

XX District People's Court of XX City
Criminal Judgment with Incidental Civil Lawsuit

(2022) X0108 *Xingchu* (刑初 criminal, first instance) No. 24

Public prosecution agency: People's Procuratorate of XX District, XX City.

Plaintiffs in incidental civil lawsuit: The three children of victim Olivia F. (3, 5, 10 years old (personal information omitted)

Ad litem representative of the plaintiffs in the incidental civil lawsuit: Wang XX, attorney at the XX City Legal Aid Center.

Defendant: John D. (personal information omitted) date of arrest?
released on bail pending trial on March 27, 2021, due to serious injury.
Defence counsel: Jin xx, attorney at XX Law Firm in XX City.

Defendant: Mary J. (personal information omitted)
arrested on March 27, 2021, released on bail pending trial on April 16.
Defence counsel: Liang XX, attorney at XX Law Firm in XX City.

Criminal and Incidental Civil Lawsuit Defendant: Jack D. (Personal information omitted, 17-year-old minor) arrested on March 27, 2021, under pretrial detention since April 23, 2021 in the Youth Department of the XX District Detention Center in XX City.

Defendant of Incidental Civil Lawsuit: Jack D's Guardian

Defence counsel and the representative of the defendant in the incidental civil lawsuit: Mr. Shang, a lawyer of the XX City Legal Aid Center.

The People's Procuratorate of XX District, XX City charged the defendants John D. and Mary J. with the crime of intentional injury (Art. 234) and the defendant Jack D with the crime of causing a traffic accident (Art. 133), causing negligently the death of Olivia (Art. 233), causing negligently injuries to John (Art. 235) and the crime of obstruction of punishment (Art. 310) July 26th, 2021; with the indictment No. 319 (*X jian zhen jian xingsu* X 检侦监刑诉 X city procuratorate, Department of Supervision of Investigation) an indictment was filed in this court. During the proceedings, the three minor children of the victim Olivia F. filed an incidental civil lawsuit through the litigation representative for economic losses and compensation for maintenance. This court formed a collegiate panel in accordance with the law and held a hearing in camera on January 24 – 25, 2022. XX District People's Procuratorate of XX City assigned prosecutor Li XX to appear in court to present and support the prosecution. Defendants John D., Mary J., Jack D. and their defence counsel Jin XX, Liang XX, and Shang X

appeared in the court hearing, and Li XX, the attorney ad litem of the plaintiff in the incidental civil lawsuit, appeared also before the court. The case has now been concluded.

The prosecution alleges that at about 10:30 pm on March 26, 2021, John, Jack (John's younger brother) and Mary had an argument with the victim Bill G. while drinking at the "Blue Moon" bar. After settling the bill at the bar, they went to the parking lot and saw that Bill G was using a screwdriver to draw a long and deep scratch across the hood of John's car. John grabbed Bill G.'s screwdriver and stabbed at Bill. When the several times stabs failed, Bill fell and Mary fell over him on the ground. John then ran the screwdriver through Bill G.'s neck, injuring a carotid artery and causing massive bleeding. Mary at once pressed Bill G's neck where the neck was bleeding, but was pushed away by Bill G's friend Bob. Bill G finally was rescued and survived. A serious injury of first degree was confirmed. After John had stabbed Bill G., Jack dragged John to the car and made him sit in the passenger seat. Jack drove away from the crime scene at high speed to escape Bill G.'s friends who went after him in pursuit. He was not in possession of a driver's license. Jack repeatedly disregarded red traffic lights and then at a speed of 120 km/h knocked down Olivia F. who was crossing the street while a traffic light showed green for pedestrians. The impact caused the death of Olivia immediately. Death resulted from multiple skull fractures and extensive brain damage. John was not wearing a seat belt, and after the car hit Olivia and Jack stomped on the brake the car collided with a lamp post. As John D did not wear a seat belt, he crashed through the windshield, causing him serious injuries. Jack suffered only minor injuries as the airbag deployed when the car struck Olivia. Mary was arrested by police not far from her brother's house after leaving the scene.

Regarding the facts of the prosecution, the prosecution provided relevant evidence to this court, including: the confessions of the defendants Jack and Mary, the testimony of witnesses, the conclusion of the expert witnesses and other evidence.

The plaintiffs in the incidental civil lawsuit requested the accused Jack D to compensate for expenses for the funeral of Olivia F amounting to 50,000 yuan and her death set at 50,000 yuan. Furthermore, alimony payments of 2.62 million Yuan for the three children should be awarded.

