

Judgment number: 000/2022/HS-ST

Dated 26 January 2022

**FOR AND ON BEHALF OF
SOCIALIST REPUBLIC OF VIETNAM
PEOPLE'S COURT OF ABC DISTRICT XYZ CITY**

The Trial Panel's members include:

- Presiding Judge: Mr. Chau Thanh N.
- People's Jurors: Mr. Luu Minh V.
Ms. Dang Minh C.

Trial Clerk: Mr. Nguyen Van D., Court Clerk of the People's Court of ABC District, XYZ City.

Representative of the People's Procuracy of ABC District attending today's trial: Ms. Pham Thi E – Prosecutor.

On 26 January 2022, at Courtroom No.1 of the head office of the People's Court of ABC District XYZ City, the public first-instance trial of the criminal case numbered 000/2022/TLHS-ST dated 27 October 2021 was conducted; in accordance with the decision on trial number 123/2022/QDXXST-HS dated 20 January 2022, against the following defendants:

* Jack D.: born 01 January 0000; registered permanent residence and current address: [...], ABC District, XYZ City; educational level: 11/12; occupation: student; no criminal record; son of Mr. Senior D. and Mrs. Senior D; detained from 26 March 2021 to 04 April 2021; being applied the preventive measure of "being forbidden to leave the place of residence, appearing in court.

A duly authorized representative of Jack D.: [Mr...], appearing in court.

* John D.: born 01 February 0000; registered permanent residence and current address: [...], ABC District, XYZ City; educational level: 11/12; occupation: car mechanic; criminal record: a monetary fine and a term of 18 months imprisonment, both have not got expunged yet; son of Mr. Senior D. and Mrs. Senior D.; having been detained and arrested for custody from 26 March 2021 until the present, appearing in court.

Defense Attorneys:

* Mr. Nguyen Van F., Lawyer, Vilob Nam Long Law Firm LLC, head office address: [...] Road, [...] Ward, ABC District, XYZ City. Appearing in court.

* Ms. Tran Thi G., Lawyer, Vilob Nam Long Law Firm LLC, head office

address: [...] Road, [...] Ward, ABC District, XYZ City. Appearing in court.

* Mr. Le Van H., Lawyer, Vilob Nam Long Law Firm LLC, head office address: [...] Road, [...] Ward, ABC District, XYZ City. Appearing in court.

Victims:

* Mr. Bill G., born 0000, residing at [...], abc ward, ABC District, XYZ City, appearing in court.

* Ms. Olivia F., born 0000, residing at [...], def ward, ABC District, XYZ City, died. Represented by Oswald F., elder brother, appearing in court.

Witnesses:

* Ms. Mary J.: born 01 March 0000; registered permanent residence and current address: [...], ABC District, XYZ City, appearing in court.

* Mr. Bob L.: born 0000; address: [...], appearing in court

* Mr. Ben K.: born 0000; address: [...], appearing in court

* Mr. Greg D.: born 0000; address: [...], appearing in court

* Ms. Cathy P.: born 0000; address: [...], not appearing in court

* Mr. Steve J.: born 0000; address: [...], not appearing in court

* Mr. Peter V.: born 0000; address: [...], appearing in court

* Mr. Arthur Z: born 0000; address: [...], appearing in court

WHEREAS

According to the materials included in the case dossier and progress at the trial, the case content is summarized as follows:

At around 20:00 on Friday, 26 March 2021, Jack, John and Mary moved to the “Blue Moon” bar to have dinner in John’s car, of which the plate number is [...]. At the dinner, John drank quite a lot of beer and showed signs of being unable to control his behaviors.

At around 22:30, John got caught up in a controversy with Bill G., Bob L, and Ben K., but then Jack and Mary persuaded John to yield to stay out of trouble. After making payment for the meal, John, Jack, and Mary were ready to leave. Despite Jack and Mary’s objection, John insisted on driving.

At the same time, Bill G.’s group walked out and saw John leaving. Bill picked up his screwdriver and scratched a long and deep track on the hood of John’s car. John got outraged immediately, hopped off his car, approached Bill, grabbed the screwdriver, and shouted “I’m gonna kill you, you bastard.” Right then, John held the screwdriver and tried to stab Gill but he did not succeed. Mary was trying to push Bill back to prevent more trouble. Suddenly, Bill slipped and fell on the ground, which also caused Mary to fall over him, and the screwdriver in John’s hand run over Bill’s neck. The screwdriver cut Bill’s neck artery and caused Bill to bleed unstoppably.

In response to the circumstance, Mary, John, and Jack tried to run away. Despite not having a driving license, Jack took the driver's seat and drove at high speed without lights on. Finding the three leaving, Bob got in his car to run after them while Ben called an ambulance to take Bill to a near hospital.

On the road, Jack ran at the speed of 130km/h regardless of traffic signals in order to not be identified and to help John avoid criminal responsibilities.

