11 April 2006 in the aforementioned court.

Based on a copy of the judges' decision¹ obtained by the Women's Justice Unit (WJU), the incident occurred on the 9 October 2005 in Leogore, Suai, Covalima, at approximately 2am. At that time the victim and her friends went to collect water from a spring. Based on the testimony of the victim during the trial, the three defendants threatened the victim with a knife so that she would have sexual intercourse with all of them. Whilst the victim and her friends were collecting water Defendant A invited the victim to another place with the intention of having sexual intercourse with her. This act was carried out after a mat taken from the house of Defendant A was laid on the ground at the request of the victim. The decision stated that Defendant A and Defendant B did in fact have sexual intercourse with the victim. Defendant B came to that place because he knew that they (the victim and Defendant A) had finished having sexual intercourse and Defendant B proceeded to invite the victim to have sex with him. Full of fear, the victim acquiesced to Defendant B's request. The victim was forced to have sex with him as she was afraid that Defendant B would tell her parents about what she had done with Defendant A. The victim did not make a voluntary decision to have sex with Defendant B or was able to exercise her own free will, but rather she was forced to do so because she did not want her family to find out about what they had done. If the victim refused to have sex with Defendant B, he would have told her family about her actions.

Pursuant the indictment issued by the Prosecutor, Defendant C also had sexual intercourse with the victim. However during the trial Defendant C denied this accusation and claimed that he did not have sex with the victim.

The indictment stated that the three defendants had raped the victim after threatening her. They threatened the victim with a knife so that they could achieve their objective.

The prosecutor stated in his recommendation that the victim did not tell the truth and continuously changed her testimony during the trial. The Women's Justice Unit (WJU) of JSMP believes that this indicates a lack of communication between the prosecutor and victim before the trial began, resulting in the prosecutor's belief that the victim was lying.

¹ Decision dated 11-04-06, Case No. 67/05.

The prosecutor in charge of this case did not hold a briefing with the victim before the trial commenced. A prosecutor is supposed to sit together with the victim to review the available evidence. At that stage the prosecutor can ascertain if the victim is telling the truth or not. The WJU believes that the prosecutor failed to provide a detailed explanation about changes to the victim's testimony. The prosecutor should have asked the victim why she had changed her story and stated that she did not know any of the perpetrators prior to the incident. It may have been that the victim told the defendant(s) that she was afraid. The WJU also believes that the prosecutor should not have made this statement as part of his recommendation, because the prosecutor is supposed to work together with the police to ensure an effective investigation and gather strong evidence, and therefore prevent this type of thing from occurring².

The decision issued by the panel of judges affirmed the prosecutor's recommendation by finding the three defendants not guilty due to a lack of convincing evidence, as the victim's testimony was inconsistent throughout the trial. The panel of judges deliberated on the following facts during the trial in order to acquit the defendants from all charges:

- There were no elements of force, coercion or threats of force against the victim
- The victim continuously changed her testimony. During the first hearing she claimed that she had never met the defendants.
- During the second hearing the victim said that she knew the three defendants and they lived in close proximity to one another.
- The victim did not relay or report the incident to her family, friends or police.
- Defendants A and B said that they did in fact have sexual intercourse with the victim, but without any element of force or coercion, but rather based on mutual agreement.

Courts in a number of jurisdictions often deliberate on such factors, however a decision that relied solely on one of these factors would be a risky one. For example, based on observations conducted by the WJU of JSMP, an appraisal of the victim's attitude is a subjective and most unreliable way to assess a person's credibility. It is most difficult to assess a person's credibility due to the existence of a number of cultural and gender nuances. A large number of cultural factors can influence the attitude of a young girl in Timor Leste when standing before a court and talking about an experience that is very personal and shameful, which may not be clear to a judge. The WJU of JSMP believes that behavior labeled as "considered and reflective" could be attributed to a range of emotional states and not merely to indicate that the victim was lying³.

Also the panel of judges commented that this case lacked strong evidence and that the victim's testimony was inconsistent, warranting their decision to fully acquit the three defendants due to a lack of convincing evidence. The panel's rationale is understandable, as any doubt in a case should result in an acquittal.

The Panel felt that it was an important issue that the victim's testimony was inconsistent and that she failed to report the incident to anybody else. The WJU of JSMP believes that the majority of rape victims experience trauma and fear. Therefore any individual capable of deliberating and pondering on these issues would be able to comprehend that there

² Article 236 of the RDTL Criminal Procedure Code.

³ JSMP Report: Law on Gender Based Violence in Timor Leste (April – November 2005).

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could be dozens of reasons why a young girl who has been the victim of rape would not want to talk about the experience, as most victims generally feel ashamed and afraid. This very well may have occurred in this case.

To prevent this type of thing from occurring, the court is obliged to provide protection to witnesses and victims during the trial process. What is meant by protection is:⁴

1. The court must take appropriate steps to protect the physical and psychological (mental) health, dignity, and confidentiality of the victims and witnesses. To this end the court must consider relevant factors such as age, gender, the nature of the crime, whether or not the crime involves sexual assault or gender based violence or assault of a minor.
2. Some parts of the proceeding could be conducted via a video link or evidence could be presented via electronic or other means. These measures are necessary in cases that involve sexual assault or where a child is required to appear as a victim or witness.

Let us hope that judges who issue decisions in rape cases will take into account the circumstances and condition of the victim and also that courts will provide protection to victims and witnesses in accordance with international law.

⁴ Article 68 of the International Criminal Court.

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