

CASE LAW DRAFT NO. 05/2024

On Determining the Role of Instigator and Mastermind in the Crime of “Murder”

Approved by the Judges' Council of the Supreme People's Court on [date] [month] 2024 and published under Decision No. [number]/QĐ-CA on [date] [month] 2024 by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

The Cassation Decision No. 12/2022/HS-GĐT dated July 25th, 2022, by the Judges' Council of the Supreme People's Court concerning the defendant Phạm Quốc B.

Location of the Case Law's Content:

Paragraph 2 of the “Court's Opinion” section.

Summary of the Case Law:

- Factual Background:

The defendant, motivated by prior conflicts, deliberately enticed and coerced several individuals to engage in physical confrontation. Before the altercation, the defendant directed these individuals to arm themselves and organize into groups, with the explicit intention of retaliatory violence against any perceived adversaries. As a result of the defendant's instigation, guidance, incitement, and encouragement, the co-defendants utilized weapons to attack individuals, culminating in one defendant fatally stabbing a person.

- Legal Resolution:

In light of the facts presented, the defendant must be found criminally liable for the offense of "Murder" as the primary instigator, mastermind, and leader in the commission of the crime.

Relevant Legal Provisions:

Article 171 of the 2015 Penal Code (amended and supplemented in 2017).

Keywords:

"Murder"; "Instigator, Mastermind"; "Disturbing Public Order".

CASE DETAILS

According to the documents in the case file and the developments at the trial, the case details are summarized as follows:

On the evening of February 4th, 2019 (Lunar New Year Eve), several young men from villages in T Commune (now P Commune), B District, Quảng Bình Province, set up tents for year-end parties. At approximately 10:00 p.m., Hồ Việt D and Phạm Quốc B from Village K visited a tent in Village X for socializing. During the gathering, Phạm Văn H (also known as Đ) from Village G put his arm around Phạm Quốc B's shoulder and danced, touching B's head. Feeling insulted, B slapped H in the face, stating, "No one has ever dared to touch my head from childhood until now". Witnessing the altercation, Lê Văn T intervened as B attempted to continue the altercation. Seeing the scuffle, Hồ Việt D rushed to B's aid, but young men from Villages X and G attacked B and D, resulting in injuries to D's left chest and lower lip.

Subsequently, B and D returned to the tent in Village G, where they reported being assaulted at the Village X tent and called for retaliation. Many individuals, including Hồ Văn L, Hoàng Duy C, Phạm Hữu N, Hồ Văn N1 from Village G; Hồ Quang H1, Đặng Gia T1, Phạm Văn D, Nguyễn Tuấn A, Nguyễn V from Village G; and Hồ Văn L1 from Village K, mobilized upon receiving B's call, declaring their intent to confront the Village X group at the stadium. After receiving the call, L1 informed others at the Village K tent about B's assault, rallying them to join the retaliation effort. Those who heeded the call included Nguyễn T2, Phan Thanh D2, Hoàng Minh H2, Lê Văn H3, Lê

Hồng Q, Hoàng Quốc T3, Hồ Văn T4, Lê Thanh K, and Nguyễn Văn L2.

Upon gathering at the Village G stadium, B stated, "There are many people at the Village X tent; we need to obtain weapons". Subsequently, Nguyễn Tuấn A acquired a folding saw, Hồ Việt D obtained a pair of red-handled scissors, Hồ Văn L1 took a pepper spray can, Hồ Văn L brought scissors, while others carried sticks, stones, and glass bottles. During their approach, Phạm Quốc B stopped at Võ Thị H4's house in Village G to procure a knife before dividing the group into two for the approach to the Village X tent.

As the two groups led by Phạm Quốc B approached the tent in Village X, B shouted, "Charge, beat the X Village gang!" This prompted the group to yell, curse, and hurl stones and objects at those present in the Village X tent. During the altercation, Mr. Trần Quốc T5 inside the tent grabbed a bamboo stick and, accompanied by Mr. Phạm Duy H5 and Phan Chí S, confronted Hồ Văn L and Nguyễn Tuấn A. Nguyễn Tuấn A, wielding an unfolded saw, struck Mr. Trần Quốc T5 on the head. T5 retaliated by hitting Tuấn A's head with a bamboo stick. Tuấn A then slashed T5's shoulder, prompting T5 to continue counterattacking Tuấn A and Hồ Văn L. Meanwhile, Nguyễn V threw stones and wielded a wooden stick against T5 before the group dispersed.

