



REPUBLICA DEMOCRATICA DE TIMOR- LESTE
RDTL
DILI DISTRICT COURT
THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No: 12/2003

JUDGEMENT

Before: Judge Edirimuni Samith de Silva (Presiding)
Judge Brigitte Schmid
Judge Deolindo dos Santos

Deputy General Prosecutor
Vs
1.Domingos Amati
and
2.Francisco Matos

Prosecutor :Ms. Wambui Ngunya

Defence Counsel:Mr. Jed Abad (For the first accused)
Mr. Holger Hembach (For the Second accused)

Date of judgment: 28th February 2005
Written decision issued: 4th March 2005

INTRODUCTION

The trial of Deputy Prosecutor General against Domingos Amati and Francisco Matos commenced before the Special Panel of Judges for the Trial of Serious Crimes in the District Court of Dili (herein after referred to as the Special Panel) on the 17th of November 2004 and all other matters (verdict of guilt pronounced on 28th February 2005), except for the decision on the sentence conclude with the issuance of this written decision on 4th March 2005.

After considering all evidence presented during the trial and the written and oral statements both by the prosecution and the defense, the Special Panel pronounces its verdict on 28th February 2005.

PROCEDURAL BACKGROUND

On the 28th of February 2003 the Deputy General Prosecutor for Serious Crimes filed before the District Court of Dili a written indictment charging both defendants of murder of Antonio Pinto Soares (a.k.a. Charles) in violation of section 8 of UNTAET Regulation 2000/15 and article 340 of the Indonesian Penal Code.

Copies of statements of several witnesses were attached to the indictment. Autopsy report, sketches and pictures of the examination of the victim's body and other ancillary documents were also attached.

The Court Clerk provided notification of the receipt of the indictment to the defendants and to the parties pursuant to section 26.1 and 26.2 of UNTAET reg. 2000/30 (as amended).

Thereafter, the defense submitted a motion to dismiss the indictment for failure to establish a prima facie case. After considering the submissions on behalf of the defense and the prosecution the Special Panel by its order dated 11th July 2003 dismissed the indictment.

The Deputy General Prosecutor appealed against the said order and the Court of Appeal by its order dated 9th December 2003 withheld the order made by the Special Panel and ordered the case to proceed on the original indictment. After the preliminary hearing the defense filed a second motion on 1/6/2004 alleging defects in the indictment. Having considered the prosecutors response to the said motion as well as the matters set fourth in the said motion, on the 11th of November 2004 the motion alleging the defects in the indictment was denied by court. Hence, the trial commenced on the 17th of November 2004 and continued with the testimonies of six prosecution witnesses and two defense witnesses.

Interpreters for English and Tetum assisted every translation before the court.

FACTS OF THE CASE

The Deputy General Prosecutor on the 28th of February 2003 filed an indictment against the defendants charging them with murder of Antonio Pinto Soares (a.k.a. Charles) on 5th September 99 by hacking him with machetes. Antonio Pinto Soares (a.k.a. Charles) was a member of Aitarak militia in Hera, Metinaro sub district of Dili district.

According to the facts submitted, the deceased Charles was also a clandestine supporter of the pro independence movement.

OF EVIDENCE LED IN COURT

A summary of evidence of witness of both the prosecution and the defense are given below. The court in arriving on the findings of fact acted on the entirety of evidence led before it and the summary given below should in no way treated as conclusive or regarded as a complete text of the evidence on which the court acted.

The first witness called by the prosecution was Albertina Mesquita..

