

CHILE

@THE BURNING OF RODRIGO ROJAS AND CARMEN QUINTANA: CASE REACHES FINAL STAGE

Before the end of the year, the Supreme Court is expected to decide on an appeal submitted by lawyers acting on behalf of Carmen Gloria Quintana and the relatives of Rodrigo Rojas de Negri. The appeal calls for the annulment of a ruling by the Military Appeals Court (*Corte Marcial*) of Santiago in January 1991 that upholds a 300-day suspended sentence against Captain Fernández Dittus for unintentional homicide in the case of Rodrigo Rojas, while absolving him from having caused serious injury to Carmen Quintana.

Rodrigo Rojas and Carmen Quintana were detained in Santiago by a military patrol early on the morning of 2 July 1986, a day of nationwide protests against the policies of the former military government. Substantial evidence including eye-witness testimonies and forensic tests indicated that the two were doused in petrol by a military patrol and then set alight. The patrol members wrapped them in blankets, took them away and dumped them on a dirt road where they were discovered by workers. Rodrigo Rojas died shortly afterwards from his injuries, while Carmen Quintana has had to undergo extensive surgery and skin grafts as a result of the serious burns she sustained.

Throughout the judicial investigations, relatives of the victims and their lawyers repeatedly complained that the courts conducted the case in a manner that appeared to be designed to obstruct rather than facilitate the emergence of the truth. For example, early requests for a reconstruction of the events were ignored by the courts for months. A first reconstruction eventually went ahead but was carried out secretly in January 1987 by which time Carmen Quintana was out of the country and another key witness had also gone abroad after he had been abducted and threatened.

Figure 1 Carmen Quintana

In June 1987, another reconstruction, this time with the participation of Carmen Quintana took place. She took part in a reconstruction of the burning and was a key witness in several identification parades. She was also interrogated at length by the specially-appointed military investigating prosecutor (*fiscal militar ad hoc*) Erwin Blanco. In all the proceedings, she and her lawyers complained that they were treated abruptly and without any consideration for Carmen's physical condition. Carmen Quintana complained repeatedly that the *fiscal* and court clerk appeared to be trying to confuse her and to distort her testimony. The lawyers also said that important information was either ignored or not requested from eye-witnesses.

Only the head of the army patrol, Captain Fernández Dittus, has been charged. In August 1989 he received a 300-day suspended sentence for failing to transfer the victims to hospital for treatment. In passing sentence, the military judge (*juez militar*) accepted the patrol's version that the fire causing the burns suffered by the victims started by accident when Carmen Quintana kicked over an incendiary device and that they had let the two get out of the truck at the victims own request after the patrol had received an urgent call to go elsewhere.¹

¹ According to Captain Fernández Dittus, "both of them were walking normally and talking coherently. Their faces showed no abnormalities, except for reddish skin, similar to sunburn".("ambos se movían de forma normal y

According to the victims' lawyers, not only did the military judge fail to take into account the testimonies of eye-witnesses and Carmen Quintana herself but also ignored a report prepared by a special unit of the Carabineros (uniformed police) - the OS-7 unit that had been leaked to the press in April 1987. The findings of the investigation carried out by the OS-7 unit reached the conclusion that the burning could not have been an accident. According to this report: the device could not have exploded by being dropped accidentally by one of the two people; the burns could not have been caused by the device exploding after being kicked by one of the two; the incendiary device had been thrown from a distance no greater than 1.5 metres from the victims and the clothes of the victims had been soaked in benzine.

In January 1991, the Military Appeals Court in Santiago modified the lower court's decision. While confirming the 300-day suspended sentence on charges of "unintentional homicide" (*cuasidelito de homicidio*) in the case of Rodrigo Rojas, it absolved Captain Fernández from having caused serious injury to Carmen Quintana. Once again, the court ignored the evidence that had been presented by eye-witnesses, and the survivor herself as well as medical tests supporting their claims and accepted the patrol's version that the fire had been caused by Carmen Quintana. As a result, the court ruled that even if Captain Fernández had been negligent in abandoning her in a place far from medical help, this did not cause her any more injury than she had already caused herself. The court made no recommendations for any reparatory measures.

The vote in the Military Appeals Court was nevertheless split. Of the five judges in the court, the two civilian judges were in favour of sentencing Captain Fernández to prison on charges of homicide. One of the civilian judges, Alberto Chaigneaux, concluded that based on the evidence, the head of the army patrol should be sentenced to 15 years.

hablaban coherentemente. Sus rostros no presentaban anormalidad, salvo la piel enrojecida, como cuando se reciben quemaduras del sol".)

Figure 2 Rodrigo Rojas

The lawyers acting on behalf of the Rodrigo Rojas' family and Carmen Quintana submitted two appeals to the Supreme Court against the Military Appeals Court's decision. One has already been rejected. The other, a *recurso de casación* - a request for the sentence to be annulled - is pending but is expected to be heard before the end of the year. The Code of Penal Procedure states that witnesses who lack the necessary impartiality or who are dependent or subordinate to the accused cannot testify in the case under investigation. In the opinion of the lawyers this rule applies to the members of the military patrol. Their appeal is based on the fact that the ruling by the Military Appeals Court only accepted the declarations made by the members of the patrol and not those presented by the defence lawyers. The lawyers fear, however, that this appeal too will be rejected by the Supreme Court.

