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**UNITED NATIONS
NATIONS UNIES**

**DILI DISTRICT COURT
PENGADILAN DISTRIK DILI
TRIBUNAL DISTRIKAL DE DILI**

**SERIOUS CRIMES
SECÇÃO CRIMES GRAVES**

Sentence

Case n°. PID.C.G/13/2001

*Public Prosecutor
V
Marcurious José de Deus*

Date: 18 of April 2002

*Panel of judges for the Special Panel for Serious Crimes of the Dili District Court,
consisting of:*

*Antero Luís – Presiding Judge and Rapporteur
Benfeito Mosso Ramos – Judge Member
António Hélder do Carmo – Judge Member*

Attended by:

*Court Clerk - Leonel Amâncio
Public Prosecutor - Essa Faal and Shymala Alagendra
Public Defenders - Siphon Malunga and Márcia Sarmiento*

I. REPORT

The Panel of Judges constituting the Special Panel for Serious Crimes of the Dili District Court agree,

I.1. MARCURIOUS JOSÉ de DEUS, alias Marcurious Malik/Marley, born in 1977 in Dakolo, Fatumean, Suai, now detained at Becora prison, has been indicted by the Public Prosecutor charged for the commission of:

a crime of murder with premeditation, foreseen and punished by article 340 of the Indonesian Penal Code (KUHP), with reference to the article 8 of UNTAET Regulation 2000/15.

I.2. The indictment was lodged in the Dili District Court on the 10th of May 2001 (pgs. 3) and the Public Prosecutor produced a collection of supporting evidences attached to it (pgs. 9 to 76).

I.3. After receiving the indictment and filing the proceeding, the accused and the Defender were officiously notified for, if wishing, they can reply under the terms and pursuant to the article 26.2 and 26.3 of UNTAET Regulation 2000/30 (Pg.77).

I.4. As the accused Marcurious José de Deus has been in detention since 13 of December 2000, the Public Prosecutor, on the 16th of May 2001 (pg. 142), requested extension of the detention for the accused under the terms and on grounds of the statements on pgs.144 and 146.

On the 20th of June 2001 the illustrious Defender of the accused produced a preliminary motion requesting the Public Prosecutor to specify the facts for the indictment requesting the Court to notify the Public Prosecutor to amend the indictment.

I.5. On the 02nd July 2001 (pgs.169) the Court fixed a preliminary hearing for the 5th of July 2001 which was postponed for the 6th of July on request of the Public Prosecutor.

On the 6th of July, by written decision of 23rd of August 2001, the Court granted the request of the Defense and ordered the Public Prosecutor to amend the indictment (pgs.186 to 190) ordered as well the release of the accused Marcurious José de Deus and his home detention as long as he would satisfy specific demands.

After notifying the CIVPOL for verification of the demands stipulated by the Court, it was verified that the conditions were not satisfied, in order for the accused to await trial in home detention and the Court determined for the accused to continue awaiting trial in preventive detention (Pg.216).

I.6. Fixed a preliminary hearing under the terms and pursuant to the article 29 of UNTAET Regulation 2000/30 of 25 of September, for the 21st of November 2001 and well after the Public Prosecutor has presented the amendment of the indictment according to the Court order from the previous session (pgs.207), the Court after been assured the right of the accused for defense, the Court determined that he would have to wait under preventive detention for further proceedings and determined for the trial to be held on 21st of January 2002.

I.7. On the 21st of January 2002, because of the absence of one of the judges of the Panel (pgs.337), the hearing end up to be postponed to the 18th of February 2002, which date was again postponed to the 11th of March 2002 on request of the illustrious Defender as he needed time to organize his defense.

I.8. On the 11th of March 2002 commenced the hearing, in accordance to the minutes attached to the proceedings, in which the accused fully admitted guilt of the facts stated in the indictment, having the Court considered the admission of guilt relevant and efficient.

