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International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

ICTR-01-70-T

22-05-2007

(3112-3107)

TRIAL CHAMBER II

3112
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OR: ENG

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 22 May 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON DEFENCE MOTION FOR JUDGEMENT OF ACQUITTAL
PURSUANT TO RULE 98bis**

Office of the Prosecutor:

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INTRODUCTION

1. The trial in this case started on 15 November 2006 on the basis of an Amended Indictment dated 26 October 2006 containing three counts ("Indictment").¹ The Prosecution presented 18 witnesses to support the allegations and closed its case on 12 March 2007. On 27 March 2007, in accordance with the Chamber's oral directive², the Defence filed its Motion for Judgement of Acquittal. In respect of Count 1, Genocide, the Defence requests acquittal on the allegation in paragraph 14 of the Indictment and several specific paragraphs upon which it claims the Prosecution has adduced no evidence. It also seeks acquittal on Count 2, Crimes Against Humanity, for the murder of both Madame Rudahunga and Father Alphonse Mbuguje.³ The Prosecution opposes the Motion but concedes that it has not led evidence on certain paragraphs and seeks the Chamber's permission to withdraw them from the Indictment.⁴

DELIBERATIONS

Legal Standard for a Judgement of Acquittal

2. Rule 98 *bis* of the Rules of Procedure and Evidence ("Rules") provide:

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 Prosecutor'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.

3. The cardinal test under Rule 98 *bis* is whether a reasonable trier of fact *could* arrive at a conviction if the Prosecution evidence is accepted.⁵ Under Rule 98 *bis*, the Chamber will evaluate the Prosecution's evidence as a whole, and make any reasonably possible inferences.⁶ Furthermore, a Trial Chamber is required to assume that the Prosecutor's evidence is entitled to credence unless it is incapable of belief.⁷ Consequently, the sufficiency

¹ *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-1, Amended Indictment dated 26 October 2006. The Accused is charged with Genocide, Murder as a crime against humanity and Extermination as a crime against humanity in counts 1, 2 and 3 respectively.

² T. 12 March 2007, p. 4.

³ « Requête aux fins d'acquiescement en application de l'article 98 *bis* du RPP », filed on 27 March 2007.

⁴ Prosecution's Response to Defence Motion for a Judgment of Acquittal of Emmanuel Rukundo Pursuant to Rule 98 *bis* of the Rules, filed on 4 April 2007.

⁵ *Prosecutor v. Delalic et al.*, IT-96-21-A, Appeal Judgment, 20 February 2001, para. 434 ("Delalic"); *Prosecutor v. Jelacic*, IT-95-10-A, Appeal Judgment, 5 July 2001, para. 37 ("Jelacic"); *Prosecutor v. Nandiliyimana et al.*, ICTR-00-56-T, Decision on Defence Motions Pursuant to Rule 98 *bis*, 20 March 2007, para. 6 ("Nandiliyimana"). See also *Prosecutor v. Mpambara*, ICTR-2001-65-T, Decision on the Defence's Motion for Judgement of Acquittal, 21 October 2005, para. 4 ("Mpambara") (citing *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Motions for Judgement of Acquittal, 2 February 2005, paras. 3, 6; *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*, 13 October 2005, paras. 35-36 ("Muvunyi"); *Prosecutor v. Semanza*, ICTR-97-20-T, 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 (Article 98 *bis* of the Rules of Procedure and Evidence) and Decision on the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgement of Acquittal, 27 September 2001, para. 15 ("Semanza").

⁶ See for example *Bagosora*, supra, para. 11; *Muvunyi*, supra, para. 40.

