

IN THE MUNICIPAL COURT of Peja
Case P. Number 580/10
29 September 2011

IN THE NAME OF THE PEOPLE

Judge Malcolm Simmons Presiding with Court Recorder Joseph Hollerhead in the criminal case against Pashk Krasniqi (hereinafter "the Defendant") charged pursuant to Indictment Number PP. 1644/09 filed by the Municipal Prosecutor of Peja dated 3 September 2009 and amended on 29 January 2010 with the criminal offence of Giving a False Statement under Article 307 (1) of the Criminal Code of Kosovo, after holding a public trial on 26 and 29 September 2011 at which Ms. Alenka Sagmeister-Ranzinger appeared for the Municipal Prosecution Office and at which the Defendant was present but unrepresented, on 29 September 2011 took and publicly announced the following

JUDGMENT

The Defendant Pashk Krasniqi, son of Zef, born on 18 April 1955, residing in village Nepole, Peja Municipality, Albanian, citizen of Kosovo, is

GUILTY

that on 24 April 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that from approximately 7pm on 24 March 1999 until approximately 6am on 25 March 1999 Gjelosh Krasniqi had been with him and other KLA soldiers in his, Pashk Krasniqi's, house in Nepole village although he knew that was not true.

By reason thereof the Defendant committed the criminal offence of Giving a False Statement under Article 307 (1) of the Criminal Code of Kosovo and is

SENTENCED

to a term of imprisonment of 5 months.

In accordance with Article 102 (1) of the Criminal Procedure Code of Kosovo the Second Defendant shall pay the costs of these criminal proceedings which the Court assesses in the sum of 50 (fifty) Euros. The Defendant shall also pay the sum of 50 (Fifty) Euros in respect of the Scheduled amount.

REASONING

The Indictment filed by the Municipal Prosecutors Office under Number PP. 1644/09 dated 3 September 2009 and amended on 29 January 2010 charged nine Defendants with giving False Statements.

On 14 July 2010 pursuant to Article 34 of the Criminal Procedure Code of Kosovo (hereinafter "the KCCP") this Court severed the case against Pren Kashnjeti, Mihill Pergega, Gjergj Quni and Pashk Krasniqi.

In relation to Pren Kashnjeti, Mihill Pergega and Gjergj Quni, pursuant to Article 326 (1) of the KCCP, prior to the start of the main trial the prosecutor withdrew the summary indictment.

It was the Prosecution case that on 24 April 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi the Defendant gave a false statement in that he stated that from approximately 7pm on 24 March 1999 until approximately 6am on 25 March 1999 Gjelosh Krasniqi had been with him and other KLA soldiers in his, Pashk Krasniqi's, house in Nepole village, although he knew that was not true.

There was no dispute that on 29 April 2009 in case number 67/09 Gjelosh Krasniqi was convicted before a panel of the District Court of Peja of War Crimes against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4th Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions, committed in the village of

Doblibare/Doblibare, Gjakova/Dakovica Municipality, on the 24 of March 1999.

That Judgment was confirmed by the Supreme Court on 14 June 2011 in case number AP353/09.

Article 307 (1) provides

A witness, expert witness, translator or interpreter who gives a false statement in court proceedings, minor offence proceedings, administrative proceedings before a notary public or disciplinary proceedings shall be punished by a fine or by imprisonment of up to one year.

The Court finds that the false statement must relate to a material fact in issue and the witness knew the statement was false or had no reasonable grounds to believe the statement was true.

The Defendant had made no prior statements.

When he testified before the Court on 24 April 2009 the Defendant stated that on the night of 24 March 1999 Gjelosh Krasniqi was working in the kitchen. He testified Gjelosh Krasniqi could only leave the village with his permission. He testified that during the period 20th March to 4th April 1999 Gjelosh Krasniqi did not leave the village. He provided an alibi for Gjelosh Krasniqi. It was the Prosecution case that alibi was false.

