

Case Status Yayasan Sudrajat

Updated 11 September 2002

I. SUMMARY OF CASE

Accused: Yayasan Sudrajat

Summary of Case:

Sudrajat as the commander of Tribuana VIII military intelligence unit (Komandan Satuan Tugas Intelijen Tribuana VIII) was indicted on 4 July 2002. He faces two primary charges and two subsidiary charges as follows:

1. First primary charge of murder as a crime against humanity in violation of Art 9(a) using Art 42(1) Military Command Responsibility.
2. Second primary charge of assault/persecution as a crime against humanity in violation of Art 9(h) using Art 42(1) Military Command Responsibility.
3. First subsidiary charge of aiding the commission of murder as a crime against humanity (Art 9(a)) in violation of Art 41.
4. Second subsidiary charge of aiding the commission of assault/persecution as a crime against humanity (Art 9(h)) in violation of Art 41.

Factual allegations

a. First Primary Charge: Murder as a Crime Against Humanity

This charge relates to the attack on the Liquisa Church.

On 3 April 1999 a pro-integration group made a death threat directed towards a pro-integration group in the village of Dato in the Sub district of Liquisa. The security and law and order situation within the community was becoming increasingly tense. On the 4 April 1999 a pro-independence mob led by Jacinto Da Costa Pereira burnt houses owned by pro-integrationists because a Besi Merah Putih (BMP) mob from Pukelara and Maubara burnt the house of Felis Berto Dos Santos and killed his son, Elidio, who was a member of the pro-independence troops.

On the fifth of April approximately 2000 people from the pro-independence camp took refuge at the residence of Pastor Rafael Dos Santos situated in the church complex at Liquisa because they heard information from Pastor Henry of Maubara that a pro-integration mob was coming to attack Liquisa. Based on the information of pastor Henry

the pro-independence group led by Jacinta Da Costa Pereira went to the border of Maubara Liquisa to deal with the planned attack by pro-integrationists but when they met at Batu Blete, BMP were assisted by the TNI and POLRI who shot at them – killing two and wounding seven, among them Jose and Sirilio Dos Santos. Then at 4.30 Western Indonesian time a BMP mob together with TNI troops and members of the police gathered at the Liquisa District Military Headquarters (MAKODIM Liquisa).

On 6 April 1999, at around 6.00 Western Indonesian Time members of Brimob (the mobile brigade) arrived in four trucks from the direction of Maliana to the Liquisa MAKODIM. At around 7.00 Western Indonesian Time approximately 300 pro-integrationists from BMP led by Manuel Sousa gathered and surrounded the residence of Pastor Rafael. They came armed with rakitan guns, machetes, swords, knives and bows and arrows and shouted that the pro-independence crowds should leave the church complex.

The accused was in Liquisa, having received an order from the Military Commander of East Timor to accompany the Deputy Military Commander of East Timor (WADANREM) Modjiono to take direct preventative action in the situation in Liquisa. The order was based on information which was received from the military commander of Liquisa (DANDIM 1638 Liquisa), Asep Kuswani, which was to the effect that the situation in the Liquisa district was becoming increasingly tense between the two fighting factions, that is the pro-independence group and pro-integration group (BMP).

The accused was in Liquisa with three soldiers from the Tribuana VIII Intelligence Unit, namely Serda. Sofyan, Prada. Dionisius Bere and Serda. Edy, together with two regular TNI soldiers.

At around 8.00 Western Indonesian Time two members of BRIMOB named Damianus Dapa and Fransiscus Salamali came to Pastor Rafael Dos Santos and asked that he hand over Jacinto Da Costa Pereira and Gregorio Dos Santos but this was refused by Pastor Rafael because he was afraid they would be killed by the pro-integration group.

At around 11.30 Western Indonesian Time 5 POLRI led by Let. Pol. Jhon Rea came to Pastor Rafael to ask that Jacinto Da Costa Pereira be handed over. On that occasion Pastor Rafael put forward two conditions namely that Jacinto Da Costa Pereira and his colleagues be taken to the POLDA Dili and the BMP mob be pulled back from Liquisa. At that moment the pro-integration mob threatened the refugees by yelling: “Leave the complex or the second layer will come and if anyone is in the church at 12.00 we will attack it. The situation at that time was extremely frightening and tense because TNI troops from the Liquisa Kodim and members of Brimob/Polri from Polres Liquisa had joined with the pro-integration crowd/ BMP in surrounding the Liquisa Church complex.

