

CASE LAW NO. 65/2023/AL

On the Criminal Liability for the Crime of "Human Trafficking"

Approved by the Judicial Council of the Supreme People's Court on August 18th, 2023, and published under Decision No. 364/QĐ-CA dated October 1st, 2023, by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

The First-instance Criminal Judgment No. 42/2018/HSST dated December 3rd, 2018, of the People's Court of Đông Hải District, Bạc Liêu Province, on the case of "Human Trafficking" against defendants Dương Văn S, Phạm Hồng K, Dương Thị T1, Trần Ích C.

Location of the Case Law's Content:

Paragraphs 9, 10 and 11 of the "Court's Opinion" section.

Summary of the Case Law:

- Case Background:

The defendant, through an intermediary, offered the victim a job, which the victim accepted. Subsequently, the defendant transferred the victim to another person, forcing the victim to perform work against their will for profit.

- Legal Resolution:

In this case, the defendant must be criminally prosecuted for the crime of "Human Trafficking".

Relevant Legal Provisions:

- Article 150 of the 2015 Penal Code (amended and supplemented in 2017);

- Resolution No. 02/2019/NQ-HĐTP dated January 11th, 2019, of the Judicial Council of the Supreme People's Court guiding the application of Article 150 on human trafficking and Article 151 on trafficking persons under 16 years old of the Penal Code.

Keywords:

"Human trafficking"; "Transfer of persons for profit".

CASE DETAILS

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

Due to the need for personnel for fishing boats to gain a profit margin, the defendant Dương Văn S connected with an individual named G (whose full name and address in Hồ Chí Minh City are unknown) to find people and transfer them to the defendant S at an agreed price. G used Facebook to post job advertisements (for long-distance bus assistant positions) with high salaries. Mr. Bùi Văn D, Mr. Lê Đức M, and Mr. Trần Văn T sought jobs on Facebook and contacted G upon seeing the advertisements. On July 26th, 2017, the three men arrived at the Miền Đông Bus Station, where G arranged for their transportation directly to S's house located in Hamlet 1, A Town, Đ District, Bạc Liêu Province. G handed over Mr. D, Mr. T, and Mr. M to S and received VND 9,000,000.

After receiving the individuals, S instructed Phạm Hồng K to draft employment contracts for Mr. D, Mr. T, and Mr. M to sign, indicating work at sea. Since the initial agreement was for bus assistant positions, they refused to sign. At this point, S, K, and C used weapons (including homemade knives, metal rods, and Thai knives) to threaten them, demanding VND 10,000,000 if they refused to sign the contracts, or else they would be detained. The victims were confined at the house of Hà Thị L (S's mother). S assigned K and C to alternate guarding shifts, with the intent to find fishing boats in need of

personnel to transfer the victims and gain the profit margin. S also tasked Duong Thị T1 (S's sister) with supervising this detention.

During the confinement, S instructed K and T1 to seize the victims' personal belongings. T1 demanded Mr. D, Mr. T, and Mr. M to hand over their property, but when they refused, K threatened them with a knife, saying, "You can voluntarily give them up or let me take them myself". Out of fear, knowing the defendants had weapons, the victims handed over their belongings, including backpacks, clothes, three mobile phones, three wallets containing three identity cards, and two ATM cards named Trần Văn T and Bùi Văn D. After taking the property, K handed them to S, who took VND 700,000 from Mr. M's wallet, VND 1,000,000 from Mr. D's wallet, gave C VND 120,000, K VND 330,000, and kept the rest for personal use.

At around 10 p.m. on July 27th, 2017, Mr. M and Mr. T escaped through the ventilation shaft. Later, around 5 a.m. on July 28th, 2017, Mr. D also escaped. All three reported the incident to the Gành Hào Border Guard Station.

During the investigation at the Police Investigation Agency of Đông Hải District, the defendants admitted their criminal acts, which were consistent with the victims' testimonies, the testimonies of related parties, and the crime scene.