The facts relating to the case of Rodrigo Rojas and Carmen Quintana were presented to the National Commission for Truth and Reconciliation (CNVR, *Comisión Nacional de Verdad y Reconciliación*) that was set up by President Aywlin in April 1990 to clarify the truth regarding the most serious human rights violations committed during the years of military rule. The government defined these as "disappearances", executions and deaths under torture where the responsibility of the state, of its agents or of people who had acted with its consent could be shown to be implicated. It also included fatal attacks carried out by private individuals for political purposes.

The report did not include the thousands of cases of torture or other incidents which did not cause the death of the individual. Carmen Quintana will not, therefore, benefit from the reparatory measures which the government has undertaken will be made towards the families of the victims' included in the report.

All the facts relating to the case were presented to the CNVR by Rodrigo Rojas' mother, Veronica De Negri, Carmen Quintana herself and lawyers acting on their behalf. In its report published in March, the CNVR briefly described the arrest of Rodrigo Rojas, saying that "a confusing incident which has been judicially controversial, resulted in the two being set alight."² It concludes that:

² "en un incidente confuso que se ha controvertido judicialmente, se produjo la inflamación de los dos detenidos"

"he was the victim of serious human rights violations, since his death, whatever the degree or nature of the individual responsibilities of those involved, was the direct result of the unlawful actions or omissions of the military personnel".³

Amnesty International remains deeply concerned about the serious irregularities reported in this case, including the apparent failure of the courts to take into consideration extensive eye-witness and forensic evidence supporting the victims' account of the incident. In September 1988, the Inter-American Commission for Human Rights of the Organization of American States (OAS) found that the then Chilean Government had violated, among others, the right to a fair trial upheld in Article 18 of the American Declaration of the Rights and Duties of Man by not providing a judicial remedy to protect the rights of the injured parties. It recommended the authorities take the necessary steps to bring those responsible to justice "to avoid the future recurrence of such condemnable crimes" and to make "amends for the material damage and moral injury caused to Carmen Gloria Quintana and the family of Rodrigo Rojas de Negri".⁴

Amnesty International hopes that the Supreme Court will take account of the numerous irregularities reported in the case and that all those responsible for causing the death of Rodrigo Rojas de Negri and the severe injuring of Carmen Quintana will be brought to justice. Amnesty International also calls for adequate reparatory measures for the victims or their relatives.

³ "fue víctima de grave violación a los derechos humanos, por cuanto su muerte, cualquiera sea el grado y la naturaleza de la responsabilidad individual de los involucrados, se produjo como consecuencia directa de acciones u omisiones ilícitas de los efectivos militares".

⁴ "a fin de evitar que crímenes tan repudiables puedan volver a ocurrir ... proceda a reparar los daños materiales y morales provocados a Carmen Gloria Quintana y a la familia de Rodrigo Rojas de Negri".

SOME OF THE INCIDENTS AND IRREGULARITIES REPORTED TO AI⁵
Jorge Sanhueza Medina, a witness, was abducted on 22 August 1986 by unidentified civilians. He was threatened that he or his wife and daughters might be "disappeared" and was told he should retract an earlier statement made to the court and say he had "seen nothing". He subsequently left the country.

Pedro Martínez Pradenas, a witness who testified before the military prosecutor on 22 August 1986, was subsequently arrested and charged under the Arms Control Law. He was released in January 1987.

Héctor Salazar, lawyer acting on behalf of victims. Proceedings were started by First Military Prosecutor for defamation of armed forces for statements to the press after the decision on 12 August 1986 of the Military Appeals Court decision to try Pedro Fernández Dittus. The lawyer had said, "it has been established that the second version given by the Army does not correspond to reality. I believe that the high command of the Chilean Army owes the courts and the country the truth".

Luis Toro, lawyer acting on behalf of victims. A group of unidentified and heavily armed men attempted to abduct him from his home on the night of 12 September 1986.

Pedro Fernández Dittus, head of the army patrol, was promoted from lieutenant to captain while in preventive detention.

The army, stated on 9 July 1986 that there were no military personnel in the area where the incident took place on the day in question but later retracted this statement when overwhelming evidence emerged proving a patrol had been involved.

Alberto Echavarría, the first investigating judge completed his investigations in little over two weeks. No reconstruction of the events was carried out, and he accepted the patrol's version of an accident.

⁵ The serious irregularities reported in this case have been extensively documented by AI in several publications including: *The Burning of Rodrigo Rojas and Carmen Quintana - One Year On* - AI Index AMR 22/39/87 and *The Burning of Rodrigo Rojas and Carmen Quintana: Army Captain Given Suspended Sentence of 300 Days* - AI Index: AMR 22/16/89.

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November 1991

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference.

DISTRIBUTION

This circular has been sent direct by the International Secretariat to Sandean/Chile coordinators/coordination groups for distribution to Sandean groups in their section. Please note that a separate set of recommended actions, Sandean Action No. 05/91, AI Index: AMR 22/06/91 has been sent to Sandean/Chile coordinators and relevant sections.