

UNITED NATIONS



NATIONS UNIES

ETTA
East Timorese Transitional Administration
DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 03/2001
Date: 19 June 2001
Original: Bahasa Indonesia

IN THE TRIAL CHAMBER

Before:

Judge Sylver Ntukamazina, Presiding
Judge Maria Natercia Gusmao Pereira, Rapporteur
Judge Luca L Ferrero

Registrar: Jose Manuel Simoes

Judgement of: 19 June 2001

THE PUBLIC PROSECUTOR
v.
Jose Valente

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Antonino Goncalves, Mr. Stuart Alford & Ms. Leonar Liu

Counsel of the accused:

Mr. Nuno Pinhero Torres & Ms. Lisete Quintao

INTRODUCTION

The trial of Jose Valente (aged 28, farmer, born on 18th July 1973 in Ococau, in Lautem Subdistrict, Los Palos District, East Timor, married and father of three children) before the Special Panel for Serious Crimes in the District Court of Dili, responsible for the handling of serious criminal offences (hereafter: the “Special Panel”), commenced on 7th March 2001 and concluded today, the 19 June 2001 with the rendering of the decision.

After considering all the evidence presented during the trial, and the written and oral statements from the office of the Public 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

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, 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.

B. PROCEDURAL BACKGROUND

On 5 January 2001, the Public Prosecutor presented before the Dili District Court a written indictment (in English and Indonesian). The Indonesian version included one charge of murder, however the English version included two charges, namely murder and attempted murder against the Defendant.

Attached to the indictment were copies of the following documents, in Indonesian:

- The statements of the accused (04.05 November 1999); and the
- statements of the witnesses Armindo da Silva (21.8.2000), Almerio Cristovao (2.9.2000), Camilo Pereira (17.9.2000), Evaristo da Cruz (18.9.2000), Eugenio de Araujo (5.10.2000);
- Police reports, photos and other documents were also submitted

The Court clerk registered the receipt of the case file, which was handed over to the special Panel. The Court clerk provided also notification of the receipt of the indictment to the accused (06.02.2001) and to his legal representative (05.02.2001), pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.

Jose Valente was arrested and detained since 6 November 2000. The court did not find on file any document about the arrest, the detention or the extension of detention.

On the 24th January 2001 the Public Prosecutor requested an extension of detention for the Defendant. On 07.02.2001, The Special Panel issued of warrant of arrest and an order of detention until the Preliminary Hearing (p.104).

The preliminary hearing commenced on the 7 March 2001. However the Public Defender of the accused was not present, therefore the hearing was adjourned until the 26th April 2001.

On 26 April 2001, the Preliminary hearing was held. 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. No. 30/2000. The Public Prosecutor submitted a motion that there was an error in the indictment given to court and to the Public Defender, namely that *the original indictment in Indonesian and the translation into English were not the same*. In the Indonesian version there was only one charge, while in the English version there were two charges. The Public Prosecutor submitted that *there was in fact only one charge against the Defendant Jose Valente*, in accordance with the original indictment, and this error was caused by a *mistranslation*. The Public Defender raised no objection; therefore the Special Panel continued with the hearing and provided an opportunity to the Defendant to make a statement concerning the charge against him. Then the Defendant stated that he had read the indictment and understood the charge against him. He affirmed that, he as the individual Jose Valente was guilty because he had taken the life of another person, but as part of a group he was not guilty. The Special Panel adjourned the preliminary hearing until 2 May 2001 to give sufficient time to the Defendant to consult with the Public Defender before making his statement and to provide an opportunity for the Defendant to make, if he wants, a confession of guilt. The Public Prosecutor requested an extension of detention for the Defendant Jose Valente; the Special Panel ordered the detention of the Defendant until the 2 May 2001.

On the 2 May 2001, the Preliminary Hearing was conducted and the Defendant made a statement about the charges. He recognizes that he killed Benedito Marques Cabral, but that he was ordered. He told the Court that he did not have any intention to kill. Then the Public Defender submitted that the accused made an admission of guilty, but not according to the charge of murder included in the indictment. For the Public Defender, there was no element of premeditation in this case and it would be more appropriately classified as a case of manslaughter (p.126, No. 10-15). The Defendant committed this act because he was ordered; he did not plan anything.