- Exhibits of the case include: Mobile phones, wallets, backpacks, and clothes which the victims have fully recovered; one yellow-handled knife 21 cm long with an 11 cm metal blade (single-edged), the widest part of the blade is 2 cm; one homemade knife 49 cm long, with a metal handle and blade, the blade is 35 cm long (single-edged), the widest part of the blade is 3 cm; one rectangular metal bar, hollow inside, with one end wrapped in cloth, 63 cm long, 4 cm wide, 2 cm high, currently managed by the Civil Judgment Enforcement Department of Đông Hải District. The amount of VND 980,000 is deposited by the Police of Đông Hải District at N Bank, Đ Branch.

- Civil liability: Mr. Bùi Văn D requires compensation of VND 1,000,000,

and Mr. Lê Đức M requires compensation of VND 700,000.

Defendant Trần Ích C has compensated VND 1,700,000. The defendants Dương Văn S, Phạm Hồng K, and Dương Thị T1 each paid VND 400,000 as compensation for the damages caused.

In the Indictment No. 17/CT-VKSĐH dated April 9th, 2018, the People's Procuracy of Đông Hải District charged defendants Dương Văn S, Phạm Hồng K, Trần Ích C, and Dương Thị T1 with the crime of "Human Trafficking" as stipulated in Article 150, Clause 2, Point d of the 2015 Penal Code (amended and supplemented in 2017). Additionally, defendants Dương Văn S, Phạm Hồng K, and Dương Thị T1 were also charged with "Extortion" under Article 135, Clause 1 of the 1999 Penal Code (amended and supplemented in 2009).

At the trial, the Procurator maintained the prosecution's stance and recommended that the Court base its judgment on Resolution No. 41/2017/QH14 dated June 20th, 2017, issued by the National Assembly on the implementation of the Penal Code No. 100/2015/QH13, amended and supplemented by Law No. 12/2017/QH14. For Dương Văn S, it was recommended to apply Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Article 54; and Article 38 of the 2015 Penal Code, sentencing him to 7 to 8 years of imprisonment for the crime of human trafficking, and 1 year 6 months to 2 years of imprisonment for extortion. The total combined sentence under Article 55 of the 2015 Penal Code would be from 8 years 6 months to 10 years of imprisonment.

For Phạm Hồng K, it was recommended to apply Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Article 54; and Article 38 of the 2015 Penal Code, sentencing him to 6 to 7 years of imprisonment for human trafficking, and 1 to 1 year 6 months of imprisonment for extortion, with a combined sentence of 7 to 8 years 6 months of imprisonment under Article 55 of the 2015 Penal Code.

For Dương Thị T1, it was recommended to apply Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clauses 1 and 2, Article 54; and Article 38 of the 2015 Penal Code, sentencing her to 3 to 4 years of imprisonment for human trafficking and 1 to 1 year 6 months of imprisonment for extortion, with a combined sentence of 4 to 5 years 6 months of imprisonment under Article 55 of the 2015 Penal Code.

For Trần Ích C, it was recommended to apply Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clauses 1 and 2, Article 54; and Article 38 of the 2015 Penal Code, sentencing him to 3 to 4 years of imprisonment.

The Prosecutor requested that the Court not impose any additional penalties on the defendants.

Final Statements:

The defendants admitted their criminal actions, expressing that their lack of literacy and poor legal awareness led them to commit the crime, and requested the Court to consider leniency.

COURT'S OPINION:

[1] Based on the case facts and evidence presented at the trial, the Court finds as follows:

[2] Regarding Procedural Matters:

[3] Legality of Actions and Decisions in Investigation, Prosecution, and Trial:

[4] The actions and decisions of the Police Investigation Agency of Đông Hải District, investigators, People's Procuracy of Đông Hải District, and procurators during the investigation, prosecution, and trial have been conducted in accordance with the procedures specified in the Penal Procedure Code.

During the investigation, prosecution, and at the trial, neither the defendants, the victims, nor other interest parties raised any objections or complaints regarding the actions or decisions of the investigating and prosecuting authorities. Thus, the actions and decisions of the authorities involved were deemed lawful.

[5] Regarding the Absence of Victims:

[6] Although the victims were absent from the trial, their statements in the case file are clear and comprehensive. Thus, their absence does not hinder the trial proceedings, and the Court decided to proceed with the trial in their absence according to Article 292 of the Penal Procedure Code.

[7] Merits of the case:

[8] The defendants' testimonies at the trial were consistent with each other, aligned with the victims' statements, and supported by other evidence in the case file, providing sufficient grounds to conclude that:

[9] The defendants, aware of the need for crew members for fishing boats in Đ District, conspired with G to find workers and supply them to boat owners for a profit.