After considering the admission of guilt on the transcript and pursuant to the article 29-A, n°2 of Regulation 2000/30, after the Prosecutor and the Defender making their respective final statements, the Court fixed for 18th of April 2002 the publication of the written sentence.

1.13. All the acts above referred were carried out with the observance of the legal formalities, as stated in the respective minutes attached to the proceedings and the audio recorded of the hearing in CD-Rom, as well as the video recorded in respective cassette, both attached to the proceedings as part of it under the terms and pursuant to the article 31.1.c. of UNTAET Regulation 2000/30 of 25 of September.

Abide for decision.

II. COMPETENCE

The Dili District Court is, under the terms of provision of the article 9 of Regulation 2000/11 of 6 of March, on the composition of Regulation 2001/25 of 14 of September, competent to hear the crimes referred in such precept. This competence, under the structure of the Dili District Court, is attributed to the Special Panel for the serious crimes, which composition is foreseen on article 22 of Regulation 2000/15 of 6 of June and with the competence referred on the articles 1 and 2 of the same Regulation.

The crime of murder with premeditation the accused has been liable for is included within the crimes listed on the referred precept and was, according to the indictment thesis, perpetrated in September 1999, therefore including itself within the temporal limits established on article 9 n°2 of Regulation 2000/11 of 6 of March and article 2, n°3 of Regulation 2000/15 of 6 of June.

It is then this Section of serious crimes of the Dili District Court, functioning here as Special Panel, materially and territorially competent to judge in the present case.

There are no previous matters on the proceedings ought to be heard at this moment.

III. FACTS

III. 1. From the admission of guilt of the accused produced on the hearing in addition with the rest of the evidences attached to the proceedings and taking into consideration the proving procedures determined by UNTAET Regulation 2000/30 of 25 of September, it resulted to be proved the following facts:

III.1.1. The accused, Marcurious José de Deus, was a Laksaur Militia member.

III.1.2. The accused has been a member since February 1999.

III.1.3. The accused joined the Laksaur Militia at Fatumean and he was one of the approximately 100 militia members based in the area.

III.1.4. At the time he joined Laksaur militia the accused bought a kitchen knife, which blade is, approximately, 15 centimeters long. The accused had the knife with him when took part in militia activities.

III.1.5. While militia member the accused mission was to stay at the control post of the village of Bubur Fehan with orders to threat the pro-independence supporters.

III.1.6. Around the 6th of September 1999 near Manekiik village a man called Agapito MAUK, also known as Agapito AMARAL, was killed by Laksaur Militia members: Petros FAHIK, Jacobus Bere and Petros LAU.

III.1.7. Francesco De ARAUJO witnessed this killing.

III.1.8. The mother of Agapito MAUK, Rosalina Cardosa BELAK, when learned of the death of her son she revolted openly against the militia.

III.1.9. The accused, together with other fellows Laksaur militia members: Petros LAU and Jacobus Bere, they had orders then to kill Rosalina Cardosa BELAK.

III.1.10. The accused, along with these fellows militia members, went then to the house of Rosalina Cardosa BELAK, but she was not at home.

III.1.11. The accused, along with these fellows militia members, went searching for Rosalina Cardosa BELAK and found her about fifteen minutes later. Rosalina Cardosa BELAK was crying over the corpse of her son.

III.1.12. Then the accused approached Rosalina Cardosa BELAK and stabbed her on the thorax area with the knife he bought at the time he joined the militia.

III.1.13. The accused stabbed Rosalina Cardosa BELAK after, for the second time on the right side of her body.

III.1.14. The accused then stabbed Rosalina Cardosa BELAK for the third time on the left side of her body.

III.1.15. Immediately after Petros LAU slashed the throat of Rosalina Cardosa BELAK with a sword.

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III.1.16. Rosalina Cardoso BELAK died as a result of this attack.

III.1.17. After the death of Rosalina Cardoso BELAK the accused went back to the militia control post.

III.1.18. That night the accused returned to the site of crime and removed the corpses of Agapito AMARAL and Rosalina Cardoso BELAK.

