

Kingdom of Cambodia

Nation Religion King

.....

On Behalf of Khmer People

Court of First Instance.....

Conducted public trial at.....Court of First Instance on.....with following composition:

Judges

Judge President of Trial Council

Judge..... Member of Trial Council

Judge.....Member of Trial Council

Prosecution Representative

Mr/Ms..... Prosecutor

Clerk of trial

Mr/Ms.....Clerk

For trial case file no.dated on.....with the following accused:

1. Name: Jack, aged 17, a high school student, and arrested and detained on.... He did not have a driver's license, and he was charged with driving without a license, violation of traffic lights and fleeing, negligent driving that caused Olivia's death, and negligent driving that caused John's injuries, offenses in Article 75 new, 83 and 85 of the Law on Road Traffic amended in 2017.
2. Name: John, aged 25, arrested and detained on....., and charged with attempted murder, offense in Article 199 of the Criminal Code in 2009. He has two prior convictions for theft, with the first one resulting in a fine imposed five years ago, and the second one resulting in a term of imprisonment for 18 months imposed three years ago. He has paid the fine and served the full prison term. The convictions have not yet been expunged from his criminal record.
3. Name: Mary, aged 23, arrested and detained on..., and charged as an accomplice to attempted murder.

The facts are as follow:

On Friday, 26 March 2021, Jack, John, and Mary decided to have a joint night out at the bar, the “Blue Moon”. Jack is John’s younger brother, and Mary is John’s friend. Jack does not drink alcohol, so he drank a few glasses of coke, while John had multiple bottles of beer, one after the other. Mary only drank water.

At around 10.30 pm, John was quite drunk and had a blood-alcohol concentration of .12%. He got into a heated argument with another guest, Bill G., and his two friends, Bob L. and Ben K. After five minutes, Jack, Mary, and John left the bar after settling the bill.

As the three of them got into the car, Bill, Bob, and Ben entered the parking lot and saw John’s car. Bill took a screwdriver from his own car and drew a long and deep scratch across the hood of John’s car. John was livid with rage, got out of his car, threw himself at Bill, and wrenched the screwdriver out of Bill’s hands. He screamed at Bill: “I’m gonna kill you, you bastard!”. Mary pushed Bill, shouting “You idiot! Why did you have to provoke him?!” John tried to stab Bill’s chest and stomach with the screwdriver several times, but kept missing him. However, when Bill slipped and fell to the ground, Mary tumbled over him, and John ran the screwdriver through Bill’s neck, cutting an artery. Bill started to bleed profusely from the neck. Bill’s friends were deeply shook and tried to staunch the flow of blood. They pushed away Mary who was leaning over Bill with her hands on his neck. She stood up and ran away.

Bill’s friend Ben managed to call an ambulance. Bill was taken to a nearby hospital and was saved with an emergency surgery.

Meanwhile, Jack dragged John into the passenger seat of John’s car and got behind the wheel and started the engine without fastening either seatbelt, driving away at a high speed without turning the headlights on. Jack drove through inner city streets at an average speed of 130 km/h, repeatedly disregarding red traffic lights at major intersections without slowing down in order to hide the number plate and to prevent John from being arrested again. He knew that driving in this manner will not allow him to react in time if another car or a pedestrian were to be in his path. All of a sudden, Olivia appeared on the street, but Jack could not brake the car in time and hit Olivia at 120 km/h, who died instantly.

In shock about hitting Olivia, Jack slammed on the brakes, making him lose control of the car. He collided with a wrought-iron lamp post at a speed of 90 km/h, which stopped the car instantaneously, causing John to suffer severe fractures to his skull, neck, arms, and ribs.

From the time Jack, John, and Mary left the bar up until the crash, 25 minutes had passed. Mary was arrested by two police officers, Greg D. and Cathy P., 15 minutes after the stabbing incident, in Rose Park Lane, a street about two blocks away from the scene of the incident. Her brother, Steve J., who is a paramedic, lives on that street. In her subsequent interview, she told the police detective Arthur Z. that she threw herself at Bill and fell over him trying to separate him from John, whose short temper she was well aware of. She was pressing Bill’s neck to staunch the flow of blood. Mary also asserted

that she ran to fetch her brother, Steve, who is a paramedic and lives two blocks away from the scene of the fight, but that she was detained by the police just before she could reach his flat. She also stated – accurately – that she told the two officers arresting her that she was on her way to get her brother to help Bill.