[10] G offered high-paying jobs as bus assistants, which Mr. D, Mr. T, and Mr. M accepted. Upon receiving the victims, G transported them to S and received VND 9,000,000. S then instructed his accomplices, K, T1, and C, to guard the victims while he sought fishing boats to transfer the victims and collect the profit.

[11] The criminal actions of the defendants were highly dangerous to society, violating the dignity, rights, and freedoms guaranteed by the Constitution and laws, and disturbing public order and safety. The defendants understood that human trafficking is illegal but acted with direct intent for personal gain, exploiting the victims' naivety. The defendants possessed the

legal capacity to be held criminally responsible for their actions.

[12] The actions of the defendants, occurring from July 2017, fall under the aggravating circumstance of “committed against multiple persons” as specified in Point e, Clause 2, Article 119 of the 1999 Penal Code (amended and supplemented in 2009), which carries a sentence of 5 to 20 years. Under the 2015 Penal Code, these actions fall under the aggravating circumstance of "against 2 to 5 persons," specified in Point d, Clause 2, Article 150, with a lighter sentence of 8 to 15 years. Therefore, in accordance with Clause 3, Article 7 of the 2015 Penal Procedure Code and Point h, Clause 2, Article 2 of Resolution No. 41/2017/QH14 dated June 20th, 2017, of the National Assembly, the more favorable 2015 Penal Code provisions should be applied. Thus, the aforementioned actions of the defendants constitute the crime of "Human Trafficking" as stipulated in Point d, Clause 2, Article 150 of the 2015 Penal Code.

[13] Furthermore, while detaining the victims, defendant S instructed defendants K and T1 to use weapons to threaten and seize personal belongings and assets from Mr. D, Mr. T, and Mr. M, including backpacks, clothes, three mobile phones, and three wallets (inside Mr. T's wallet was an ID card in his name; inside Mr. M's wallet was an ID card, an ATM card in his name, and VND 700,000; inside Mr. D's wallet was an ID card, an ATM card in his name, and VND 1,000,000). The total estimated value of the assets seized was VND 10,300,200, making the total asset value VND 12,000,200. Thus, the threatening actions to seize the assets of others by S, T1, and K satisfy the elements of the crime of "Extortion" under Clause 1, Article 135 of the 1999 Penal Code.

[14] Regarding aggravating and mitigating circumstances for the defendants:

[15] The defendants have no previous convictions or records; they cooperated fully during the investigation, prosecution, and trial, and showed

remorse. Although the victims did not demand compensation, the defendants voluntarily compensated part of the damages. These are mitigating circumstances under Points b and s, Clause 1, Article 51, applied to the defendants. Defendants S and K have two mitigating circumstances under Clause 1, Article 51, thus Clause 1, Article 54 of the Penal Code applies to decide a sentence below the minimum range. For defendants T1 and C, despite being accomplices, they played minor roles, committed the crime for the first time, had difficult circumstances, and were influenced by defendant S, who is a relative. Therefore, applying Clauses 1 and 2, Article 54 of the 2015 Penal Code, a lesser sentence than the adjacent minimum range of the applicable law is warranted.

[16] In this case, defendant S played a dangerous, direct commanding role over the other defendants; defendant K was the most aggressive accomplice, directly using dangerous weapons to threaten the victims, thus their sentences should be higher than those of defendants T1 and C. Considering the above analysis, strict sentences are necessary to isolate the defendants from society for a certain period to educate them on legal compliance and community living standards.

[17] Additional Penalties: According to Clause 4, Article 150 of the 2015 Penal Code, offenders may be fined between VND 20,000,000 to VND 100,000,000, subjected to probation, banned from residing in certain areas for 1 to 5 years, or have part or all of their property confiscated. However, based on the evidence and defendants' statements at the trial, showing that they are freelance laborers with difficult economic conditions, the Court decides not to impose additional penalties on the defendants.

[18] Exhibits in the Case:

[19] Mobile phones, wallets, backpacks, and clothes were returned to the victims by the investigating authority as per Point b, Clause 3, Article 106 of the Penal Procedure Code, which is appropriate.

