



PREMIJ DOK. 531

Number: X-KRŽ-06/217
Sarajevo, 31 August 2007

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting on the Appellate Division Panel consisting of Judge Azra Miletić as the Presiding Judge and Judges Finn Lynghjem and José Ricardo Juan de Prada Solaesa as the Panel members, with the participation of the Legal Advisor Melika Bušailić as a minutes-taker, in the criminal case against the accused Radmilo Vuković for the criminal offense of Crimes against Civilians in violation of Article 173 (1) c) and e) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), deciding upon the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the BiH Prosecutor's Office) number KT-RZ-131/06 dated 30 May 2007, and the accused Radmilo Vuković and his defense counsel, attorney Milenko Radović, against the Verdict of the Court of Bosnia and Herzegovina, number X-KR-06/217 dated 16 April 2007, at the session held in the presence of the accused, his defense counsel, lawyer Bajro Čilić, and Behaija Krmjić, Prosecutor of the BiH Prosecutor's Office, on 31 August 2007 rendered the following:

DECISION

Upholding the appeals filed respectively by the accused Radmilo Vuković and his defense counsel, thus revoking the Verdict of the Court of Bosnia and Herzegovina number X-KR-06/217 dated 16 April 2007 and scheduling a trial before the panel of the Appellate Division of Section I for War Crimes of the Court of Bosnia and Herzegovina.

REASONING

By the Verdict of the Court of Bosnia and Herzegovina, number X-KR-06/217 dated 16 April 2007, the accused Radmilo Vuković was found guilty of the criminal offense of War Crimes against Civilians under Article 173 (1) c) and e) of the CC of BiH committed by the actions described in the operative part of the first-instance Verdict, and applying the provisions referred to in Article 42, 48, 49 and 50 of the Criminal Procedure Code of Bosnia and Herzegovina, he was sentenced to 5 /five/ years and 6 /six/ months of imprisonment.

Pursuant to Article 198 (2) of the CPC of BiH, the injured party, protected witness A, was referred to take civil action with her claim under civil procedure law, while by applying Article 188 (4) of the CPC of BiH the accused was relieved of the duty to reimburse the costs of the criminal proceedings.

The Prosecutor of the BiH Prosecutor's Office, the accused and his defense counsel, lawyer Milenko Radović, filed timely appeals from the above mentioned Verdict.

Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88;

[REDACTED]

The BiH Prosecutor's Office filed the appeal for the incorrectly established state of the facts referred to in Article 299 (1) of the CPC BiH and the decision as to the criminal sanction referred to in Article 300 (1) of the CPC BiH. The accused filed the appeal for essential violations of the criminal procedure provisions, a violation of the criminal code, and the state of the facts being erroneously or incompletely established, while the defense counsel filed the appeal for essential violations of the criminal procedure provisions, a violation of the criminal code, the state of the facts being erroneously or incompletely established and the decision as to the criminal sanction.

The BiH Prosecutor's Office submitted a response to the appeals filed by the accused and the defense counsel, maintaining that the defense arguments were ill-founded, and proposed that the Appellate Panel refuse the defense appeal, grant the appeal filed by the BiH Prosecutor's Office and act upon the proposal given in the appeal.

At the session of the Appellate Panel, held on 31 August 2007, pursuant to Article 304 of the CPC of BiH, both parties gave brief presentations of their appeals and responses to the appeals and fully supported previously presented arguments and proposals.

Having reviewed the first-instance Verdict insofar as contested by the appeals, the Appellate Panel rendered the Decision as stated in the operative part for the following reasons:

There are grounds for the arguments of the defense counsel's appeal indicating that the first-instance court did not present the reasons due to which it considered certain facts established, and that the evaluation of the evidence in the contested Verdict is incomplete and erroneous. In other words, in the reasoning of the contested Verdict the first-instance court was bound, pursuant to Article 290 (7) of the CPC of BiH, to state specifically and completely which facts and on what grounds the Court found to be proven or unproven, furnishing specifically an assessment of the credibility of contradictory evidence and the reasons guiding the Court in ruling on legal matters and especially in ascertaining whether the criminal offense was committed and whether the accused was criminally responsible.

In the opinion of the Appellate Panel, the first-instance panel in the concrete case failed to evaluate the presented evidence in the manner stipulated by Article 281 (2) of the CPC of BiH, particularly the testimonies of witnesses, both by correlating them mutually and in the context of the nature of the criminal offense about whose elements they testified, as well as the lapse of time, the circumstances and the manner of perpetration. The panel also failed to give a valid explanation as to why it accepted certain parts of the testimonies of the witnesses heard at the main trial as credible, while it did not accept the other parts as credible, which was the case of the testimony provided by the witness A, as justifiably indicated in the defense counsel's appeal, which was an essential violation of the criminal procedure provisions set forth in Article 297 (1) k) of the CPC of BiH. The Appellate Panel finds that there is also a doubt as to the correctness of the state of facts established by the first-instance Verdict.

A doubt as to the correctness of the state of facts established by the first-instance Verdict also arises from the fact that the injured party, witness A, gave statements on several occasions as follows: on 13 April 1994 to an authorized official of the Security Services Center in Sarajevo, which is a statement that is not completely corresponding to her testimony at the main trial. The first-instance court failed to evaluate the credibility of the contradictory evidence. As correctly stated in the defense counsel's appeal, also contradictory

Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88;

conclusion of the first-instance panel on the credibility of the testimonies of the witness A and B - the witnesses that the first-instance court gave full credence to by stating that they are consistent and correspondent in their essential and important elements.

In other words, the Court did not give credence to the testimony of the witness A exactly in reference to the fact establishing the existence, as defined by the first-instance court, of the "extramarital relation" between the injured party, witness A, and the accused; however the same fact, in the context of the first-instance verdict, represents a decisive fact because based on the same fact Article 49 b) of the CC of BiH was applied indicating that the first-instance court failed to evaluate the credibility of contradictory evidence.

Furthermore, pursuant to Article 303 (2) of the CPC of BiH, the Appellate Panel has received a document issued by the Public Health Institution - Cantonal Hospital Gorazde, the content of which indicates that the injured party, witness A, following the delivery in February 1993 identified as the rapist another person and not the accused, and that the baby was possibly conceived earlier and not on 10 June 1992 when the injured party was allegedly raped by the accused. This information, which, true, does not possess the strength of evidence but which seriously challenges the correctness of the established state of the facts in this criminal matter, commits the court to verify the information concerned, which is only possible in the procedure stipulated by the rules on presentation of evidence at the main trial.

The Appellate Panel, considering certain shortcomings referring to essential violations of the criminal procedure provisions and the state of the facts being erroneously established, granted the appeals and pursuant to Article 315(1) b) of the CPC of BiH revoked the first-instance Verdict and ordered the holding of a trial before the panel of the Appellate Division of the Court of BiH.

The essential violations of the criminal procedure provisions will be eliminated in the retrial, while the presented evidence will be repeated and, if required, the other evidence will also be presented together with the evaluation of other arguments of the appeals.

Considering that the first-instance Verdict is revoked, the Appellate Panel did not engage in a detailed analysis of other arguments of the appeals, but pursuant to Article 316 of the CPC of BiH it restricted itself to a brief presentation of the reasons for revocation.

MINUTES-TAKER

Melika Bušatić

(signature omitted)

PRESIDING JUDGE

JUDGE

Azra Miletić

(signature omitted)

REMEDY: No appeal shall be allowed against this Decision.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serb/Croat.
Sarajevo, 29.02.2003

Certified Court Interpreter for English



Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88;

11