



In: KSC-CA-2023-02

Name: The Specialist Prosecutor v. Salih Mustafa

Before: Judge Michèle Picard, Presiding
 Judge Kai Ambos
 Judge Nina Jørgensen

Registrar: Dr. Fidelma Donlon

Date: 27 October 2023

Classification: PUBLIC REDACTED

[IN COURT REDACTION ORDER]

The Panel of the Court of Appeals Chamber FINDS that the following blacked out text contains confidential information and ORDERS this information shall be removed/ edited from the PUBLIC broadcast/streaming, audio visual recording and transcripts in all three languages *Albanian/ English/ Serbian*. Hearing of 27 October 2023, transcript reference transcript reference Page 20 Line 14 to Page 20 Line 15, (time code from 10:21:19 to 10:21:32), Page 20 Line 19, (time code 10:22:00), Page 20 Line 21 to Page 21 Line 22, (time code from 10:22:09 to 10:22:13).

| | | |
|-------|---|----------|
| 20:13 | you and, indeed, everybody back to the start of the trial phase in | 10:21:15 |
| 14 | which we initially heard some of the [REDACTED] | 10:21:19 |
| 15 | [REDACTED] in this case testifying about their plight. | 10:21:32 |
| 16 | The first witness, Witness 03593, underwent four days of | 10:21:33 |
| 17 | examination in court. Nearly a day and a half were given to the | 10:21:43 |
| 18 | Defence to conduct a hugely testing cross-examination. It was hugely | 10:21:48 |
| 19 | testing [REDACTED]. And the Trial Panel equally -- because this | 10:22:00 |
| 20 | was the assertion made, the Trial Panel took nearly half a day to put | 10:22:05 |
| 21 | additional questions to this witness. Indeed, [REDACTED] | 10:22:09 |
| 22 | [REDACTED] were most thoroughly examined by not just the parties but | 10:22:13 |
| 23 | also the Judges. | 10:22:22 |
| 24 | It wasn't that their testimony was just waived through. Far | 10:22:25 |
| 25 | from it. It was tested and tried as it must be done in search of | 10:22:29 |
| 21:1 | fully establishing what happened and of the truth, but this mustn't | 10:22:37 |
| 2 | be forgotten, and this is why it's wrong to state that there were any | 10:22:42 |
| 3 | double standards. The Judges were very critical in each and every | 10:22:51 |
| 4 | situation with each and every witness. | 10:23:01 |
| 5 | This trial and the way it's been conducted has provided the | 10:23:03 |
| 6 | Defence and Salih Mustafa with ample opportunity to put their case, | 10:23:17 |
| 7 | that their case wasn't convincing is a different matter entirely. | 10:23:18 |
| 8 | Another point that was raised by the Defence, and this I only | 10:23:26 |
| 9 | want to mention in passing before I can already draw to a close, but | 10:23:30 |
| 10 | a point that directly affects the interest of victims is the | 10:23:39 |
| 11 | Defence's request for a petition to the Constitutional Court of | 10:23:40 |
| 12 | Kosovo. In my view, it's nothing more than an attempt by the Defence | 10:23:42 |
| 13 | to delay these proceedings. There's no issue of law here that | 10:23:49 |

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Registry implementation: Yes No Feed Terminated Time From _____ to _____

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| | | |
|-------|---|----------|
| 32:25 | him, and we asked the question specifically, from who did you hear | 11:23:16 |
| 33:1 | that then. And he answered to that question it was from [REDACTED] | 11:23:21 |
| 2 | I will give you the reference, which I will give in a minute, but I | 11:23:30 |
| 3 | do have the specific reference for that, Your Honour. | 11:23:33 |
| 4 | And [REDACTED] answered to that question, when he was asked the | 11:23:35 |
| 5 | specific question on that murder victim's name, [REDACTED] | 11:23:44 |
| 6 | [REDACTED] That's basically what it | 11:23:49 |
| 7 | was, what he said in answer to that. So 4600 cannot -- it cannot be | 11:23:55 |
| 8 | possibly part of the evidence that we relate to hearsay evidence and | 11:24:02 |
| 9 | that hearsay evidence remaining even uncorroborated evidence, | 11:24:11 |
| 10 | uncorroborated from the alleged source of this particular thing was | 11:24:18 |
| 11 | being told to 4600. | 11:24:27 |
| 12 | Therefore, Your Honour the basis upon which this entire | 11:24:32 |
| 13 | causation was based was based on presumptions, and the most important | 11:24:51 |
| 14 | presumption was left aside here by the Trial Panel. And that is the | 11:25:00 |
| 15 | presumption of innocence. We need to make sure from the basic proper | 11:25:07 |
| 16 | start of any approach to a criminal case, we presume that this person | 11:25:15 |
| 17 | is innocent, and only when there is clear and unequivocal evidence to | 11:25:22 |
| 18 | the contrary then one can be found guilty. But on the basis of these | 11:25:29 |

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KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TE KOSOVES
SPECIJALIZOVANA VECA KOSOVA

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| | | |
|------|---|----------|
| 45:8 | the transcript of 24 September, that is 2021, 4600, on page 767, line | 11:56:47 |
| 9 | 1 to 19, says that he heard it from [REDACTED] | 11:57:41 |
| 10 | [REDACTED] | 11:57:41 |
| 11 | [REDACTED] | 11:57:41 |
| 12 | [REDACTED] | 11:57:41 |
| 13 | [REDACTED] | 11:57:41 |
| 14 | [REDACTED] So | 11:57:42 |
| 14 | [REDACTED] | 11:57:45 |
| 15 | that was my hearsay evidence which, in the view of the Defence, was | 11:57:49 |
| 16 | uncorroborated by the source, by the alleged source. | 11:57:54 |
| 17 | Thank you very much. | 11:57:59 |
| 18 | Unless there is questions. | 11:58:01 |
| 19 | PRESIDING JUDGE PICARD: Thank you. There will be questions. | 11:58:03 |
| 20 | Yes. | 11:58:04 |
| 21 | MR. VON BONE: Yes. | 11:58:05 |
| 22 | JUDGE JØRGENSEN: I had a question, but it -- I'll perhaps | 11:58:09 |
| 23 | present it to the SPO first, and then come back to you. | 11:58:13 |
| 24 | MR. VON BONE: Okay. | 11:58:16 |
| 25 | JUDGE JØRGENSEN: I'm afraid it goes back to the murder charge. | 11:58:19 |
| 46:1 | There was an outstanding question relating to omissions. | 11:58:23 |
| 2 | So I just wanted some clarification on how, focusing on | 11:58:27 |
| 3 | liability for omissions rather than conduct, there was both positive | 11:58:33 |
| 4 | acts and omissions or simply positive acts. | 11:58:39 |
| 5 | If we focus on omissions, how would that overcome the question | 11:58:43 |
| 6 | of a possible intervening new act if the new act could also have been | 11:58:46 |
| 7 | said to cause the death? And then related to that, how would the | 11:58:52 |
| 8 | intent for murder then be framed in the context of an omission? | 11:59:00 |
| 9 | MR. BAARLINK: To answer your first question. As we've | 11:59:03 |
| 10 | submitted yesterday, the causal contribution here under the ordinary | 11:59:10 |
| 11 | principles of causation passes that test. So it's a substantial | 11:59:20 |

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