

UNITED NATIONS



NATIONS UNIES

ETTA

East Timorese Transitional Administration

DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No.03 C.G.2000
Date: 8/03 - 25/04/2001
Original: Bahasa Indonesia

IN THE TRIAL CHAMBER

Before:

Judge Luca L. Ferrero, Presiding

Judge Maria Natercia Gusmao Pereira, Rapporteur

Judge Sylver Ntukamazina,

Registrar: José Manuel Simoes.

Judgment of: March 8 - April 25, 2001

THE PROSECUTOR

v.

CARLOS SOARES CARMONA

JUDGEMENT

The Office of the Public Prosecutor:

Ms Donna Daleo.

Counsel of the accused:

Mr. Cancio Xavier, Ms. Veronica Maia Barros and Siphosami Malunga.

INTRODUCTION

The trial of Carlos Soares Carmona, Age 36, Married, Farmer, born 15 August 1962 in Asulau, Subdistrict of Hatulia, District of Ermera, before the Panel for Serious Crimes in the District Court of Dili, responsible for the handling of serious criminal offences (hereafter: "Special Panel"), commenced on 18/01/2001 and concludes today the 25 April 2001 with the rendering of the decision.

After considering all the evidence presented during the trial, and the written and oral statements from the office of the Prosecutor General (hereafter: the Public Prosecutor") and The Defendant and The Defence for the Defendant, the Special Panel,

HEREBY RENDERS ITS JUDGEMENT.

A. THE SPECIAL PANEL

The Special Panels were established, within the District Court in Dili, pursuant to Section (hereafter "Sect.") 10 of UNTAET Regulation (hereafter "U.R.") No. 2000/11, in order to exercise jurisdiction with respect to the following serious criminal offences: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as specified in Sections 4 to 9 of U. R. 2000/15.

B. PROCEDURAL BACKGROUND

Carlos Soares Carmona, was arrested and detained on 20 July 2000 by CIVPOL pursuant to the Indonesian Penal Code. The Court did not find on file any document about the detention and the extension of detention which was submitted by the Public Prosecutor pursuant to Sections 19 and 20 of regulation 2000/30 on the transitional rule of Criminal Procedure.

On 23 November 2000, The Public Prosecutor presented a written indictment (in English) with a charge of murder against the Defendant Carlos Soares Carmona, to the Dili District Court. The case file was registered by the Registry of the Court and forwarded to this Special Panel. The Court Clerk also provided notification of the receipt of the indictment to the accused and to his Defence, pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.

On 11.01.2001 The Public Prosecutor made a request for an extension of detention for Carlos Soares Carmona (and 19 other Defendants). On 12.01.2001 the Special Panel issued a Detention Order until the Preliminary Hearing.

The Preliminary Hearing commenced on the 18 January 2001. The Court checked if the Defendant had read the indictment or if the indictment had been read to him, and asked if he understood the nature of the charges, his right to be represented by a legal advisor, his right to remain silent, to plead guilty or not guilty to the crime committed as provided for in Sect. 30.4 U.R. No 30/2000. The Defendant made a statement that he had not read the indictment, that the indictment had not been read to him and that

he didn't understand the charges against him. Then the Public Prosecutor requested an extension of detention for the Defendant. The Special Panel extended the detention of the Defendant until such time as the final judgement is rendered by the Court and postponed the hearing until the 30th January 2001 to enable the accused to understand the nature of the charges against him.

On 30 January 2001 the continuation of the Preliminary Hearing was held and the Defendant made a statement about the charges. The Special Panel was of the opinion that there was no admission of guilt in the Defendant's statement as specified in Sect. 30.4 U.R. 30/2000, because the Defendant did not agree totally with the charges put forward by the Public Prosecutor. The Defence submitted to the Special Panel that it was inappropriate for the Special Panel to hear this case, as the Defendant murdered the victim without any political motive (could not therefore be classified as a Serious Crime), then requested for the Special Panel to decide that it did not have jurisdiction and to hand over this case to the Panel for Ordinary Crimes. The Special Panel, "considering that, pursuant UNTAET Regulations nn. 2000/11, sect.10 and 2000/15, sect. 1.2 the Special Panel for Serious Crimes of Dili District Court has exclusive jurisdiction to deal with the following serious criminal offences committed in the period between 1.01.99 and 25.10.99: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as described in the sections 4 to 9 of UNTAET Regulations n. 2000/15" rejected the motion.