The Defendant testified on 24 April 2009 that on 24 March 1999, he organized the guards of the village. He and other persons went to his house to celebrate the NATO bombings. He said there were six persons in his house that night. They were Kole Krasniqi, Gjelosh Krasniqi, his brother Gjergj, Krist Krasniqi and a neighbour, Joze Ademi.

He testified they stayed awake until around 2am and that in the morning he went to inspect the guards. He said Gjelosh Krasniqi and Kole Krasniqi were together with him until around 10am on 25 March 1999.

He was cross-examined on 24 April 2009

Public Prosecutor: Can you help me understand a document prepared by sub-colonel Sali Lajqi. This document indicates the service record of Gjelosh Krasniqi and it indicates he was assigned to Nepole unit as a soldier not a cook from 16th June 1998 to August or September 1998 and then brigade 132 Zeneli from September 1998 to June 1999 and this document is stamped on letterhead from TMK Headquarters. Do you agree with this recorded confirmation from the records?

Pashk Krasniqi: The local did not have brigades this was a war based on a voluntary basis and after the offensive 2nd August and 3rd September as I mentioned after the agreement between Milosevic and Holbroke the brigades were formed in September.

Presiding Judge: The Public Prosecutor is saying that Gjelosh Krasniqi was serving as a soldier not as a cook, this was the point of the Public Prosecutor, but according to you he was just a cook and the weapon was assigned to his brother not to him. This is the point that needs clarification.

Pashk Krasniqi: We did not have a typing machine or stamp. All we had was handwritten so we did not keep a written record about every soldier just the commander and deputy. We did not specify their position.

Public Prosecutor: I'm trying to understand and perhaps you can clarify after 24th March did Gjelosh Krasniqi remain in the village and under your command?

Pashk Krasniqi: Yes.

Public Prosecutor: Was Kole Krasniqi the commander?

Pashk Krasniqi: He was commander of local Head Quarters until he went to Buqan, around 27th or 28th. 26th or 27th March.

Public Prosecutor: If somebody left their post without your permission would you report this fact?

Pashk Krasniqi: If such thing happened but I did not have any such cases.

Public Prosecutor: We have heard after 24th March Gjelosh Krasniqi disappeared from Nepole and never seen again.

Pashk Krasniqi: It is not true; Gjelosh Krasniqi was in Nepole until the end of the war. How could Gjelosh Krasniqi disappear when on 24th April, we buried his brother and he was there?

Public Prosecutor: Would you agree with this assertion that after the bombing of 24th March that there was a break down in discipline among the soldiers in Nepole?

Pashk Krasniqi: It's not true.

Public Prosecutor: I would like to ask about the wounding of Gjelosh Krasniqi according to the service record I showed you it states on 5th April 1999 while fighting in Jabllanica he was wounded shot by a missile grenade. Where you present during this battle?

Pashk Krasniqi: No.

Public Prosecutor: Who sent his unarmed un-uniformed cook into battle?

Pashk Krasniqi: The offensive on 3rd and 4th April that took place on entrance of Nepole I was present but after 10 hours I left the battlefield and Serb police and military forces entered the field and rest of population went to the church and I spent rest of day with his brother Gjergj and Gjelosh Krasniqi went Jaballanica and the following day, I heard that Gjelosh Krasniqi had been wounded.

...

Presiding Judge: We want to go back to the night of the 24th. Do you remember what Gjelosh Krasniqi cooked for dinner?

Pashk Krasniqi: Veal.

Presiding Judge: You said that there were six or seven people.

Pashk Krasniqi: Six.

Presiding Judge: What about the age of the others. Were they young, old?

Pashk Krasniqi: Kole was the oldest. Joza was a little bit younger than Gjelosh. Krist was born around 1965. Gjergj was born in 1965. I took their personal data when they were soldiers.

Presiding Judge: More or less this was the age of the people. Then, how did it go? There was the dinner until when?

