

NATIONS UNIES



UNITED NATIONS

ETPA
East Timorese Public Administration
DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 06/2001
Date: 14/05/2002
Original: English

Before:

Judge Sylver Ntukamazina, Presiding
Judge Maria Natercia Gusmao Pereira
Judge Benfeito Mosso Ramos

Registrar: Joao Naro

Judgement of: 14 May 2002

THE PROSECUTOR
v.
AUGUSTO DOS SANTOS

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Charles Nsabimana

Counsel of the accused:

Mr. Siphosami Malunga

Ms. Lizete Quintao

INTRODUCTION

- 1 The trial of Augusto dos Santos (aged 20, single, born on the 5th August 1981 in Saguria, District of Aileu, East Timor) before the Special Panel for the Trial of Serious Crimes in the District Court of Dili (hereafter: the “Special Panel”), responsible for the handling of serious criminal offences, commenced on the 19th March 2002 and concluded today, the 14th May 2002 with the rendering of the decision.
- 2 After considering all the evidence presented during the trial, and the written and oral statements from the office of the Prosecutor General (hereafter: the “Public Prosecutor”) and also the defendant and the defense for the defendant, the Special Panel.

HEREBY RENDERS ITS JUDGEMENT.

A. THE SPECIAL PANEL

- 3 The Special Panels were established, within the District Court in Dili, pursuant to Section (hereafter “Sect.”) 10 of UNTAET Regulation (hereafter “U.R.”) no. 2000/11 as amended by U.R 2001/25 , in order to exercise jurisdiction with respect to the following serious criminal offences: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as specified in Sections 4 to 9 of U. R. 2000/15. With regard to the serious criminal offences of murder and sexual offences, the Panels shall have exclusive jurisdiction only insofar as the offence was committed in the period between 1 January 1999 and 25 October 1999, pursuant to Section 2.3 of U.R.2000/30.

B. PROCEDURAL BACKGROUND

- 4 On 21 February 2001, the Public Prosecutor presented before the Dili District Court a written indictment (in English version) with a charge of murder against Augusto dos Santos. Attached to the indictment were copies of the following documents: the Confession of guilt dated 20th November 2000, presented to the investigating judge for serious crimes at Dili District Court by Defense Counsel Alvaro Maria Freitas (in English and Bahasa Indonesian), the statements of the witnesses Mariano da Silva dated 16th September 2000 (in English) and 17th September 2000 (English and Tetum), Mateus do Santos dated 17th September 2000 (English and

Tetum), Flaviano Mausino dated 20th September 2000 (English and Tetum), and the digital photographs of grave.

- 5 The Court clerk provided notification of the receipt of the indictment to the accused and to his legal representative, pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.
- 6 On the 13th March 2001, the Public Prosecutor submitted to the Court the Bahasa Indonesian version of the indictment, what he repeated on the 19th April 2001.
- 7 Augusto dos Santos was arrested and detained on the 16th October 1999. His arrest was then confirmed and ordered by the Investigating Judge. The order of detention was renewed on the following dates: 11th December 1999, 10th December 1999, 12th January 2000, 15th February 2000, 25th March 2000, 16th April 2000, 16th May 2000, 14th June 2000, 15th July 2000, 14th August 2000, 12th September 2000, 27th September 2000, 13th October 2000. On the 6th March 2001, the Court decided to release the accused Augusto do Santos and to order, as substitute restrictive measures, that he reports once a day to Aileu Civpol. The Court also ordered to strictly prohibit the accused to talk with the witnesses.
- 8 The preliminary hearing commenced on the 11th April 2001 and finished on the 28th January 2002.
- 9 On the 11th April 2001, the Defense requested to have some clarifications of the indictment, to be given 2 weeks to prepare the case, and to file written motions relating to the defects in the indictment. The preliminary hearing was postponed to 9 May 2001 for the Defence to prepare the case. The defence filed the response to the indictment, including the preliminary motions on 19th April 2001.
- 10 On 23 April 2001, during the preliminary hearing, the prosecution responded orally and submitted also written response to the preliminary motion filled by the defense. The Court took the case to decide in chamber on the motion raised by the defense.
- 11 The Court found that the charge in the indictment couldn't be deemed accurate pursuant to Section 24 U.R 2000/30 and decided on the 28th May 2001 to invite the Public Prosecutor to amend the indictment. The prosecutor was given until the 1st June 2001 to submit the amended indictment and the Defence was asked to file the response to the amended

indictment before the 7th June 2001. The date of the next preliminary hearing was set on 13 June 2001. The Public Prosecutor filed the amended indictment on 30 May 2001.