The Ordinary Trial was held on 13 February 2001, the Public Prosecutor read the indictment in an open hearing, the Defence responded orally, and the Defendant made a statement and was questioned by the Court and by both parties. The following witnesses were questioned and gave testimony under oath: Maculada Borges Madeira Martins, Nicolau Araujo and Moises Martins. The Defence did not present any witnesses or evidence. The Court closed the presentation and hearing of evidence and then asked the Public Prosecutor to make a closing statement and then the defence was asked to make a closing statement. The Court then gave an opportunity to the Defendant to add something and make a statement.

The Special Panel set the date of 8th March 2001 to issue a written decision.

On 14 February 2001, the Court of Appeal annulled the warrant of arrest issued on 12.01.2001 and ordered a review of the detention of the accused.

On 8th March 2001 the Court read to the public the verdict and the sentence and postponed to the 19.04.2001 to release the written judgment.

On the 19th April 2001 the hearing was postponed to the 25th of April 2001, because of the absence of one Judge.

C. APPLICABLE LAW

As specified in UNTAET Regulations No. 1/1999, No.11/2000 and No. 15/2000, the Special Panel for Serious Crimes shall apply:

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- UNTAET Regulations and directives;
- Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;
- Pursuant to Sect. 3 Untaet Regulation No. 1/1999, The law applied in East Timor prior 25.10.1999, until replaced by UNTAET Regulations or subsequent legislation, insofar as they do not conflict with the internationally recognized human rights standards, the fulfillment of the mandate given to UNTAET under the UNITED NATIONS SECURITY COUNCIL RESOLUTION 1272 (1999), or UNTAET Regulations or directives.

Therefore, the Court will apply U.R. No. 2000/15, No. 2000/11, the Penal Code of Indonesia (hereafter C.P.I.) and U.R. No.2000/30 on Transitional Rules of Criminal Procedure.

D. THE FACTS

Factual allegations of the case.

The Prosecutor's factual allegations may briefly be set out as follows. The Public Prosecutor alleged that, on or about the 28 May 1999, in the Village of Asulau, District of Ermera, Carlos Soares Carmona, with others, tied up Constantino in the house of Nicolau Araujo and hit him. After being tied up and hit, Carlos Soares Carmona then stabbed Constantino. Constantino died from the wounds inflicted.

The Defence, on the other hand, stated that Nicolau Araujo ordered him to kill the Victim as the Victim had made his daughter ill (with magic) and Araujo gave him the potent drink of "Tuak" (palm wine), then Nicolau Araujo ordered and forced him to kill the Victim.

Factual findings.

Most of the factual allegations made by the Public Prosecutor are undisputed because Carlos Soares Carmona himself acknowledged them.

He declared that, at that time when the daughter of Nicolau Araujo was sick, himself, Aidila and Moises were ordered by Nicolau Araujo to go and arrest the Victim and bring him to the home of Nicolau Araujo, because Nicolau Araujo suspected that the Victim had made his daughter ill by means of black magic. On arrival in the house of Nicolau Araujo, the Victim placed some saliva on the sick daughter and she awoke from her state of unconsciousness. Nicolau Araujo ordered the Victim to go and fetch some magic potion to be used as magic in his house and to bring it back to the home of Nicolau Araujo. The victim followed the order and took three parcels of tree root and bark to the home of Nicolau Araujo. Then the Victim was tied up by the Defendant and Moises and was investigated by Comandant Sikat. Then the defendant stabbed the victim and the victim died, after that the defendant did not know about anything else because he was very intoxicated at the time.

There is evidence that conflicts with the statement of the Defendant, according to which he was ordered and forced to by Nicolau Araujo to kill.

The witness Nicolau Araujo, confirmed that at that time his daughter was ill (Epilepsy), thus the Victim was called and on arrival at the witness' house, the Victim placed some saliva on the sick child and the child awoke from her state of unconsciousness, hence the victim was asked to explain if the victim had made the witness' daughter fall ill. Then the victim was investigated by Comandant Sikat, where during the investigation the Victim admitted to his act, in that he had performed magic on the daughter of Nicolau Araujo and several other children (approx. five) in the village, including two of the defendant's children (one girl and one boy) who had died as a result of the magic used by the victim.

The intention of this investigation was so that Constantino Mauloe would not be able to repeat the same act, which had caused havoc in the aforementioned community.