[20] The amount of VND 980,000 deposited by Police of Đông Hải District at N Bank, Đ branch, including VND 480,000 from defendant S and VND 500,000 from defendant K, is unrelated to the case and should be returned to the defendants. However, to ensure civil enforcement, the money should be managed for future civil judgment enforcement.

[21] One yellow-handled knife, 21 cm long with an 11 cm metal blade, the widest part being 2 cm; one homemade knife, 49 cm long with a 35 cm metal blade, the widest part being 3 cm; one rectangular metal rod, hollow inside, one end wrapped in cloth, 63 cm long, 4 cm wide, and 2 cm high—these items are no longer useful and should be confiscated and destroyed as per Clause 2, Article 106.

[22] Civil Liability: Mr. Bùi Văn D demands VND 1,000,000 in compensation from defendants S, K, and T1; Mr. Lê Đức M demands VND 700,000. At the trial, the defendants agreed to compensate, so according to Article 5 of the Civil Procedure Code and Articles 584, 585, 586, and 592 of the 2015 Civil Code, defendants Dương Văn S, Dương Thị T1, and Phạm Hồng K are each ordered to compensate Mr. Bùi Văn D VND 333,400; and each to compensate Mr. Lê Đức M VND 233,400.

[23] Defendants Dương Văn S, Dương Thị T1, and Phạm Hồng K each deposited VND 400,000 at the Civil Judgment Enforcement Department of Đông Hải District to compensate the victims, so Mr. M will receive VND 400,000, Mr. D will receive VND 400,000, and Mr. T will receive VND 400,000. Defendant Trần Ích C compensated VND 1,700,000, to be divided equally among the victims T, M, and D, each receiving VND 566,600.

[24] The opinion of the Prosecutor regarding the charges, the sentencing, the aggravating and mitigating circumstances, and other relevant issues in the case is well-founded and accepted.

[25] Regarding criminal and civil court fees: Defendants are to pay

according to legal regulations.

In light of the foregoing,

IT IS DECIDED:

1. Sentencing:

- Defendants Dương Văn S, Phạm Hồng K, Trần Ích C, and Dương Thị T1 are guilty of "Human Trafficking."

- Defendants Dương Văn S, Phạm Hồng K, and Dương Thị T1 are guilty of "Extortion."

1.1. Sentencing of Defendant Dương Văn S:

- Applying Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clause 1, Article 54; Article 38; Clause 3, Article 7 of the 2015 Penal Code (amended and supplemented in 2017); Resolution No. 41/2017/QH14 dated June 20th, 2017, of the National Assembly: Defendant Dương Văn S is sentenced to 7 years of imprisonment for "Human Trafficking".

- Applying Clause 1, Article 135 of the 1999 Penal Code; Point s, Clause 1, Article 51; Article 38 of the 2015 Penal Code (amended and supplemented in 2017): Defendant Dương Văn S is sentenced to 1 year and 6 months of imprisonment for "Extortion".

- Applying Article 55 of the 2015 Penal Code (amended and supplemented in 2017): The total sentence for both crimes is 8 years and 6 months. The imprisonment term starts from July 29th, 2017.

1.2. Sentencing of Defendant Phạm Hồng K:

- Applying Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clause 1, Article 54; Article 38; Clause 3, Article 7 of the 2015

Penal Code (amended and supplemented in 2017); Resolution No. 41/2017/Q1114 dated June 20, 2017, of the National Assembly: Defendant Phạm Hồng K is sentenced to 6 years of imprisonment for "Human Trafficking".

- Applying Clause 1, Article 135 of the 1999 Penal Code; Point s, Clause 1, Article 51; Article 38 of the 2015 Penal Code (amended and supplemented in 2017): Defendant Phạm Hồng K is sentenced to 1 year of imprisonment for "Extortion".

- Applying Article 55 of the 2015 Penal Code (amended and supplemented in 2017): The total sentence for both crimes is 7 years. The imprisonment term starts from July 29th, 2017.

1.3. Sentencing of Defendant Dương Thị T1:

- Applying Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clauses 1 and 2, Article 54; Article 38; Clause 3, Article 7 of the 2015 Penal Code (amended and supplemented in 2017); Resolution No. 41/2017/QH14 dated June 20th, 2017, of the National Assembly: Defendant Dương Thị T1 is sentenced to 3 years of imprisonment for "Human Trafficking".