III.1.19. The accused left East Timor in mid September 1999 and travelled to Atambua with his family.

III.1.20. On 12 of December 2000 the accused attempted to enter disguised in to East Timor and he was detained by the NZBATT.

III.1.21. The accused integrally admitted guilt of the facts he has been indicted for.

III.1.22. He is repentant and in the court hearing he had apologized the family of the victim for the facts he had perpetrated.

III.1.23. The accused has co-operated with the investigators to reveal the truth and to identify others responsible for.

III.1.24. He is single and his family consists of his mother and his brothers and sister.

III.1.25. The accused is under preventive detention since 13 of December 2000.

No further statements.

IV. STATEMENT OF FACT

IV. 1. Court Conviction

The Court formed its conviction, on the following means of evidence:

On the entire admission of guilt of the accused Marcurious José de Deus and without reservations, which is considered as valid and relevant by the Court, on the terms and for the effect of the article 29-A of Regulation 2000/30 and yet on his statements in the hearing, as well as the evidences attached to the proceedings that supports the same admission of guilt namely:

- the statements of the witnesses Francisco de Araújo, Cândido dos Santos, Graciano da Cruz e Marianos João,
- the documents of pgs. 160 and 344 to 346 of the proceedings.

The admission of guilt of the accused supported by the referred evidences, allow us to consider proven the facts above referred with no doubts at all.

V. LEGAL CAUSE

V. 1. Legal Identification of Facts

As it has been referred the accused integrally admitted guilt without reserve for the facts to him imputed as well as the respective crime.

Such admission of guilt implies that the Court consider proven the crime imputed to the accused and that he may be convicted for such crime, as it result from the article 29A.2 of UNTAET Regulation 2000/30.¹

Therefore the accused Marcurious José de Deus committed a crime of a **crime of murder with premeditation**, foreseen and punished by article 340 of the Indonesian Penal Code (KUHP), with reference to article 8 of UNTAET Regulation 2000/15.

V. 2. Decision on the punishment.

The homicide crime with premeditation is punishable for up to twenty (20) years imprisonment.

In determining the real punishment the Court shall take into consideration the fault of the accused and the punishment shall never surpass this fault, understood this as a base for the application of any sanction.

From the facts given as proved turn out to be that the accused acted pursuant to an order. This circumstance shall not relieve the accused from his criminal responsibility but it may be considered in mitigation (article 21 of Regulation 2000/15).²

This circumstance together with the entire admission of guilt of the accused without reserve, as well as his regret and collaboration with the authorities takes the Court to conclude in a mitigation of punishment

This particular mitigation of punishment is still based on the young age of the accused at the time he committed the facts (22 years of age in 1999) and the scenery of particular climate of violence experienced in East Timor during 1999, in which the accused found himself involved in, perhaps compelled by this very youthfulness and the propitiatory circumstances of violence that was going on.

All these allegations are valid and true.

However, we shall not forget the other side of the situation or of the victims and their suffering.

Violence is something that always followed mankind along the history and is part of the common legacy of peoples.

Nevertheless, the 1999 violence in East Timor surpasses this common violence breaking

the beast and skipping the mid man's understanding.

For the case in judgment, and avoiding to drag on East Timor recent past beyond the strictly necessary, the intensity of the malice is high (direct malice), as well as the lawlessness showed on circumstances non integrating of the type but that result from the execution of the fact. In this aspect it is particularly relevant that the crime has been perpetrated when the victim was crying the death of her son and the accused to have persisted with the aggression striking several stabbings.

In comparing between the mitigating circumstances and the degree of lawlessness of the fact that the court shall find out the fair sentence for the crime committed by the accused, which shall never surpass his fault.

The Court, on the absence of a legal criterion to determine the measurement of the punishment established on Indonesian Penal Code (KUHP), shall also take into consideration the personal conditions of the accused resulting from the proven facts, as well as the rest of the decisions uttered by the East Timor courts.