The Special Panel deemed that there was no confession of guilt in this case because *“the statement of the accused does not correspond with the facts alleged in the indictment, and that there is no clear consultation with the legal representative”*. So the trial would continue with an ordinary trial in accordance with Section 29a.3 U.R. 30/2000. The Public Prosecutor requested an extension of detention for the Defendant and the Public Defender did

not raise an objection. The Special Panel decided to extend the detention of the Defendant for the duration of the trial until a final decision was handed down in this case.

The ordinary trial was scheduled for 16 May 2001.

On the 16 May 2001, the Public Prosecutor read out the indictment in an open hearing, the Public Defender responded orally and submitted a document signed by the Defendant, Public Prosecutor and Public Defender. In the aforementioned document the Defendant confessed to some of the facts alleged against him (*p. 105*). The Defendant did not make any statement. The Court then asked the Public Prosecutor to present the witnesses. The Public Prosecutor stated that the testimonies of 5 witnesses were to be heard but one of the witnesses could not be present today, so the court allowed the testimony of this witness to be heard during the next hearing. The Court then examined and heard testimonies from the witnesses Armindo da Silva, Evaristo da Cruz and Almerio Cristovao. The witness Camilo Pereira was not examined as he was only a de Audito witness (that is a witness who only heard information from others and was not a direct witness), and the Public Defender raised no objection to the submission as evidence of the statement made before the police by Camilo Pereira. The Court deemed relevant to consider the statement of the witness Camilo Pereira as evidence and adjourned the hearing until the 23rd May 2001 so the testimony of the witness Eugenio de Araujo could be heard.

On the 23 May 2001, the Court examined and heard the testimony of the witness Eugenio de Araujo. The Public Defender had no evidence or witnesses to present. Finally the court closed the presentation and hearing of evidence and both parties were permitted to submit their closing statements, the Public Defender also submitted mitigating circumstances for the Defendant (*p.148, no.94*). The Court then gave an opportunity to the Defendant to make any additional statement. He preferred to remain silent.

On the 30 May 2001 the Court read to the Public the verdict and the sentence and adjourned to the 18th June 2001 to release the written judgment. On the 18th June 2001, the hearing was postponed to 19th June 2001.

Interpreters into English, Bahasa Indonesia and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

As specified in UNTAET Regulations No.1/1999, No.11/2000 and 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 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 fulfillment of the mandate given to UNTAET under the United Nations Security Council Resolution 1272 (1999), or UNTAET Regulations or directives.

Therefore, the Court will apply U.R. No. 2000/15, No. 2000/11, the Penal Code of Indonesia (hereafter PCI) and U.R. No.2000/30 on Transitional Rules of Criminal Procedure.

D. THE FACTS

Factual allegations of the case

The Public Prosecutor's factual allegations may briefly be set out as follows:

The Public Prosecutor alleged that Jose Valente was a member of Team Alpha who operated in Lautem from 1986 with the intention of eradicating Falintil and pro-independence supporters. In September 1999 Jose Valente with his colleagues, namely Eugenio de Araujo, Rui da Costa and approximately 10 members of Team Alpha left from COM to the rice warehouse in Lautem to take rice. They planned to take the life of the victim Benedito Marques Cabral and Armindo da Silva. On the aforementioned date, the Defendant with about 10 members of Team Alpha including Eugenio de Araujo and Rui da Silva were heading towards the warehouse when they saw Bendito Marques Cabral and Armindo da Silva who were known as pro-independence activists. Benedito Marques Cabral and Armindo Da Silva were standing near the Lautem gate carrying a sack of rice. At that moment, the Defendant and his colleagues shot them. As a result of that shot, Bendito Marques Cabral fell down while Armindo escaped. A moment later, members of Team Alpha and the Defendant approached the victim and the Defendant Jose Valente shot him, as a result of that shot the victim Bendito died

In the final statement the Public Prosecutor submitted that it is not important for a person to individually have the intent to kill pro-independence supporters or others taking rice, the most important thing is that the individual had an intention and realized that intention successfully. A person doesn't have to know the name or be able to identify somebody. That is not important, as long as the Defendant knew about the general plan of the militia group in which he was a member. The Defendant implicated himself with the group by traveling in the car from COM and also planned to pursue and kill those taking rice, after that the Defendant approached the victim and shot him in the forehead, a shot that was not directed at another part of the body, such as a leg or an arm, but was directed at the forehead of the victim, with the intention and knowledge of the consequences of this shot. This shot was intended and was accompanied with the statement "*this person has to die, because members of my family have died*". If the Defendant was acting under the command of another this in no way can exclude his criminal responsibility. The evidence presented by the witness Eugenio is very clear, that the witness did not hear any command to kill; on the contrary he heard the order not to kill.