This witness's evidence was that one Johnny chased the deceased Antonio Pinto Soares a.k.a. Charles to the beach and shouted at two Indonesian soldiers present to arrest him, but the soldiers did not arrest him, instead, handed him over to and left. After the two Indonesian soldiers left, a person by the name of Antonio Kolan arrived on a motor cycle and beat the deceased with a rakitan shouting "You die! You die." The witness states that Antonio stabbed the deceased but does not mention the weapon used. Thereafter, he was chased to the main road by Antonio who was on the motorbike and was beaten up on the road by Antonio's friends who happened to be there. The deceased started walking towards the Indonesian Military Post and on the way a person by the name of Agus has stabbed the deceased on the stomach, which wound the deceased covered his with his shirt. The witness states that he went to his house that was on the beach and thereafter, to the beach itself. He has seen the deceased going to the sea to wash his wounds was sitting in the water, in the low sea tide, when Domingos Amati armed with a machete and Sico Matos armed with a spear appeared. Witness states that they followed the deceased to the

water when Sico Matos stabbed while Domingos Amati hacked the deceased with the machete on the face and the head. The witness states that he did not see, probably referring to how the stabbing was done. At this stage an Indonesian commander named Agus has come there and had fired a shot in the air and asked them not to do anything to Charles in the presence of the people and to take him away from the people and do if they wished to do so.

The witness stated that Domingos Amati is from his family therefore known to him from very young days and he knows Sico Matos from his childhood, as he is Amati's brother in law. He pointed out the first defendant as Domingos Amati and the second defendant as Sico Matos. The witness stated that when the night came, on the orders of the militia he moved to his uncles house and on his way, around seven p.m., he saw Charles at the militia post heavily wounded, but still alive. Later, the witness has heard that the chief of the village Mateus has come and taken Charles to hospital and the dead body of Charles was later brought to Hera. The witness has seen stitched wounds on the face and the forehead of the dead body. The dead body was buried the day following the day it was brought to Hera. The witness also mentions that the body was exhumed recently, presumably referring to the exhumation done to perform the autopsy in relating to this case. The witness also came out with hearsay evidence that he heard that the deceased was strangled on the way to hospital.

In answer to the prosecutor, the witness stated when the attack took place the deceased and the defendants were close to each other and were within a distance of one meter, and more or less facing each other. The witness demonstrated how the second defendant held the spear and said that he made several strikes on the deceased but cannot say how many.

The first defendant attacked the deceased with a machete several times, although the witness is unable to say how many strikes were made. The witness said that several strikes were made. The witness stated that the defendants were drunk and angry. The witness maintained that he had a clear view of the place of the incident from where he stood, which was shown to be a rough distance of one hundred and ten meters.

The prosecution showed the statement made by the witness to the investigator where she the witness identified her signature. An application was made with a view to produce her statement in evidence to corroborate her evidence given in court. However, the defendant's application was not pursued subsequently. In cross-examination on behalf of the first defendant the witness was examined about stabbing by Antonio with a rakitan. Witness denied that Antonio stabbed and stated that stabbing was by Agus and not by Antonio. Witness under cross-examination stated that he saw that the shirt of the deceased was covered with blood. Witness admitted that the first defendant, with others was drinking Timorese palm wine, toasabo for a long period of time. In the course of cross-examination the counsel referred to the drink as 'rum'.

In answer to the counsel for the second defendant the witness said that the victim was about 15 to 20 meters in water when he was hacked and the deceased and defendants were closely moving around each other when the hacking took place. The witness in answer to questions about the beating up near the police post said that subsequent to the beating the deceased still managed to walk down to the post. The witness in further answer to the counsel stated that he saw big wounds in the dead body and the injuries were across the forehead, chin, neck and shoulder.

The next witness called in was Edurado Tavares who said that he knew the deceased from 1996 and that they worked together, unloading wood from ships for one Verde da Silva and they were friends. They ate and drank together every day. The deceased joined the Aitarak with the idea of tipping off the people of their prospective arrests by the militia so that the people can escape on time. Many people in the village had known this involvement of the deceased. The witness said that the deceased was not interested of being in the militia and was not a loyal member of the militia. The witness said what he meant by militia was the pro autonomy group that was there in 1999. The witness had not been in Hera at the time Charles's death. In cross-examination the witness stated that the deceased saved several people from the militia including his own cousin.