After the investigation was completed, the Victim was untied, and all those present namely The Defendant, Comandante Sikat (Falentil), Aidila (Falentil), Moises and Maubusa, Nicolau and his wife, an unidentified girl, also the wife of the Victim Maculada Borges, were satisfied and happy because the Victim had confessed and the daughter of Nicolau had recovered so they forgave each other, achieving reconciliation, and Nicolau bought two bottles of "Tuak" (Palm wine) to celebrate the said reconciliation and to make peace.

All those present went home. However the Defendant did not, went back to Araujo's house and suddenly murdered the victim by stabbing him once in the chest and after the knife was withdrawn the victim fell down dead and the defendant licked the tip of the bloody knife and stated "I am a member of the Darah Merah Integras Militia and I will take responsibility for this".

Araujo was questioned about the reason why Carlos Carmona Killed the Victim. He replied that, in his opinion, the defendant was dissatisfied and unhappy with the result of the investigation as two of his children had died as a result of magic used by the victim.

The Witness Maculada Borges Madeira Martins – the Victim's wife - stated that she and her husband were in the rice field, the Defendant came and stated that he had come to collect her husband, but her husband was unwilling to comply and asked: "for what reason do I have to go? If it was not for some important business then my wife can go". After that the Defendant left that place. Not long after, the wife of the Victim returned from the rice field to her house to get some water and after that when Maculada returned to the rice field, evidently her husband was no longer in the field. Maculada returned to her house and the Defendant came to Maculada's house and said to her that her husband (the Victim) had been arrested and was now in the home of Nicolau Araujo, as he was accused of making the daughter of Nicolau de Araujo ill.

Then the Witness went to the home of Nicolau Araujo and found her husband tied up and his face was covered with blood and the witness could hardly recognise him. At that time the witness saw that the Defendant had struck her husband, so the witness asked why did you hit my husband? What has he done wrong?

The defendant replied that the victim had killed his children.

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The witness did not eat lunch or drink with the others, however the witness was present, and after the others had finished drinking the witness heard the defendant continue to ask her husband: "why did you kill my children"? Then the Defendant stabbed a knife into the region close to the victim's stomach and the victim died instantly, after that the defendant continued to shout out that you have to die because you used magic on my children.

According to the witness the murder occurred because the defendant had wanted to take revenge on her husband for some time because they had accused her husband of being a devil (in Tetum known as "BUAN") who had continuously caused trouble for them.

The witness Moises Martins confirmed that at that time himself and Carlos Carmona went in the rise field to call the Victim to obtain some clarification about the magic he had used. They went to Araujo's house and questioned the victim. After the investigation all problems were settled and reconciliation followed. Thus Nicolau bought Tuak (palm wine) to drink together as a symbol of peace. When the Defendant killed the Victim, the witness did not see this take place, the witness was in the house close to Nicolau Araujo's home because Moises was providing security for Comandant Sikat and Aidila who were asleep.

Interrogated, the witness could not give an explanation on the reasons why Carlos Carmona killed Constantino.

The Special Panel deems that the evidence above summarized proves, beyond reasonable doubt, that Carlos Carmona stabbed Constantino Mauloe and that the stab wound inflicted by the defendant was the cause of Constantino's death.

It is the opinion of the Court that the killing cannot be related to the attacks against the civil population of East Timor in 1999, before and immediately after the ballot for independence. The fact that Carlos Carmona was a militia member and that Comandante Sikat and Aidila were Falentil is not relevant in this case. Comandante Sikat, Aidila, Moises and Maubusa, Nicolau and his wife decided to arrest Constantino Mauloe in order to interrogate him about his black magic powers, especially towards children. They wanted to punish him and to deprive him from his magic items so that he would not be able to repeat the same acts, which had caused havoc in the aforementioned community. After the investigation and the beatings, Constantino confessed his black magic actions, confirmed that some children died because of them, withdrew the spell he put on Araujo's daughter and promised to quit. To celebrate the reconciliation they drank palm wine offered by Araujo. Everybody was satisfied and forgave Constantino. Everybody but Carlos Carmona.

The Special Panel deems that the Defendant, thinking about his two children recently killed by Constantino's black magic, waited until everybody walked away from Araujo's house and went back to kill the Victim. Nobody expected that reaction, not even the victim who was stabbed once, in the chest, without any defence reaction.

The Special Panel believes that there is no evidence that Nicolau Araujo forced Carlos Carmona to commit the crime, or that the Defendant was intoxicated with alcohol against his will.