In response to the Indictment, the Public Defender submitted that the Defendant committed this act because he was ordered by his commander to kill the victim. The statement made by the Defendant previously (on the 2 May 2001 at the commencement of the Preliminary Hearing) stated: "*in relation to the murder of Bendito Marques Cabral, I am guilty. However in terms of premeditation, the truth is I went to Lautem, not to kill, but to take rice. We were taking rice while other colleagues were providing security, resultantly they saw the victim and shot him, the victim ran away. We stayed in the warehouse loading rice into the car. After hearing the shot, I ran to the scene to see what had happened. On arrival at a primary school, the victim fell down. However the victim was still alive, a person*

from Team Alpha known as Salvador ordered me to kill him” (excerpts pp. 122-123No.45-5). [The Public Defender quoted the statement of the Defendant].

In relation to the aforementioned matters the Public Defender added that in fact the Defendant has confessed that his shots caused the death of the victim, the issue was if there was premeditation or not. In accordance with the facts stated by the Defendant there was no premeditation; for the Public Defender, the aforementioned act "*only constitutes ordinary murder/manslaughter*".

Factual findings

The Court deems that the following facts have been proved in relation to what was charged and what the Defendant acknowledged and the Defense affirmed during the trial:

- The conduct of the accused
- The victims' cause of death and the link between the conduct and the outcome proved

The conduct of the accused

The Public Prosecutor and the Defense on the following facts agree it on: Jose valente was a member of a militia group called Team Alfa. On 25th September 1999, he went with a group of 10 men members of Team Alfa to the elementary school at Lautem to capture Benedito Marques Cabral and Armindo Da Silva whom they believed to be pro independence supporters. The intention of the group was to capture the two men and to kill them. The members of the group, including Jose Valente saw Benedito Marques and Armindo da Silva and chased them. A man called Salvador, who was in the group with Jose Valente, fired a shot that hit benedito Marques Cabral. Jose valente then fired the second shot. Benedito was injured by the two shots and died of his injury (p.105).

When the Defendant was examined before the Court during the Preliminary Hearing he stated that he was a member of Team Ratih and Team Panah since 1986. Kopassus was the one who formed Team Alfa. Team Alfa was the umbrella for Team Ratih and Team Panah and PAMSWAKARSA, who shared the same objective. Then he stated that his duties in 1986 were to find information about Falintil, its supporters and its clandestine members and then to report to his commanders at the Lore I post, namely T.W. Hardono, Syarifudin, 1st Sergeant Rahmad Pasuma, 1st Sergeant Karyono. In 1998 the Kopassus posts were removed from the village level but still existed in the Sub-District of Lautem.

The accused does not deny in his statement that he killed the victim "*I admit that I'm guilty of taking the life or another, individually I admit (...) however as part of a group/team I am not guilty because it wasn't my intention (...)*

During the preliminary hearing on the 2 May 2001, the Defendant stated that he is guilty because he shot the victim Benedito Marques Cabral when ordered by Salvador.

The statements of the Defendant must be considered with the facts and with the statements of the witnesses before the court.

The witness Evaristo da Cruz, born in Dalantolo, 12 Dec 1977 from the village of MAINA I confirmed that:

"(...) at that time Bendito was shot in the leg, I was about 30m from the victim, and after the victim was shot by Team Alpha the victim fell down. I was about 3m away and I saw Jose Valente shoot him (...). I didn't hear an order from someone else to Jose Valente to shoot. (...) Arrived from COM in an opened back kijang (...), about 10 people were in the car and Jose Valente was one of them in the car (...). They saw people taking rice (...). The kijang stopped near the primary school after passing the gate of the primary school, and I saw people getting out from the car and chasing (...). And the first shot at bendito was from the back of the car (...). There were 5 guns and the other weapons such as machetes and swords (...) I saw Jose valente shoot the victim in his forehead "(excerpts from the court record dated 16 May 2001 p 6-9). The witness then helped bury the victim and the witness recognized him because he was a fellow class member. Evaristo da Cruz and Camilo Pereira identified the corpse of Bendito and they buried him near a hill close to the teacher's residence.