The third witness called by the prosecution Joana Feritas, stated that she was a friend of the deceased and they worked together. As the deceased was afraid of the militia he has joined them. But, he was of two minds, which the witness described as having "two minds, two heads, but his soul was with the independence" The deceased had been used to send things such as cigarettes, sugar and coffee to the pro- independence groups in the districts. The deceased had connections with 'Falantil' and helped them. The witness's position was that on the date of the incident (the witness seems to be not quite certain of the date), around four or five p.m., Domingos Amati was about to lift a machete to hack Charles when Charles picked up a knife and threw it back, which struck Amati and bled. Amati has shouted in Bhasha Indonesia "kill him, Kill him, he got two heads two minds". Then, Sico Matos and several others started chasing the deceased and out of them Agus Viqueque stabbed the deceased on the chest. The witness states that she is not sure on which side of the chest the deceased was stabbed. Amati and Sico Matos have run to the

beach after the deceased and the deceased (referred to as 'kid' by the witness) has run to the sea. There, Amati has hacked the deceased with a machete and when it slipped Sico Matos has picked it and hacked the deceased. At this stage the witness identified the first accused as Amati and the second accused as Sico Matus. The witness pointed out a rough distance of 60 meters as the distance at which he saw the incident.

Witness points out a rough distance of twenty meters at which she saw Agus stabbing the deceased. Under cross-examination the witness maintained that Agus stabbed the deceased on the beach and Amati and Sico Matos hacked the deceased. In cross-examination, in answer to the suggestion that the witness has not stated to the investigator about the hacking, the witness stated that the interpreter might not have translated it to the investigator (malai). In answer to further cross-examination the witness stated only two militia members followed the deceased to the beach, Amati and Matus, and she saw them hacking the deceased. In further answer the witness stated that the first accused hacked and when the machete fell the second accused picked it up and hacked the deceased.

According to her when the hacking took place all of them have been in water. The witness further stated that Amati was drinking wine that day referring to locally brewed palm wine. In cross-examination the witness reiterated that Charles was hacked in water and when the knife was slipped off Domingos Amati's hand Sico Matos grabbed it and hacked Charles. The witness confirms that he told the investigator the same thing.

However, her position was that the investigator never read over her statement to her.

The fourth witness for the prosecution Antonio Kolan Soares states that the incident in which Charles's death resulted took place on the 7th September 1999. In September the witness was living in Hera and Charles had been his neighbor. As the witness was scared

of the militia he had joined the militia to stay alive. The leader was Mateus Carvalho. Mateus has had two houses and he used one for dwelling and the other as the militia post of Aitarak. Witness states that he suffered a leg injury and since his movement was limited, he was put in as the commander of the post. Charles was also a militia member but attached to Alberto's post. Referring to the incident the witness states that afternoon when he was at home he heard screams "help, help" and as the screams were getting closer to Alberto's post the witness went out to see what was going on and had seen Sico Matos stabbing Charles and chasing him into water. Then the witness has shouted to stop but Sico Matos has not listened to the witness. Sico Matos had a machete with which he hacked the deceased. The witness states Sico Matos and one Jose brought Charles out from the water and put behind the militia post and then Amati came there and hacked the deceased. Later, Mateus had come and taken the deceased to hospital in his car where he died. Witness states that the hacking took place around 5 p.m. and the diseased was taken to hospital around 7 p.m., the dead body brought home the next day and the witness has assisted in taking the dead body inside the house. Witness states that Mateus ordered Sico and Amati to build the coffin, as they were the people who hacked the deceased. At this stage the witness that when Sico hacked the deceased Amati appeared from the back of the post and hacked Charles. The prosecutor refreshed the witness's memory referring his statement to the investigator wherein he has said "Amati was running facing us with blood in his hands and Amati's sister Isabell was screaming, "two childs because he has two heads kill him kill him" (the word two childs was used as the deceased was known as child). Witness admits that he made this statement to the investigator and his answer given to question number 57. Witness admitted that he told the investigator that Amati