Although Jack knew that if there were any obstacles on road, he would not be able to react on time, he was still driving rapidly to avoid being caught by Bob.

When turning in a bend, Jack saw a woman (who was later identified as Olivia F.) crossing the road when the traffic light was green on for walkers. Jack tried to brake but still hit Olivia at a speed of 120km/h. The impact threw Olivia into the air before she smashed her head against the wall, causing multiple severe traumatic brain injuries and instant death.

Jack lost control and crashed the car against a light pole at the speed of 90km/h, causing the car's immediate pause. Sitting in the back seat without a seatbelt, John threw himself through the windshield glass, resulting in severe fractures at the skull, neck bone, arms, and ribs.

According to the Assessment conclusion number [...] date [...] of the XYZ City Forensic Assessment Center, Bill's body injury rate is 40%.

According to the Assessment conclusion number [...] date [...] of the XYZ City Forensic Assessment Center, Olivia died due to multiple severe traumatic brain injuries.

According to the alcohol test report number [...] date [...], John's blood alcohol concentration was measured as [...].

The seized evidence included a screwdriver size [...] and a car of which the plate number is [...].

By the indictment number [...] dated [...], the ABC District People's Procuracy prosecuted the defendants as follows:

1. John, the crime of intentionally causing injury as prescribed in Item c, Clause 3, Article 134 of the 2015 Penal Code.
2. Jack, the crime of violating the regulations on participating in road traffic prescribed in Item a, Clause 2, Article 260 of the 2015 Penal Code.

At the Trial:

Jack sincerely confessed all of the crimes as stated in the indictment and showed remorse and regret for the wrong acts that he had caused and asked for a reduction in the punishment.

John did not confess his offense. He had an uncooperative attitude and refused to answer all questions raised by the representative of the People's Procuracy.

Representative of the ABC District People’s Procuracy presented the indictment:

Regarding the crime:

John committed the crime of “intentionally causing injury” pursuant to Item c, Clause 3, Article 134 of the 2015 Penal Code amended in 2017.

Jack committed the crime of “violating the regulations on participating in road traffic” pursuant to Item a, Clause 2, Article 260 of the 2015 Penal Code amended in 2017.

Regarding penalties:

Applying the provisions of Item c, Clause 3, Article 134, Item b, Clause 1, Article 51, Item h, Clause 1, Article 52 of the Penal Code, defendant John should be sentenced from 8 years to 8 years and 6 months in prison.

Applying the provisions of Item a, Clause 2, Article 260, Items b and s, Clause 1, Article 51, and Clause 2 Article 101 of the Penal Code, defendant Jack should be sentenced from 2 years 6 months to 3 years in prison.

Handling evidence:

Applying Item a, Clause 1, Article 46, Article 47, and Article 48 of the Penal Code, Item c, Clause 2, Article 106 of the Penal Proceedings Code. Confiscating and destroying: a screwdriver size [...], confiscating and expropriating to the State’s budget a car having plate number of [...].

Civil responsibilities:

To force defendant John to compensate Bill an amount of VND [...], including ambulance costs, in-patient treatment expenses, and costs for rehabilitation after treatment, specifically as follows:

- Ambulance cost: VND [...]
- Surgery cost: VND [...]
- In-patient cost: VND [...]
- Medicine cost: VND [...]
- Rehabilitation cost: VND [...]

To force defendant Jack to compensate Olivia’s family an amount of VND [...], including funeral costs, and mental loss compensation for the dead victim’s family, specifically as follows:

- Funeral cost: VND [...]
- Compensation for mental loss: VND [...]

Besides, the representative of the People’s Procuracy also suggested a trial fee in accordance with the provisions of the laws.

Lawyer’s defending viewpoints:

The Lawyers agree that the charges against the defendants have grounds, and comply with the laws. It is proposed that the Trial Panel considers the familial status

of the defendants, and extenuating circumstances by the provision of Article 51 of the Penal Code: the defendants sincerely declared, repented; have remedied the consequences and compensated for the damages; defendant Jack is a person under the age of 18. The lawyers proposed the Trial Panel consider applying the laws' relevant provisions, especially the Penal Code's provisions, to juvenile offenders to apply the lowest sentence as prescribed by the law to Jack. Regarding John, his family has promptly remedied the consequences, compensated for the damages, and paid necessary expenses as prescribed by the law to Bill. The lawyers proposed the Trial Panel consider applying the extenuating circumstance under the laws to Jack.