- 12 On the 13th June 2001, the accused did not show up. The preliminary hearing was postponed to 11 July 2001 in order to summon the accused. On 10th July 2001, considering that the special panel for serious crimes was dealing for three weeks with the trial hearing of another case (Los Palos case), decided to adjourn the trial hearing of Augusto do Santos case to 18 September 2001. One month later, on 13 August 2001, the preliminary hearing of the case was adjourned sine die, because of the continuation of the trial of Los Palos case.
- 13 On 21 November 2001, the preliminary hearing was scheduled on the 18th January 2002, but on that date, one of the judges involved in the case was not available and the hearing was again postponed to 28th January 2002.
- 14 On the 28th January 2002, the Court checked if the defendant had read the indictment or if the indictment had been read to him, and asked if he understood the nature of the charges, his right to be represented by a legal advisor, his right to remain silent, to plead guilty or not guilty to the charge, as provided for in Sect. 30.4 U.R. 30/2000. The Defendant made a statement that he had read the indictment and understood the charges against him. The Court then accepted the list of evidence submitted by the Public Prosecutor. The Defence did not submit any list of evidence.
- 15 The Defendant did not want to make any statement concerning the charge against him.
- 16 The ordinary trial was scheduled on the 19th March 2002.
- 17 The trial was conducted over two sessions (19 March and 3 April 2002). On the 19th March 2002, the Public Prosecutor read out the indictment in an open hearing, the Defendant made a statement and pleaded guilty to the charge of murder as stipulated in Section 8 of UNTAET Regulation 2000/15 and Article 340 of Penal code of Indonesia. The hearing was postponed on the 3rd April 2002 for the Court to verify the validity of the guilty plea.
- 18 After verifying the validity of his guilty plea, particularly in light of Section 29A of UNTAET regulation 30/2000, the Special Panel entered a plea of guilty against the accused on the 3rd April 2002, and convicted him

on the charge of the indictment. On the same day, the Public Prosecutor and the Public Defender submitted orally their respective final statements. Then the court gave an opportunity to the Defendant to make any additional statement. He told the Court that he had nothing else to say.

- 19 Furthermore, the Court decided to set the date of sentencing hearing for 17th April 2002. But considering that on the 17th April 2002, one of the judges involved in the case was sick, decided to postpone the hearing of the sentence on the 30th April 2002.
- 20 On the 30th April 2002, the Court read out to the public the disposition of the decision and adjourned the hearing to the 14th May 2002 to release the written judgment.
- 21 Interpreters into English, Bahasa Indonesian and Tetum languages assisted every act before the Court.

C. THE GUILTY PLEA

- 22 As stated earlier, the accused pleaded guilty to the charge set forth in the indictment against him. In accordance with section 29A.1, the Special Panel sought to verify the validity of guilty plea. To this end, the Panel asked the accused:
 - a) If he understood the nature and the consequences of the admission of guilt;
 - b) If his guilty plea was voluntarily made, if he did it freely and knowingly without pressure, or promises;
 - c) If his guilty plea was unequivocal, i.e. if he was aware that the said plea could not be refuted by any line of defense.
- 23 The accused replied in the affirmative to all these questions. The Special panel accepted the plea of guilty of the accused. Furthermore, it found that all the essential facts required to prove the crime to which the admission of guilty relates have been established as required by Section 29A.2 of regulation 2000/30. The accused Augusto dos Santos was convicted of the murder of Antonio Ribeiro contrary to Section 8 of UNTAET Regulation No. 2000/15 and Article 340 of penal code of Indonesia.

D. APPLICABLE LAW

24 As specified in UNTAET Regulation No.1/1999, U.R.No.11/2000 as amended by U.R.2001/25 and U.R.No. 15/2000, the Special Panel for Serious Crimes shall apply:

- UNTAET Regulations and directives;
- Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;
- Pursuant to Sect. 3 UNTAET Regulation No.1/1999, the law applied in East Timor prior to 25.10.1999, until replaced by UNTAET Regulations or subsequent legislation, insofar as they do not conflict with the internationally recognized human rights standards, the fulfilment of the mandate given to UNTAET under the United Nations Security Council Resolution 1272 (1999), or UNTAET Regulations or directives.

24 Therefore, the Court will apply U.R.2000/15, U.R.2000/11, the Penal Code of Indonesia (hereafter PCI) and U.R.2000/30 on Transitional Rules of Criminal Procedure as amended by U.R.2001/25.

