



UNITED NATIONS
NATIONS UNIES

ICTR-01-65-T
21-10-2005
(1048-1049)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before: Judge Jai Ram Reddy, presiding
Judge Sergei Alekseevich Egorov
Judge Flavia Lattanzi

Registrar: Adama Dieng

Date: 21 October 2005

THE PROSECUTOR

v.

Jean MPAMBARA

Case No. : ICTR-2001-65-T

2005 OCT 21 A 9:11
ICTR
JUDGE JAI RAM REDDY

DECISION ON THE DEFENCE'S MOTION FOR JUDGEMENT OF ACQUITTAL

The Prosecution

Richard Karegyesa
Andra Mobberley
Didace Nyirinkwaya
Ousman Jammeh

The Defence

Arthur Vercken
Vincent Courcelle-Labrousse

Pro.

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber I, composed of Judge Jai Ram Reddy, presiding, Judge Sergei Alekseevich Egorov, and Judge Flavia Lattanzi;

BEING SEIZED OF the Defence “Requête aux Fins d’Acquittement en Application de l’Article 98 *bis* du Règlement de Procédure et de Preuve”, filed on 3 October 2005;

CONSIDERING the Prosecution’s response, filed on 10 October 2005, and the Defence reply, filed on 19 October 2005;

HEREBY DECIDES the motion.

INTRODUCTION

1. This trial commenced on 19 September 2005. During the course of eight days, the Prosecution presented its case-in-chief, consisting of ten witnesses. On 29 September 2005, the Prosecution closed its case subject to the Defence’s right to cross-examine Witness AHY.¹

2. The Defence’s motion seeks a judgement of acquittal in respect to paragraphs 7(iv), 7(v), 7(vi), 9(ii), 9(iii), 9(iv), 9(v), 14, 15, 16, 18(vi), 18(x) and 20 of the Indictment. The Defence argues that the Prosecution has either presented no evidence on these paragraphs or failed to establish them through evidence on the record. The Defence has not asserted in its motion that the Prosecution evidence is wholly insufficient to support any of the three counts alleged against the Accused, namely genocide, complicity in genocide, and extermination as a crime against humanity.

DELIBERATIONS

3. Rule 98 *bis* provides:

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused filed within seven days after the close of the Prosecution’s case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

4. In the Tribunal’s jurisprudence, the proper test to apply under Rule 98 *bis* is whether a reasonable trier of fact *could* arrive at a conviction at the end of trial if the prosecution evidence is accepted.² A judgement of acquittal is appropriate where there is no evidence

¹ T. 29 September 2005 p. 29. The Chamber decided that the period for a 98 *bis* motion ran from 29 September 2005. T. 30 September 2005 p. 8. The Chamber ordered that the cross-examination of Witness AHY take place on 13 and 14 December 2005, prior to the Defence beginning its case on 9 January 2006. T. 29 September 2005 p. 28.

² *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, paras. 3, 6; *Muvunyi*, Decision on Tharcisse Muvunyi’s Motion for Judgement of Acquittal Pursuant to Rule 98 *bis* (TC), 13 October 2005, paras. 35-36; *Semanza*, Decision on Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza After Quashing the Counts Contained in the Third Amended Indictment (Article 98 *bis* of the Rules of

probative of one or more of the required elements of a crime charged in a specific count.³ The Chamber does not assess the credibility and reliability of the evidence unless the Prosecution case “has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through cross-examination as to the reliability and credibility of witnesses that the Prosecution is left without a case”.⁴ The Trial Chamber is, in no way, bound as a result of a decision taken under Rule 98 *bis* to accept the Prosecution’s evidence in its ultimate decision of criminal responsibility, and the Chamber may find that the Prosecution evidence fails to establish the Accused’s guilt beyond a reasonable doubt at the end of trial.⁵

5. The Defence requests that the Chamber make a determination of whether there is sufficient evidence to support specific paragraphs of the Indictment. The Prosecution acknowledges that there have been limited circumstances in which material facts have been struck out or deleted after the Chamber has found that the accused has no case to answer on certain allegations, but the Prosecution maintains that the Chamber has not generally gone so far as to enter an acquittal in respect to those paragraphs.