Pashk Krasniqi: When we have this kind of celebration or joyful event, the dinner or the meal can last quite long since we keep drinking alcohol and eating slowly so the dinner lasted some four hours.

Presiding Judge: When did it start?

Pashk Krasniqi: Around 8 and lasted until midnight.

Presiding Judge: What time did you gather in the house?

Pashk Krasniqi: Before 8.

Presiding Judge: Did you go all together to the house?

Pashk Krasniqi: Yes, all together in my house.

Presiding Judge: Was Gjelosh with you?

Pashk Krasniqi: Yes.

Presiding Judge: What time did you start eating?

Pashk Krasniqi: Slightly before 8. I cannot be more precise.

Presiding Judge: You entered around 8 and you started eating at around the same time, at 8.

Pashk Krasniqi: We arrived at my place around 7. We did not start dinner immediately, but we started with rakia and coffee.

Presiding Judge: Why did you say a minute ago that you arrived at the house slightly before 8 and now you are saying 7?

Pashk Krasniqi: 7, 8. I said before 8.

Presiding Judge: When did you gather at your house?

Pashk Krasniqi: At around 19.00 hours.

Presiding Judge: When did the dinner start?

Pashk Krasniqi: We started drinking around 8 and the dinner started later since the meat cannot be prepared in two minutes.

Presiding Judge: How much later?

Pashk Krasniqi: Around 10.

Presiding Judge: Just one minute ago, you said you started eating slightly before 8 and now you are saying that the dinner started at 10. How is it possible that there is such a big discrepancy?

Pashk Krasniqi: We sat down and started drinking rakia and coffee and eating appetizers and we consider that from that moment it is dinner.

...

Pashk Krasniqi: ...we hung out... until 2 and then we went to have some rest and some sleep in the house until the following morning.

Presiding Judge: Where did you have this rest?

Pashk Krasniqi: Three of us rested in the kitchen and the other three went in another room, which I call the guest room.

Presiding Judge: Who went to the other room?

Pashk Krasniqi: Gjergj, Kole and Krist.

Presiding Judge: Whilst you and Gjelosh and a third person were resting in the kitchen?

Pashk Krasniqi: Yes.

Presiding Judge: What do you mean by rest, do you mean sleeping?

Pashk Krasniqi: Yes, we were sleeping.

Presiding Judge: How long did you sleep?

Pashk Krasniqi: Until around 6 in the morning.

Presiding Judge: Not for two hours. For four hours.

Pashk Krasniqi: Approximately for four hours from 2 until 6.

Presiding Judge: Were you sleeping?

Pashk Krasniqi: Yes.

Presiding Judge: So you cannot say what Gjelosh was doing in that time?

Pashk Krasniqi: Gjelosh went to sleep or to rest at the same time as me.

Presiding Judge: If you were sleeping, you cannot say what he was doing. May be woke up but if you know, just tell us.

Pashk Krasniqi: He could by no means wake up. We did not have a heavy sleep during the war.

Presiding Judge: How can you say he could wake up since you were sleeping for four hours?

Pashk Krasniqi: I would have heard the door opening and I had two dogs in my garden so he could not go out of the house.

Presiding Judge: This is an assumption of yours and

as a witness you cannot make assumptions. You can only refer to what you see and what you hear. You are not here to make assumptions. You were sleeping for four hours.

Pashk Krasniqi: Yes.

Presiding Judge: Then we are now at 6 on the 25th.

Pashk Krasniqi: Yes.

Presiding Judge: What happened?

Pashk Krasniqi: When we woke up in the morning, we washed our hands and face. We went to the village to survey the guards. We started the daily activities.

Presiding Judge: All of you or some of you?

Pashk Krasniqi: All of us.

Presiding Judge: Was Kole Krasniqi present during these activities performed by this group of people?

Pashk Krasniqi: Yes.

Presiding Judge: And then? All of you went to see what the guards were doing also Gjeloš was present.

Pashk Krasniqi: He came with us to the village. I went together with Krist to survey the guards and I came back 20 minutes later and joined him again.