The accused together with the Deputy Military Commander of East Timor, Mudjiono, held a meeting at the Liquisa Military Headquarters which was attended by the DANDIM, KAPOLRES, and BUPATI of the Liquisa district. At the meeting they heard about and discussed the report from KASSET SERSE POLRES Jhon Rea about his failed negotiations with Pastor Rafael. On the basis of the report, the accused coordinated with the DANDIM, KAPOLRES, and BUPATI of Liquisa with the result that they agreed to accept the two conditions put forward by Pastor Rafael and they directed the Bupati to

accept the handover of Jacinto Da Costa Pereira and his colleagues. However they were afraid they would be killed, so based on deliberations with Mudjiono they directed Let Pol. Jhon Rea to return to Pastor Rafael's residence. Just as he left, an explosion of fire arms was heard which was followed by a BMP attack. When that occurred, the accused immediately exited the District Military Headquarters and went to the scene of the attack. The attack was being carried out by the BMP supported by TNI/POLRI troops including 3 Tribuana VIII unit troops, namely Serda. Sofyan, Serda Edy, and Prada. Dionisius Bere. The attack resulted in the deaths of 22 people from the pro-independence group who had been sheltering in Pastor Rafael's residence inside the Liquisa Church complex. The deceased included the following people:

- Jacinto Da Costa Pereira
- Agustinho
- Joanico
- Abrao Dos Santos
- Augusto Mauzinho
- Ameko Dos Santos
- Narsizio
- Hermino Dos Santos
- Fernando Dos Santos
- Laurindo Pereira
- Mariki Dos Santos
- Manuel Lisboa
- Victor Da Costa
- Alberto Oliveira
- Amondio Cesar Dos Santos
- Cesar Dos Santos
- Augustinho Dos Santos
- Santiago
- Johny/ Mau Soko
- Two other unidentified bodies

b. Second Primary charge – Assault/persecution as a crime against humanity

The account of the build up to and the attack on the Liquisa Church is the same as the account set out above. It is pleaded that as a result of the attack at least 21 people were injured - namely:

- Jose Ramos
- Francisco Dos Santos
- Joao Pereira
- Abilio Dos Santos
- Jose Nunes Serrao
- Lucas Soares
- Mateus Panlero
- Ricardo Rodrigues Pereira
- Lakumau
- Januari
- Felis

- Joao Kuda
- Armando
- Antonio
- Luis
- Emilio
- Lucas Dos Santos
- Joao Dos Santos
- Sebastiao
- Ramirio
- Matius AlvesCorreia

c. First Subsidiary Charge – Aiding the commission of Murder as a Crime Against Humanity

The account of the build up to and the attack on the Liquisa Church is the same as the account set out above under the heading First Primary Charge.

d. Second Subsidiary Charge – Aiding the commission of an Assault/Persecution as a Crime Against Humanity

The account of the build up to and the attack on the Liquisa Church is the same as the account set out above under the headings First Primary Charge and Second Primary Charge.

Alleged basis of criminal responsibility

a. First Primary Charge: Murder as a Crime Against Humanity

As the commander of Tribuana VIII military intelligence unit, under the operation control of DANREM 164/Wira Dharma, and as part of the Danrem's (i.e. Suratman's) special staff, the accused's primary duties were as follows:

- a) to observe and find information about the situation in East Timor, particularly information related to current geographic, demographic, and social conditions, for the purpose of aiding the work of KOREM 164/Wira Dharma;
- b) assist the military sub districts (KODIMS) to efficiently carry out their territorial operations;
- c) assist in creating a situation conducive to peaceful reconciliation between the two fighting groups in order to make the popular consultation a success;

The accused job was to perform these tasks by gathering all the information collected by Tribuana VIII intelligence troops located in the various KODIMS, sorting that information and then reporting to the DANREM and also by providing technical supervision for DANREM activities by coordinating with KODIM commanders.

In carrying out his work Sudrajat, divided and placed Tribuana VIII personnel in every military sub district (KODIM).

The accused as the commander of Tribuana VIII intelligence unit knew, or given the situation, should have known that there was a widespread or systematic attack on civilians who had taken refuge in the Liquisa church complex which was being carried out by 3 members of his intelligence unit together with members of BMP and TNI and POLRI, whereby the three members of the accused's unit were at the scene at the time of the attack. The accused should have taken the necessary steps which were within his authority to prevent and stop this occurrence and to hand over the three troops, who had joined with the BMP and TNI/POLRI, to the appropriate authorities to be investigated, questioned and charged.

b. Second Primary Charge: Assault/persecution as a Crime Against Humanity

The alleged basis of criminal responsibility in relation to the second primary charge is the same as the alleged basis of criminal responsibility outlined in the first.

c. First Subsidiary Charge: Aiding in the commission of Murder as a Crime Against Humanity

It is alleged that the accused aided in the perpetration of the crime by deliberately providing the opportunity to the BMP and TNI/POLRI troops (including 3 members of his own intelligence unit). This opportunity was provided because the accused did not carry out his duties as he was required to as the commander of the Tribuana VIII military intelligence unit, namely, he did not create a situation which was conducive to reconciliation between the two fighting groups, i.e. the pro-independence group and the pro-integration group.

d. Second Subsidiary Charge: Aiding in the commission of an Assault/Persecution as a crime against Humanity

The basis of criminal responsibility for the second subsidiary charge is the same as for the first subsidiary charge.

Possible sentence if convicted

A person convicted under Art 42 (command responsibility) or Art 41 (attempting, conspiring or aiding in the commission of genocide or crimes against humanity) is liable to the same penalty that he or she would be liable to if he or she had personally and directly committed the crime. Therefore a conviction based on Art 9(a) for murder as a crime against humanity carries a penalty ranging from death to a maximum sentence of 25 years to a minimum sentence of 10 years. A conviction based on Art 9(h) for assault/persecution as a crime against humanity carries a maximum sentence of twenty (20) years and a minimum sentence of ten (10) years imprisonment.