E. FACTS OF THE CASE

25 The Public Prosecutor submitted that in 1999, the District of Aileu was divided into four sub-districts: Aileu City, Liquidoe, Remixio and Laurara. On 30th August 1999 the people of East Timor voted in a referendum for independence from the Republic of Indonesia. Following the vote, there were attacks directed against the civilian population in, among other areas, the sub-district of Aileu City. On or about the 4th of September 1999, AHI¹ militia members and others went to the village of Menarboe, in the sub-district of Aileu City. They attacked the village, burning houses and displacing the civilian population. On the same day, the commander of the AHI militia, Horacio de Araujo ordered members of the militia, including the accused Augusto dos Santos, to attack a man known as Antonio Ribeiro. Augusto dos Santos and three others, murdered Antonio Ribeiro by beating him with pieces of wood and guns.

¹ Aileu Hidup dengan Indonesia/Integrasi

- 26 In his final statement, the Public Prosecutor requested the Court to sentence Augusto dos Santos according to the law.
- 27 The accused admitted that he is guilty because when Antonio was killed, he was together with 3 of his friends and they all started to beat him on an order. He said, *“Because at that time the situation was very scared and we were ordered by our superiors and we the small people were afraid. And until the present time I feel, after all those events and until today, I still remember what we did at that time. I feel very sad about the problems and the events that we were ordered to carry out”*. He clearly agreed that himself and 3 other persons murdered Antonio Ribeiro by beating him with pieces of wood and guns on or about 4 September 1999, because they were ordered by their superior. He clarified that: *“On that day Horacio took us by car to a village, after coming back from the village Horacio ordered us to get out of the car and beat that person. (...) We didn’t have a plan to kill him.*
- 28 The accused also explained that his superior did not force him, but only ordered him, together with 3 of his friends, to beat and to kill Antonio Ribeiro. He said: *” I was ordered by my commander together with 3 of my friends to beat or to kill Mr Antonio Ribeiro. Not planned, not on my own free will”*
- 29 The accused admitted that he carried out the order and killed Antonio Ribeiro. He described how he beat the accused: *“ I hit him twice, he fell to the ground and my three other friends beat him with wood and homemade weapons until he died.*
- 30 The accused then asked the Court to give consideration to his confession: *“My confession is as I said before that I am guilty and I am being honest and now I request Your Honour to give consideration to my confession”*.
- 31 The defense underlined that the admission of guilty made by the accused is made as it has been discussed between him and his client. For him, the accused confessed and admitted having committed a murder and having wanted to kill a victim because he repeatedly said that he did not have a plan. For the Defense the question of a plan is an academic question. A competent counsel represents the accused. The definition of the charge is clear and the accused has admitted it. He is represented and he is well advised.
- 32 The accused admitted also, with respect to the killing, the evidence and the statements of witnesses Flaviano Mausino and Matteus dos Santos

submitted by the Prosecution. The Defense underlined that the part of the reason for the confession was so that it is not necessary to call the witnesses in relation to the killings. For the accused, their statements are in accordance with what he said that they were ordered by Horacio to beat the victim, and that they beat him until he was dead and the corpse was left on the road.

F. CONVICTION.

52. In light of the admissions of all the evidence made by the accused in addition of his plea of guilty, the Special Panel, on 03 April 2002, accepted his plea and convicted him of the murder of Antonio Ribeiro contrary to Sections 340 of the Indonesian penal code and Section 8 of UNTAET Regulation 2000/15.

G. SENTENCING

1) Facts related to the sentence.

53. Pursuant to these findings of guilt, the Special Panel will proceed to sentence Augusto dos Santos, in order to determine the appropriate penalty.
54. According to the applicable law, in particular Art. 340 of PCI, the penalties that the Special Panel could impose on a person convicted of murder are capital punishment, life imprisonment or a maximum of 20 years of detention. U.R. # 1999/1, Sect. 3.3, excludes capital punishment. Finally, U.R. # 15/2000, Sect. 10, excludes life imprisonment by providing that it has to be for a specified numbers of years, which may not exceed a maximum of 25 years.
55. The Public Prosecutor asked for the highness of the punishment. He urges the Court to take into consideration the fact that the accused, a young man, murdered an old man. He asked the Court to consider also the means used to murder the victim. He underlined that the accused beat Antonio Riberio to death, and when he didn't die, he took a sharp piece of wood and hit him in the ears. The Prosecutor advanced also that, instead of coercive circumstances, *"not every young man joined criminal activities. Most young men did not participate. So it was his [the accused] choice to participate"*.

