REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

TRIBUNAL DISTRITAL de DILI
SECÇÃO CRIMES GRAVES

Case No. 29/2003
Date: 19/05/2004
Original: English

Before:
Judge Oscar Gomes
Judge Antonio Helder Viera do Carmo
Judge Francesco Florit, presiding and rapporteur

Registrar: Joao Naro

Judgement of: 19/05/2004

The Prosecutor
V.
Florindo Morreira

JUDGEMENT

The Office of the Public Prosecutor:
Mr. Essa Faal
Mr. Per Halsbog

Counsel for the defendant
Ms. Radmila Dimitijevic

INTRODUCTION

The trial of Florindo Morreira- of unknown age, believed to reside in Atsabe sub-district, Ermera- before the Special Panel for the Trial of Serious Crimes in the District Court of Dili (hereinafter: the "Special Panel") started on the 17 March 2004 and ended today, the 13th May 2003, with the rendering of the decision.

After considering all the evidence presented during the trial and the written and oral statements from the defense and from the Office of the Public Prosecutor (hereinafter: the "Public Prosecutor"), the Special Panel renders its judgement

PROCEDURAL BACKGROUND

On 26 September 2003, the Public Prosecutor filed before the District Court of Dili a written indictment (in English) against the defendant charging him with two counts: murder and torture, both as crimes against humanity.

Copies of statements of several witnesses were attached to the indictment. Autopsy reports, sketches and pictures of the crime scene, of the burial sites and of the examination of the victims' bodies, as well as maps of the area and ancillary documents, were also attached.

The Court clerk provided notification of the receipt of the indictment to the defendant and to the parties pursuant to Sect. 26.1 and 26.2 of UNTAET Reg 2000/30 (as amended).

After the preliminary hearing, the trial started on the 17 March 2004. The trial continued with the testimonies of two (Prosecution) witnesses.

Interpreters for English, Portuguese and Tetum assisted every act before the Court, where needed.

FACTS OF THE CASE

The Public Prosecutor submitted that, in the context of the events that disrupted the country in 1999, the presence of militia in Hera involved a group called Aitarak, to which the defendant belonged.

According to the Prosecutor's version, the defendant participated in an action that caused the death of Martinho Vidal and Mantus de Araujo which took place on 31 August 1999 in Akanunu. Specifically, on that afternoon, the pair of victims were stopped at a militia checkpoint, were searched and, being found in possession of documentation showing their membership of pro-independence organizations, beaten and eventually stabbed to death. The Defendant allegedly contributed to the action both by beating the two victims with sticks and by stabbing Martinho Vidal with a samurai sword.

These allegations were divided into two charges against the defendant: one of murder and one of torture (as crimes against humanity).

The Public Prosecutor underlined that the acts of the defendant were undertaken as part of a widespread or systematic attack directed against the civilian population, and especially targeting those who were considered to be pro-independence, linked to or sympathetic to the independence cause for East Timor, with knowledge of the attack.

FINDINGS OF FACT

The Court heard two Prosecution witnesses. The Court found them entirely unconvincing. Their testimonies were contradictory within themselves and with each other. They were lacking in corroboration. They had no first- hand information about the alleged events and, it became clear during the course of their in-court testimony, that they had both relied on the declarations of a third party, a Mr. Gilherminho. This individual was purportedly present at the scene of the crime but is now dead.

The insufficiency of the evidence brought before the Court by the Prosecution was clear, even for the Prosecutor himself. Following the testimonies of these two witnesses, the Prosecutor submitted an oral motion to withdraw the indictment against the Defendant. There is, in the Court's opinion, no need to consider further the Defence's line of argumentation that the witnesses lacked credibility because of their personal motivations against the defendant.

LEGAL FINDINGS

After receiving the testimonies of two witnesses, it is clear that the Prosecution's case could not lead to a conviction (even if uncontested by the Defence). As mentioned above, the Prosecutor moved to withdraw the indictment.

While, as said before, no problem is raised, to state, in keeping with the view of the Parties, that there is no sufficient evidence upon which a Court could ground a decision of conviction, the Court thinks that the withdrawal of the indictment is not the proper way to conclude the case.

Indeed, after the filing of the indictment, the Prosecutor, in most jurisdictions, no longer has the excusive control of the charges against the defendant and, in general, of the trial.

This framework becomes crucial when the decision to prematurely end a trial is taken in the middle of the trial itself, after some witnesses have been heard. Indeed, when the examination of some witnesses has turned out to be unsatisfactory for the Prosecutor, a purely procedural solution, like the withdrawal of the indictment, would leave the door open (and the accused exposed) to further investigation by the Prosecutor and to a fresh inquiry, possibly resulting in a new indictment in the case of the acquisition of new evidentiary material. This would be in violation of the principle of the double jeopardy that finds application in the transitional rules of criminal procedure with the traditional formula of *ne bis in idem* (section 4 UNTAET Regulation 2000/30). If the Prosecutor were left free to end

a case that she or he thinks is doomed, at her or his own discretion, simply by withdrawing the indictment before the Court makes a decision on the merit, there is no doubt the guarantee against double jeopardy would be weakened.

If, in the opposite case and as this Court in inclined to uphold, a decision is made on the merits of the case, the trial is brought to its natural end (the final decision) and, in case of acquittal, the legal mechanism to prevent double jeopardy is maintained.

For these reasons, the accused must be acquitted.

CONCLUSION

Having considered the evidence and the arguments of the parties, the Special Panel for Serious Crimes issues the following decision:

Count 1) The defendant is acquitted of the charge of crimes against humanity for the murder of Manto de Araujo and Martinho Vidal, committed on 31st August 1999, in Akanunu, District of Dili, as a part of a widespread or systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (a) UNTAET Reg.2000/15;

Count 2) The defendant is acquitted of the charge of crimes against humanity for the torture of Manto de Araujo and Martinho Vidal, committed on 31st August 1999, in Akanunu, District of Dili, as a part of a widespread or systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (f) UNTAET Reg.2000/15.

The parties have the right to file a notice of appeal within 10 from the day of the notification to them of the final written decision and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This Decision was rendered and delivered on the 19 May 2004 in the building of the Court of Appeal of Dili by

Judge Oscar Gomes

Judge Antonio Helder Viera do Carmo

Judge Francesco Florit, presiding and rapporteur

(Done in English)