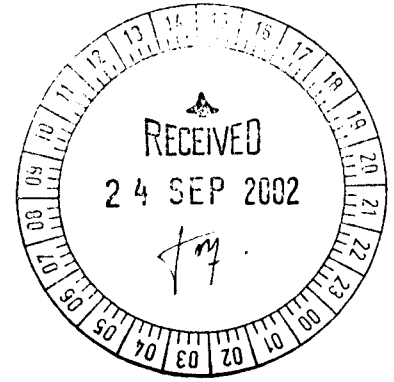


Case: 09/2002
Original

138 f



REPUBLICA DEMOCRATICA DE TIMOR LESTE

DISTRICT COURT OF DILI

SPECIAL PANEL FOR SERIOUS CRIMES

THE GENERAL PROSECUTOR

V

CARLOS SOARES aka Carman

Case No: ER-58-99-SC

09/2002

Presentation of an Indictment
Section 24 of UNTAET Regulation 2000/30 as amended by 2001/25

The General Prosecutor for Serious Crimes, charges: CARLOS SOARES aka Carman with MURDER, as set forth in this indictment,

I. Name and particulars of the accused:

Name: CARLO SOARES aka CARMAN
 Date of Birth/Age: 33 years old
 Place of Birth: Aitura Sub-village, Ermera District
 Nationality: East Timorese
 Address: Aitura sub-Village, Estado Village, Ermera sub-District, Ermera District, East Timor
 Location: Detained in Gleno Prison, Ermera since 15 July 2002.

II. Statement of Facts:

- a. In September 1999, the accused, **Carlos Soares (aka Carman)**, was a clandestine member of the Falentil (Armed Forces for the National Liberation of East Timor);
- b. On or about 19 September 1999, **Carlos Soares**, **Domingos Soares** and **Afonso Dos Santos** went to the sub-village of Aitura to observe and assess the situation in that village;
- c. **Carlos Soares**, **Domingos Soares** and **Afonso Dos Santos** were walking to the sub-village of Aitura when they heard a voice calling them. They turned around and recognized **Graciano Mau Mario** (the victim). **Graciano Mau Mario** eventually reached the group. The four men then proceeded towards the sub-village of Aitura divided into two groups. **Domingos Soares** and **Afonso Dos Santos** were walking together and **Carlos Soares** and **Graciano Mau Mario** were following closely behind;
- d. **Carlos Soares** was carrying a metal spear;
- e. While walking, **Afonso Dos Santos** heard a voice behind him. There after, the victim **Graciano Mau Mario** ran past him holding his belly and uttering the words: "I am dying now";
- f. Meanwhile, the accused **Carlos Soares** who was still behind **Afonso Dos Santos** was holding his spear in his hands. His spear was full of blood;
- g. **Domingos Soares** and **Afonso Dos Santos** then left the scene of the incident and reported the event to the Zona secretary **Angelino Britis**;
- h. The accused **Carlos Soares** also left the scene of the crime, leaving the victim for dead;

- i. Afonso Assuncao Dos Santos, a security officer of Falintil heard the news of the stabbing of Graciano Mau Mario. He and his group went to the site where Graciano Mau Mario was attacked. Graciano Mau Mario was still alive;
- j. Graciano Mau Mario told Afonso Assuncao Dos Santos, he had been stabbed in the back with a spear by **Carlos Soares**;
- k. Graciano Mau Mario also told Margarida Bendita Lemos, he had been stabbed by the accused **Carlos Soares**;
- l. Afonso Assuncao Dos Santos decided to take the victim to the Falintil Base so he could receive medical treatment;
- m. While being carried to the Falintil Base Graciano Mau Mario died as a result of the injuries he had sustained, and
- n. Later that day, **Carlos Soares** confessed to Angelino Britis and Abilio Xilmenes having killed Graciano Mau Mario.

III. Criminal Responsibility

The accused is individually responsible for the crime charged in this indictment. Individual responsibility under Section 14.3 UNTAET Regulation 2000/15 arises if an accused:

“(a) commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;”

IV. Pursuant to the above the General Prosecutor for Serious Crimes charges:

Count 1: MURDER

By his acts or omissions, as described above, on or about 19 September 1999 near the Sub-village of Aitura, Sub-district Ermera, District of Ermera, **Carlos Soares aka Carman** is responsible for the murder of Graciano Mau Mario in violation of section 8 of UNTAET Regulation 2000/15 and article 340 of the Indonesian Penal Code.