Simultaneously, Hồ Việt D, armed with red-handled scissors, entered the tent in Village X and encountered Mr. Trần Quốc T5 holding a bamboo stick. Stepping back momentarily, D noticed Mr. Phạm Duy H5 standing nearby. D swiftly approached, seized Mr. H5 by the head, and stabbed him multiple times, including two stabs to the left shoulder, one to the right shoulder, and one to the right ear. Confronted by several individuals from the Village X tent giving chase, D pushed Mr. H5 away and fled. Other members of Phạm Quốc B's group, including Đặng Gia T1, hurled stones into the tent and assaulted a young man inside. Hoàng Minh H2, Phan Thanh D2, Hồ Văn L1, Phạm Hữu N, and Hồ Văn N1 also threw stones into the tent. Nguyễn T2, Hồ Quang H1,

Phạm Văn D1, and Hoàng Duy C carried stones and sticks but did not engage in violence.

Following the stabbing of Mr. Phạm Duy H5, Hồ Việt D fled with the scissors toward an alley leading to the P Pagoda, where he encountered Phạm Quốc Bảo. D informed Bảo, "Sir! I just stabbed that guy a few times; I don't know if he's dead or alive."

As a consequence of these events, Mr. Phạm Duy H5 succumbed to his injuries after being rushed to the hospital for emergency treatment. Mr. Trần Quốc T5 sustained injuries resulting in a 12% health impairment rate. Additionally, the security and order in T Commune (now P Commune) were severely disrupted.

In the First-instance Criminal Judgment No. 11/2020/HS-ST dated May 13th, 2020, the People's Court of Quảng Bình Province applied Point b, Clause 2, Article 318; Point s, Clause 1, Clause 2, Article 51; and Article 38 of the Penal Code, sentencing Phạm Quốc B to 30 months of imprisonment for "Disturbing Public Order", with the prison term calculated from February 6th, 2019.

Additionally, the first-instance court convicted Hồ Việt D of "Murder" and other defendants in the case for "Intentionally Causing Injury" and "Disturbing Public Order", resolving civil liability and court fees.

In the Appellate Appeal Decision No. 17/QĐ-VC2 dated June 9th, 2020, the High People's Procuracy in Đà Nẵng proposed that the High People's Court in Đà Nẵng vacate the First-instance Criminal Judgment No. 11/2020/HS-ST dated May 13th, 2020, of the People's Court of Quảng Bình Province regarding the criminal liability of Phạm Quốc B for further investigation into the crime of "Intentionally Causing Injury".

In the Appellate Criminal Judgment No. 233/2020/HSPT dated September 18th, 2020, the High People's Court in Đà Nẵng did not accept the

appeal of the High People's Procuracy in Đà Nẵng and upheld the first-instance court's decision regarding the charges and sentence of Phạm Quốc B.

In the Appeal Decision No. 26/QĐ-VKSTC-V7 dated August 19th, 2021, the Chief Procurator of the Supreme People's Procuracy appealed the Appellate Criminal Judgment No. 233/2020/HSPT dated September 18th, 2020, of the High People's Court in Đà Nẵng regarding the criminal liability of Phạm Quốc B and proposed that the Judges' Council of the Supreme People's Court conduct a cassation review to vacate the aforementioned Appellate Criminal Judgment and the First-instance Criminal Judgment No. 11/2020/HS-ST dated May 13th, 2020, of the People's Court of Quảng Bình Province regarding the criminal liability of Phạm Quốc B for re-investigation according to the law.

At the cassation session, the representative of the Supreme People's Procuracy proposed that the Judges' Council of the Supreme People's Court accept the aforementioned Appeal Decision of the Chief Procurator of the Supreme People's Procuracy.

COURT'S OPINION:

[1] Based on the documentary evidence in the case file, it is established that on the evening of February 4th, 2019, following an assault at the year-end party tent in Village X, Phạm Quốc B and Hồ Viết D returned to the tent in Village G to rally others for retaliation. Many individuals agreed to join B and D, and prior to departing, B instructed them to procure weapons such as knives, scissors, sticks, bricks, stones, and glass bottles. Hồ Viết D was armed with red-handled iron scissors, while B carried a knife. Upon approaching the tent in Village X, B incited the group with the command, "Charge, beat the X Village gang", leading to a confrontation where they yelled, cursed, threw stones, and attacked those at the year-end party in Village X. During the altercation, Hồ Viết D fatally stabbed Mr. Phạm Duy H5 with the scissors, while Nguyễn Tuấn A used a saw to inflict injuries on Mr. Trần Quốc T5, resulting in a 12% health impairment.

The convictions of Hồ Việt D for "Murder" and Nguyễn Tuấn A for "Intentionally Causing Injury" by both the first-instance and appellate courts are well-founded and lawful.

