

CASE LAW NO. 46/2021/AL

On the penalty-determining circumstance "Against the children whom the offender is responsible for educating" in the crime of "Lewd Acts Against Children"

Approved by the Judicial Council of the Supreme People's Court on November 25th, 2021, and published under Decision No. 594/QĐ-CA dated December 31st, 2021, by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

The Cassation Decision No. 12/2020/HS-GĐT dated August 7th, 2020 of the Judicial Council of the Supreme People's Court on the case of "Lewd Acts Against Children" against the defendant Đinh Quang D.

Location of the Case Law's Content:

Paragraphs 3 and 4 of the "Court's Opinion" section.

Summary of the Case Law:

- Case Background:

The defendant is a teacher where the victim, a child, studied, did not directly teach the victim, and committed lewd acts towards the victim.

- Legal Resolution:

In this case, the Court must determine that the defendant committed the crime of "Lewd Acts Against Children" according to Point c, Clause 2, Article 116 of the 1999 Criminal Code with the circumstance determining the penalty "Against the children whom the offender is responsible for educating" (corresponding to Point d, Clause 2, Article 146 of the 2015 Criminal Code on the crime of "Lewd Acts Against People Under 16 Years Old" with the circumstance determining the penalty "Against the children whom the offender

is responsible for educating").

Relevant Legal Provisions:

-Point c, Clause 2, Article 116 of the 1999 Criminal Code on the crime of "Lewd Acts Against Children" (corresponding to Clause 1, Point d, Clause 2, Article 146 of the 2015 Criminal Code, amended and supplemented in 2017 on the crime of "Lewd Acts Against People Under 16 Years Old");

-Point đ, point e Clause 1 Article 31 Circular 12/2011/TT-BGDĐT dated March 28th, 2011 of the Ministry of Education and Training promulgating the Regulations for Secondary Schools, High Schools and Multilevel Educational Institutions.

Keywords:

"The teacher where the victim is a child studied"; "Lewd Acts Against Children"; "Lewd Acts Against People Under 16 Years Old"; "The offender is responsible for educating".

CASE DETAILS

Because they knew each other before, around 7:30 A.M on April 2nd, 2017, Nguyễn Thị T (born August 3rd, 2001), a 10th grade student, L High School, used her phone to text Đinh Quang D, who is the school teacher, and asked to go to D's room to play.

After the appointment, T walked to D's room in the teacher's dormitory. While in D's room, because he was afraid of someone passing by, D closed the door and held T's hand to read her palm. At this time, D put his arm around T's shoulder and waist. Seeing that T did not react, D came up with the idea of wanting to get close to T to satisfy his personal needs. D kissed T, pulled T down on the bed and lay on the bed with T, then continued to kiss, used his hands to touch T's stomach and chest, then used his hands to unbutton T's pants and pull down T's zipper. D put his left hand to touch T's genitals. T didn't

agree so she pulled D's hand away and pulled up her pants. D continued to unzip T's pants and pulled down the front of the his pants to expose part of his penis, touching T's hip. T pushed D away and D's pants popped up on their own, pushing his penis into the pants. D continued to sit on T's lap, using both hands to rub T's cheeks, then T pushed D away and stood up to fix her hair and clothes and asked to go home. D went behind and hugged T and opened the door for T to leave. After that, T told her family about being sexual abuse by D. On April 3rd, 2017, Ms. Trần Thị H, T's mother, reported Đinh Quang D's behavior to the authorities.

In the Forensic Examination Report No. 166/TTPY dated July 7th, 2017, the Forensic Examination Center of G Province concluded: Nguyễn Thị T was not physically harmed.

In the First-instance Criminal Judgment No. 55/2017/HSST dated October 2nd, 2017, the People's Court of Chư Prông District applied Clause 1, Article 116; Points h, p, s, of Clause 1, Clause 2 of Article 46 of the 1999 Criminal Code, sentenced Đinh Quang D to 07 months imprisonment for the crime of "Lewd Acts Against Children".

On October 2nd, 2017, Đinh Quang D appealed for a reduced sentence and a suspended sentence.

In Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017, the People's Court of Gia Lai Province accepted the appeal of defendant Đinh Quang D; apply Clause 1, Article 116; Points h, p, s, Clause 1, Clause 2, Article 46; Article 60 of the 1999 Criminal Code; applying additional point x, Clause 1, Article 51 of the 2015 Criminal Code, amending the First-Instance Criminal Judgment, sentencing Đinh Quang D to 07 months imprisonment but allowed for a suspended sentence.