The prosecution assumes that the accused John D and Mary J intentionally injured others, causing serious injuries, and their behavior established the offence of Article 234 Criminal Law of the People's Republic of China. However, since John D's criminal behavior was provoked by the victim's illegal behavior, the sentence should be mitigated. Intoxication should not be considered as a circumstance relevant for guilt as Art. 18 clearly states that any intoxicated offenders shall bear criminal responsibility. John D has two previous convictions which aggravate punishment according to Art. 65. Therefore, for the accused John D and based on Art. 234 s. 2 providing a sentencing range of 3 to 10 years imprisonment, a sentence of eight years and five months imprisonment is recommended.

Mary J had assisted in John D's crime, and should be held criminally responsible as an accessory to the crime of intentional injury. In view of her behavior to prevent the

crime from developing to a more serious level, and as the role of assistance is limited, it is recommended to sentence her to six months of criminal detention.

The prosecution assumed that the accused Jack D was not in possession of a drivers' license, and his speeding resulted in the death of one person and serious injury to another person, and the act of assisting John D to escape violated Articles 133, 233, 235 and 310 of the Criminal Law of the People's Republic of China. According to the regulations, the crimes of causing a traffic accident, negligent injuries and negligent death and the crime of obstruction of punishment shall be investigated for criminal responsibility. Although Jack is a minor, the circumstances of the crime are serious and he has committed several crimes. For minors, the principle of lighter punishment shall be applied (Art. 17 s. 3), and a sentence of four years and ten months is recommended.

Defendant John D remained silent throughout the proceedings, and neither he nor his defense counsel offered a guilty plea.

During the investigation, the accused Mary, declared in her statement to the investigators that she deliberately fell to the ground to separate John and Bill G. Her defence counsel also adopted this view and held that his client had provided help to Bill G.

Defendant Jack D confessed to all facts of the crime during police interrogation and court hearing after his arrest, but did not plead guilty.

After reviewing the evidence and recommendations, it was found that:

At about 10:30 pm on March 26, 2021, John D, Jack D (John's younger brother) and Mary J had an argument with the victim Bill G. while drinking at the "Blue Moon" bar. After setting the bill at the bar, they went the parking lot and saw that Bill G was using the screwdriver to draw a long and deep scratch across the hood of John's car. John grabbed Bill G.'s screwdriver. When the first two stabs failed, Bill G. fell to the ground and Mary fell upon him. John then ran the screwdriver through Bill G.'s neck, injuring a carotid artery and causing massive bleeding. Mary once pressed Bill G's neck where the neck was bleeding, but was pushed away by Bill G's friend. Bill G was rescued and survived. A serious injury of first degree was confirmed by expert witnesses. After John had stabbed Bill G., he was dragged to the back seat of his car by Jack. Jack drove away from the crime scene at a high speed to escape Bill G.'s friend; he was not in possession of a driver's license. Jack repeatedly disregarded red traffic lights and ultimately knocked down Olivia, who was crossing the street while traffic lights showed green for pedestrians. She died immediately after the impact. She had suffered from multiple skull fractures and extensive brain damage as medical experts testified. John was not wearing a seat belt and, when the car hit Olivia and Jack slammed the brakes, hit the windshield, causing serious injuries. Jack suffered only minor injuries as the airbag deployed when the car struck Olivia. Jack and John were questioned by police after being treated in hospital and able to speak normally. Mary was arrested by police not far from her brother's house after leaving the scene.

The above facts have been cross-examined in court, and proved by the confirmed case registration form, the document of the source of the case, the statement of Mary J,

Jack's confessions, and the testimony of six witnesses, and the forensic experts' opinion of the XX City Forensic Institute as well as other evidence. This is sufficient to confirm the facts beyond any reasonable doubt. Regarding the controversial scene of Mary J falling on the victim at the crime scene, Mary made a confession that she threw herself at Bill and fell over him, witness Bob testified that Mary J fell to the ground not by accident, but on Bill's body intentionally, making Bill lose his ability to defend himself. This court believes that based on the analysis of human nature, Mary chose to side with her boyfriend John D in an emergency and tried to use her body to stop Bill's attack on John D, which objectively gave John D the opportunity to stab Bill. So, Mary's defense is not supported.

This court believes that the accused John D and Mary J intentionally assaulted others, causing serious injury to one person. Therefore, their behavior has established the crime of intentional injury. The public prosecution charged the accused John D and Mary J with intentional injury. The accused John D and Mary J acted in the form of complicity, John was the principal offender, and Mary J played a relatively small (auxiliary) role in carrying out the crime which amounts to the role aiding and abetting (Art. 27) . The accused John D has two previous convictions, one of which establishes recidivism according to law (as he committed a crime within five years after serving a sentence for a prior criminal offence, Art. 65). The accused Jack D's behavior has established the crime of causing a traffic accident, negligently causing death and injury and the crime of obstruction of punishment. All these conclusions are based on the Criminal Law of the People's Republic of China, Article 234(2), Article 26-27, Article 65, Article 133, Article 233, 235, Article 310.