and Agus followed Sico Matos and in answer to court he said Amati and Agus did the same thing while in water meaning, Amati and Agus did hack or stab with machete as Matos did. In cross-examination the witness denied that a group of men chased Charles but stated that Jose went into the water to help the deceased out. In cross-examination the witness apparently remembering the correct sequence of events stated that Agus was the first one who stabbed on the beach and Sico Matos hacked him in water. Later, the witness clarified himself and stated that when he went there the stabbing by Agus had already taken place. He further stated that he came to the scene right when Agus stabbed. However, the witness's position was that he did not see Amati hacking the deceased in the sea, but saw Amati hacking the deceased in dry land. It seems that the very probable inference from his evidence is that he may not have seen Amati hacking the deceased in the water. In reexamination the witness stated that Amati hacked the deceased behind the post and it was dry land.

The fifth witness Domingos Lao Nunu Arujo agreed that Charles died in September 1999 and that he lived in Hera. The deceased had been looking after his boss Verdi's house.

The witness's position was that in 1999 Aitarak militia was in the country and he joined the militia but left and rejoined through fear. Witness stated that he could only remember one or two things that led to Charles's death. He said he saw Charles and Domingos Amati chasing each other. Charles had run into water and Amati with the expectation of someone coming to help shouted 'kill him , kill him'. Since Domingos could not get into the water he fired a rakitan but did not hit Charles. Then Charles has got into a big boat, thereafter, to a smaller boat, later to the water and from there to the beach. The witness states that he later heard that Charles surrendered to Tentara militia. The witness has

heard guns being fired but still not seen anyone attacking Charles. He has seen a machete in Amati's hand but still Amati had been unable to get to Charles as Charles ran to the BTT. Later, the witness has heard that Amati and Matos hacked the deceased. Since the witness was not clear in his memory the prosecutor refreshed his memory by referring to his statement to the investigator. Witness states that he saw Sico Matos with a machete, thinking that Charles was dead he with four others picked up his body but found Charles to be alive. Later, Matos has arrived and fearing that Charles will die the witness has gone away. At that stage, he has seen Sico Matos with a machete. Later, the witness has found the deceased a place to sleep and washed the place where the deceased was lying and given him a coffee. Subsequently, the village chief has taken the deceased from the post and later brought his dead body. Witness stated that the Amati, Matos and Agus made the coffin as ordered by the village chief. In cross-examination when the defense referred to the witness's statement to the investigator, he admitted that Amati looked drunk and the people said that he was drunk.

The next witness called by the prosecution was the forensic pathologist Dr. Mohamed Nurul Islam who conducted the post mortem on skeletal remains exhumed at Hera beach graveyard i.e. mortuary file no513. Present with him had been Caroline Baker, a forensic anthropologist. Inside the body bag there had been some personal effects including two identity cards. These were produced marked as 1a to 1f. The forensic pathologist's evidence was that on an examination of the skeletal remains he observed a sharp force injury on the left of the zygomatic bone 10 mm in length and three sharp force injuries on the spinal vertebra 9mm., 10by 8mm and 7mm in size. The witness's opinion was that a heavy sharp edged weapon probably a machete could have caused the injuries. The

witness stated that the injury anatomically corresponding to the injury on the zygomatic bone should be an injury on the face. The forensic pathologist's view was that the injury on the face was fatal in the ordinary course of nature and with immediate medical intervention survival would have been possible. If no immediate medical attention were given the patient would die. The forensic pathologist stated that the injuries on the cervical vertebra were fatal injuries. According to him the cause of death was shock and hemorrhage resulting from sharp force injuries. However, the witness stated that by examining the skeletal remains alone he couldn't express an opinion how long the injured would have been in a state of shock. Photographs marked 2a to 2d that showing the injuries on the skeletal remains were produced. In answer to questions raised in cross-examination the witness stated that the deceased could have walked after having received the above injuries.

The defense called two witnesses on behalf of the defendant Sico Matos. No witnesses were called on behalf of Domingos Amati.