The next witness Eugenio de Araujo, the final witness who at the time was also in the kijang vehicle traveling from the COM harbour stated:

"(...) we hopped inside the pick-up vehicle from COM to go to the warehouse to take rice and there were people there taking rice, so we pursued them. We chased them through the teacher's residence and I ran up the hill. I heard five shots and I saw that Bendito was shot in the foot and from that direction I saw unidentified person shooting the victim in the forehead (...)" (excerpts from court record dated 23 May 2001 p. 140 No.19)

From the description it could be deduced that the Defendant was a member of Team Ratih or Team Panah. It was the same as belonging to Team Alpha. Team Ratih/Panah were with the mother organization as Tim Alpha what meant that there was no significant difference between these groups. In fact, Team Alfa was the umbrella of the other two small organizations. The Special Panel finds that it is undisputed that Jose Valente shot the victim in the forehead. Jose Valente *was* carrying a gun and was the one who shot dead the victim. Together with other militia members from Team Alpha he left from COM to go to the rice warehouse in Lautem, near the teacher's residence (primary school). Jose valente with others chased and after the victim was shot in the leg. The Defendant Jose Valente shot with the rifle in the victim's head and therefore the victim died instantly.

The victim's cause of death and the link between the conduct and the outcome proved

It is undisputed that Jose Valente shot the victim in the forehead and therefore caused the death of Bendito Marques Cabral. The Public Defender admitted that in fact the Defendant has confessed that his shots caused the death of the victim. He agreed that it is the Defendant who fired a shot that killed the victim, but did not admit that this constitutes a premeditated murder. The accused himself in his statement admitted that he killed the victim *"I admit that I'm guilty of taking the life of another (...)* The witness Eugenio de Araujo told the Court: *(...) I saw unidentified person shooting the victim in the forehead and the victim died instantly.*

The issue is if there was premeditation or not, or if there was an order to kill.

In relation to the plan to kill the victim, the accused told the Court that he had no plan to kill, but he went to Lautem only to take rice. During the preliminary hearing on the 2 May 2001, the Defendant stated that: “ (...) *in terms of premeditation, the truth is I went to Lautem, not to kill, but to take rice [excerpts p. 122 No.45]*”

But, the group clearly had a plan to something other than collecting rice. If they were collecting rice, they would have gone into the warehouse and not have passed by. The shot occurred after they passed the gate. The witness Almerio Cristovao, was the driver of the car carrying Jose valente and the other militia members of Team Alpha, and told the Court:

(...) At that time I was ordered by militia to go from COM to the rice warehouse in Lautem to take rice. When we came for the second time to take rice from the warehouse, when we were halfway from Lautem those in the back of the vehicle ordered me to go past the rice warehouse towards the Lautem primary school via the intersection (...) we were traveling and the militia saw Bendito and Armindo who were walking carrying one sack of rice near the school. (...) Rui and Eugenio started to shoot, they were firing from the back of the vehicle (excerpts from court record dated 16 May 2001 p. 9-10).

It was obvious that there was a plan for a violent action. Almerio told the Court he knew the intention of the militiamen and was trying to slow down. Probably it was a way to let Bendito and Armindo to escape. He gave the following statement:

The militia inside the car ordered me to speed up the vehicle but because I knew their intention I slowed the vehicle down so that one of the militia members inside the car hit me on the shoulder so that I would immediately pursue the aforementioned people. Armindo and Bendito threw their rice away and ran towards the teachers' residence. (Excerpts from court record dated 16 May 2001 p. 9-10).

Furthermore, when the Court asked the Defendant if he knew the plan of the commander from his group to kill those taking rice, the Defendant answered that he knew there was a plan to kill those taking rice. During the same Preliminary hearing he said *'I knew perfectly well from team Alfa that my task was to kill the people taking the rice from warehouse.*

The accused knew about the general plan to destroy East Timor after the announcement of the referendum. He denied that he himself planned it; but the militia from Team Alpha, the local regional government and the TNI were the ones who made the plan. On 26.04.01 the accused told the Court that *"after hearing the result we were ordered to destroy East Timor and at that time we were controlled by the Indonesian government officials, and I wasn't part of Team Alpha but part of Team RATIH which was established by Kopassus. At that time we were ordered to go to the COM harbour to leave for West Timor, this was in relation to REFERENDUM in which AUTONOMY was Defeated; we were ordered by militia commanders to immediately burn East Timor". [Excerpts from the Defendant's statement dated 26 April 2001 pp.3-4].*

It is therefore clear that the intention and the plan were also to kill pro-independence supporters. Anyway, it does not matter if the intention and the plan were to kill pro-

independence supporters or people stealing rice. Either way, it is still an intention to commit a murder.

