

BAUCAU DISTRICT COURT

Lawsuit nr 20/CRM.C/2008/TD.BCU

COURT DECISION

1. Report

1ST DEFENDANT

Name: Gaspar da Costa
Date and place of birth: 15 May 1979
Marital status: Married
Son of: Domingos Soares and Pascoelas Soares
Profession: Commander of Uatulari sub district station
Education: Secondary studies
Residence: Uatulari

2ND DEFENDANT

Name: Domingos Soares
Date and place of birth: 12 May 1977
Marital status: Married
Son of: Mateus Madeira and Verônica Belo
Profession: PNTL Agent
Education: Secondary studies
Residence: Uatulari

3RD DEFENDANT

Name: Henrique de Carvalho
Date and place of birth: 15 March 1960
Marital status: Married
Son of: Anarita Henrique and Maria Aparício
Profession: Chief of Afaloicai Suco
Education: First year of preparatory school in 1974
Residence: Uatulari

4th DEFENDANT

Name: Luís Cabral *alias* Luís Power
Date and place of birth: 12 December 1979
Marital status: Married
Son of: Afonso Henrique and Maria Cabral
Profession: Farmer
Education: Third year of preparatory school
Residence: Macadici, Uatulari

5th DEFENDANT

Name: Manuel Gaspar Soares da Silva
Date and place of birth: 16 May 1959
Marital status: Married
Son of: Gaspar Roteio and Delfina Pinto
Profession: Teacher at pre-secondary school
Education: Second year of Portuguese School (1974)
Residence: Uatulari

Afore-listed defendants are charged with the actions described on pages 805 to 810 of the accusation records, reproduced herein, resulting in the crime of arson, as defined and ruled by Article 187, and the crime of violence against people and property, as defined and ruled by Article 170, both from the Penal Code.

Charges were submitted to Court and a date was settled for trial.

Defendants submitted statements of defence nor called witnesses¹

¹ TN: Based on the page 9, this sentence should read: “(...) and called defense witnesses.”

II Grounds

A) Assumptions

The trial was conducted in compliance with established rules of due process.

The court is competent to judge this matter.

The despatch that defined the date of the trial did not contain minor material flaws, nor nullities, exception or other issues impeding the appraisal and judgement of the present case, worth mentioning herein.

B) Proven Facts:

The following facts were proven in court:

In the afternoon of August 7 2007, defendants **Henrique de Carvalho** and **Manuel Gaspar**, in Uatulari sub-district, Matahoi Suci, participated in a gathering at José do Amaral residence with a group of people not identified in this decision, with the purpose of protesting against the appointment of the Government by the President of the Republic in August 6, 2007.

For such protest, they gathered with local leaders of the Fretilin party and decided to stage a large demonstration to show people's displeasure at the decision to appoint a new government and to organise a general strike in the civil service.

Defendants **Manuel Gaspar Soares da Silva**, **Domingos Soares** and **Luís Cabral**, exception made to Henrique de Carvalho, leading a large group of party supporters, armed with machetes, spears, handmade weapons, peaces of wood, gasoline and all sorts of instruments that can be used for violent ends, induced the protesting group to extreme violence, under which the victims, most of them supporters of other political parties, had their houses stoned and burned, being forced to run from the treats and escape into the mountains abandoning all their belongings;

On August 8, around 9:00 hours, in **Afaloicai suco**, defendant **Manuel Gaspar**, holding a flag of the Falintil party, led a group of party supporters, bearing weapons and

gasoline and participated actively in the arson of **Luís Ribeiro** house (damages described on pages 646 and 689).

On that day, during the morning period in Afaloicai suco, **Luís Cabral** led the group responsible for the arson of **Rita da Cruz**' house resulting in its total destruction;

In that same day, August 8, **Rita** witnessed defendant **Henrique de Carvalho**, Chief of Afaloicai suco, approach riding a motorcycle, followed by a large number of individuals saying "if you have nothing to do, you better redraw to your fields or plots";

In Afaloical suco, approximately 70 houses were set on fire and stoned;

Also on August 8, during the morning period and in Babulo suco, defendants **Domingos Soares** and **Manuel Gaspar**, led the group that set fire to **José Amaral** and **Anacleto da Cruz Lopes** houses;

Still on August the 8, during the morning period and in Afaloicai suco, defendants **Manuel Gaspar** and **Domingos Soares**, led the group that set fire to **Rita Ximenes**' house;