E. THE LAW

Pursuant to the facts and evidence obtained by the Special Panel during the trial, it is necessary to prove that each element of the charge made by the Public Prosecutor is fulfilled, pursuant to Sect. 8 U.R. 15/2000 and Article 340 IPC.

The elements are as follows :

The person;

The person in this article is intended to be a human as a legal subject who is to be made responsible for his actions, the Defendant Carlos Soares Carmona could speak and answer coherently all ~~answers~~^{QUESTIONS} directed towards him, therefore the first element is sufficiently established.

Who with deliberate intent;

Deliberate intent in this article means with the desire or intention or realization, included in the intent of the perpetrator, in this instance is the death of the victim. The Defendant consciously stabbed the knife into the chest of the victim and this stab wound caused the death of the victim.

Considering that pursuant to the aforementioned deliberations the judges feel that the element of *with deliberate intent* in this article, has been sufficiently established.

And with premeditation;

Premeditation means that there is time between when the intent to murder arises and when the intent is actually realized for the perpetrator/accused to calmly think about how the murder is to be committed. The time should not be too short, however nor should it be too long, the important issue is if there is time for the perpetrator/accused to think calmly and organize the murder.

Carlos Carmona, Nicolao Araujo and the others, organised the arrest and the interrogation of the victim in order to investigate his black magic powers and to prevent him from being able to repeat the acts, which had caused havoc in the community. This plan is a part of the premeditation.

The evidence clearly shows that everyone agreed to the fact that Constantino should have been punished, in fact nobody stopped Carlos Carmona while he was beating him so hard that his face was covered with blood. Maybe, if Constantino had not confessed and asked to be forgiven, the punishment could have been fatal.

On the contrary, reconciliation followed the meeting in Araujo's house.

It's not possible to determine exactly when Carlos Carmona decided to kill the victim but the evidence clearly shows that it was not an instinctive reaction to a very peculiar situation, but a decision reached by reasoning, after which followed the conduct.

Considering that during the investigation it was revealed that two children of the Defendant had died as a result of the magic used by the Victim (one had died one year and the other one other four months before), probably the decision had been taken in that very moment.

What is important is that the evidence shows that Carlos Carmona did not share his decision with the others, but, on the contrary, waited until everybody had left Araujo's house and then killed Constantino. He calmly waited to be alone with the victim and stabbed him so unexpectedly that there wasn't any opportunity to resist.

Considering that there was time between when the intent to murder arose for the accused to calmly think about how the murder was to be committed the element of *premeditation* has been established.

Takes the life of another person.

Considering that the actions of the accused in accordance with the facts determined by the Special Panel in the hearing, the death of the victim Constantino Mauloe was caused by a single stab wound in his chest from a knife measuring one finger wide and 25 cm long. This fact is stated by the accused and the victim's wife and is undisputed.

Pursuant to the aforementioned deliberations the element of *takes the life of another person* has been established;

Pursuant to the consideration of the aforementioned elements, it is found legitimately and in accordance with the law that the Defendant has committed the crime as specified in Sect. 8 U.R. 2000/15 and article 340 C.P.I.

The Defence submitted that the actions of The Defendant were at the order of and with coercion from Nicolau Araujo, and that the Defendant was intoxicated, so that the Defendant did not intend to kill the Victim. Nicolau Araujo, however, held this intent.

According to article 49 of C.P.I. "not punishable shall be the person who commits an act necessitated by the Defence of his own or another one's body". U.R 2000/15 Sect.19.1.d) provides that "the conduct which is alleged to constitute a crime within the jurisdiction of the panels has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that persons or another person, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be made by other person or constituted by other circumstances beyond that person's control".

Article 48 of C.P.I. provides that "not punishable shall be the person who commits an act to which he is compelled by force majors". U.R 2000/15 Sect.19.1.b) provides that "a person shall not be criminally responsible if, at the time of that person's conduct is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime".

The Special Panel deems that none of the aforementioned circumstances of exclusion of criminal responsibility are applicable to the murder committed by Carlos Carmona.

The Special Panel believes that there is no evidence that the Defendant was ordered by Nicolau Araujo. On one side, none of the witnesses acknowledged this order. On the other, Nicolau Araujo is an ordinary citizen whose daily occupation is that of a farmer. This is in contrast to the Defendant who was in fact a member of the Darah Merah Militia who, at that time, was held in high regard and feared by ordinary

citizens like Nicolau Araujo. Carlos Carmona was more likely in the position to give orders to Araujo than to receive orders from him.