On April 6th, 2018, the Chief Prosecutor of the Supreme People's Procuracy in Đà Nẵng issued Decision No. 48/QĐ-VC2 to request the vacatur

of the First-instance Criminal Judgment and the Appellate Criminal Judgment. This decision was motivated by the belief that Đinh Quang D's crime must be tried with the aggravating circumstance "Against the children whom the offender is responsible for educating" specified in Point c, Clause 2, Article 116 of the 1999 Criminal Code.

In the Cassation Decision No. 55/2018/HS-GDT dated October 23rd, 2018, the Judicial Committee of the High People's Court in Đà Nẵng upheld the Appellate Criminal Judgment.

In Appeal No. 13/QD-VKSTC-V7 dated October 23rd, 2019, the Chief Prosecutor of the Supreme People's Procuracy has rendered the following decision:

The protest is lodged against Cassation Decision No. 55/2018/HS-GDT dated October 23rd, 2018, issued by the High People's Court in Đà Nẵng, as well as Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017, from the People's Court of Gia Lai Province. The Judicial Council of the Supreme People's Court is hereby requested to conduct cassation proceedings to vacate First-instance Criminal Judgment No. 55/2017/HSST dated October 2nd, 2017, of the People's Court of Chư Prông District, Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017, of the People's Court of Gia Lai Province, and Cassation Decision No. 55/2018/HS-GDT dated October 23rd, 2018, of the High People's Court in Đà Nẵng, for a new first-instance trial in accordance with the law. This request is made on the basis of the following grounds:

“The High People's Court in Đà Nẵng erroneously interpreted Clause 2, Article 116 of the 1999 Criminal Code, specifically the term "Person responsible for education," limiting it to teachers directly instructing or acting as homeroom teachers to the victim. Despite the defendant Đinh Quang D being a teacher at L High School and the victim Nguyễn Thị T being a student, their lack of a direct teacher-student relationship led to the application of

Clause 1, Article 116 of the 1999 Criminal Code to Đinh Quang D's prosecution. This assessment constitutes a significant misapplication of the Criminal Code. As per Points đ and e, Clause 1, Article 31 of Circular 12/2011/TT-BGDĐT dated March 28th, 2011, issued by the Ministry of Education and Training in conjunction with the Regulations for Secondary Schools, High Schools, and Multilevel Educational Institutions, the responsibilities of subject teachers include safeguarding students' legitimate rights and interests and collaborating with homeroom teachers and other educators in their educational roles. Consequently, as a schoolteacher, D is inherently responsible for the education of all students at L High School, including Nguyễn Thị T. Đinh Quang D's criminal actions have severely tarnished the reputation of all educators at L High School. Therefore, Đinh Quang D's criminal conduct warrants prosecution and trial under the aggravating circumstance "Against children whom the offender is responsible for educating," stipulated in Point c, Clause 2, Article 116 of the Criminal Code.

Moreover, the People's Court of Chư Prông District imposed a sentence of 07 months' imprisonment on Đinh Quang D under Clause 1, Article 116 of the 1999 Criminal Code, a penalty inconsistent with the gravity and danger posed by the defendant's actions. The Appellate Judgment and Cassation Decision erroneously applied additional Point x, Clause 1, Article 51 of the 2015 Criminal Code to Đinh Quang D, incorrectly asserting that the defendant's father was a martyr. Furthermore, granting Đinh Quang D a suspended sentence fails to meet the imperative of combating the increasingly complex and socially concerning type of crime involving child sexual abuse, which commands heightened public attention today”.

At the cassation trial, the representative of the Supreme People's Procuracy requested the Judicial Council of the Supreme People's Court to accept the appeal of the Chief Prosecutor of the Supreme People's Procuracy; vacate the First-instance Criminal Judgment No. 55/2017/HSST dated October

2nd, 2017 of Chư Prông District People's Court, Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017 of the People's Court People of Gia Lai Province and Cassation Decision No. 55/2018/HS-GDT dated October 23rd, 2018 of the High People's Court in Đà Nẵng for a new first-instance trial in accordance with the law.

COURT'S OPINION:

[1] Based on the documents contained in the case file, the first-instance court and the appellate court tried Đinh Quang D for the crime of "Lewd Acts Against Children" as well-founded and in accordance with the law.

[2] With respect to the determination of aggravating circumstances, the Judicial Council of the High People's Court in Đà Nẵng's assertion that D did not directly instruct Nguyễn Thị T constitutes a serious error, rendering the aggravating circumstance stipulated in Point c, Clause 2, Article 116 of the 1999 Criminal Code inapplicable to this case.

[3] Đinh Quang D, a geography teacher at L High School, initiated contact with T on March 26th, 2017, within the boarding school area for ethnic minorities, where he enlisted male students to assist in banana cutting behind his dormitory. During this encounter, D encountered T in the female students' quarters and learned of her status as a 10th-grade student. Subsequently, D and T frequently exchanged text messages. On April 2nd, 2017, following a text message from T, she visited D's room where D engaged in lewd acts towards her. Thus, D was acquainted with T for approximately one week and was aware of her enrollment as a student at L High School.