Witness Manuel Pinto, called on behalf of Sico Matos stated that he knew Charles and Charles died in 1999. He stated that he can tell about the death of Charles and it took place in Bediti, Hera. Many people chased Charles from BTT, many Indonesians, to bring him back to the place of Mateus and Ameu Matte was there with blood in his forehead. Charles ran into the water and Ameu Matte hacked him with a machete. Sico Matos was standing 2-3 meters away. Matos didn't hack or didn't stab Charles. Witness states that he saw this clearly with his own eyes. Witness said that he didn't see the whole incident thing as he ran back being scared. In cross-examination he re-affirmed that he didn't see the whole incident. The witness stated that he didn't watch the incident in the

water for more than 2-3 minutes, as he was scared he ran home. He has seen Domingos giving two blows. He stated that he heard that Matues ordering Domingos Amati, Matos and Agus to make the coffin.

The second witness on behalf of the defense was Vincente Mendonca. The defence sought several dates to secure the attendance of this witness and since the witness didn't show up in court the defense sought summons on the witness. On the day the witness was summoned he turned up late in court and stated that he was assaulted by his brother in law, he complained to the police and for that reason he was late. Witness showed in court some papers stating that it was the complaint he made. At another stage the witness stated that after making the complaint he went to the District Court mistakenly thinking that it was the court, which he should attend. Later he went back home to get the summons when the fiscal of the court (whom he refers to as the colleague) came and said that it was the court in the Court of Appeal building. Witness stated that he was attached to the Serious Crimes Unit and he is still attached to the UNMISSET's IT and Translation Unit. His evidence was that he mostly translated from Indonesian to English and occasionally from Tetum to English. In answer to defense counsel he stated that nobody has complained about the quality of his work and that he has not come across instances where his translation was not perfect. He stated that during an investigation the only person who goes with the investigator is the interpreter and there is nobody to correct the translation if it goes wrong. In answer to court he admitted that he has had no formal education in English Language, although he attended two English Language courses didn't complete either. He also admitted that he is still learning English and he learns English from his

friends and colleagues. The witness in answer to defense stated that he couldn't remember interpreting the statement made by Joana Feritas during the investigation.

Photographs produced marked 1a-1f of the personal belongings found inside the body bag and the photographs produced marked 2a-2d of the injuries on the skeletal remains of the deceased were led in evidence.

The Autopsy Report of the Forensic Pathologist Dr. M. Nurul Islam dated 6th November 2002 on (the Mortuary File No. 513) Charles Antonio Pinto Soares and the Forensic Anthropology Report of Forensic Anthropologist Caroline Baker dated 11th December 2002 on (the Mortuary File No. 513) Charles Antonio Pinto Soares (a.k.a. Antonio Pinto Soares) forms part of the case record.

FINDINGS OF FACT

The court heard six witnesses on behalf of the prosecution and two witnesses called on behalf of the defense. The court found the testimony of all witnesses who testified to the incident, called by both the prosecution and the defense to be substantially the same, reliable and convincing (except for differences that could arise as a result of the lapse of time, weaknesses in individual memories, forgetfulness, differences in the manner of perception and presentation by individual witnesses) other than the testimony of the witness Mr. Nunu Lau Aroujo whose testimony was found to be entirely unconvincing and unreliable. Except for the aforesaid witness's testimony the other witnesses were found to be sufficiently corroborating each other. Witness Ms. Joana Feritas needs a special reference. The prosecution witness Ms. Joana Feritas in the course of her evidence referred to certain matters not borne out by her written statement made to the