The Special Panel deems that also the state of intoxication alleged by the Defence has not been proved. The evidence of this case shows that only two bottles of the alcoholic drink "Tuak" (palm wine) were served by Nicolau Araujo and the Defendant was not the only one drinking: everyone at that place consumed the aforementioned alcohol as part of the peace ceremony. In fact the behavior of the accused - who waited until all Araujo's guests had walked away, and simulated to leave himself, but instead went back and killed Constantino with a single fatal stab - reveals a normal level of control.

It is finally necessary to emphasize that, in the Preliminary Hearing, the Defendant Carlos Soares Carmona stated that he committed the act because he was ordered and forced to by Nicolau Araujo, however in the following hearing the Defendant stated that he was highly intoxicated and was not aware of the murder. The contradiction reveals the groundlessness of the defence line.

F. VERDICT

For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt and therefore finds Carlos Soares Carmona guilty of murder, as a violation of Sect. 8 U.R. 2000/15 and article 340 C.P.I.

G. SENTENCING

Pursuant to these findings of guilt, the Special Panel will proceed to sentence Carlos Soares Carmona, in order to determine the appropriate penalty.

According to the applicable law, in particular Article 340 of the C.P.I., the penalties that the Special Panel could impose on a person convicted of murder are capital punishment, life imprisonment or a maximum of 20 years of detention. U.R. No. 1999/1, Sect. 3.3, excludes capital punishment and U.R. No. 15/2000, Sect. 10, excludes life imprisonment by providing that it has to be for a specified numbers of years, which may not exceed a maximum of 25 years.

Neither party submitted any aggravating or mitigating circumstances.

The Public Prosecutor did not give any specific recommendation for the length of sentence.

The Special Panel has taken into account the following:

Aggravating circumstances.

The Special Panel deems that there are no aggravating circumstances in this case.

Mitigating circumstances.

The Defendant committed the murder because he was convinced by the victim himself that his two children had died as a consequence of magic. It might seem that a Court could not deem such a circumstance as relevant. However, the Special Panel believes that, since black magic is part of the East Timorese culture, especially in the countryside, the revenge against the assumed murder of the Defendant's children deserves some clemency.

The special Panel bears in mind that the accused is married with children (however this may be said of many accused persons and cannot be given any significant weight in a case of this gravity) and has no previous convictions.

H. DISPOSITION

For the foregoing reasons, having considered all the evidence (statements from the witnesses and the defendant) and the arguments of the parties, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the Defendant Carlos Soares Carmona:

GUILTY for the charge of murder, in violation of Sect. 8 of UNTAET Regulation 2000/15 and Article 340 of the Penal Code of Indonesia;

In punishment of the above-mentioned crime, sentences Carlos Soares Carmona to an imprisonment of 11 years.

Orders the Defendant to pay the costs of the criminal procedure.

Credit for time served

According to Sect. 10.3 U.R. 15/2000, Sect. 42.5 U.R. 30/2000 and article 33 Of C.P.I. the Special Panel deducts the time spent in detention by Carlos Soares Carmona, due to an order of an East Timorese Court. The Defendant Carlos Soares Carmona was arrested on 20 July 2000. Accordingly, previous detention shall be deducted from the sentence today imposed, together with such additional time he may serve pending the determination of any final appeal.

Enforcement of sentences

Pursuant to sect. 42.5 U.R. 30/2000, the convicted shall be imprisoned and shall spend the duration of the penalty in East Timor.

Pursuant to Sect. 40.2 and Sect. 42.3 Untaet Regulation No. 30/2000 The Special Panel informs Carlos Soares Carmona and the Public Prosecutor that the Defendant is entitled to file a Notice of Appeal to this decision within 10 days and to file the written appeal statement within the following 30 days.

The sentence shall be executed immediately.

The Special Panel informs that it is the responsibility of the Public Prosecutor to notify the decision to the competent authorities.

The Special Panel orders the Court Clerk to give a copy of the written decision to each party and to the prison manager.

Done in Bahasa Indonesia and English, the Indonesian text being authoritative.

The Judgement was rendered and delivered on the 8th March 2001 and the written decision on the 25th April 2001 in the District Court of Dili by:

Judge Luca L. Ferrero, Presiding

Judge Maria Natercia, Rapporteur

Judge Sylver Ntukamazina

Registrar: José Manuel Simoes.