[2] The root cause of the incident stemmed from a prior conflict between Phạm Quốc B and Phạm Văn H during the year-end party in the tent at Village X, escalating into a broader altercation involving B, Hồ Việt D, and others. B subsequently enticed and recruited others to participate in the retaliation, directing them to arm themselves and dividing them into groups to approach the tent in Village X with the intent to harm. Through B's instigation, provocation, and encouragement, Hồ Việt D, Nguyễn Tuấn A, and co-defendants utilized various weapons to assault and throw objects at those attending the party in Village X. This culminated in Hồ Việt D fatally stabbing Mr. Phạm Duy H5 multiple times with the scissors, resulting in Mr. H5's death.

Therefore, Phạm Quốc B bears primary responsibility for the outcome of the case and should be criminally liable for murder as the instigator, mastermind, and ringleader of the crime, in accordance with the law. Consequently, the trial and appellate courts' conviction of Phạm Quốc B for "Disturbing Public Order" is incorrect and represents a serious error in legal application.

[3] Regarding civil liability:

[4] Compensation for the victim Mr. Phạm Duy H5 was resolved in the Appellate Criminal Judgment No. 233/2020/HSPT dated September 18th, 2020, of the High People's Court in Đà Nẵng and the First-instance Criminal Judgment No. 11/2020/HS-ST dated May 13th, 2020, of the People's Court of Quảng Bình Province. Therefore, resolving the joint liability for compensation for Phạm Quốc B will be addressed in a separate case under civil law if Hồ Việt D makes a request.

In light of the foregoing,

IT IS DECIDED:

Pursuant to Clause 3 of Article 371; Clause 4 of Article 382; Clause 3 of Article 388; Article 391, and Article 395 of the Penal Procedure Code:

1. The Cassation Decision No. 26/QĐ-VKSTC-V7 dated August 19th, 2021, of the Chief Procurator of the Supreme People's Procuracy is accepted.

2. The Appellate Criminal Judgment No. 233/2020/HSPT dated September 18th, 2020, of the High People's Court in Đà Nẵng and the First-instance Criminal Judgment No. 11/2020/HS-ST dated May 13th, 2020, of the People's Court of Quảng Bình Province regarding Phạm Quốc B are vacated for re-investigation; the case file is to be remanded to the Supreme People's Procuracy for re-investigation according to general procedures.

CONTENT OF THE CASE LAW:

“[2] The root cause of the incident stemmed from a prior conflict between Phạm Quốc B and Phạm Văn H during the year-end party in the tent at Village X, escalating into a broader altercation involving B, Hồ Việt D, and others. B subsequently enticed and recruited others to participate in the retaliation, directing them to arm themselves and dividing them into groups to approach the tent in Village X with the intent to harm. Through B's instigation, provocation, and encouragement, Hồ Việt D, Nguyễn Tuấn A, and co-defendants utilized various weapons to assault and throw objects at those attending the party in Village X. This culminated in Hồ Việt D fatally stabbing Mr. Phạm Duy H5 multiple times with the scissors, resulting in Mr. H5's death.

Therefore, Phạm Quốc B bears primary responsibility for the outcome of the case and should be criminally liable for murder as the instigator, mastermind, and ringleader of the crime, in accordance with the law. Consequently, the trial and appellate courts' conviction of Phạm Quốc B for “Disturbing Public Order” is incorrect and represents a serious error in legal application.”

REASON FOR THE DRAFT'S PROPOSAL

Public order disturbances with severe consequences, including fatalities, are becoming increasingly frequent. These incidents often involve a large number of participants, making it difficult to determine the specific charges and roles of each individual, especially in cases where someone is killed.

This case involved Defendant B, who, due to prior conflicts, enticed and recruited others to join him in a fight. Before the fight, B instructed these individuals to obtain weapons and divided them into groups with the specific purpose of attacking people for revenge. Under B's guidance, encouragement, and incitement, other defendants used weapons to assault others, with one defendant ultimately stabbing someone to death.

The first-instance and appellate courts found Phạm Quốc B guilty of “Disturbing Public Order”. However, the Chief Procurator of the Supreme People's Procuracy appealed this decision regarding B's criminal liability. The Judges' Council of the Supreme People's Court, in its cassation decision, determined that Defendant B committed murder as an accomplice, specifically as the instigator, mastermind, and ringleader of the crime. This decision accurately reflects B's criminal acts and role in the case.

Given the complexity of these situations, developing clear case law is essential to ensure the uniform application of the law in similar future cases. This will help authorities determine the appropriate charges and roles for each participant in public order disturbances, especially those with severe consequences.