⁷ *Jelacic*, supra, para. 55; See also *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Reasons for Oral Decision of 17 September 2002 on the Motions for Acquittal, 25 September 2002, para. 18 ("Nahimana"); *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Decision on Defence Motions Pursuant to Rule 98 *bis*, 22 November 2005, para. 8 ("Bizimungu").

of the available evidence should be determined without consideration of its credibility and reliability, which is to be made at the end of the trial in light of all the evidence adduced.⁸

Genocide (Count 1) and Individual Paragraphs

4. For the count of Genocide, the Defence limits its request for acquittal to the allegation contained in paragraph 14 of the Indictment. This paragraph alleges that the Accused took a young Tutsi woman into his room at the St. Leon Minor Seminary, locked the door and sexually assaulted her, thereby causing her mental harm.⁹ The Defence submits that the Prosecution failed to adduce evidence to prove that the essential elements of the offence were present.

5. Trial Chambers have consistently held that Rule 98 *bis* requires examination of the evidence in relation to Counts, but not of the sufficiency of evidence in relation to each paragraph of the Indictment.¹⁰ This is equally applicable to a request for acquittal on a particular allegation within a Count. Otherwise, "the Chamber would easily be drawn into an unwarranted substantive evaluation of the quality of much of the Prosecution evidence if it were to pronounce on the sufficiency of evidence in relation to each material fact in each paragraph" of the Indictment.¹¹

6. The Chamber therefore declines to evaluate one particular allegation of the Genocide Count in isolation of other allegations. The Genocide Count is made up of multiple inter-dependant allegations describing events in and around the Kabgayi region. These allegations cumulatively form a continuum and therefore cannot be considered separately. The Chamber equally declines to evaluate individual paragraphs as requested by the Defence, as they provide contextual or background information to the actual charges in the Indictment.

7. The Defence also requests that the Accused be acquitted on certain paragraphs in the Indictment because no evidence in support has been adduced.¹² The Prosecution submits that it is inappropriate at this stage to consider the evidence on the basis of the paragraphs of the Indictment. The Prosecution acknowledges, however, that it has not led evidence in respect of paragraphs 10(i), 16 and 25(i) and requests the Chamber for permission to withdraw those allegations from the Indictment.

8. In accordance with the jurisprudence of this Tribunal, the Chamber grants the Prosecution request to withdraw the paragraphs on which the Prosecution concedes that it has not adduced any supporting evidence.¹³

Crimes Against Humanity- Murder (Count 2)

9. With respect to the murder charge, it is alleged in the Indictment that the Accused is responsible for the death of two people, Madame Rudahunga and Father Alphonse Mbuguje, in two unrelated incidents. The Defence claims that the Prosecution has, on both accounts, failed to establish the requisite elements for the charge of murder as a crime against

⁸ *Ndindiliyimana*, supra, para. 7 (citations omitted).

⁹ Paragraph 14 reads in its entirety as follows: "On one occasion, on or about 15 May 1994, a the St. Leon Minor Seminary, Emmanuel Rukundo, armed and escorted by an armed soldier, took a young Tutsi refugee woman into his room, locked the door and sexually assaulted her. These acts of Emmanuel Rukundo caused her serious mental harm."

¹⁰ *Prosecutor v. Prtais Zigiranyirazo*, ICTR-2001-73-T, Decision on Defence Motion Pursuant to Rule 98 *bis*, 21 February 2007, paras. 10, 20 ("*Zigiranyirazo*"); *Ndindiliyimana*, supra, para. 9 (citing *Bagasora*, supra, paras. 8-9).

¹¹ *Id.*

¹² These paragraphs are: 3 (in part), 6, 9, 10 (in part), 10 (i), 16, 25 (i), 17, 19, 20, 23, 29, 30.

¹³ See for example, *Ndindiliyimana*, supra, paras. 11, 28; *Nahimana*, supra, paras. 20-21.

humanity. Although both alleged murders are included under one Count of murder as a crime against humanity, the Chamber will evaluate each allegation separately, because either incident, if proved, could sustain the Count, and because they occurred in separate transactions and occurrences.