56. The Defense underlined the following factors in mitigation:

- a. The fact that the accused has admitted guilt and been honest. For the defence, it is rare; there are not many cases, in which the accused has admitted guilt. Many accused persons sometimes put the Court and the prosecutor through the troubles of a trial, even if the accused is subsequently found guilty. The defense said: *“Here is a man, a boy, who has decided to come clean and clear his conscience and not to waste anyone’s time. The Court must take that into account and encourage others who are aware of their own guilt to come forward and admit it.”*
- b. The accused is remorseful, by saying in the Court that he was sorry: *‘I did not know that man. He did no wrong to me. I am sorry.’* For the defense, the accused didn’t want the Court to go to the trouble of proving something that his conscience wants to release. The accused said in the Court that he is apologizing for killing a man, he is apologetic to the family.
- c. The circumstances in which the offence was committed. For the defense, the accused was unwilling to commit the offence. It was not his intention. A superior ordered him, but did not force him. The defense said: *“He is happy enough to say that he was not forced but ordered. He did not himself formulate the intent. He was unwilling to commit the offence. This must be taken into account. He did not wake up to say that today I am going to kill a person. He was unwilling, but he carried out the order”*.
- d. The obedience to superior order to be taken into account. The defense advanced that the accused person, in committing the offence, was carrying out superior orders: *“The accused person pointed out that he was afraid because Horacio was a commander. He did not know why Horacio gave the orders. Horacio was his superior. Section 21 of U.R. 2000/15 provides that a superior order is not a defence but can be taken into account in mitigation when the interests of justice require. We submit that the interests of justice require it”*.
- e. The fact that the accused is a young man. The Defense strongly requested the Court, in sentencing the Accused, to take into account that he was 18 years old when the crime was committed. He concluded that the accused was still a juvenile and required that a Court take into account the juvenile status of a defender in

procedures and in punishment. He stated that the term of imprisonment might be appropriate for an adult but not for a juvenile and suggested the Court to consider alternative methods of punishment. For the defense, the age of the accused is important for two reasons, (1) *for assessing the level of appreciation of his actions*, (2) *in deciding how the Court should punish someone so young who still has his whole life ahead for this one serious and unfortunate mistake*.

- f. The coercive environment in which the crimes were committed. The defense submitted that " *The Accused spoke to the Court very honestly. He gave a detailed account of the situation in Alieu. He joined the militia because they [Militia groups] were looking for youths, young people. He had to swear a blood oath. They gave them something to drink. What pressure does it put on those it affects? Some joined for money and rice. Some because if they didn't join they might have been killed.* For the defense, the coercive environment is a crucial factor for the Accused in committing the offence.
- g. The fact that the Accused person has co-operated with the police and the investigators. He has not wasted anybody's time. The indictment did not mention the correct village. The Accused could have denied that the offence happened in this place. However, he corrected this and stated where the offence happened. The defense underlined also that the accused continued to cooperate with the Court after he was released. "*After being released he went back to his village where the crime was committed and continued to come to the Court and co-operate. He is here today to hear the sentence. He knows there is a possibility he might be sent to prison. He brought himself from liberty to hear his sentence today*".
- h. The family background of the accused to be taken into account. The Defence asked the Court to take into account that both the parents of the accused are alive, as well as his brothers and sisters. He has a family to go back to. He is not an outward character that cannot integrate into society. There is a need to restore him to his normal life as soon as possible for his rehabilitation. "*He is the youngest in the family. It is important that he be given an opportunity to be with his own family. Since being released on bail, he has re-integrated. He has the backing of his village. He has been living in peace with his fellow villagers. Not that they*

didn't know what he did. He has admitted. He has not done anything wrong before during Indonesian times. This is his first and worst mistake. We must give him a chance".

- i. The accused contribution to the crime. In assessing the sentence, the defense asked the Court to look at the participation of the accused in the offence. The accused was involved in the case and hit the victim only twice.
- j. Finally, the defense suggest that the accused be given a penalty of 2 years, suspended for 1 year on the condition that he does not commit any further offences in that time.

57. The Special Panel has taken into account the following:

58. Aggravating circumstances:

59. Before the victim Antonio Ribeiro was killed he was beaten, wounded and tortured in a sadistic and inhumane way, a situation that the Defendant could have avoided. On the contrary, the Defendant acted with his three friends in carrying out a sadistic murder. At that time, he should have felt sorry to kill the victim, who was a defenseless old man.

