

**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA V. VELIBOR
BOGDANOVIĆ**

Case No. S1 1 K 003336 11 Krž 3
The Court of Bosnia and Herzegovina
Appellate Division Verdict
August 01, 2012

Judges:

Redžib Begić
Tihomir Lukes
Senadin Begtašević

Prosecution:

Remzija Smailagić

Defense:

Nada Dalipagić

Gender Keyword(s): Corroboration; Credibility or Character of the Victim; Expertise in Trauma Related to Crimes of Sexual Violence; Rape

Procedural History: On November 8, 2010, the Prosecutor of Bosnia and Herzegovina (BiH) filed an indictment against Velibor Bogdanović.¹ On November 10, 2010, the indictment was confirmed and on July 7, 2011, the Prosecutor amended the indictment.² The Prosecutor charged Bogdanović with individual and accomplice liability for committing war crimes against civilians under the provision of the Criminal Code of Bosnia and Herzegovina (CC of BiH) prohibiting “coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, [and] forcible service in the armed forces of enemy’s army or in its intelligence service or administration” during times of war, armed conflict, or occupation.³ The charges were based on allegations that Bogdanović, armed and uniformed, entered the apartment of civilians Mina and Salko Zerem and ransacked the apartment, stealing valuables, and then took Salko Zerem to a

¹ *Prosecutor v. Velibor*, First Instance Verdict, August 29, 2011, p. 1.

² *Id.* The nature of the amendments to the indictment is not publicly available.

³ *Id.* (citing Article 173(1)(e) of the CC of BiH). , In terms of modes of liability, the Prosecutor charged the accused under Article 29 of the CC of BiH, which provides for accomplice liability,” and Article 180(1), which provides that “[a] person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence.” *Id.*; Criminal Code of Bosnia and Herzegovina, “Official Gazette of Bosnia and Herzegovina” No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07.

camp and raped Mina Zerem in her home (¶¶ 46, 47, 62, 64, 71-72). On August 29, 2011, the First Instance Panel found Bogdanović guilty of the charges of committing rape against Mina Zerem and of unlawfully detaining her husband, Salko Zerem, for 30 days and sentenced Bogdanović to six years of imprisonment.⁴

The Prosecution appealed to the Appellate Panel to modify the sentence and impose a lengthier sentence within the limits of the statutory penalty prescribed for the criminal offense (¶ 4). The Defense also filed an appeal of the First Instance Panel's verdict on several grounds, including its decision on the criminal sanction, arguing that the verdict was based on incorrectly and incompletely established facts and that the First Instance Panel had violated essential criminal procedure provisions as well as the CC of BiH (¶ 6). Therefore, the Defense requested the Appellate Panel to refuse the Prosecution's Appeal and to modify the First Instance Panel's verdict by acquitting Bogdanović of the charges or by revoking the verdict and holding a retrial (¶ 5). On August 1, 2012, the Appellate Panel reached its verdict in the case, which is digested here.

Disposition: The Appellate Panel rejects the Defense argument that the charges against Bogdanović for the rape of Mina Zerem and the unlawful detention of Salko Zerem were not correctly and completely established (¶¶ 85, 103). The Panel decides that the First Instance Panel's verdict on the rape charge was correctly based on the testimony of victim Mina Zerem, as well as testimony from other Prosecution witnesses and expert opinion (¶¶ 79-85). Similarly, the Panel decides that the First Instance Panel's ruling that Salko Zerem was a civilian at the time of the abduction and deprived of his liberty as a result of his ethnicity were correctly and completely established (¶¶ 93, 95, 98, 103). The Panel rejects the Defense's claim that the Criminal Code of the Socialist Federal Republic of Yugoslavia is applicable in the case and not the CC of BiH (¶ 111). The Appellate Panel thus rejects the Defense's appeal to revoke the verdict of the First Instance Panel as to the criminal charges, contending that the Defense has not presented explicit grounds nor reasoning in their support (¶ 139). The Appellate Panel also refuses to admit the Prosecution's appeal that, in arriving at the sentence, the First Instance Panel disregarded the aggravating circumstances and overestimated the mitigating ones (¶¶ 117, 129). The Appellate Panel affirms the verdict and the sentence of the First Instance Panel with regard to both charges (p. 3).