10. In order to convict the Accused for murder as a crime against humanity, Article 3 of the Statute provides that the crime must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds. The Accused need not necessarily act with discriminatory intent, but he must have knowledge that his act is part of a widespread or systematic attack on discriminatory grounds.¹⁴ The Accused must be found to have murdered one or more civilians¹⁵, and there must have been some premeditation of the crime.¹⁶

Alleged Murder of Madame Rudahunga

11. For the alleged murder of Madame Rudahunga, the Defence submits that based on the testimonies of Witnesses BLC, BLP and BLJ, the Prosecution failed to establish the elements of the crime. It further submits that the evidence of these witnesses was so contradictory, that a reasonable trier of fact could not find the Accused guilty on this count.

12. The Chamber notes that there is evidence to suggest that Rukundo was present at St. Joseph's College when soldiers, allegedly under his command, abducted Madame Rudahunga.¹⁷ The soldiers then drove Madame Rudahunga away in a vehicle to her house. Father Rukundo is said to have followed that vehicle in his Suzuki Samurai. About thirty minutes later, the soldiers returned to the College and took more refugees away. One of the people taken away by the soldiers on their second visit saw Madame Rudahunga's dead body at her house.¹⁸ Rukundo was said to have been within the area at the time of her death.¹⁹ Rukundo was also later heard talking about the specifics of Rudahunga's killing and how it was done, allegedly using the pronoun, "we", suggesting that he was personally involved in her killing.²⁰

13. The Chamber concludes that the evidence adduced with regard to the circumstances surrounding Madame Rudahunga's death, including her abduction from St. Joseph's College, the alleged presence of Rukundo together with soldiers at that location, in addition to Rukundo's purported admission of involvement in her killing, if believed, could support a reasonable inference that the Accused is responsible for her death. The request for acquittal on the allegation of the murder of Madame Rudahunga is therefore denied.

¹⁴ *Prosecutor v. Tharcisse Muvunyi*, 2000-55A-T, Judgement (TC), para. 514, citing *The Prosecutor v. Akayesu*, Judgement (AC), 2 September 1998, paras. 464-465.

¹⁵ See for example, *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, ICTR-96-10 and ICTR 96-17-T, Judgement and Sentence (TC), 21 February 2003, para. 803.

¹⁶ See for example, *Semanza*, Judgement and Sentence (TC), 15 May 2003, para. 339.

¹⁷ Witness BLP: T. 15 November 2006, p. 13-15. BLP first saw Rukundo in military uniform at a roadblock near the Kabgayi Printing Press, driven by a soldier in a Suzuki Samurai. He was talking to and laughing with the soldiers manning the roadblock. Sometime between the 12 and 15 April 1994, the witness again saw Rukundo outside St. Joseph's College with soldiers. He also saw the Suzuki Samurai with two other vehicles. The soldiers came out of the College with documents and other objects, which they showed to Rukundo.

¹⁸ Witness BLP: T. 15 November 2006, pp. 15-17; Witness BLJ: T. 9 March 2007, pp. 12-13 (closed session).

¹⁹ Witness BLJ: T. 9 March 2007, p. 14 (closed session). The witness was told to hide because Rukundo's car might still be around.

²⁰ Witness BLC: T. 4 December 2006, p.21 (closed session), "We entered in Rudahunga's *Iyenzu's* house, we killed the wife and the children, but the idiot managed to get away from us."

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Alleged Murder of Father Mbuguje

14. The Defence asserts that the evidence adduced in support of this allegation of murder is insufficient to establish guilt on the part of the Accused. In particular, the Defence notes that none of the witnesses were present when Mbuguje was killed, and that none of the witnesses established a causal link between Mbuguje's death and the Accused. The Prosecution concedes that the evidence against the Accused with regard to this allegation is mostly circumstantial, but submits that when considered as a whole, can lead to the only reasonable conclusion that the Accused is criminally responsible for Mbuguje's death.