[4] According to the provisions of Points đ and e, Clause 1, Article 31 of Circular 12/2011/TT-BGDĐT dated March 28th, 2011, issued by the Ministry of Education and Training in conjunction with the Regulations for Secondary Schools, High Schools, and Multilevel Educational Institutions, the responsibilities of subject teachers include safeguarding students' legitimate

rights and interests and collaborating with homeroom teachers and other educators in their educational roles. Therefore, as a teacher of the school, D must be responsible for educating all students of the school, including Nguyễn Thị T. Therefore, D must be subject to aggravating circumstances “Against children whom the offender is responsible for educating” stipulated in Point c, Clause 2, Article 116 of the 1999 Criminal Code, is the right application of the law.

[5] The People's Court of Chư Prông District imposed a sentence of 07 months' imprisonment on Đinh Quang D under Clause 1, Article 116 of the 1999 Criminal Code, a penalty inconsistent with the gravity and danger posed by the defendant's actions. The Appellate Judgment and Cassation Decision erroneously applied additional Point x, Clause 1, Article 51 of the 2015 Criminal Code to Đinh Quang D, incorrectly asserting that the defendant's father was a martyr, as the veterans' records show that D's father was not. Furthermore, granting Đinh Quang D a suspended sentence fails to meet the imperative of combating the increasingly complex and socially concerning type of crime involving child sexual abuse, which commands heightened public attention today

[6] Therefore, the Cassation Appeal No. 13/QĐ-VKSTC-V7 dated October 23rd, 2019 of the Chief Prosecutor of the Supreme People's Procuracy against the Cassation Decision No. 55/2018/HS-GĐT dated October 23rd, 2018 of the High People's Court in Đà Nẵng and Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017 of the People's Court of Gia Lai Province, is necessary; it is necessary to vacate the First-instance Criminal Judgment No. 55/2017/HSST dated October 2nd, 2017 of Chư Prông District People's Court, Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017 of the People's Court of Gia Lai Province and Cassation Decision No. 55/2018/HS-GĐT dated October 23rd, 2018 of the High People's Court in Đà Nẵng for a new first-instance trial in accordance with the law.

In light of the foregoing,

IT IS DECIDED:

Pursuant to Clause 3, Article 388; Article 391 and Article 394 of the 2015 Criminal Procedure Code:

1. To accept the Cassation Appeal No. 13/QĐ-VKSTC-V7 dated October 23rd, 2019 of the Chief Prosecutor of the Supreme People's Procuracy against the Cassation Decision No. 55/2018/HS-GĐT dated October 23rd, 2018 of the High People's Court in Đà Nẵng and Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017 of the People's Court of Gia Lai Province.

2. To vacate the First-instance Criminal Judgment No. 55/2017/HSST dated October 2nd, 2017 of the People's Court of Chư Prông District, the Appellate Criminal Judgment No. 97/2017/HSPT dated December 29th, 2017 of the People's Court of Gia Lai Province and the Cassation Decision No. 55/2018/HS-GĐT dated October 23rd, 2018 of the High People's Court in Đà Nẵng for a new first-instance trial in accordance with the law.

3. To remand the case file to the People's Court of Chư Prông District, Gia Lai Province for a new first-instance trial.

CONTENT OF THE CASE LAW:

“[3] Đinh Quang D, a geography teacher at L High School, initiated contact with T on March 26th, 2017, within the boarding school area for ethnic minorities, where he enlisted male students to assist in banana cutting behind his dormitory. During this encounter, D encountered T in the female students' quarters and learned of her status as a 10th-grade student. Subsequently, D and T frequently exchanged text messages. On April 2nd, 2017, following a text message from T, she visited D's room where D engaged in lewd acts towards her. Thus, D was acquainted with T for approximately one week and was aware

of her enrollment as a student at L High School.

[4] According to the provisions of Points đ and e, Clause 1, Article 31 of Circular 12/2011/TT-BGDĐT dated March 28th, 2011, issued by the Ministry of Education and Training in conjunction with the Regulations for Secondary Schools, High Schools, and Multilevel Educational Institutions, the responsibilities of subject teachers include safeguarding students' legitimate rights and interests and collaborating with homeroom teachers and other educators in their educational roles. Therefore, as a teacher of the school, D must be responsible for educating all students of the school, including Nguyễn Thị T. Therefore, D must be subject to aggravating circumstances "Against children whom the offender is responsible for educating" stipulated in Point c, Clause 2, Article 116 of the 1999 Criminal Code, is the right application of the law."