THE COURT FINDS

Based on the case's contents, materials duly collected in the case's dossier, and the issues argued at the trial hearings, the Trial Panel has the following opinions:

[1] Regarding the legitimacy of the procedural acts and decisions of the Investigation Police, Investigators, Procuracy Authority, and Prosecutor during the progress of the investigation, prosecution, and adjudication: They have strictly followed the provisions of the Penal Procedural Code. During the progress of the investigation and trial hearing, defendants, victims, and the representatives of the dead victim have neither objection nor petition against the acts and decisions of the Procedural Enforcement Authorities. Hence, the procedural acts and decisions conducted by the Procedural Enforcement Authorities and procedural enforcers are lawful.

[2] Regarding offenses of defendants:

[2.1] The act of intentionally causing injuries

The defendant had an uncooperative attitude and refused to answer all questions raised during the hearing. However, all testimonies provided by Bill, Mary, Bob, and Ben at the trial are suitable with the evidence and dossier of the case.

The Trial Panel has sufficient basis to conclude: At around 10:45 PM on 26 March 2021, John used a screwdriver size [...] to slide through an artery, causing Bill an injury rate of 40%.

[2.2] The act of violating rules on road traffic safety

Despite having no driving license and being underage to drive a car on road, Jack still drove the car to escape from the pursuit of Bob, causing a traffic accident, and resulting in immediate death.

[3] Regarding the characteristics and level of offenses conducted by defendants:

John's offense is severe and harmed the health of a person who is protected by the laws. The defendant's act shows hooliganism, under which he caused injuries to the victim just because of a minor conflict.

Jack committed the offense when he was under 18 years old, so he is entitled to a milder sentence applicable to a person of full 18 years old who commits a similar offense.

[4] Regarding the aggravating and extenuating circumstances

John must bear the aggravating circumstance of recidivism as prescribed in Item h, Clause 1, Article 52 of the Penal Code.

Although John did not confess his offense, after committing the offense, his family conducted remedies and compensated the victim's family. Hence, John is entitled to extenuating circumstances provided in Items b and s, Clause 1, Article 51 of the Penal Code.

Jack is not subject to any aggravating circumstances.

Jack sincerely admitted his offense; after committing the offense, together with his family, he conducted the remedies and compensated the victim's family. Jack is a good student, has excellent academic achievements, and this is his first time committing an offense. He is entitled to extenuating circumstances provided in items b and s of clause 1, and clause 2 of Article 51 of the Penal Code.

[5] Regarding penalties

John needs to be isolated from social life for a while to be educated and reformed into a useful person for the family and society, as well as to deter and prevent crimes in general.

This is the first time Jack has committed a crime. He has a specific address, self-educating ability, and several extenuating circumstances. He should be sentenced to imprisonment but serving a suspended sentence is enough to have a deterrent and educational effect on him.

[6] Regarding civil responsibilities:

The parties self-negotiated civil matters at today's trial, hence, the Court will not consider and resolve those matters.

[7] Regarding evidence:

To destroy the screwdriver size[...]

To confiscate the car having plate number of [...]

[8] Regarding court fee: To apply Article 136 of the Penal Procedural Code and Resolution 326 dated 30 December 2016 of the Standing Committee of the National Assembly providing court fees, to force defendants to bear court fees for the first-instance penal case and the first-instance civil case under provisions.

For the above reasons,

RULES

1. To pronounce:

John committed the crime of intentionally causing injuries.

Jack committed the crime of violating regulations on road traffic safety.

Applying provisions under Item c, Clause 3 Article 134, Items s and b Clause 1 Article 51, Item h Clause 1 Article 52 of the Penal Code, to sentence John 8 years and 6 months of imprisonment. The term of serving imprisonment sentence is counted from the date of custody, 26 March 2021.

Applying provisions under Item a, Clause 2 Article 260, Items s and b, Clause 1 Article 51, Clause 1 Article 101 of the Penal Code, to sentence Jack 2 years and 6 months of imprisonment but allow him to serve a suspended sentence. The probationary term of 60 months is counted from the date of pronouncement.

2. Regarding civil responsibilities

The defendants cooperated with their family to negotiate and agree on the compensation of civil responsibilities for the victims' families. At today's trial, the victim in the case of "intentionally causing injuries" and the representative of the victim in the case of "violating regulations of road traffic safety" do not have any additional requests. Hence, the Court does not set out to consider and settle.

3. Regarding evidence:

To destroy a screwdriver size [...].

To confiscate the car having the plate number of ...

4. Regarding court fee

Each defendant shall bear VND 200,000 of court fee for the criminal first instance.

The court fee for the civil first instance: The defendants do not have to pay the court fee for the civil first instance.

5. Right of appeal:

The defendants, duly authorized representatives, and advocates of defendants under 18 years old; duly authorized representatives of victims, victims, and people having relevant rights and obligations will have a right to appellate the judgment within 15 days from the pronouncement of the first-instance judgment.

Recipients:

**FOR AND ON BEHALF OF
THE FIRST INSTANCE ADJUDICATION PANEL
JUDGE – TRIAL CHAIRMAN**

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CHAU THANH N.