15. The Chamber has heard evidence to the effect that Rukundo's relationship with Mbuguje and other Tutsi seminarians deteriorated at school in 1991 mainly because of prevailing ethnic divisions,²¹ and that the media produced articles denouncing Tutsi seminarians including Mbuguje at that time.²² There is no direct evidence, however, linking Rukundo to these articles. There was evidence to suggest that Rukundo made comments denouncing Mbuguje²³ and calling him an *Inyenzi* and that *Inyenzi* had to die.²⁴ There is indirect testimony that Mbuguje was indeed killed in Cyangugu, after he was arrested by the head of the intelligence service of the Cyangugu prefecture at the Bishopric in Cyangugu.²⁵ His arrest and detention in Cyangugu might have been because he was suspected to be an accomplice of the RPF.²⁶ There is also evidence to suggest that Rukundo boasted at a convent about the killing of four *Inyenzi* and complained that Mbuguje was still alive. Subsequently, Rukundo was informed that Mbuguje was in Cyangugu; Rukundo is subsequently alleged to have said that he would send somebody to "get" Mbuguje.²⁷ The Chamber also heard evidence that Rukundo and Father Daniel Nahimana were special friends,²⁸ and that the latter went to Cyangugu to locate Mbuguje the day before his eventual arrest and to warn him that he was being sought after.²⁹

16. There is no link, however, between Rukundo's statements, acts or omissions and Mbuguje's arrest and eventual killing. Mbuguje was allegedly killed after being arrested in Cyangugu following a warrant of arrest issued by authorities in Gitarama.³⁰ Irrespective of hostile comments allegedly made by Rukundo against Mbuguje, there is no evidence to support the proposition that Rukundo was involved with the production or execution of the arrest warrant when he was in Kabgayi, or that Rukundo instigated or encouraged the denunciation of Mbuguje in the media. Furthermore, there is no evidence to link the perpetrators of Mbuguje's death with Rukundo. There is also no evidence to support the proposition that Father Nahimana did anything other than actually warn Mbuguje that he was being sought after. In the absence of sufficient evidence to connect the Accused with Mbuguje's murder, a reasonable trier of fact could not convict Rukundo for Mbuguje's death. The request for partial acquittal on the charge of murder as a crime against humanity in respect of the killing of Father Mbuguje is therefore granted.

²¹ Witness BPA: T. 7 March 2007, p. 9; Witness BLR: T. 7 March 2007, p. 56; T. 8 March 2007, p. 5.

²² Witness CCL: T. 27 November 2006, p. 5-6, 8; 28 November 2006 p. 3, 11.

²³ Witness OCN: T. 23 February 2007 p. 12-14 (closed session).

²⁴ Witness CCH: T. 13 February 2007, p. 58 (closed session), 14 February 2007, p. 4 (closed session).

²⁵ Witness BLE: 20 February 2007, p. 4, 31-33 (closed session).

²⁶ Witness CCG: T. 15 February 2007, p. 21, 22, 24 (closed session); Witness BLE: 20 February 2007, p. 5 (closed session), 10 (open session), 34, 38 (closed session).

²⁷ Witness OCN: T. 23 February 2007, pp. 18-19, T. 26 February 2007, p. 50 (closed session).

²⁸ Witness BLC: T. 4 December 2006, p. 17 (closed session).

²⁹ Witness BLE: 20 February 2007, p. 6 (closed session).

³⁰ Witness BLE: 20 February 2007, p. 4, 31-33 (closed session); Witness BLR: T. 8 March 2007, p. 5, 30; CCJ: T. 14 February 2007, pp. 33-34 (closed session).

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THE CHAMBER THEREFORE

- I. **GRANTS** partial acquittal on the charge of murder as a Crime Against Humanity with respect to the killing of Father Alphonse Mbuguje;
- II. **GRANTS** the withdrawal of paragraphs 10(i), 16 and 25(i) from the Indictment;
- III. **DE NIES** the remainder of the Motion.

Arusha, 22 May 2007, done in English.


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge




Seon Ki Park
Judge