Presiding Judge: What about the other three, Kole and the other two?

Pashk Krasniqi: Kole and the other two stayed in the village.

Presiding Judge: To be clear. After 6 you wash and then all together all six of you went to see what the guards were doing. Then the group splits up in the middle of the village.

Pashk Krasniqi: For 20 minutes

...

Presiding Judge: Let us speak about Gjelosh. You are all together in the village, this group of six people. Then, Kole receives the order to go to Bugan and he goes to his house. What about the other five?

Pashk Krasniqi: We had our duties to perform. We were informed that in Kralan, 2,000 people had arrived from Drenica and we had to go there and settle them in houses.

Presiding Judge: All of you went there or not?

Pashk Krasniqi: Yes.

Presiding Judge: Also Gjelosh Krasniqi?

Pashk Krasniqi: Yes, he was driving the tractor.

Presiding Judge: And then?

Pashk Krasniqi: After, we brought them in the village in Gllogjan and Llugaxhi where some families had up to 90 members amongst them Gjelosh and his brother. It is worth mentioning that in those days an old lady ... (witness is interrupted)

Presiding Judge: We are not dealing with the war but with a war crime, which is something different. How was Kole Krasniqi as a Commander? Did he want to be informed of the movements of his soldiers? For instance, if a soldier left the village without informing him, was this behaviour accepted or not?

Pashk Krasniqi: As a Commander, he was good but it was not the duty of the Commander to deal with all the soldiers and for that reason, I was there since he had tasks to forward to me, tasks given by the Commander of the Zone and the Commander of the Brigade.

Presiding Judge: Did he want to be informed or not?

Pashk Krasniqi: I informed him of every case.

Presiding Judge: So he wanted to be informed?

Pashk Krasniqi: Certainly.

Presiding Judge: If you had not informed him about such a fact, would he have become angry or not?

Pashk Krasniqi: Certainly, yes.

Presiding Judge: If this had happened in the morning of the 25th, would he have become angry or not?

Pashk Krasniqi: Which thing had happened?

Presiding Judge: If a soldier of his had left the village without informing you.

Pashk Krasniqi: He would have punished me first and certainly the soldier.

Presiding Judge: He was a very stern Commander?

Pashk Krasniqi: A very sincere man.

Presiding Judge: Was he stern or not?

Pashk Krasniqi: He was stern.

Presiding Judge: Regarding this issue of leaving the village without permission, was he strict or not?

Pashk Krasniqi: Yes.

Presiding Judge: So he would never have allowed such a thing.

Pashk Krasniqi: No.

Presiding Judge: Even though this was the morning of 25th after NATO bombing?

Pashk Krasniqi: No.

Presiding Judge: He was strict event though it was the morning of the 25th.

Pashk Krasniqi: Yes.

Presiding Judge: You said Kole Krasniqi is a very sincere person.

Pashk Krasniqi: Yes.

Presiding Judge: To let you know that in front of the court, the Public Prosecutor, the Defence Counsel and the defendant, he said that he did not care any more and since the 25th he did not see Gjelosh Krasniqi anymore and that he was not informed at all that he had left the village. Just to let you know. This was the early hours of the 25th.

Pashk Krasniqi: I do not know what Kole Krasniqi stated.

...

Presiding Judge: On the 24 March, how was he dressed?

Pashk Krasniqi: On 24 March was wearing civilian clothes since we did not have enough uniforms. All in all we had 17 uniforms.

Presiding Judge: During the dinner, what kind of clothes was he wearing?

Pashk Krasniqi: He had a cook's apron on.

Presiding Judge: How long was this apron?

Pashk Krasniqi: Down to the knees.

Presiding Judge: Do you remember the colour?

Pashk Krasniqi: White.

Presiding Judge: Were there pockets on this apron?

Pashk Krasniqi: Two front pockets.

Presiding Judge: Do you remember what kind of shoes he was wearing?