During trial

Jack confessed to the commission of the charged crimes.

John did not say anything, maintaining his right to remain silent.

Mary said that she did not want any quarrels; she asked John to leave and tried to prevent him from driving, while requesting Bill not to provoke John who was drunk. She testified that she incidentally fell on Bill with the intent to help him. During the incident, she pressed on Bill's neck in order to stop the bleeding and tried to call her brother staying nearby to help Bill as well. She requested the court to release her from the criminal charges.

The prosecutor asserted that Jack voluntarily confessed to all of the charged offenses. The prosecutor also indicated that although John remained silent, he had committed the charged offenses based on several pieces of evidence that have been corroborated. As for Mary, there was no evidence proving her complicity. Therefore, the prosecutor requested that Mary be released, and that both Jack and John be sentenced according to the laws.

The defense lawyer for Jack indicated that his client is a minor and only tried to help his brother, which is why he confessed to committing the alleged offenses. The defense lawyer for John indicated that he was provoked by Bill, and that he had responded in defense to Bill's attack with a view to protecting his own property (car) that he adored, with these actions committed in the state of intoxication. Both lawyers thus requested a sentence reduction in view of the mitigating circumstances. John's lawyer also represented Mary, who requested that she be released, since she was neither a principal nor accomplice to the alleged offense.

Having

Considered the confessions made by the accused Jack,
Examined the evidence produced during the criminal investigation,
Heard the final testimonies from the accused,
Heard the concluding statement of the prosecutor,
Heard the closing statements of the defense lawyers, and
Considered the case according to the laws,

Reasons

1. On Friday, 26 March 2021, the facts mentioned above were attempt by John and committed by Jack and characterized as the offenses specified above.
2. During trial, Jack confessed to the charged offenses, and John asserted his right to remain silent, though there were several pieces of corroborated evidence.
3. The prosecutor asserted that there is sufficient evidence to prove that Jack and John are guilty. John intended to kill Bill, as expressed in his words, although Bill's life was saved through a surgery. Although John remained silent, the witness (Mary) asserted that he has a short temper.
4. The defense lawyers requested a sentence reduction in light of mitigating circumstances, which will be considered by the court.
5. The accused are mentally fit to criminal liability, and knew the consequences of their acts. John's actions in defense of his property were of a force that was not proportionate to the risk, but the fact of intoxication has been considered in deciding the sentence.
6. The accused Jack is a minor, and he shall be accorded a sentence reduction.
7. John also has two prior convictions for theft, with the first resulting in a fine imposed five years ago, and the second resulting in a term of imprisonment for 18 months imposed three years ago.
8. Having considered the Law on Land Traffic 2017: Article 75 new on driving without a license that can be punished from 1 month to 6 months and fined from 800,000 to 4,000, 000 riels, and Article 83 on negligent driving that causes injuries that can be punished from 6 months to 2 years and fined from 2,000,000 to 10,000,000 riels, which is aggravated to 1 to 3 years if driving without a license or fleeing from the site of the incident, and Article 85 on negligent driving that causes death that can be punished from 1 year to 3 years and fined from 4,000,000 to 15,000,000 riels, which is aggravated to 2 years to 5 years and fined from 10,000,000 to 25,000,000 riels if causing death while driving without a license or fleeing from the site of the incident.
9. Having considered Article 27 on definition of attempt, Article 84 on applicability of subsequent offences, Article 87 on committing a felony after sentencing for a misdemeanor, and Article 199 on murder of 2009 the Criminal Code, that is punishable from 10 to 15 years of imprisonment.
10. Having considered Article 39 on measures applicable to minors, Article 93 on definition of mitigating circumstances, Article 94 on effect of mitigating circumstances, Article 138 on separate prosecution, and Article 160 on principal penalties applicable to minors over the age of fourteen, of the 2009 Criminal Code.

Therefore, decided

1. Sentenced:
 - a. John with 25 years in prison of attempted murder.
 - b. Jack with 2 years and six months in prison of all charged offenses in Article 75 new, Article 83 and Article 85 and fined of 12.5,000,000 riels imposed on civil liable person.
2. Order Jack and John to be detained continuously.
3. Confiscate and store the collected evidence until the final conclusion of the case.
4. This trial was conducted and the judgment was pronounced publicly in the presence of Jack, John, and Mary. The accused have the right to appeal according to the laws.

Clerk

Judge (president)

Judge (member)

Judge (member)