Also on August 8, during the morning period and in Macadiki-Namanei, **Luís Cabral** led a group bearing a large number of weapons, such as spears, arrows (*rama ambon*), machetes, spades and iron bars, that set fire to the houses of Domingos Soares (damages described on pages 183 and 333), Cesaltino Pinto Pinto (damages described on pages 185 and 335), Domingos Soares Pinto Lequiso (damages described on pages 188 and 335), Anival do Rosa rio Amaral (damages described on pages 189 and 334), and Geraldo de Carvalho (damages described on pages 192 and 335);

On August 9, 2007, around 9:00 hours, in Babulo suco, Uatulari sub-district, defendants **Domingos Soares** and **Manuel Gaspar**, led a group of persons, not yet identified in the process, and had active participation in the arson of the houses of the following persons: Zeferino Ximenes (damages described on pages 642 and 688), Alípio Fernandes (damages described on pages 643 and 688), Xisto Lopes (damages described on pages 647 and 690), Marcos de Aguina (damages described on pages 650 and 690);

While leading Fertilin supporters group, defendants induced group members to attack houses of individuals known to support the rival political party, indicating their houses and providing gasoline to start the arson fire;

Not resigned with the Presidential appointment of the new members of Government , defendants decided to protest in a violent and inconsequent manner, blaming the political authorities for the criminal behaviours, by excluding Fretilin members from Government formation;

Defendant **Luís Cabral** acted deliberately, on his own free will and volition, with the intention of burning the houses of Rita da Cruz, Germano Amaral, Domingos Soares, Gregório Amaral, Cesaltino Pinto, Aníbal do Rosário Amaral, Domingos Soares Pinto Lekioso, Geraldo de Carvalho, Octaviano Canísio Amaral and Manuel de Jesus; the aggrieved parties listed live in Macadici and Afaloicai sucos. Furthermore, defendant knew his actions were against the law.

On August 8, defendant Gaspar da Costa stood all day at home supporting his wife with gynecologic hemorrhage resulting from a miscarriage, and in the morning of August 9, defendant headed Viqueque on his motorcycle that broke midway. Defendant was assisted by UNPOL, PNTL and Adarai Chief of suco;

- Defendants are first offenders and have good criminal records;
- Said burned houses were recovered with Government grants from USD 4,500 (four thousand five hundred American dollars) to USD 9,000 (nine thousand American dollars) ;

The following facts were not proven in court:

- That the victim was compelled to participate in a gathering lunch with the members of the group responsible for the criminal acts, because she felt intimidated and scared with the situation;
- That the individuals following **Henrique de Carvalho** were shouting “Kill all those in the opposition and burn their houses; tomorrow Xanana and Ramos Horta will build them back again”
- In his quality of community leader, defendant Henrique de Carvalho guided Fretilin partisans to use violence against a large number of victims, authorizing them expressly to act as they did;
- Still on August 8, during the morning period, at Babulo suco, defendants Manuel Gaspar and Domingos Soares, led a group of people that set fire to **Rofino Menezes’** house;
- The victim was threatened on the day of the facts, and was still feeling threatened when she was heard by the Public Prosecution;
- The victim Rita da Cruz was threatened on August 8 by then PNTL commander Domingos Soares, holding a gun and a wooden bar, and by other group members, all of them armed.
- Still on August 8, around 17:00, in Afaloicai suco, defendants **Domingos Soares, Gaspar da Costa, Manuel Gaspar** and **Henrique Carvalho**, led the group that set fire to Germano Amaral house (damages described on page 693), and drove their motorcycles in front of the destroyed house praising Fretilin and blowing whistles;
- Still on August 9 in the morning, in Afaloicai suco, defendant **Manuel Gaspar**, led the group that set fire to Nazário Guterres house (damages described on page 654);

- It was not proven that defendants showed any signs of repentment nor did they realize the wrongfulness of their actions.

C) Decision Grounds

The Court decided based on the statements of the aggrieved parties, the testimony of the witnesses during the hearings and the trial and based on **Henrique de Carvalho** and **Manuel Gaspar** confession of participating in a gathering on August 6 2007, at José do Amaral's house (Matahoi Suco Council). Defendant Henrique de Carvalho declared he was invited by Manuel Madeira, by a PNTL commander, a UNPOL commander, UIR commander and by a youngster named **Samuel da Costa**. This meeting was called to organize a protest to show people's displeasure at the Presidential decision to appoint a new government on August 6 2007.