investigator. Her position was that in the course of her statement she mentioned those facts to the investigator and that the investigator did not read out the statement to her at the conclusion of the recording. The court having regard to her demeanor during the witness stand, the consistency of her version, the promptness of her answers had no hesitation in concluding that she is a convincing and a credible witness. The fact that her statement in Tetum may not have been properly translated into English was more substantiated, in the view of court, when the defense called the interpreter Mr. Mendonca who translated her statement to English. Since Mr. Mendonca stated that he is competent to speak in English the court requested him to give evidence in English. By listening to the testimony of Mr. Mendonca the court was convinced that his proficiency in English is poor. He had no English Language qualification at the time he translated Ms. Feritas statement. Then, he was in the early stages of learning English Language and that was also from his colleagues and friends. Even at the time of giving evidence before court Mr. Mendonca did not demonstrate a proficiency in English Language to an extent he could be clearly understood. Therefore, the court is of the view that Mr. Mendonca's incompetence as an interpreter may have resulted in the lapses in Ms. Feritas statement. The defense witness Mr. Manuel Pinto does not implicate Sico Matos as an assailant, although he states that Sico Matos was standing 2-3 meters away from Domingos Amati when he hacked. It's very clear from the evidence of Mr. Pinto that he may not have witnessed the entire incident as he states that he ran away after Domingos Amati dealt the second blow. Admittedly he has not witnessed the whole incident.

The court is convinced that the testimony of all prosecution and defense witness, except that of Mr. Vincente Mendonca is reliable and truthful. The court is not inclined to treat the testimony of Mr. Mendonca as reliable and truthful.

Based on the above evidence the court is of the view that the following facts are proved:

- (a) Antonio Pinto Soares (a.k.a. Charles) although acted on the pretence of being a member of the pro autonomy militia, he was a clandestine supporter of the pro independence movement.
- (b) An exchange of words took place between Domingos Amati and Antonio Pinto Soares (a.k.a. Charles) on or about 5th September 1999, in Hera. Domingos Amati was after liquor.
- (c) Provoked, Domingos Amati tried to attack Antonio Pinto Soares (a.k.a. Charles) with his knife and at that stage Antonio Pinto Soares (a.k.a. Charles) threw his knife at Domingos Amati and he sustained an injury.
- (d) On the suspicion that Antonio Pinto Soares (a.k.a. Charles) was supporting pro independence movement he was chased after by several people including Domingos Amati and Francisco Matos (a.k.a. Sico Matos). Both Domingos Amati and Francisco Matos (a.k.a. Sico Matos) were supporters of autonomy.
- (e) That on or about 5th September 1999, in Hera Domingos Amati and Francisco Matos (a.k.a. Sico Matos) hacked Antonio Pinto Soares (a.k.a. Charles) with machetes.
- (f) At the first instance hacking took place in the sea and at the second instance near the Aitarak Militia Post near Hera Beach. Both incidents were within a close proximity of time.

- (g) Antonio Pinto Soares (a.k.a. Charles) died as a result of the injuries sustained by the hacking of Domingos Amati and Francisco Matos (a.k.a. Sico Matos).
- (h) At the time the hacking took place both Domingos Amati and Francisco Matos (a.k.a. Sico Matos) acted under provocation offered by the first incident and the belief that Antonio Pinto Soares (a.k.a. Charles) was a supporter of the pro independence group.
- (i) Both Domingoes Amati and Francisco Matos (a.k.a. Sico Matos) acted without premeditation to commit murder. The court is of the view that the evidence does not establish premeditation as contemplated by section 340 of the Indonesian Penal Code.

LEGAL FINDINGS

The accused Domingoes Amati and Francisco Matos (a.k.a. Sico Matos) by taking part in the attack on Antonio Pinto Soares (a.k.a. Charles) with machetes intentionally committed the victim's death. They acted jointly and contributed to the commission of the offence, with a common purpose or the knowledge or intention to commit the offence. There is no finding of fact that the accused acted with premeditation. In the absence of findings on premeditation¹ the Court finds both accused guilty of murder (manslaughter) in terms of section 338 of the Indonesian Penal Code.

Therefore, the court found that:

- (a) The first accused Domingos Amati guilty of murder of Antonio Pinto Soares (a.k.a. Charles) on the 5th of September 1999 in Hera, in violation of section 8 of

¹ Case no 50/03 The Deputy General Prosecutor vs. Domingos Amati And Francisco Matos. Court of Appeal decision dated 9th December 2003.