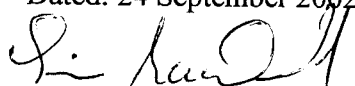
V. Victim and evidence for trial:

The victim is Graciano Mau Mario born 2 May 1974.
The evidence in support of this indictment is contained in Annex A, which forms part of this Indictment.

VI. Request for trial

The General Prosecutor hereby requests that the Special Panel for Serious Crimes of the Dili District Court assumes jurisdiction and tries this case expeditiously.

Dated: 24 September 2002



Eric MacDonald
Prosecutor for Serious Crimes

251
f

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

DISTRICT COURT OF DILI

THE GENERAL PROSECUTOR

V

CARLOS SOARES AKA CARMAN

Case No: 9/2002

Judge Florit

APPLICATION FOR LEAVE TO AMEND INDICTMENT PURSUANT TO SECTION 32.1 OF REGULATION 2000/30 AS AMENDED BY REGULATION 2001/25

The General Prosecutor requests that the Special Panel for Serious Crimes makes an order granting leave to amend the indictment filed against the accused person on 24 September 2002.

Background:

The accused person, Carlos Soares aka Carman, was arrested on 11 July 2002 and on 24 September 2002 the prosecution filed an indictment against the accused charging him with the murder of Graciano Mau Mario in violation of Section 8 of UNTAET Regulation 2000/15 as amended by Regulation 2001/25 and Article 340 of the Indonesian Penal Code (KUHP). The accused was conditionally released on 18 October 2002 awaiting his trial.

In her motion to dismiss the indictment, dated 17 July 2003, the defence argued that the mental requirement (*mens rea*) for murder under Article 340 had not been satisfied in this case ie: it had not been shown that the accused committed the act with 1) deliberate intent and 2) premeditation.

The defence also argued that the Special Panel did not have jurisdiction under Section 1.3 and 8 of Regulation 2000/15 to hear the case on a homicide charge other than Article 340 of the KUHP eg: Article 338 of the KUHP.

In its decision dated 14 August 2003, the court rejected the defence's motion to have the indictment dismissed and held that the Special Panel did have jurisdiction to hear cases charged under Article 338 of the KUHP.

Amendments sought:

- i. In Part IV, Count 1: Murder, delete the following: "By his acts or omissions, as described above, on or about 19 September 1999 near the Sub-village of Aitura, Sub-district Ermera, District of Ermera, **Carlos Soares aka Carman** is responsible for the murder of Graciano Mau Mario in violation of section 8 of UNTAET Regulation 2000/15 and **article 340** of the Indonesian Penal Code."

- ii. In Part IV, Count 1: Murder, insert the following: "By his acts or omissions, as described above, on or about 19 September 1999 near the Sub-village of Aitura, Sub-district Ermera, District of Ermera, **Carlos Soares aka Carman** is responsible for the murder of Graciano Mau Mario in violation of section 8 of UNTAET Regulation 2000/15 and **article 338** of the Indonesian Penal Code."

Grounds for the request:

The reasons for the proposed amendments are as follows:

- a. to ensure that the statements of facts are in tandem with the charges;
- b. to ensure that the statements of fact support the charges contained in the indictment;
- c. to comply with the requirements of Section 24.1(c) of Regulation 2000/30 by providing a concise statement of facts upon which the accusation is based; and
- d. to clarify the participation of the accused person in the crimes charged in the indictment.
- e. to comply with the decision rendered by the Special Panel on 14 August 2003.
- f. Further, the amendments sought are not prejudicial to the accused.

Orders sought:

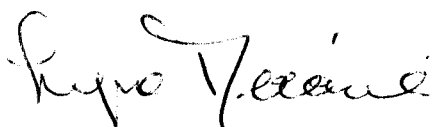
The General Prosecutor requests that the Special Panel for Serious Crimes grants an order for:

- 1. leave to amend the indictment in the terms described above; and

293
f

- upon granting leave to amend the indictment , to deem the indictment amended in the terms described above and to deem the amended indictment filed herewith to have been duly filed.