According to defendant Manuel Gaspar Soares da Silva (pages 907-909), they decided to stage a large demonstration to show people's displeasure at the decision to appoint a new government and to organise a general strike in the civil service. Defendant Henrique de Carvalho did not agree with the decision (page 902) and a youngster named Samuel da Costa got agitated and said that he would have to bear the responsibility for the consequences of such action. The meeting ended at 6.00 p.m. (according to Gaspar Manuel Soares da Silva's testimony) with an agreement only to prepare pamphlets to be handed out on the streets.

These testimonies were confirmed by the witness Filipe Pereira Ximenes, in his quality of UIR operational commander, confirming the meeting in Miabuti at Samuel da Costa residence. During the meeting, disagreements arose on the forms of action. Samuel da Costa declared he would continue on strike and other attendants shouted they didn't need the Police to be present. Filipe Pereira Ximenes heard that Henrique de Carvalho did not accept the idea of damaging private property.

According to the testimonies gathered by the Public Prosecution from the witnesses, the aggrieved parties and defendants, there was a large group of people armed with machetes, spears, handmade weapons, peaces of wood, gasoline and all sorts of instruments that can be used for violent ends, protesting with extreme violence, under

which the victims, most of them supporters of other political parties, had their houses stoned and burned, being forced to run from the threats and escape into the mountains abandoning all their belongings.

On August 8, around 9:00 hours, in **Afaloicai suco**, defendant **Manuel Gaspar**, holding a flag of the Falintil party, led a group of party supporters, bearing weapons and gasoline and participated actively in the arson of **Luís Ribeiro** house, according to the statements of this aggrieved party (pages 935 to 936). He furthermore declared that defendant Manuel Gaspar led the group of people, encouraging them to set the houses on fire. Upon his shout “Viva Fretilin” the group started arsoning the houses.

On that same day, during the morning, in Afaloicai, defendant **Luís Cabral**, assisted by three other individuals, Fortunato, Amâncio and Rofino, pushed the victim Rita da Cruz out of her house and set it on fire, resulting in its complete destruction (pages 938 and 955).

Still on August the 8, during the morning period and in Afaloicai suco, defendants **Manuel Gaspar** and **Domingos Soares**, led the group that set fire to **Rita Ximenes’** house.

In that same day, August 8, **Rita** witnessed defendant **Henrique de Carvalho**, Chief of Afaloicai suco, approach riding a motorcycle, followed by a large number of individuals saying “if you have nothing to do, you better redraw to your fields or plots”. In Afaloical suco, approximately 70 houses were set on fire and stoned.

According to **Rofino Menezes’** testimony (pages 960 to 963/967), on August 8, during the morning period, at Babulo suco, defendants **Manuel Gaspar** and **Domingos Soares** led a group of people that set fire to his house.

Also on August 8, during the morning period and in Babulo suco, defendants **Domingos Soares** and **Manuel Gaspar**, led the group that set fire to **José Amaral** and **Anacleto da Cruz Lopes** houses (pages 987 to 989/994 and 989 to 990 respectively).

According to Domingos Soares testimony in court (pages 1029 to 1030), on August 8, during the morning period and in Macadiki-Namanei, **Luís Cabral** led a group of men bearing a large number of weapons, such as spears, arrows (*rama ambon*), machetes, spades and iron bars, that set fire to his house and to the houses of Cesaltino Pinto (pages 1046 to 1047), Domingos Soares Pinto Lequioso, (pages 1082 and 1083), Aníbal do Rosário Amaral (pages 1080 and 1082) and to Geraldo Carvalho's house.

Still on August 8, around 17:00, in Afaloicai suco, defendants **Domingos Soares, Gaspar da Costa, Manuel Gaspar and Henrique Carvalho**, led the group that set fire to Germano Amaral house (damages described on page 693), and drove their motorcycles in front of the destroyed house praising Fretilin and blowing whistles.

On August 9, 2007, around 9:00 hours, in Babulo suco, Uatulari sub-district, defendants **Domingos Soares and Manuel Gaspar**, led a group of persons, not yet identified in the process, and had active participation in the arson of the houses of the following persons, according to the individual testimonies of the aggrieved: Zeferino Ximenes (pages 929 to 932/944 to 947), Alípio Fernandes (pages 932 and 934), Xisto Lopes (986 and 987/992 to 994), Marcos de Aguina (pages 936 and 937/951 to 953).

