



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis, Registrar

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THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION ON PROSECUTION MOTION TO ADMIT THE STATEMENTS
OF DECEASED WITNESSES PRH249 AND PRH093**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

**Legal Representatives of
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr John Jones &
Mr Iain Edwards

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothée Le Fraper
du Hellen & Mr Khalil Jad

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Mr Philippe Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaël Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution has statements from two deceased witnesses, Mr Nawwar Dona (Witness PRH249) and Mr Ahmad Srour (Witness PRH093), relating to the sale and use of telephones belonging to what it calls the ‘red network’ of telephones.¹ The ‘red network’ is one of five groups of telephones the Prosecution alleges were used to plan and carry out the assassination of the former Lebanese Prime Minister Rafik Hariri in Beirut, on 14 February 2005.² The Prosecution seeks to tender these statements into evidence under Rules 149 (C) and 158 of the Special Tribunal’s Rules of Procedure and Evidence, on the basis that they are relevant, reliable, probative, and go to proof of matters other than the acts and conduct of the accused as charged in the indictment.³

2. Rule 158 allows the Trial Chamber to admit evidence in the form of a written statement, any other reliable record of what a person has said, written or otherwise expressed, or transcript of a statement by a person who has died, who can no longer with reasonable diligence be traced, or who is for good reason otherwise unavailable to testify orally. This is, however, subject to certain conditions. In deciding whether to admit such evidence, the Trial Chamber must first, in accordance with Rule 158 (A), be satisfied of the person’s unavailability, and second, find that the statement is reliable, taking into account how it was made and maintained. It must also, as required by Rule 158 (B), consider whether the evidence goes to the proof of the acts or conduct of the accused.⁴

3. Statements and documents tendered under Rule 158 do not need to be in the form prescribed by, notably, Rules 155 and 156, which govern the admission into evidence of written statements and transcripts in lieu of oral testimony or examination in chief. In addition, the Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155⁵ does not apply to documents and statements tendered through

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1902, Prosecution Rule 158 Motion for Admission of Written Statements of Unavailable Persons PRH249 and PRH093, 14 April 2015.

² F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, paras 14 and 15 (a); STL-11-01/PT/TC, F1077, Redacted Version of Prosecution’s Updated Pre-Trial Brief, dated 23 August 2013, 31 October 2013, para. 6.

³ Prosecution motion, paras 1, 4-9 and 18-20.

⁴ F1890, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH402 and PRH636, 27 March 2015, paras 15-16; Oral Order on Prosecution Request for PRH148’s Statement to be Admitted under Rule 158, Transcript no. 28 of 9 January 2014, pp 14-15.

⁵ STL-PD-2010-02, 15 January 2010.

Rule 158. Although not strictly applicable here, the Practice Direction and Rule 155 nevertheless provide useful guidance on the formal elements to consider in assessing the reliability of a statement under Rule 158 (A) (ii).

4. Counsel for the Accused, Mr Mustafa Amine Badreddine and Mr Assad Hassan Sabra, responded to the motion.⁶ The Prosecution replied to the Sabra response.⁷

DISCUSSION

Mr Nawwar Dona

Submissions

5. Mr Dona died in a car accident on 23 November 2005. The Prosecution has provided a medical examiner's report, investigative reports and other documents related to the accident.⁸

6. Mr Dona owned a mobile telephone store in Tripoli, Lebanon. He sold five telephone handsets to an unidentified male customer on 30 December 2004. On 5 January 2005, the customer returned to the store and asked for one of the handsets to be repaired because it was not working. After repairing it, Mr Dona used his personal SIM card⁹ to verify that the repair was successful and returned the handset to the customer.¹⁰

7. Mr Dona gave at least four statements about this event:¹¹

- a. A statement on 9 April 2005 to the Lebanese Military Police;
- b. A statement dated 12 August 2005 to the United Nations International Independent Investigation Commission (UNIIC);

⁶ F1916, Badreddine Response to Prosecution Rule 158 Motion for Admission of Written Statements of Unavailable Persons PRH249 and PRH093, 20 April 2015; F1931, Sabra Defence Response to Prosecution Rule 158 Motion for Admission of Written Statements of Unavailable Persons, 28 April 2015.

