



Justice Update
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COMPLICATIONS WITH THE APPLICATION OF LAW IN A MURDER CASE INVOLVING JOSÉ LOPES

INTRODUCTION

On 05 July 2007 the Dili District Court handed down a final sentence in a case of murder involving a member of PNTL who is also a student of a private institute of higher learning in Dili. This decision was the final decision in a judicial process conducted by the Dili District Court. The Court decided to acquit the defendant from all charges as the presiding judge was uncertain about testimony provided by witnesses throughout the trial in accordance with the principle "*IN DUBIO PRO REO*". However, when JSMP sought confirmation about this case at the Dili District Court it turns out that a representative of the prosecution unit, namely international prosecutor Baltazar Ramos, has already appealed against the decision as the appeal was registered on 24 July 2007 at the Dili District Court so there still is a possibility that the decision can be modified in this murder case.

According to those witnesses who gave testimony, the defendant Jose Lopes was the person most responsible for the death of the victim João "Karau" Barreto in an incident that occurred in Ailok-Laran on 21 January 2007.

As a culmination of the trial process into this matter, at exactly 2.55pm on Thursday 5 July 2007, the Dili District Court read out its final decision in this murder case involving the defendant Jose Lopes who is a PNTL member as well as an Instructor at the Timor Leste Police Academy.

FACTS AND LEGAL ANALYSIS

Juridical Facts

The judges of the Dili District Court presiding over this murder case outlined the reasoning behind their final decision and referred to the following articles:

1. In principle any criminal case occurring within the community must be tried in accordance with the type of act committed. This is also true for murder cases according to Article 338 of the Indonesian Penal Code which carries a maximum sentence of 15 years imprisonment for any person found guilty of murder.

2. However Articles 48 and 49 (1) of the Indonesian Penal Code state that a person can not be punished for an act necessitated for his own defence that results in the death of another.

After examining the conclusions of the court and the aforementioned juridical facts, JSMP believes that any act committed by an individual should be punished when evidence presented in court can establish that the defendant is the actor of that murder pursuant to the applicable criminal procedure code in Timor Leste. However, it is necessary to examine why the incident occurred. Did the defendant commit the act with pure intent, or was it an act of self defence?

Based on its observations, JSMP believes that the murder attributed to the defendant José Lopes was an act of murder that can not be ignored and the consequence of his actions was the death of the victim João “Karau” Barreto which clearly violated the law, independently from the aforementioned elements, in particular those elements set out in Articles 48 and 49 (1).

The Public Prosecutor stated in his final recommendation on 28 June 2007 that the defendant should be given the maximum sentence possible because as a member of the police he should set an example for the community. On the contrary, he committed a murder that is punishable according to Article 338 of the Indonesian Penal Code.

The prosecution believed that this was clearly an act of unlawful murder that has to be punished in accordance with the applicable law in Timor Leste. The defendant should not have been acquitted due to chronological considerations¹.

Legal Analysis

To the best of its ability, JSMP will attempt to analyze and review aspects of legality pursuant to the applicable law in Timor Leste.

We hereby summarize the articles of law referred to by the judges:

1. Article 338 of the Indonesian Penal Code states that:
“The person who with deliberate intent takes the life of another person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of 15 years”.

Manslaughter here is interpreted as an act of murder. It is clear that the execution of the murder caused the death of another person. What is meant by deliberate intent is that there was a clear desire and expectation that the act

¹ Chronological considerations take into account sequential events (why an incident has occurred) and do not consider the criminal act itself.

would take place and result in death (intent).² The defendant intended that all of his acts would result in the death of the victim and therefore he should be punished in accordance with this article.

2. Article 48 of the Indonesian Penal Code states that: *“not punishable shall be the person who commits an act to which he is compelled by force majeure,”* and Article 49 (1) states that: *“not punishable shall be the person who commits an act, necessitated by the defence of his own or another one’s body, chastity or property against direct or immediate threatening unlawful assault”*.

The two articles above encompass acts of murder that are committed due to overwhelming and unavoidable forces, self defence or emergency defence that can not be avoided. This means that the defendant himself would be killed as a result of such an attack which is described as an overwhelming force.

In this particular case involving the defendant Jose Lopes, JSMP believes that that the murder committed by the defendant should be punished pursuant to Article 338 of the Indonesian Penal Code because the defendant’s act resulted in the death of the victim João “Karau” Barreto, without prejudice to Articles 48 and 49 (1) of the Indonesian Penal Code Indonesia which state that any act necessitated by the defence of one’s body shall not be punished.

The prosecution presented witnesses Tomas Carvalho de Cardoso, Anacleto, and Abrão Sequeira who contradicted one another when summoned to give testimony. Therefore the Panel of Judges concluded that the testimony provided by these witnesses did not amount to evidence that would aggravate the charges against the defendant Jose Lopes, or in other words the Panel was not convinced by the evidence and therefore they used their discretion to issue a decision that considered the principle of *IN DUBIO PRO REO*, meaning that when there are doubts about testimony a judge shall acquit the defendant from all charges and find in favor of the defendant. Therefore the panel decided to fully acquit the defendant Jose Lopes from all charges.

The judges were convinced that it would have been impossible for the defendant Jose Lopes, who is both a member of PNTL as well as an instructor at the Timor Leste Police Academy, to commit an unlawful act such as murder if his circumstances weren’t of a coercive nature.

² Refer to the Indonesian Penal Code, Chapter XIX Crimes Against Life, Article 338 (R Soesilo, p 240, Politeia Bogor)

Conclusion

JSMP has been monitoring developments in this case and admits that the testimony provided by prosecution witnesses was contradictory and therefore the Panel was unconvinced that this witness testimony could constitute strong evidence. On these grounds the Panel decided to acquit the defendant from all charges as the actions of the defendant Jose Lopes were committed purely in self defence as he was being attacked by a group of approximately 15 people under the command of João “Karau” Barreto.

JSMP recommends for all members of the community, especially the family and friends of victims involved in a particular case to respect court decisions, recalling that Article 118 (3) of the RDTL Constitution states that “Court decisions shall be binding and shall prevail over the decisions of any other authority”. Also, the applicable law provides the family of victims an opportunity to submit an appeal unit to the court of appeal via the prosecution unit if they feel that a decision issued by a court of first instance was not made pursuant to the juridical facts and is in conflict with the applicable law. In fact, the prosecution unit has taken such action in this matter and has submitted an appeal to the Court of Appeal against the decision issued by the District Court.

JSMP also recommends that the prosecution unit should not act in haste when confronted with similar cases in the future. The prosecution unit should not submit an indictment to the court unless they have sufficient material evidence and enough key witnesses to prove to the court that an act has been committed by the defendant. In this case the defendant was acquitted due to the weakness of evidence which was the responsibility of the prosecution to prove the crime through the trial process.

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