Key Gender-Based Holdings:

CORROBORATION

- In its appeal, the Defense objected to the truthfulness and accuracy of the allegations that Bogdanović came to the apartment of Mina and Salko Zerem and raped Mina Zerem, arguing that there was no evidence to corroborate these allegations (¶¶ 46-47). The Defense submitted that the Prosecution did not produce medical records for Mina Zerem that documented the fact that she was raped and that other Prosecution witnesses did not corroborate her allegation because they had not seen Bogdanović prior to the trial (*id.*). The Appellate Panel notes that rape is one of the crimes that is most difficult to prove because, in most

⁴ *Prosecutor v. Velibor*, First Instance Verdict, August 29, 2011, p. 2.

cases, there are no eyewitnesses besides the perpetrator and the victim, since most rapes occur in private spaces (¶ 58). The Appellate Panel also acknowledges the fact that injuries on the victims are not often observed because these crimes are not often reported in a timely manner (*id.*). The Appellate Panel finds that the lack of documentary evidence does not diminish the weight of other evidence indicating Bogdanović's guilt for this crime, noting that "the collection of physical evidence at the time of the offense would have been entrusted to the persons belonging to the same military and police structures as the perpetrator," thus any investigation would not have been unbiased (¶¶ 73-74). The Appellate Panel also accepts Mina Zerem's response to the question of why she did not see a doctor after the rape, in which she explained that seeing a doctor in 1993 would have been impossible under the circumstances (¶ 75). Further, the Appellate Panel accepts the medical report from a doctor Mina Zerem visited in 2006, to whom she reported that she had been raped, as corroborating her testimony (¶¶ 76-77). Although the medical report did not expressly note that Mina Zerem had been raped, it did document the fact that she had suffered severe mental and physical traumas during the war and was prescribed therapy as a result (¶ 77). The Appellate Panel accepts the First Instance Panel's conclusion that this report is adequate to show that Mina Zerem was raped (*id.*). The Appellate Panel notes further that the First Instance Panel's conviction for this crime was supported by the testimonies of several witnesses that were consistent with Mina Zerem's testimony (¶ 82). Therefore, the Appellate Panel holds that the First Instance Panel correctly established that the Accused Velibor Bogdanović committed rape as a war crime against civilians (¶ 85).

CREDIBILITY OR CHARACTER OF THE VICTIM:

- As noted under "Corroboration" above, in its appeal, the Defense questioned the credibility of the victim Mina Zerem, who testified at trial that she had been raped by Bogdanović (¶ 47). In addition to the argument that her testimony was uncorroborated, the Defense submitted that Zerem was not credible because she had not told anyone about the rape for 17 years and she had worked and engaged in other activities throughout that time without undergoing therapy, despite having allegedly been raped (¶¶ 47, 50). Additionally, the Defense argued that the Prosecution's medical experts, psychiatrists Dr. Alma Bravo Mehmedbašić and M.Sc. Senadin Fadilpašić, could not unambiguously conclude that the alleged psychological disorder from which Mina Zerem suffered was as a result of rape, since they could not explain when and where Mina Zerem started her psychiatric treatment nor the nature of the therapy (¶ 50). The Appellate Panel finds that these Defense arguments are unfounded and that the First Instance Panel was justified in finding Mina Zerem credible because she "completely corroborated the Prosecution's allegations" and consistently identified Bogdanović as the person who had raped her (¶ 55). Furthermore, the Appellate Panel finds that it is natural for rape victims to refrain from talking about their experience due to fear of retribution, embarrassment, sense of self-accusation, mistrust in the prosecution authorities, confusion, and other reasons, including "the conservative community, lack of education, [and] a general lack of empathy" (¶ 70). The Appellate Panel

