



Press Release

3 August 2007

TRIAL STARTS IN SHOOTING CASE INVOLVING AFONSO “KUDA LAI”

On 3/8/2007, the Baucau District Court (operating out of the Dili District Court) conducted a hearing relating to the shooting of the victim Afonso Kuda Lai, which occurred on 3/6/2007 when parliamentary election campaigning was taking place in Viqueque District. This hearing was presided over by a Panel of Judges comprising Dra. Telma A. Fiquirido (International), Dra. Edite Palmira and Dra. Ana Paula F.M. de Jesus (National). The Prosecution Unit was represented by Flavio Borges and the defendant was represented by public defender Andre Fernandes.

At the commencement of the hearing, the Presiding Judge read out the Prosecutor's indictment against the defendant which was based on contentions drawn from witness testimony, video footage and photos taken at the scene of the crime when the incident was taking place.

During the aforementioned hearing, the defendant Luis da Silva testified that the cause of the incident on 3 June 2007 was action taken by a group of people against political campaigning by the National Council for the Reconstruction of Timor Leste (CNRT). A group of youths approached the campaign area and were displaying CNRT party symbols, however when they reached that spot they stamped on the party symbols they had been carrying and burned them while yelling offensive words.

To stop the mob from running amok, the Viqueque District Police immediately came to the campaign area to deal with the problem. The defendant Luis da Silva was wearing civilian clothing when he arrived at the location, where members of the community were massing. He claimed that he was working as an intelligence officer for the police in the Viqueque region and that he had been told by his commander to monitor campaign activities. On arriving at the scene, it is claimed the protesting group suddenly attacked the defendant and struck him, ultimately causing him to lose consciousness.

In response to the actions of a group of youths (including the victim), the defendant at one point took out his pistol and fired shots directly at the victim, killing him instantly. The defendant stated that he fired 4 shots which were not preceded by a warning shot. He claimed that Police Regulation No. 21/2004 states that it is not necessary to fire a warning shot when a police officer is faced with an imminent threat to his life.

The defendant also cited self defense in his testimony, claiming that although he had intended to shoot the victim, he had only done so because he felt himself to have been faced with a serious threat. After the incident, it is claimed the defendant remained at the

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scene until UNPOL arrived. The defendant ran in the direction of his base after UNPOL fired tear gas.

In the course of the hearing, the court also summoned 4 witnesses. These were all police officers from Viqueque District. Two of the witnesses, namely Salvador de Jesus da Silva and Pedro Sarmiento da Silva, did not, in fact, provide testimony, stating that they were not present at the scene of the crime. The other two witnesses, namely Francisco Soares Ximenes and Domingos Soares, provided testimony in support of the defendant. The witness Domingos Soares is a police commander from Uatu Lari Sub District who states he gave orders directly to the defendant to monitor the campaigning activities of CNRT.

At approximately 15:00, after the examination of witnesses had been completed, the public prosecutor submitted his sentencing recommendation in respect of the shooting of Afonso Kuda Lai, also known as the "Viqueque incident". The Baucau District Court is, accordingly, now in a position to hand down its final decision.

In his sentencing recommendation, the public prosecutor asserted that the defendant had admitted his guilt and that the defendant's actions were extremely aggressive. It was also noted that when the incident occurred the defendant was not wearing a PNTL uniform, and confusion over his identity may have led to the defendant being attacked. Also, the defendant did not fire a warning shot, and had a clear intent to kill the victim.

With these factors in mind, the public prosecutor restated his original charges against the defendant with reference to Article 338 of the Indonesian Penal Code.

Andre Fernandes, the defendant's legal representative, argued that Article 49 of the Indonesian Penal Code should be applied to his client's actions. He also stated that the medical report provided did not amount to satisfactory evidence and that the report had not been written in one of the official languages of Timor Leste, as prescribed in Article 82 of the Criminal Procedure Code, which provides that "under penalty of nullity, procedural acts shall be performed using an official language of Timor-Leste." On these grounds the defence appealed for the defendant to be acquitted of all criminal charges.

After hearing the final recommendation of sentence and closing plea, the court decided that a decision on the charge of murder in this case would be announced on 17 August 2007 at 10:00 by the Baucau District Court.

Legal Observer Osorio de Deus observed that the trial of this case has progressed relatively smoothly and should serve as a model for future trials of a similar kind. The aforementioned legal observer also urges the Timor Leste Prosecution Unit to try all criminal cases relating to incidents that occurred during the campaigning period - not just the Viqueque case. Every case reported by CNE should be processed in accordance with the applicable law in Timor Leste.

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