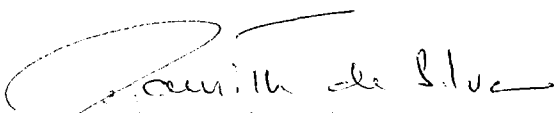
the UNTAET Regulation 2000/15 read with section 338 of the Indonesian Penal Code.

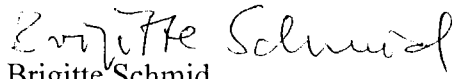
- (b) The second accused Francisco Matos guilty of murder of Antonio Pinto Soares (a.k.a. Charles) on the 5th of September 1999 in Hera, in violation of section 8 of the UNTAET Regulation 2000/15 read with section 338 of the Indonesian Penal Code.

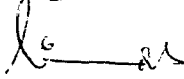
CONCLUSION

For the aforementioned reasons on 28th February 2005 the court convicted:

- (a) The first accused Domingos Amati of murder of Antonio Pinto Soares (a.k.a. Charles) on the 5th of September 1999 in Hera, in violation of section 8 of the UNTAET Regulation 2000/15 read with section 338 of the Indonesian Penal Code.
- (b) The second accused Francisco Matos of murder of Antonio Pinto Soares (a.k.a. Charles) on the 5th of September 1999 in Hera, in violation of section 8 of the UNTAET Regulation 2000/15 read with section 338 of the Indonesian Penal Code.
- (The English version will prevail. To be translated into Portuguese)


Judge Edirimuni Samith de Silva (Presiding)


Judge Brigitte Schmid


Judge Deolindo dos Santos

(Issued on 4th March 2005)



REPUBLICA DEMOCRATICA DE TIMOR- LESTE
RDTL
DILI DISTRICT COURT
THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No: 12/2003

Final Disposition

Before: Judge Edirimuni Samith de Silva (Presiding)
Judge Brigitte Schmid
Judge Deolindo dos Santos

Deputy General Prosecutor

Vs

1.Domingos Amati

and

2.Francisco Matos

Prosecutor :Ms. Wambui Ngunya

Defence Counsel:Mr. Jed Abad (For the first accused)
Mr. Holger Hembach (For the Second accused)

Date of judgment: 28th February 2005
Written decision issued: 4th March 2005
Disposition on the sentence 5th April 2005

Disposition

Having found the accused Domingos Amati and Francisco Matos guilty for murder of Antonio Pinto Soares (a.k.a. Charles) on the 5th September 1999 in Hera, in violation of UNTAET regulation 2000/15 read with section 338 of the Indonesian Penal Code, and

Considering the arguments of the parties and the factors put forth at the sentencing hearing and the provisions of the Transitional Criminal Procedure, the court *inter alia* Takes into consideration the following mitigating and aggravating circumstances:

That the first accused was consuming liquor and upon the arrival of the deceased, Antonio Pinto Soares(a.k.a.) Charles, an argument took place between them and the first accused pulled out his knife to attack the deceased, but the deceased was quick enough to throw his knife at the first accused, causing an injury to his forehead; and that this incident sparked off an episode which ended with the death of Antonio Pinto Soares(a.k.a.) Charles. The first accused aforesaid conduct is a considered a matter against him (as an aggravating circumstance) as he was the person who took the first initiative in the aggression. The court also acknowledges the fact that the first incident flared off into a greater issue after the deceased attacked the first accused. This is considered to be a mitigating factor.

The suspicion harbored by the members of the militia that the deceased was a double agent for both the militia and the clandestine movement has further provoked the assailants. This fact too is considered as a mitigating factor as the suspicion that existed provided a background for the incident. To some extent, the court observes this as an aggravating circumstance as it may push the case against the accused more towards the borders of premeditation. However, the court made no finding of fact on premeditation.

