



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

TRIBUNAL DISTRIITAL de DILI
SECÇÃO CRIMES GRAVES

DISTRICT COURT of DILI
SPECIAL PANELS for SERIOUS CRIMES

Case No 18 a / 2003

Date: 28 February 2005

Before :

Judge Brigitte Schmid, presiding

Judge Samith de Silva

Judge Deolindo dos Santos

PROSECUTOR

V.

Aparicio GUTERRES
a.k.a. MAU BUTI

J U D G M E N T

A. PROCEDURAL BACKGROUND

The indictment, filed by the Prosecution on 10 July 2003, named as an accused (among 57 others) Aprecio Mali Dao; it was registered as case No 18/2003. After a person who gave his name as Aprecio Guterres was arrested on 21 April 2004, a Detention Hearing was held on 27 April 2004. The arrested person was released on certain restrictive conditions by the Court of Appeal on 9 June 2004.

On 15 June 2004 the Special Panel issued a Court Order severing the indictment against Aprecio Mali Dao from Case No 18/2003, renumbering his case as No 18 a /2003.

The prosecution On 18 June 2004 filed a new indictment against Aparicio Guterres a.k.a. Mau Buti, charging him with the Crime Against Humanity of Murder, as mentioned in the indictment dated 10 July 2003, and naming the victims. Copies of witness statements were attached to the indictment.

On 5 July 2004 the Special Panel by Court Decision considered the indictment dated 18 June 2004 as a new indictment, of which a translation into Tetum had to be delivered to the defence.

On 4 November 2004 the prosecution requested, " in the interests of justice" that the Special Panels allow the prosecution to withdraw the indictment 18a/2003 against Aparicio Guterres pursuant to Sec. 54.2 of UNTAET Reg.NO.30/2000 and Art.144 (1) and (2) of the Indonesian Code of Criminal Procedure to allow a "more egregious" case to be tried au lieu.

The Court Decision dated 19 November 2004 dismissed the request.

On 16 December 2004 the Court of Appeal decided not to grant leave for the appeal against that decision filed by the defendant Aparicio Guterres.

After the Preliminary Hearing, the trial started on 28 January 2005.

After the Court had heard the witnesses Isabel Araujo, Deolindo Cardoso and Joao Amaral on 9 February the prosecutor filed an oral motion to withdraw the indictment without prejudice announcing that he did not intend to call further witnesses. On request, the prosecution clarified that the court be free to decide the case on the basis of the evidence submitted.

The defence pointed out, referring to Case No. 29/2003 Florindo Morreira, that a judgment of acquittal was appropriate due to the prosecutor's indication that he has closed his presentation of evidence.

B. FACTS OF THE CASE

According to the prosecutor's submission, on 9 September 1999 DMP militia were ordered by their commanders to accompany TNI Sgt. Miguel Soares to

Mulau, where they were to kill the escapees from the POLRES Massacre. DMP militia, including the accused, therefore walked in the direction of Mulau Village. There, the accused, as alleged in the Indictment, participated in an action that caused the death of 13 victims. Beyond that, the prosecutor asserts that Luis Mali Dao and the accused caught Carlos Maja who attempted to escape. Both militia members were armed with samurai swords. As the victim was running, Luis Mali Dao stabbed him in the back; when the victim had fallen to the floor, the accused stabbed him on his right side; Carlos Maja was just left on the floor to die. Luis Mali Dao and the accused caught up with the group.

The accused accordingly was held responsible as an individual for the killing of Carlos Maja and the other 13 named victims and charged with the CRIME against HUMANITY of Murder.

The prosecutor pointed out that the accused acted within a widespread or systematic attack directed against the civilian population with knowledge of the attack.

C. FINDINGS OF FACTS

The Court heard three witnesses presented by the prosecutor. Witnesses Isabel Araujo and Deolindo Cardoso were no eyewitnesses to the killings near Mulau Village. They were not even present at the scene of the crime, and therefore could not describe whether the victims were killed.

Witness Joao Amaral was presented as eyewitness. He was at the scene of the Crime. His testimony, however, was contradictory. Whereas in a previous statement (8/10/02) he told the investigators that he had seen the accused stabbing Carlos Maja, and even recognized the arrested accused on 4/05/04 as the one who stabbed the victim, in his testimony before the court, he gave a different version of the accused's role in the events. The witness, a former militia member, testified that he had not seen the accused stab the victim. He described that the accused in front of a crowd of militia waved a bloody knife maintaining the blood was Carlos Maia's. He insisted that it was only Luis Mali Dao who stabbed Carlos Maja, that the accused not even touched the victim.

The witness was repeatedly asked which of his different versions was the truth, He was adamant about never having told the truth before his testimony given to this court.

The Prosecution never called any witnesses concerning the accused's responsibility for the deaths of the further 13 victims.

So it became obvious even for the Prosecution that it could not present sufficient evidence to obtain a conviction. Consequently the Prosecution submitted an oral motion to withdraw the indictment without prejudice announcing that there would not be presented any further witnesses.

D. LEGAL FINDINGS

The testimony of Joao Amaral, the only eyewitness of the alleged crime, could not lead to a conviction .

Since the Prosecution declined to call further witnesses the hearing of evidence by the Court is closed.

At this stage of the proceedings the permission for a withdrawal of the indictment is required, as follows from Sec.32.1 TRC . After the written indictment is presented to the Court only the Court has the authority to approve the amendment of the indictment. When an even less substantive action as the mere amendment of an indictment requires the approval of the Court, the more so the withdrawal of an entire indictment necessarily must require the approval of the Court. The Court has already dealt with this problem in the Decision rendered 19 November 2004.

To approve of the withdrawal of the indictment at this stage however would not be appropriate.

Since the evidence heard cannot lead to a conviction, and no further witnesses can be called the imperative consequence has to be an acquittal. Approving of the withdrawal of the indictment the Court would violate the accused's right to be acquitted.

For these reasons the accused had to be acquitted.

E. CONCLUSION

Having considered the evidence and the arguments of the parties, the Special Panel for Serious Crimes on 14 February 2005 rendered the following judgment:

The Court acquits the accused Aparicio GUTERRES a.k.a. MAU BUTI of the charge of Crimes against Humanity for the Murder of Carlos MAJA, Manuel MEGALHAES, Lamberto DE SA BENEVIDES, Abilio MARQUES VICENTE, Augustinho DOS SANTOS MARQUES, Pedro LUIS, Jose BARRETO, Paul DA SILVA, Ernesto DA COLI, Lucas DOS SANTOS, Luis SOARES a.k.a. DOS SANTOS, Geronimo a.k.a. Jeroni LOPES and Domingos TITI MAU, Committed on or about 9 September 1999 at the Mulau area, Maliana Sub-District, Bobonaro District, as part of a widespread or systematis attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 (a) of UNTAET Regulation 2000/15.

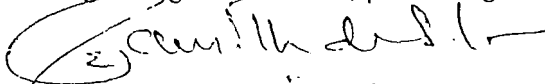
The parties have the right to file a notice of appeal within 10 days from the day of the notification of the final written decision to them and a written appeal

statement within the following 30 days (Sec. 40.2 and 40.3 UNTAET Regulation 2000/30).

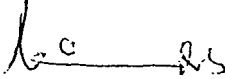
This Decision was rendered and delivered on 28 February 2005.



Judge Brigitte Schmid, presiding



Judge Samith De Silva



Judge Deolindo Dos Santos

(To be translated into Tetum, the English text remaining authoritative)