The accused John D is convicted of intentional injury and sentenced to eight years and five months in prison. (The term of imprisonment shall be calculated from the date of execution of the judgment. For those who were detained before the execution of the judgment, one day of detention shall be converted into one day of imprisonment. So, the sentence runs from February 11, 2022 to July 11, 2030).

The accused Mary J is convicted of intentional injury and sentenced to six months' imprisonment. (The term of imprisonment shall be calculated from the date of execution of the judgment. For those who were detained before the execution of the judgment, one day of detention shall be converted into one day of imprisonment. So, the sentence runs from February 11, 2022 to July 21, 2022)

The accused Jack D is convicted of causing a traffic accident, negligently causing death and injuries as well as obstruction of punishment and is sentenced to four years and ten months (The term of imprisonment shall be calculated from the date of execution of the judgment. For those who were detained before the execution of the judgment, one day of detention shall be converted into one day of the sentence of imprisonment, that is, from February 11, 2022 to January 25, 2026)

The accused Jack D's legal guardians shall pay 50,000 yuan for funeral expenses and 50,000 yuan for death compensation and a total of 2.62 million Yuan alimony to Olivia F's three minor children.

If you are not satisfied with this judgment, you may file an appeal through this court or directly to the Intermediate People's Court of XX City within ten days from the second day of receipt of the written judgment. In the case of a written appeal, one original and four copies of the appeal petition shall be submitted.

Presiding Judge: Zhang XX
Judge: Wang X
People's Assessor: Li XX

January 31, 2022

Assistant Judge: Zhao XX

Clerk: Chen X

Comments:

1) Jurisdiction:

In China, there are no juvenile courts yet, but most courts have set up juvenile chambers to hear juvenile delinquency cases. The given case is a joint crime committed by an adult and a minor, it should be prosecuted in separate cases under normal circumstances. However, according to the Supreme People's Procuratorate's 2013 "People's Procuratorate's Regulations on Handling Juvenile Criminal Cases", if the case involves a criminal incidental civil lawsuit, should be charged together, but which is an exception in practice.

2) Jack D's offence on driving without driving license

In China, driving without a driver's license normally establishes an administrative offence according to Art. 99 Law of the People's Republic of China on Road Traffic Safety (RTS 2021).

Article 99 For any of the following acts a fine of not less than 200 Yuan but not more than 2000 Yuan shall be imposed by the traffic administrative department of the public security organ:

(1) Driving a motor vehicle without a valid driving license, or after a driving license was revoked, or during a period of temporary seizure of a driving license;

However, if someone has no driving license and drives a motor vehicle causing a heavy traffic accident, the following article shall be applied.

Article 101 Whoever violates the road traffic safety laws or regulations, thus causing a heavy traffic accident shall, if a crime is constituted, be subject to criminal liabilities in accordance with the law, and his motor vehicle driving license shall be revoked by the traffic administrative department of the public security organ.

Article 133 Criminal Code: Whoever violates traffic and transportation laws and regulations thereby giving rise to major accidents involving severe injuries, deaths, or great losses of public and private properties is to be sentenced to not more than three years of fixed-term imprisonment; when fleeing the scene after an traffic and transportation accident or under other particularly odious circumstances, to not less than three years and not more than seven years of fixed-term imprisonment; when fleeing after causing a person's death, to not less than seven years of fixed-term imprisonment.

3John D, and Mary J have been convicted as principle offender and accomplice

Article 26 (1) : A principal offender is one who organizes and leads a criminal group in conducting criminal activities or plays a principal role in a joint crime.

Article 27: An accomplice is one who plays a secondary or supplementary role in a joint crime.

An accomplice shall, in comparison with a principal offender, be given a lesser punishment or a mitigated punishment or be exempted from punishment.

4) Jack D has been convicted the crime of obstruction of punishment

Article 310 . Whoever provides a person who he clearly knows to be a convict with a hiding place, financial and material support, assists him to escape, hides, or protects him by falsifying evidence is to be sentenced to not more than three years of fixed-term imprisonment, limited incarceration, or probation; when the circumstances are severe, to not less than three years but not more than ten years of fixed-term imprisonment.

5) John D's sentencing

Article 65 (1)Where a convict sentenced to fixed-term imprisonment or a heavier penalty commits again a crime for which a fixed-term imprisonment or a heavier penalty shall be given within five years after finishing serving his sentence or being pardoned, he shall be a recidivist and be given a heavier penalty, unless it is a negligent crime or he commits the crime under the age of 18.

Article 233 Whoever negligently causes the death of another is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment; when the circumstances are relatively minor, he is to be sentenced to not more than three years of fixed-term imprisonment. Where this Law has other stipulations, matters are to be handled in accordance with such stipulations.