⁷ F1934, Prosecution Reply to Sabra Defence Response to Prosecution Rule 158 Application, 4 May 2015.

⁸ Prosecution motion, para. 3 and Annex A.

⁹ At footnote 2 of its motion, the Prosecution explains that a 'SIM card' (Subscriber Identity Module or Subscriber Information module) contains an integrated circuit-card identifier (IC-CID) with a unique 19 or 20 digit serial number, which personalises the telephone. The SIM card also holds the IMSI (International Mobile Subscriber Identity), which is another unique number used to identify the subscriber over the radio path.

¹⁰ Prosecution motion, para. 4.

¹¹ Prosecution motion, para. 6.

- c. A statement dated 24 August 2005 before the Lebanese Investigating Judge; and
- d. A statement dated 12 September 2005 to the Information Branch of the Lebanese Internal Security Forces.

8. The Prosecution wants to tender the statements of 12 August 2005, 24 August 2005 and 12 September 2005 into evidence. It submits that they present a comprehensive picture of Mr Dona's evidence and avoid any unnecessary duplication.¹² The Prosecution has used and will use information from the statements—such as Mr Dona's mobile telephone number, and the IMEI¹³ of the handset he repaired and tested with his own SIM card—in call sequence tables to be tendered into evidence.¹⁴

9. The Prosecution argues that Mr Dona's statements meet the indicia of reliability for admission under Rule 158.¹⁵ The witness is identified in the statements and signed them. In his UNIIC statement, he acknowledges the truth of the statement and that it might be used in legal proceedings.¹⁶ Before giving his statement to the Lebanese Investigating Judge, he took an oath under Article 87 of the Lebanese Code of Criminal Procedure.¹⁷ In his statement to the Information Branch of the Lebanese Internal Security Forces, he acknowledges his rights under Article 47 of the Lebanese Code of Criminal Procedure.¹⁸

10. Counsel for Mr Badreddine take no position on the admission of Mr Dona's statements.¹⁹

11. Counsel for Mr Sabra do not object to the admission of the statements, on condition that Mr Dona's statement of 9 April 2005 to the Lebanese Military Police is also admitted.²⁰ They argue that

¹² Prosecution motion, para. 8.

¹³ At footnote 6 of its motion, the Prosecution explains that an International Mobile Identity Number (IMEI) is an electronic number, which contains the serial number of the mobile telephone handset as well as the make and model.

¹⁴ Prosecution motion, para. 5.

¹⁵ Prosecution motion, para. 9.

¹⁶ Prosecution motion, para. 11.

¹⁷ Prosecution motion, para. 13. Article 87 of the Lebanese Code of Criminal Procedure sets out the procedure for hearing witnesses as an investigative measure.

¹⁸ Prosecution motion, para. 15. Article 47 of the Lebanese Code of Criminal Procedure concerns the measures to be taken by the Judicial Police in connection with offences other than those discovered at the time of their commission or immediately afterwards.

¹⁹ Badreddine response, para. 2.

²⁰ Sabra response, para. 1.

admitting all four of Mr Dona's statements would allow the Trial Chamber to have a complete understanding of his evidence and properly assess his credibility.²¹

12. In its reply, the Prosecution argues that it is inappropriate to seek relief such as the admission of a statement in a response, and that the Sabra Defence should file its own motion under Rule 158.²² Parties seeking to admit witness statements should respect and comprehensively address the applicable Rules and not leave the Trial Chamber to assess the statements, including any deviations from the relevant Practice Direction, without the assistance of the applying Party.²³ The Trial Chamber should consequently dismiss this request.²⁴

Decision to admit Mr Dona's statements

13. The Trial Chamber is satisfied that the medical examiner's report and the other documents provided by the Prosecution prove that Mr Dona is deceased, and hence unavailable to testify within the meaning of Rule 158. His evidence is relevant to the Prosecution's case and probative of the purchase of five of the handsets used in the 'red network'. Mr Dona's three statements adequately identify him and those present at the interviews, and the circumstances in which they were taken confer upon them sufficient indicia of reliability to admit them under Rule 158.