Pashk Krasniqi: Dark black shoes.

Presiding Judge: Were they boots or shoes?

Pashk Krasniqi: Shoes.

Presiding Judge: Do you remember the colour of his trousers?

Pashk Krasniqi: No.

Presiding Judge: You remember perfectly that he had dark black shoes from 10 years ago. My compliments, you are a brilliant man.

Pashk Krasniqi: My memory is quite sharp since I have 11 children and grandchildren

Presiding Judge: May be you can inform us of the colour of the shirt.

Pashk Krasniqi: It was a slightly different colour from the apron.

Presiding Judge: Were there stains on the apron or not?

Pashk Krasniqi: No.¹

...

Public Prosecutor: A few questions based upon the translated document, which I have now read. I am looking at the daily report for 23 March 1999. Perhaps he can look at his version. It says on my translation there were enemy movements from Dollova where they had many NATO bombings.

Witness now looks at the original document.

Pashk Krasniqi: There were movements from Dollova because of the fear from NATO bombings even though the bombings started before but they were expected.

Public Prosecutor: I believe you testified earlier that Dollova was held by the Serb police and Serb paramilitaries, is that right?

Pashk Krasniqi: Yes.

¹ Extract from the Minutes of the Main Trial of 24.4.2009, pages 31, 32.

Public Prosecutor: It was 4 kms from Nepole.

Pashk Krasniqi: Yes.

Public Prosecutor: As we look at the daily report for 24 March, I read the following translation: "The guard was on the level of action it was added because the enemy had many movements from Dollova. We had added guards because of the activity in Dollova." Is that correct?

Pashk Krasniqi: Yes.

Public Prosecutor: If I understand the military situation, we are expecting NATO bombing on 24th and we are just 4 kms away from Nepole. We have a Serb-controlled area full of paramilitary Serbs.

Pashk Krasniqi: The village of Nepole is at a higher altitude compared to Dollova. We placed our guards at the exit to survey the area.

Public Prosecutor: It is fair to say there is added security because of the situation.

Pashk Krasniqi: Yes.

Public Prosecutor: Would Kole Krasniqi be wrong when he said that on the night of the 24th there were no guards?

Pashk Krasniqi: Kole Krasniqi did not deal with guards.

...

Public Prosecutor: The women and children were placed in the church on the night of the 24th, is that right?

Pashk Krasniqi: Yes.

Public Prosecutor: Why is that?

Pashk Krasniqi: Because NATO bombings were expected and Serbia was retaliating by attacking us.

Public Prosecutor: The 24th going into the 25th is very dangerous particularly in Nepole village, is that right?

Pashk Krasniqi: Yes.

Public Prosecutor: You decide that night to have a party and drink raki.

...

Presiding Judge: It is strange why people gathered in the church if you were afraid of a bombing and you were celebrating in a house in the same village. Can you explain to us?

Pashk Krasniqi: We did not have a party we had a get-together to listen to the news and regarding the people who were staying at the church, the priest and the nuns took care of them and not us.

...

Presiding Judge: You said that you were drinking rakia.

Pashk Krasniqi: Yes.

Presiding Judge: Were some of you drunk afterwards or not?

Pashk Krasniqi: No.

Presiding Judge: All of you were sober?

Pashk Krasniqi: Yes.

Presiding Judge: Again, Kole Krasniqi told us that all of the people in the house were drunk and in particular, he said he was drunk.

Pashk Krasniqi: A person can have one glass of raki and say he was drunk. The police would give you a ticket. I do not know the limit.

Ferdinando Bautier de Mongeot: Since you saw him on that night, was Kole Krasniqi drunk or not?

Pashk Krasniqi: I did not notice.

Evaluation of the evidence

The Defendant did not testify before this Court, save to state that his testimony before the Court on 24 April 2009 was true.

The Defendant testified that on 24 March 1999 he and other members of his unit sat down for dinner at approximately 7pm. They drank rakia. Food was served at approximately 10pm. It was the Defendants testimony on 24 April 2009 that Gjeloš Krasniqi was the person responsible for preparing dinner.