In relation to the killing of the victim, the Defendant himself did not have a plan to kill the victim. But Jose Valente was a member of a group that had for a long time planned to kill pro-independence supporters and to also kill those taking rice, so the killing of Bendito was part of a plan that had been formed previously.

Section 14.3 of UR-2000/15 provides that “a person shall be individually responsible and liable for punishment for a crime within the jurisdiction of the Special Panels if that person,

- Commits such a crime, whether as an individual or jointly with another.
- (...) For the purpose of facilitating the commission of such a crime aids, abets, or otherwise assists in its commission (...)
- In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose.

Jose Valente joined the plan when he knew that this was the common of the militia group. The Plan to kill was made when the group has a common purpose to kill pro-independence supporters. There was no plan to kill Benedito Cabral as individual. Jose Valente did not know Benedito Cabral and did not know he was going to be on the road in Lautem. There was a plan to kill pro-independence supporters. That plan became a plan to kill the victim, once he was seen on the road. Jose Valente admitted in his written admissions that Benedicto Cabral and Armindo da Silva were identified as being pro-independence.

The accused told the Court he was ordered to join the militia and to kill.

To explain his forced involvement within the militia group, the accused advanced before the court (...) *We were ordered by militia commanders to immediately burn East Timor. At that time we couldn't refuse because of our families (...) [excerpts from the Defendant's statement dated 26 April 2001 pp.3-4].*

Concerning the killing of the victim on the 25th September 1999, the accused states: *"On arrival at a primary school the victim fall down, however the victim was still alive, a person from Team Alpha known as Salvador ordered me to kill him" (p.123)*

But the Defense was not able to submit any evidence to support those affirmations. Instead, the eyewitness Evaristo da Cruz was at 3m from the victim Benedito at the time of the killing and he didn't hear an order. The witness said: " (...). *I was about 3m away and I saw Jose Valente shoot him (...) I did not hear on order from someone else to Jose Valente to shoot.*" (P.6).

Another eyewitness Eugenio Araujo stated there was an order not to kill: (...) I heard Rui saying, *"don't shoot"* but the person stated that his family has been killed so the victim has to die

The Special Panel deems that there was no order to kill and that it was possible for Jose Valente not to go with the group. Almerio and Evaristo did not go.

E. THE LAW

The Special Panel Deems that the evidence on record proves beyond any reasonable doubt that all the essential elements of murder – as alleged in the charge made by the Public Prosecutor – are met.

Pursuant to Sect. 8 U.R. 15/2000 and Article 340 PCI, “the person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished...”.

- ◆ The perpetrator in this case is Jose Valente
- ◆ Taking the life of another- it is clear that Bendito Marques Cabral was killed as a result of a shot fired by Jose Valente, which was directed at the forehead of the victim who died instantly.
- ◆ With intent – it is beyond reasonable doubt that the shot fired by Jose Valente and directed at the forehead of the victim was intended by Jose Valente to cause the death of the victim.

Premeditation means that there is a time between when the intent to murder arises and when the intent is actually realized. Jose Valente knew and could calmly think about how the murder is to be committed. Evidence shows that since the beginning of September 1999, the Defendant was following a command to kill pro-independence supports and destroy East Timor. The Defendant calmly followed this large-scale well-known plan. Specifically on the 25 September 1999, the Defendant had knowledge of and was with certainty and calmly following a plan to kill pro-independence supporters/CNRT who were taking rice, namely Bendito Marques Cabral. The Court deems that a person doesn't need to know the name or the identity of somebody, this is not important as long as the individual knows about the general plan of the group of which he is part of. The victim knew the evil intent of the team Alfa/militia so he ran away via the teachers' residence. The victim was pursued by a number of militia including the Defendant but the victim was unable to escape as he was wounded in the foot. The accused did not take into account the victim's condition; rather he aimed his rifle at the forehead of the victim Bendito and consequently the victim died. At least from the moment the accused Jose Valente got down from the kijang, he had the plan to join the group in killing Benedito Marques Cabral. This time to think calmly how to commit the murder can be assessed as the element of *premeditation*.