Dated: 3/10/03



Lyne Decarie
Prosecutor for Serious Crimes

| | Date | Received By |
|---------------------|------|-------------|
| Filed in Dili Court | | |
| Served on Defense | | |
| | | |



25A
f

República Democrática de Timor-Leste
TRIBUNAL DISTRITAL DE DILI
CRIMES GRAVES

DISTRICT COURT OF DILI

SPECIAL PANEL for SERIOUS CRIMES

Public Hearing Record

Case No. 9/2002 - *The Public Prosecutor Vs. Carlos Soares aka Carman*

Hearing: Trial

Date: 6th October, 2003

Place: Court of Appeal Building – Court Room

Judges: Francesco Florit (**PJ FF**), Presiding
Dora De Moraes (**J DM**), and Antonio Helder Viana do Carmo

Public Prosecutor: Lyne Décarie (**PP LD**)

Defense Counsel: Maria Rocheteau (**DC MR**)

Interpreter: Lurdes Pereira (**L**)

Transcriber: Elizabeth Muigai

Witnesses:

TIME: 3:15 P.M.

255
7

PJ FF: Good afternoon.

PP LD: Your Honour, before the Court starts the trial, I would like to introduce myself. My name is Lyne Décarie.

PJ FF: Pleasure, and where are you from?

PP LD: Canada.

PJ FF: Which part?

PP LD: Montreal.

PJ FF: When did you arrive?

PP LD: On the 4th of August and was sworn in two weeks ago. This is my first appearance.

PJ FF: So, welcome! We can now declare the trial open in the case No. 9/2002 – *The Public Prosecutor Versus Carlos Soares aka Carman*.

I will appoint myself Judge Rapporteur and we can briefly go through the formalities of Section 30 and I am referring to the knowledge of the charges by the accused person. This question has already been asked to the accused during the Preliminary Hearing so I will simply repeat whether he has read and understood the charges against him.

C: I understood.

PJ FF: And of course you have the same Defense Counsel since the early stages. There is no doubt that your right to Counsel has been respected.

I have to remind you that you have the right to remain silent – you do not have to say anything but if you want to say anything, of course you have this right. Before starting with the case of the Public Prosecutor, I will ask the Defense Counsel and the accused if they have taken into consideration the possibility of guilty plea or they have no intention for this.

DC MR: Thank you Your Honour. No, we have no intention to.

PJ FF: Any preliminary question from the Public Prosecutor?

PP LD: Yes Your Honour, thank you, I do have one. After the decision at the Preliminary Hearing on 14th August 2003 so that the charge will be following this decision, I have an application for leave to amend the indictment pursuant to Section 32.1. Following the decision of the Special Panels made on 14th August, 2003, the charge should be according to Article 338 of the Indonesian Penal Code instead of 340 in accordance with the decision of the Special Panels.

PJ FF: Do you want to say something Ms. Rocheteau.

DC MR: Your Honour, may be for the Prosecutor to give me a copy but for us it does not matter whether this charge is 338 or 340. For us, we don't have any objection since it is in favour of our client and in the previous motion we did not argue about the charge but about the power that the Public Prosecutor's office has. It does not mean that we accept the charge. If the Prosecutor wants to amend the charge, we have no objection.

PJ FF: So, the Court, on the request, allows the amendment of the indictment with reference to Section 338 of the Indonesian Penal Code instead of 340. Now, we can start with the first witness.

PP LD: The first witness will be Abilio Ximenes.

DC MR: Your Honour, the accused wants to give his statement.

PJ FF: Mr. Soares you want to give a statement?

C: Yes.

PJ FF: The Public Prosecutor, are there any witnesses here?

PP LD: No, Your Honour, they are all out.

PJ FF: Mr. Soares, what would you like to say?

C: For the Judges whom I respect, the Prosecution, because the accusation for me on the 17th of August, 1999.

PP LD: Can he please take the oath.

PJ FF: In the common law, yes but in civil law it is very, very rare that the accused has to take the oath. Please Mr. Soares continue.

C: At this moment, the responsible of the area told me to go – go to confirm the situation.