The court also takes into consideration the other facts put fourth by counsel for the accused, the background and the social conditions of the accused and the fact that both accused are married, the first accused is a father of one young child whereas the second accused is a father of seven children. The court also takes into consideration as mitigating circumstances that both accused have expressed, through their counsel, regret and remorse and apologies to the victim's family.

The fact that the first accused chased behind the deceased to the sea and hacked him is considered by court as an aggravating circumstance. At that stage, the second accused who came to the scene also hacked the deceased, having picked up the machete that slipped off the first accused hand. The fact that second accused involved himself in the attack without any prior incident or provocation is treated by court as an aggravating circumstance against him.

Subsequent to the attack in water, both accused have hacked the decease at the militia post. The lapse of time between the two incidents which would have afforded time for the accused to 'think with a free mind,' narrows down the margin between the offence of murder under section 340 of the Indonesian Penal Code and section 338 of the Indonesian

Penal Code, although the court made no finding under section 340 of the Indonesian Penal Code. Therefore, court views this as aggravating circumstance against both accused.

Before imposing the following sentence the court also takes into consideration the fact that both accused are already convicted and sentenced by the Special Panels in case no.28/2003

The Special Panel for Serious Crimes based on its findings on 28th February 2005 (of which the written decision was issued on 4th March 2005) imposes sentence as follows:

First accused Domingos Amati:

- A. Sentence the first accused Domingos Amati for seven (07) years imprisonment, and
- B. ORDER the first accused Domingos Amati to pay the costs of the criminal proceedings.

Second accused Francisco Matos

- A. Sentence the Second accused Francisco Matos for seven (07) years imprisonment, and
- B. ORDER the second accused Francisco Matos to pay the costs of the criminal proceedings.

Credit for time served

According to Sec.10.3 of UNTAET Regulations 2000/15, Sec.42.5 of UNTAET regulation 2000/30 and Art.33 of the Indonesian Penal Code the Special Panels deduct the time spent in detention by Domingos Amati due to an East Timorese Court i.e. ten (10) days from 30.9.2002 to 10.10.2002 and one month (01) and twenty nine (29) days from 21.10 2002 to 20.12. 2002 totaling to two (02) months and eight (08) days and the time spent by Francisco Matos in detention from 30.09 2002 to 11.10. 2002 eleven (11) days. Accordingly the period of previous detention shall be deducted from the sentence imposed by this Court, together with such additional time they may serve pending the determination of any final appeal.

Execution and enforcement of sentence

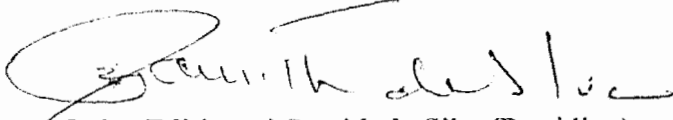
Pursuant to Sec 42.1 and 42.6 of UNTAET Regulation 2000/30, both accused shall continue to be imprisoned immediately after the conclusion of the present term of imprisonment they are serving and spend the duration of the sentence in East Timor. The sentence shall be executed immediately after the lapse of the present term of imprisonment the accused are serving, with this disposition to serve as a Warrant of Arrest.

This decision is provided in one copy to the defendant and his legal representative the Public Prosecutor and the Prison manager.

Appeal

This written decision, issued subsequent to the written decision issued on 4th March 2005, constitutes the final disposition of the case in terms of section 40.1 of the UNTAET Regulation 2000/30 and the accused have the right to file a notice of appeal within ten (10) days after the release of this decision and a written statement of appeal within the following thirty (30) days pursuant to Sec.40.2 and 40.3 of the UNTAET Regulation 2000/30.

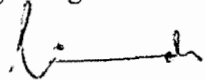
This disposition of the case was rendered and delivered on 5th April 2005 by the Special Panel for Serious Crimes sitting at the Court of Appeals building in Caicoli, Dii, by:



Judge Edirimuni Samith de Silva (Presiding)



Judge Brigitte Schmid



Judge Deolindo dos Santos
(5th April 2005)

The English version will prevail. To be translated into Portuguese)