14. With regard to counsel for Mr Sabra's request that the Trial Chamber also admit Mr Dona's fourth statement, the Trial Chamber agrees with the Prosecution that the moving party should provide the Trial Chamber with the information it needs to assess whether a statement is relevant, reliable, and probative. Here, the Sabra Defence submit that Mr Dona's fourth statement should be admitted for the same reasons as those cited by the Prosecution in relation to Mr Dona's other three statements.²⁵ The Trial Chamber finds this information sufficient to assess that statement's relevance, reliability and probative value, and considers that admitting it along with Mr Dona's three other statements will help to provide context. The four statements contain some minor differences in

²¹ Sabra response, para 10. Counsel for Mr Sabra also pointed out, at paragraph 12 of their response, that Mr Dona's statement of 12 September 2005 contains the beginning of someone else's statement and asked the Prosecution to file a new version of that document containing only Mr Dona's statement, which the Prosecution did on 15 May 2015.

²² Prosecution reply, para. 4.

²³ Prosecution reply, paras 4-5.

²⁴ Prosecution reply, para. 7.

²⁵ Sabra response, paras 9-10

detail; admitting all four will therefore help the Trial Chamber to better assess these differences, and hence their reliability. All four statements are therefore admissible into evidence under Rule 158.

Mr Ahmad Srour

Submissions

15. Mr Srour died on 13 June 2013. The Prosecution has provided a copy of his death certificate, and a statement from a family member describing the circumstances of his death.²⁶

16. Mr Srour bought an Alfa SIM card and a Nokia mobile telephone handset in early 2005 from a mobile telephone store in Nejme Square, in Tripoli. The retailer photocopied his identity card as part of the purchase formalities. Mr Srour used this mobile telephone number for a year and a half before selling it. On 17 March 2010, Prosecution investigators interviewed him and showed him an Alfa application number form for a different telephone number, to which a copy of his identity card was attached. The application form was in Mr Srour's name, and included his date and place of birth, and his parents' names. However, he did not recognise the handwriting on the form, and stated that the personal details listed, his education level and family size were incorrect.²⁷

17. The Prosecution submits that Mr Srour's statement is relevant to, and probative of, the purchase of a SIM card in Tripoli that was used as part of the 'red network'.²⁸ The statement is reliable because the Prosecution investigators adequately identified Mr Srour and made a copy of his identity card. He signed the statement after it was orally translated to him into Arabic, and acknowledged that he is liable for prosecution by the Special Tribunal for contempt or false testimony.²⁹

18. Counsel for Mr Badreddine and Mr Sabra do not object to the admission into evidence of Mr Srour's statement.³⁰

²⁶ Prosecution motion, para. 17.

²⁷ Prosecution motion, para. 19.

²⁸ Prosecution motion, para. 18.

²⁹ Prosecution motion, para. 20.

³⁰ Badreddine response, para. 2; Sabra response, para. 1.

Decision to admit Mr Srour's statement

19. The Trial Chamber is satisfied that the death certificate and the statement from Mr Srour's family member prove that he died on 13 June 2013, and hence is unavailable to testify within the meaning of Rule 158.

20. Mr Srour's evidence is relevant, and probative of the Prosecution's case on the telephone networks. His statement shows that the Prosecution investigators who interviewed him confirmed his identity. Although the investigators did not sign the 'Witness Acknowledgement form' and the Interpreter's Certification, they did sign each page of the statement. These minor formal shortcomings do not affect the reliability of the evidence. The Trial Chamber accordingly finds Mr Srour's statement admissible into evidence under Rule 158.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the motion;

DECLARES admissible under Rule 158 the four statements of Mr Nawwar Dona (Witness PRH249) dated 9 April 2005, 12 August 2005, 24 August 2005 and 12 September 2005, and the statement of Mr Ahmad Srour (Witness PRH093) dated 17 March 2010; and

DECIDES that it will, at a suitable stage in the proceedings, formally admit the statements into evidence.

Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
The Netherlands

18 May 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