60. Mitigating circumstances:

- a. It is important to recall that the accused pleaded guilty to the charge against him. As the Court established, his guilty plea was made voluntarily and was unequivocal. Augusto do Santos clearly understood the nature of the charge against him and its consequences. The Court agrees with the Defense that a person, who is honest and quick to admit guilt, coming with an open heart and an open mind, has to be treated consequently.
- b. Augusto dos Santos cooperation with the investigators was substantial. He freely admitted the participation in the killing of Antonio Ribeiro. He always acted in good faith during the proceedings. The accused has aided in the administration of justice by cooperating and providing full disclosure in the investigations of the crimes that occurred.

- c. Augusto dos Santos acted pursuant to an order of a superior. All his actions were taken under the authority of Horacio. The defendant was ordered to beat and kill Antonio Ribeiro and carried out that order. Therefore the Special Panel deems that this specific circumstance is provided for in Section 21 U.R. 2000/15 and can be applied in this case.
- d. Augusto do Santos, prior to the commission of the crime for which he has been convicted, lived in a very coercive environment. There were pressure from militia and ceremonies organized for young men to join criminal activities. As the Defence stated, the coercive environment has been a factor for the accused in committing the crime, although as underlined by the prosecution, there are some who refused to join criminal activities. The fact that some joined while others were able to resist, does not mean that there was no coercive environment.
- e. Augusto dos Santos expressed remorse for the crime that occurred. He asked for forgiveness.
- f. The Special Panel disagrees with the Defense saying that at the date of the commission of the offence on 04/09/1999, the accused was still a minor, since he was already 18 years old. Pursuant to Section 45.1 UNTAET Regulation 2000/30, a minor is a person under 18 years of age. However, the Special Panel still bears in mind the age of the accused. The fact that he is only twenty years old and that he has been very cooperative with the investigators of the crime, in addition to showing remorse publicly, would suggest possible rehabilitation.
- g. The Special Panel has also taken into consideration the fact that the accused has no previous conviction.

61. Having reviewed all the circumstances of the case, the Special Panel is of the opinion that exceptional circumstances in mitigation surrounding the crime committed by the accused afford him some clemency.

2) Sentencing policy

62. According to Sect. 10 U.R. 2000/15, for the crimes referred to in Sect. 8 of the aforementioned regulation “the penalties prescribed in the

respective provisions of the applicable Penal Code in East Timor (i.e. the PCI) shall apply. *“In imposing the sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”*.

63. The penalties imposed on accused persons found guilty by the Special Panel must be directed, on one hand, as retribution of the said accused, who must see their crimes punished (*punitur quia peccatur*). Over and above that, on other hand, as deterrence, namely to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of law and human rights (*punitur ne peccetur*).
64. Finally, the objective to prosecute and punish the perpetrators of the serious crimes committed in East Timor in 1999 is to avoid impunity and thereby to promote national reconciliation and the restoration of peace.
65. Taking into account the aggravating and mitigating circumstances, the gravity of the crime and the abovementioned considerations, the Special Panel, deems appropriate the punishment of 5 (five) years imprisonment.

H. DISPOSITION

66. For the foregoing reasons, having considered the plea of guilty of the accused and the arguments of the parties, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the defendant Augusto dos Santos:

- (1) GUILTY for the charge of murder, in violation of Article 340 of the Penal Code of Indonesia, pursuant to Section 8 of UNTAET Regulation 2000/15.
- (2) In punishment of the aforementioned crime, sentences Augusto dos Santos to an imprisonment of 5 (five) years.
- (3) Orders the defendant to pay the costs of the criminal procedure.

Credit for time served

67. According to Section 10.3 U.R. 15/2000, Section 42.5 UR-30/2000 and Article 33 of Indonesian Penal Code, the Special Panel deducts the time spent in detention by Augusto dos Santos, due to an order of an East Timorese

Court. The defendant Augusto dos Santos was arrested on 16.10.1999, and released on 06.03.2001. Therefore he has been so far under detention for 1 (one) year, 4 (four) months and 25 days. Accordingly, previous detention shall be deducted from the sentence today imposed, together with such additional time he may serve pending the determination of any final appeal.

Enforcement of sentence

68. Pursuant to Sections 42.1 and 42.5 of UR-2000/30, the convicted shall be immediately imprisoned and shall spend the duration of the penalty in East Timor.

The sentence shall be executed immediately, provided this disposition as a warrant of arrest.

This decision is provided in one copy to the Defendant and his legal representative, Public Prosecutor and to the prison manager.

Dili, 14/05/2002.

Judge Sylver Ntukamazina (presiding)

Judge Maria Natercia Gusmao Perreira

Judge Benfeito Mosso Ramos