6. In the Chamber’s view, Rule 98 *bis* provides for a procedure through which the Chamber may make a determination of whether there is sufficient evidence for each count charged in the Indictment at the close of the Prosecution case.⁶ The Chamber believes that the Prosecution’s evidence should be evaluated as a whole, looking to “the totality of the evidence” and making any reasonably possible inferences.⁷ The Defence does not assert that the lack of evidence in support of certain paragraphs should result in acquittal on any count. Consequently, the motion is not well founded and must be denied.

7. Notwithstanding the general standard, the Chamber may make a finding that the accused has no case to answer on particular factual allegations and may strike out or indicate that it has no intent to consider those specific allegations during final deliberations.⁸ At the close of the Prosecution case, the Chamber asked the Prosecution to convey to the Defence the paragraphs it no longer intended to pursue.⁹ The Prosecution, in its response, concedes that it led no evidence at trial on paragraphs 9(iii), 9(iv), 9(v), 14, 16 (in part), and 20 of the Indictment.¹⁰ Consequently, the Accused has no case to answer in respect to these paragraphs.

Procedure and Evidence) (TC), 27 September 2001, para. 15. See also *Jelusic*, Judgement (AC), 5 July 2001, para. 37; *Delalic*, Judgement (AC), 30 February 2001, para. 434.

³ *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 6.

⁴ *Semanza*, Decision on the Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza After Quashing the Counts Contained in the Third Amended Indictment (TC), 27 September 2001, para. 17.

⁵ *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 6. See also *Muvunyi*, Decision on Tharcisse Muvunyi’s Motion for Judgement of Acquittal Pursuant to Rule 98 *bis* (TC), 13 October 2005, para. 40.

⁶ *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 8.

⁷ *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 11; *Muvunyi*, Decision on Tharcisse Muvunyi’s Motion for Judgement of Acquittal Pursuant to Rule 98 *bis* (TC), 13 October 2005, para. 40.

⁸ *Bagosora et al*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 8. See also *Brdjanin*, Decision on Motion for Acquittal Pursuant to Rule 98 *bis* (TC), 28 November 2003, para. 8.

⁹ T. 30 September 2005 p. 8.

¹⁰ The Prosecution concedes that it led no evidence to the effect that the Accused circulated in Rukara commune and advised Tutsis to take shelter at Rukara Parish or that the Accused prepared a list of names of certain Tutsi civil servants gathered at Rukara Parish. However, the Prosecution argues and the Chamber agrees that evidence was presented on the remaining part of paragraph 16, namely that the Accused transported Tutsi refugees to

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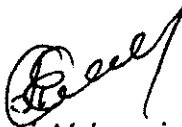
8. The parties dispute whether the Prosecution proffered evidence in support of paragraphs 7(iv), 7(v), 7(vi), 9(ii), 15, 16 (in part), 18(vi), and 18(x) of the Indictment. In its submissions, the Prosecution points to evidence on the record which it asserts supports these paragraphs in whole or in part. The Chamber declines the invitation to assess each of the contested paragraphs of the Indictment in isolation as the Defence does not assert that removal of these paragraphs would, in any way, alter the counts against the Accused. The Accused should consequently respond to these paragraphs to the extent it deems appropriate.


FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence's request for judgement of acquittal.

Arusha, 21 October 2005


Jai Ram Reddy
Presiding Judge


Sergei Alekseevich Egorov
Judge


Flavia Lattanzi
Judge

[Seal of the Tribunal]



Rukara Parish. Consequently, the Chamber's conclusion that the Accused has no case to answer relates only to the two points conceded by the Prosecution. The Defence should respond to the remaining allegation in paragraph 16.