The Special Panel deems it inappropriate to qualify the crime with the lesser offence of manslaughter. According to the C.P.I, the difference between murder (art.340) and manslaughter (art.338) is premeditation. The premeditation does not necessarily imply a long term planning of the conduct. It is enough to have thought about acting and to have decided whether to take the life of the victim or to withdraw from that intention.

The defense submitted that the accused was ordered to join the militia and to kill.

Pursuant to article 49 IPC “not punishable shall be the person who commits an act necessitated by the Defense of his own or another one’s body”. Sect. 19.1(d) of UR-2000/15. States A person shall not be criminally responsible if at the time of that person’s conduct: *“the conduct which is alleged to constitute a crime within the jurisdiction of the Special Panels has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be made by other persons or constituted by other circumstance beyond that person’s control.”*

On one hand as stated above, there is no evidence that the Defendant was threatened. On the other hand the statement that the Defendant was acting on an order from a superior also cannot exclude criminal responsibility. “The fact that an accused acted pursuant to an order of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment...” (Sect. 21 of U.R. 2000/15).

The Court deems that a general order to kill pro-independence supporters and destroy East Timor, which was ordered by militia commanders, is clear in the aforementioned facts. However the Defendant was not threatened or ordered. On the contrary the Defendant was fully aware when carrying out the said command.

Pursuant to the consideration of the aforementioned elements, it is found legitimately and in accordance with the law that the Defendant has committed the crimes as specified in Sect. 8 U.R. 2000/15 and article 340 of PCI.

F. VERDICT

For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt and therefore finds Jose Valente guilty of murder, as a violation of Sect. 8 U.R. 2000/15 and article 340 of PCI.

G. SENTENCING

Pursuant to these findings of guilt, the Special Panel will proceed to sentence Jose Valente, in order to determine the appropriate penalty.

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.

The Public Defender submitted the following mitigating circumstances:

- Jose Valente is married and has got three small children who cannot support and sustain for them.
- Jose Valente acted following an order of a superior
- Jose Valente since the beginning of the proceedings voluntarily admitted the commission of the crime
- The accused freely cooperated with the prosecution office and told what he knew about the Team Alfa action.

The Prosecution submitted no mitigating circumstances or aggravating circumstances.

The Public Prosecutor requests for a minimum sentence of 12 years if the Court finds the Defendant guilty. In the case the Court finds that the Defendant was carrying out an order then a minimum sentence of 8 years was recommended.

The Special Panel has taken into account the following:

Aggravating circumstances:

The Special Panel deems that there are no aggravating circumstances in this case.

Mitigating circumstances

1. The Defendant admitted some facts before the Court and freely cooperated with the Public Prosecutor about his involvement in becoming a member of Team Ratih/Panah
2. The Special Panel bears in mind that the accused is married with children. However this may be said of many accused persons and cannot be given any significant weight in a case of this gravity. The accused has no previous convictions

Sentencing policy

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 Special Panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”.

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*).

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.

Taking into account the mitigating circumstances, the gravity of the crime and the abovementioned consideration, the Special Panel, deems appropriate the punishment of 12 (twelve) years and 6 (six) months of imprisonment.

H. DISPOSITION

For the aforementioned reasons, having considered all the evidence (statements from the witnesses and the Defendant before the Court) 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 Jose Valente:

- (1) GUILTY for the charge of murder, in violation of Section 8 of UNTAET Regulation 2000/15 and Article 340 of the Penal Code of Indonesia;
- (2) In punishment of the crime, sentences Jose Valente to an imprisonment of 12 (twelve) years and 6 (six) months.
- (3) Orders the Defendant to pay the costs of the criminal procedure

Credit for time served

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 Jose Valente, due to an order of an East Timorese Court. The Defendant was arrested on 6 November 2000. 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

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.

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

The Defendant has the right to file a Notice of Appeal within the coming 10 days and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This Judgment was rendered and delivered on the 19th of June 2001 in the District Court of Dili by

Judge Sylver NTUKAMAZINA (presiding)
Judge MARIA NATERCIA Gusmão Pereira (reporting)
Judge Luca L. FERRERO (member)

Court Clerk:

(Done in Bahasa Indonesia and English, the text Bahasa Indonesia being authoritative)