In short, defendants Luís Cabral, Manuel Gaspar Soares da Silva and Domingos Soares, together with a group of not identified persons, participated in the arson fires of the houses in Afaloicai, Babulo and Matahoi;

According to the testimonies of Domingos Soares (page 1029), Cesaltino Pinto (page 1047) Aníbal do Rosário Amaral (page 1080), Geraldo de Carvalho, Octaviano Canísio Amaral, Domingos Soares Pinto Lekioso, and Manuel de Jesus (page 1107), defendant Luís Cabral, also known as Luís Power, was directly involved in the burning of houses in the village of Namanei, in Macadici suco and in Afaloicai suco according to the aggrieved Rita da Cruz (page 1027) and Germano Amaral (page 1024); Said burned houses were recovered with Government grants from USD 4,500 (four thousand five hundred American dollars) to USD 9,000 (nine thousand American dollars).

The testimonies of witnesses called by defendants Manuel Gaspar Soares da Silva and Domingos Soares contradict the statements of these defendants during preliminary interrogation, specially the testimony of defendant Manuel Gaspar Soares da Silva, according to whom, on August 8 2007, when the crowd gathered, he tried to talk to them, but the mob did not listen to him, declaring that it was not the time for morale lessons. On the other hand, the witnesses such as Augusto Pinto Ribeiro, Domingos Soares and Matias Pinto, declared that defendant Manuel Gaspar Soares da Silva stood all day at home.

As for defendant **Gaspar da Costa**, the Court considers his statement to be reliable and coherent. The defendant claims that on August 8 2007, he stood all day at home assisting his wife with gynecologic hemorrhage resulting from a miscarriage also assisted by a midwife named Felismina do Rosário (pages 1352 to 1354) and a nurse named Eduardo Lopes. He furthermore stated that in the morning of August 9 2007, he left his house in a motorcycle and headed Viqueque, aiming to inform the police. His motorcycle broke midway, around Adarai area and the defendant was assisted by UNPOL and PNTL agents and Adarai Chief of suco. With their help, the defendant managed to return to Uatulari, arriving around 12:00h.

Defendant **Domingos Soares** stated he was not involved in the arsons in Afaloicai. According to his defence witnesses, he was working in the construction of his own house at the time. On the other hand, he declared that when he saw the crowd approaching, he drove his motorcycle away from it and rushed in the direction of said persons.

As for defendant Luís Cabral, there is no doubt that he participated directly in the arson fires occurred in Macadici and Afalici.

Regarding defendant Henrique de Carvalho, and according to UIR Commander Filipe Pereira Ximenes (pages 1331 to 1332), the defendant opposed to engagement in any acts of violence since the beginning of the meeting. Aggrieved parties Rita da Cruz and Manuel de Jesus declared that on August 8 2007 morning, the defendant suggested that they should stay inside their houses or run for the fields because there was a crowd approaching. Almost all aggrieved declared that they had not seen the defendant leading of the crowd.

The remaining facts left unproven result from the lack of supporting evidences.

D) Legal- Criminal Framework

Defendants are accused of the crimes of arson fire as defined and ruled by Article 187 of the Penal Code and Article 170, both from the Penal Code.²

Under Article 187 of the Penal Code, “Any person who with deliberate intent sets fire, causes explosion or causes a flood, shall be punished:

- first, by a maximum imprisonment of twelve years if thereby general danger to property is feared,
- second by a maximum imprisonment of fifteen years if thereby danger of life for another is feared;
- and third, by life imprisonment or a maximum temporary imprisonment of twenty years if thereby danger of life for another is feared and the act results in the death of someone”.

According to Article 170 of the Indonesian Penal Code “Any person who with deliberate intent acts violently against people and property shall be punished by a maximum imprisonment of five years and six months.”

Penalty assessment for law infringement shall take into account the following essential elements: the individual, the conduit, the event and causal connection.

Thus, it is considered proven that on August 8 2007, around 08:00, the defendants induced a group of people that set fire to houses in Matahoi, Afaloicai and Babulo, acting in co-authorship, and although there was no prior express agreement, the circumstances in which the defendants acted denote, in the light of common sense, a tacit agreement based on the conscience and will to cooperate.

Therefore it is considered co-author of a crime any person that, although not entering directly in the criminal action, has arranged said crime with somebody else, and **is present** in that action.