Witnesses for the Prosecution whose prior evidence was put before the Court during the trial of Gjeloš Krasniqi testified that Gjeloš Krasniqi, together with other KLA soldiers had been in the village of Doblibare/Doblibare, Gjakova/Dakovica Municipality on the night in issue at the time the Defendant testified he had been in Nepole Village.

The Defendant testified that after dinner the group was awake celebrating until approximately 2am the following morning. He said they then went to sleep. That contradicted the testimony of Kole Krasniqi who testified the group remained awake celebrating until 7am the following morning.

The Defendant testified they woke at approximately 6am and then went to inspect the guard. He said Gjeloš Krasniqi and Kole Krasniqi were present. He said he went with Krist Krasniqi to inspect the guard, leaving Gjeloš Krasniqi and Kole Krasniqi in the village. He testified they returned to joining Gjeloš Krasniqi and Kole Krasniqi approximately 20 minutes later. That contradicted the evidence of Kole Krasniqi who said Gjeloš Krasniqi disappeared during the night and he did not see him again.

The Defendant testified that Gjeloš Krasniqi was not wearing a uniform on the night of 24 March 1999. That evidence was contradicted by Prosecution witnesses who in their prior testimony described Gjeloš Krasniqi wearing a uniform.

In his testimony on 24 April 2009 the Defendant attempted to portray Gjelosh Krasniqi as a simple cook. He was anything but that. The Defendant was contradicted by both Prosecution and defence witnesses, including Kole Krasniqi, on important events and his explanations were simply untenable.

On 29 April 2009 in case number 67/09 Gjelosh Krasniqi was convicted by the District Court of Peja of War Crimes against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4th Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions, committed in the village of Doblbare/Doblbare, Gjakova/Dakovica Municipality, on the 24 of March 1999. That Judgment was confirmed by the Supreme Court on 14 June 2011.

In several important material respects the Defendants evidence before the Court on 24 April 2009 was contradicted by both Prosecution and defence witnesses. The Defendants evidence was a lie, concocted to provide a false alibi for Gjelosh Krasniqi.

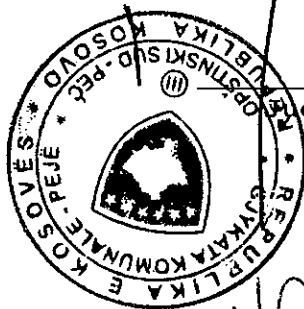
The Court finds the Defendant gave a false statement when he testified before the Court on 24 April 2009 thereby committing an offence under Article 307 (1) of the Criminal Code of Kosovo.

The Defendant is a farmer, married with 11 children. Four of those children are minors. He described his financial situation as "poor". He said that he is the sole provider for his family. However, his adult children assist, presumably with chores around the farm. He has four daughters, some of whom are married. The Defendant has no prior convictions. A term of imprisonment can have a devastating effect on the entire family and not only the defendant upon whom the punishment is imposed. However, it behoves all who commit criminal offences to consider the impact any custodial sentence will have upon their dependants. False testimony is a serious offence. In this case the Defendant provided a false alibi. His testimony was clearly designed to pervert the course of justice and, as such, undermines the entire justice system. The only appropriate sentence is a custodial sentence. In the circumstances of this case I have kept the sentence to the minimum term I consider appropriate.

Having regard to all the circumstances of this case the Court is satisfied the sentences are reasonable and proportionate.

For the reasons stated herein I hereby render this Judgment.

Dated this 29 day of September 2011.



Judge Malcolm Simmons
Presiding Judge

Joseph Hollerhead
Court Recorder

LEGAL REMEDY: Pursuant to Article 398(1) of the Criminal Procedure Code of Kosovo, the authorized persons may file an appeal of this Judgment within fifteen (15) days of the day the copy of the judgment has been served.