holds that Mina Zerem knew from the beginning that the perpetrator was Bogdanović, but notes the reasons she stated for not telling others, including the fact that she knew the perpetrator and was afraid of how her 18-year-old son would react to the news and was also afraid for the safety of her husband while he was still detained at the camp (¶¶ 67, 71). In response to the Defense’s argument that Mina Zerem had worked and carried on without therapy for 17 years, the Appellate Panel recalls the testimony of expert witnesses who stated that rape victims often continue to function with “diminished capacity” for years, “suffering quietly” (¶ 79). The Appellate Panel holds that Mina Zerem’s testimony was credible and truthful since it was sincere, consistent, thorough, and corroborated by other witnesses’ testimonies, and that the alibi witnesses offered by the Defense did not sufficiently challenge the evidence against the accused (¶¶ 55, 56, 59-63, 82). The Appellate Panel thus finds that the First Instance Panel correctly established Bogdanović’s guilt for the rape of Mina Zerem (¶ 85).

EXPERTISE IN TRAUMA RELATED TO CRIMES OF SEXUAL VIOLENCE:

- As noted above under “Credibility or Character of the Victim,” the Defense contended in its appeal that the expert testimony of the psychiatrists Dr. Alma Bravo Mehmedbašić and M.Sc. Senadin Fadilpašić did not corroborate the allegation that the psychological disorder from which Mina Zerem suffers is a result of the alleged rape (¶ 50). The Appellate Panel disagrees, acknowledging the expert witnesses’ testimony on several issues at trial, including the fact that rape victims often “suffer quietly” and continue to function with “diminished capacity” (¶ 79). The Appellate Panel concludes that the First Instance Panel properly evaluated the findings of Dr. Mehmedbašić and Dr. Fadilpašić (¶ 80).

RAPE:

- As noted under “Corroboration” and “Credibility or Character of the Victim,” the Defense appealed Bogdanović’s conviction for rape as a war crime against a civilian (¶ 47). As noted above, the Appellate Panel acknowledges the unique factors that typically accompany the crime of rape, including the lack of witnesses and documented injuries, the reluctance of victims to come forward, and their reasons for that reluctance (¶¶ 58, 65, 68, 70). For the reasons stated above, the Appellate Panel gives credence to victim Mina Zerem’s testimony and, based upon her testimony and the other evidence that corroborated her statements, the Appellate Panel affirms the decision of the First Instance Panel that Bogdanović raped Mina Zerem and is guilty of committing the war crime of rape under both individual and accomplice liability (¶ 85). As discussed below, in assessing the First Instance Panel’s sentence, the Appellate Panel also addresses the effects of rape on victims and on the society as a whole (¶ 133).

Other Issues:

SENTENCING:

- In assessing the First Instance Panel’s decision on sentencing, the Appellate Panel discusses the effects of rape on victims, stating that “[r]ape offends in an extremely cruel manner the woman’s-victim’s most intimate sphere of life, assaulting not only her sexual but her whole integrity” (¶ 133). The Appellate Panel observes that rape causes a severe injury to the victim’s “personality... autonomy, psychological and physical integrity, self-control and self-respect” and also has a “secondary impact” on the victim’s family members, relatives, friends, and acquaintances (*id.*). The Appellate Panel thus finds that rape affects the society as a whole, “creating fear and disturbance” and causing “sociological consequences” (*id.*). Noting that rape attracts public attention, curiosity, and disgust at the same time, the Appellate Panel expresses the need to adequately punish perpetrators of this crime and to help rape victims deal with the traumatic consequences (¶ 135). However, citing the fact that Bogdanović only raped one person, and reviewing other mitigating factors such as his young age at the time the crime was committed, the Appellate Panel concludes that the First Instance Panel’s sentence of six years of imprisonment was “adequate, purposeful, and fair” and affirms this decision, dismissing the Prosecution’s appeal on this issue (¶¶ 129, 138).