- Applying Clause 1, Article 135 of the 1999 Penal Code; Point s, Clause 1, Article 51; Article 38 of the 2015 Penal Code (amended and supplemented in 2017): Defendant Dương Thị T1 is sentenced to 1 year of imprisonment for "Extortion".

- Applying Article 55 of the 2015 Penal Code (amended and supplemented in 2017): The total sentence for both crimes is 4 years. The imprisonment term starts from the date the defendant begins serving the sentence.

1.4. Sentencing of Defendant Trần Ích C:

- Applying Point d, Clause 2, Article 150; Points b and s, Clause 1, Article 51; Clauses 1 and 2, Article 54; Article 38; Clause 3, Article 7 of the 2015 Penal Code (amended and supplemented in 2017); Resolution No. 41/2017/QH14 dated June 20, 2017, of the National Assembly: Defendant Trần Ích C is sentenced to 3 years of imprisonment for "Human Trafficking". The imprisonment term starts from July 29th, 2017.

2. Civil Liability:

- Applying Article 42 of the Penal Code; Articles 584, 585, 586, and 592 of the 2015 Civil Code: Defendants Dương Văn S, Dương Thị T1, and Phạm Hồng K each must compensate Mr. Bùi Văn D VND 333,400; and each must compensate Mr. Lê Đức M VND 233,400.

- Additionally, Trần Văn T, Lê Đức M, and Bùi Văn D each receive VND 966,600. The victims and defendants shall handle the transactions at the Civil Judgment Enforcement Department.

3. Exhibits:

- Applying Article 106 of the Penal Procedure Code: Confiscate and destroy 1 yellow-handled knife (21 cm long, 11 cm metal blade, 2 cm wide at the widest part); 1 homemade knife (49 cm long, 35 cm metal blade, 3 cm wide at the widest part); 1 rectangular metal rod (hollow inside, one end wrapped in cloth, 63 cm long, 4 cm wide, 2 cm high). These items are currently managed by the Civil Judgment Enforcement Department of Đông Hải District.

- The amount of VND 980,000 deposited by the Police of Đông Hải District at N Bank, Đ branch, including VND 480,000 from defendant S and VND 500,000 from defendant K, will continue to be held to ensure civil judgment enforcement.

4. First-instance Criminal Court Fees:

- Applying Article 136 of the 2015 Penal Procedure Code; Resolution No.

326/2016/UBTVQH14 dated December 30th, 2016, of the National Assembly Standing Committee on court fees and charges: Each defendant must pay VND 200,000 at the Civil Judgment Enforcement Department. For civil court fees, defendants S, T1, and K each must pay VND 300,000.

- From the date the execution request is submitted until the judgment is fully executed, the liable party must also pay interest on the delayed amount as specified in Clause 2, Article 468 of the Civil Code, corresponding to the delay period.

- If the judgment is enforced according to Article 2 of the Law on Civil Judgment Enforcement, the entitled and liable parties can agree to voluntarily enforce the judgment or be coerced into enforcement as stipulated in Articles 6, 7, 7a, 7b, and 9 of the Law on Civil Judgment Enforcement. The statute of limitations for judgment enforcement is stipulated in Article 30 of the Law on Civil Judgment Enforcement.

- Defendants and other participants present at the trial have the right to appeal within 15 days from the date of the judgment announcement. Those absent have the right to appeal within 15 days from the date they receive or are duly served the judgment.

CONTENT OF THE CASE LAW:

“[9] The defendants, aware of the need for crew members for fishing boats in D District, conspired with G to find workers and supply them to boat owners for a profit.

[10] G offered high-paying jobs as bus assistants, which Mr. D, Mr. T, and Mr. M accepted. Upon receiving the victims, G transported them to S and received VND 9,000,000. S then instructed his accomplices, K, T1, and C, to guard the victims while he sought fishing boats to transfer the victims and collect the profit.

[11] The criminal actions of the defendants were highly dangerous to society, violating the dignity, rights, and freedoms guaranteed by the Constitution and laws, and disturbing public order and safety. The defendants understood that human trafficking is illegal but acted with direct intent for personal gain, exploiting the victims' naivety. The defendants possessed the legal capacity to be held criminally responsible for their actions."