Therefore, taking into account all these factors, *the court decide to sentence the accused Marcurious José de Deus with the sanction of five (5) years imprisonment.*

**¹ Section 29A
Proceedings on an Admission of Guilt**

29A.1

29A.2 Where the court is satisfied that the matters referred to in Section 29A.1 of the present regulation are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

**² Section 21
Superior orders and prescription of law**

The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if a panel determines that justice so requires.

VI. DISPOSITIVE

VI. 1. After all the statement, the Judges constituting the Special Panel agree to sentence the proceeding and proven indictment and, consequently:

- a) As material author of crime of murder with premeditation, foreseen and punished by article 340 of the Indonesian Penal Code (KUHP), with reference to the article 8 of UNTAET Regulation 2000/15 to convict the accused MARCURIOUS JOSÉ de DEUS, alias Marcurious Malik/Marley sentenced to five (5) years imprisonment, deducted the preventive detention time he already suffered.
- b) With no costs the process consider the personal situation of the accused.

VI. 2. Settlement of the sanction.

As been referred the accused has been convicted with sanction of five (5) years imprisonment deducted the preventive detention already suffered, pursuant to the article 42.5 of UNTAET Regulation 2000/30 and article 10.3 of Regulation 2000/15.³

On the settlement of the sanction shall be taken into consideration the criteria established on articles 42° and 43° of UNTAET Regulation 2000/30 and also the determination on articles 15°, 27° and 33° of Indonesian Penal Code (KUHP) in the part where UNTAET regulation is omitted.

The accused has been continuously imprisoned since 13th of December 2000 up to date corresponding to one (1) year, four (4) months and five (5) days imprisonment.

Therefore the accused Marcurious José de Deus has to accomplish, to the order of the present proceedings, *the total of three (3) years, seven (7) months and twenty five (25) days imprisonment.*

In this manner and in respect to the settlement (calculation) of the sanction it has been done on the following terms:

- half of the sanction (2 years and 6 months) – 13 of June 2003.
- two thirds of the sanction (3 years and 4 months – 13 of April 2004.
- term of the sanction – 13 of December 2005.

The convict shall have the right for a conditional release order when has completed two thirds (2/3) of the term of imprisonment pursuant to the article 43.1. of UNTAET Regulation 2000/30(4), as long as he has a favorable report on his conduct in the prison and his release does not become a danger to public security and safety.

The conditional release shall be upon request by the convict or his Defense Counsel.

³ Section 42

Court Orders and Sentences

42.5 The Court shall discount from the term in prison the time the convict spent under pretrial detention in respect of the crime for which the convict has been convicted. Prison sentences shall be supervised and executed by a District Court in accordance with Section 13 of Regulation No 2000/11. The convict may present any claim to the Court in relation to the violation of his or her rights.

(4) Section 43

Conditional Release After Trial

43.1 Upon request by the convict or his or her legal representative, and after a hearing, a court may order the conditional release of a convict who has been sentenced to a term of imprisonment where:

- (a) two thirds of the term of imprisonment has been completed;
- (b) a favorable report on the conduct of the convict has been presented to the court by correctional authorities; and
- (c) the convict poses no danger to public security or safety.

VI. 3. Judgment Execution

The convicted Marcurious José de Deus shall be collected immediately to the Becora prison premises to accomplish his remaining punishment of *three (3) years seven (7) months and twenty five (25) days imprisonment.*

VI. 4. Notifications.

Notify the Public Prosecutor and the Defense Counsel of the present sentence, by issuing them copies.

Notify the convict by issuing copy of the decision translated into Indonesian language which translation will be requested to the translators.

Hand over copy of the sentence to Becora prison attached to the bench warrant.

Dili East Timor
18 of April 2002.

Judge Antero Luís (Presiding Judge and Rapporteur)

Judge Benfeito Mosso Ramos (Judge Member)

Judge António Hélder do Carmo (Judge Member)

Original in portuguese