Case No. ICTR-96-4-T



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International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda

CHAMBER I - CHAMBRE I

OR: ENG

Before:

Judge Laïty Kama, Presiding Judge

Judge Lennart Aspegren Judge Navanethem Pillay

Registry:

Mr. Antoine Kesia-Mbe Mindua

Decision of: 9 March 1998

THE PROSECUTOR VERSUS VEAN_PAUL AKAVESU

Case No. ICTR-96-4-T

DECISION ON THE DEFENCE MOTIONS TO DIRECT THE PROSECUTOR TO INVESTIGATE THE MATTER OF FALSE TESTIMONY BY WITNESS "R"

Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Mr. James Stewart

Counsel for the Accused:

Mr. Nicolas Tiangaye

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL"),

SITTING as Trial Chamber I of the Tribunal, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING RECEIVED from the Defence, two motions, dated 29 January 1997 and 2 March 1998 respectively, requesting, pursuant to Rule 91 of the Rules of Procedure and Evidence (the "Rules"), that the Tribunal direct the Prosecutor to investigate the testimony of witness "R" in the present case, with a view to the preparation and submission of an indictment for false testimony against him;

HAVING HEARD the parties during the audience of 6 March 1998 held to that end;

AFTER HAVING DELIBERATED

WHEREAS in support of its request for the investigation of the false testimony by witness "R", the Defence submitted in its first motion and during the hearing that the answers given by this witness during his examination-in-chief, heard on 28 January 1997, and those given by him during his cross-examination, heard on 29 January 1997, conflicted to such an extent that they undoubtedly constituted false testimony;

WHEREAS, during the hearing, the Prosecutor, submitted that the request of the Defence was unfounded and drew attention to the distinction that has to be made between, on the one hand, the credibility of a witness and, on the other hand, false testimony by a witness;

WHEREAS, according to the provisions of Rule 91(B) of the Rules, if a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, or at the request of a party, it may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony;

WHEREAS, in the opinion of the Tribunal, the said provisions stipulate:

- Either the Chamber establishes proprio motu that strong grounds exist for believing that a witness has knowingly and wilfully given false testimony, and thence directs the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony;
- Or, at the request of a party, it invites the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; and in this case, the onus is on this party to convince the Chamber that there exist strong grounds for believing that a witness has knowingly and wilfully given false testimony;

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WHEREAS it is generally accepted that false testimony may be defined as a false statement made in court under oath or solemn declaration;

WHEREAS, by way of an example, in Great Britain, the Perjury Act of 1911, section 1, subsection (1), stipulates, *inter alia*, that : "If a person lawfully sworn as a witness [...] in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury [...]";

WHEREAS in the United States of America, 18 U.S.C. § 1621, provides that: "Whoever, having taken an oath before a competent tribunal [...], that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true [...], is guilty of perjury [...]";

WHEREAS therefore, the constituent elements of false testimony are:

- the witness must make a solemn declaration;
- the false statement must be contrary to the solemn declaration;
- the witness must believe at the time the statement was made that it was false; and
- there must be a relevant relationship between the statement and a material matter within the case;

WHEREAS a false testimony may therefore consist of either an affirmation of a false fact or negation of a true fact;

WHEREAS, in many judicial systems, the false testimony must be directly linked to the facts of the case; some judicial systems even add that statements, which are deemed to be false, must have some bearing on the outcome of the trial, during which the witness was heard; in other words, the false statement must be able to influence the decision of the judge, either in favour of or against the accused (see in France, Garraud, no.2296, note 17; see also in India, Sheodahin 3 Cr, LJ46: "In a complaint for giving false evidence, it must be intentionally false and the alleged false statement should have a bearing upon the matter in issue");

WHEREAS it is indeed appropriate to add that false testimony is a deliberate offence, which supposes wilful intent on the part of the perpetrator to mislead the judge and thus to cause harm;

WHEREAS, finally, and in accordance with the general rules of evidence, the onus is on the party pleading a case of false testimony to prove:

- the falsehood of the witness statements;
- that these statements were made with harmful intent, or at least that they were made by a witness who was fully aware that they were false; and

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the possible bearing of the said statements upon the judge's decision;

WHEREAS the Tribunal notes that, in its motion, the Defence does not demonstrate that the witness "knowingly and wilfully gave false testimony" as required by Rule 91(B) of the Rules; rather the Defence, in support of the request, only refers to instances in the testimony which give rise to possible contradictions;

WHEREAS, thereupon, Counsel for the Defence reaches the conclusion that the witness undoubtedly falsely testified on the basis of there being an apparent conflict as to the answers given during the examination-in-chief and cross-examination; the Tribunal is of the opinion that the arguments submitted by the Defence thereon are pertinent only to raising doubts as to the credibility of the statements made by the witness rather than to showing that there are strong grounds for believing that there may have been false testimony;

WHEREAS, obviously, raising doubts about the reliability of statements made by a witness is not in itself sufficient to establish that this witness knowingly and wilfully gave false testimony; the Tribunal moreover is of the opinion that, in the context of the ongoing trials before the Tribunal, inaccuracies and other contradictions could eventually be raised during the overall evaluation of credibility upon the final determination of the probative value of the evidence presented at trial;

WHEREAS, in pursuance of the above findings, the Tribunal is of the opinion that the Defence motions for false testimony by witness "R" should be dismissed;

FOR THE ABOVE REASONS,

Rendered on 9 March 1998.

THE TRIBUNAL

DECLARES the motions admissible but without merits;

FINDS that there are no grounds to request the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony against witness "R";

Signed in Arusha on Laity Kama Presiding Judge	24 March 1998. Lennart Asp Judge	égre	Navanethem Pillay Judge
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