² NT. The paragraph should read as follows: “Defendants are accused for the crimes of arson fire as defined and ruled by Article 187, and the crime of violence against people and property, as defined and ruled by Article 170, both from the Penal Code.”

That said, the defendants have incurred in the crime of arson fire, destroying completely houses in the populations of Babulo, Afaloicai, Matahoi and Macadici sucos, Uatulari district.

By assessing the matters submitted to this Court, the defendants are objectively and subjectively responsible for the crime of arson fire they were accused of.

In result of the proven facts, defendants Luís Cabral and Manuel Gaspar Soares da Silva must be condemned as co-authors of the crime of arson fire as defined and ruled by Article 187 combined with Article 55.1 of the Penal Code.

E) **Sentences Assessment and Definition**

The definition of the sentence, within the limits defined by law, shall rely on the guilty of the individuals, taking into account the need to prevent future crimes, the large number of arson crimes in Baucau district and in the country in general.

We would like to highlight, as **aggravating circumstances**, the high-guilt of defendant Luís Cabral, acting wilfully and determined to set fire to the houses in Uatulari, namely in Macadici and Afaloicai sucos; as for the other defendants, they acted as leaders in those areas, leading a crowd of people and inducing them to burn the houses.

Regarding **attenuating circumstances**, defendant Luís Power has partially confessed the facts and all defendants have no previous criminal records.

Based on above referred circumstances, it is adequate to establish a confinement sentence below the middle level of the respective criminal legal framework.

That said, defendants are to serve **four (3)³ years imprisonment for the crime** of arson fire as defined and ruled by Article 187 combined with Article 55.1 of the Penal Code and **3 years of imprisonment for defendants: Luís Cabral, Manuel Gaspar da Costa and Domingos Soares.**

³ It should read “three (3) years”, according to III Operative Provisions, ahead.

Defendants **Henrique de Carvalho and Gaspar da Costa** are released from all charges.

Sentence is considered adequate to the measure of defendant's guilt, satisfies the need for general positive prevention and integration present in this particular case (prospective plan for assets under judicial guardianship); sentences furthermore consider the reintegration capacity of the defendants.

III Operative Provisions

By the exposed and after thorough and unanimous decision, the Collective Court considers the accusation proven and decides the following:

- To sentence defendants **Luís Cabral, Manuel Gaspar Soares da Silva and Domingos Soares**, as co-authors of the crime of arson fire as defined and ruled by Article 187 combined with Article 55.1 of the Penal Code, to 03 (three) years of imprisonment, reducing the time that Luís Cabral and Domingos Soares spent in provisional custody;

Defendants **Luís Cabral, Manuel Gaspar Soares da Silva and Domingos Soares** are released from the crime of violence against people and property, as described and ruled by Article 170 of the Penal Code.

Defendant **Henrique de Carvalho** is released from the crime of arson fire as described and ruled by Article 187, and from the crime of violence against people and property, as described and ruled by Article 170, both from of the Penal Code.

Defendant **Gaspar da Costa** is released from the crime of arson fire as described and ruled by Article 187, and from the crime of violence against people and property, as described and ruled by Article 170, both from of the Penal Code.

Defendants **Luís Cabral, Manuel Gaspar Soares da Silva and Domingos Soares** shall pay Court fees on the amount of 10 (ten) American dollars.

Formalities to be sent to criminal record.

Court Decision to be recorded.

Baucau, June 8 2009

The Judge President

)) signed

Edite Palmira dos Reis

The Assistant Judge

)) signed

Ana Paula Fonseca Monteiro de Jesus

The Assistant Judge

)) signed

Deolindo dos Santos

BAUCAU DISTRICT COURT

NOTIFICATION

Lawsuit nr 20/CRM. C/2008/TD BCU

*Stamped (Baucau District Secretariat
16/06/09 nr 10079 illegible signature)*

Plaintiff: Public Prosecution

Defendants: Gaspar da Costa and others

You are hereby notified as follows:

The Public Ministry hereby invites you to read the Court Decision regarding the Lawsuit against Gaspar da Costa and others.

You are hereby informed of the content of such decision, attached.

Also attached, copy of the accusation records.

Person to notify: Public Prosecutor

Notice dated 16.06.09

Signature of the person to be notified (or of the receiver): *)) signed*

Baucau, 16 June 2009

The Law officer

))signed

Helder Vinhas