

CASE LAW NO. 30/2020/AL

On Intentional Vehicular Homicide After Traffic Accident

Approved by the Judicial Council of the Supreme People's Court on February 5th, 2020, and published under Decision No. 50/QĐ-CA on February 25th, 2020, by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

Appellate Judgment No. 280/2019/HSPT dated May 16th, 2019, of the High People's Court in Hà Nội regarding the case of "Murder" against defendant Phan Đình Q, born in 1980.

Location of the Case Law's Content:

Paragraphs 2, 3, 4, and 5 of the "Court's Opinion" section.

Summary of the Case Law:

- Case Background:

Following a traffic accident in which the victim was struck, the defendant stopped their vehicle to assess the situation and observed the victim lying beneath the truck. Unable to ascertain the victim's condition, the defendant proceeded to drive the vehicle, running over the victim and causing their death.

- Legal Resolution:

In this case, the defendant must be held criminally responsible for the crime of "Murder".

Relevant Legal Provisions:

Articles 93 and 202 of the 1999 Criminal Code (corresponding to Articles 123 and 260 of the 2015 Criminal Code, as amended and supplemented in 2017).

Keywords:

“Traffic accident”; “Operating a vehicle to run over the victim”; “Violation of road traffic regulations”; “Murder”.

CASE DETAILS

According to the Indictment of the People's Procuracy of Hà Tĩnh Province, the First-instance Criminal Judgment of the People's Court of Hà Tĩnh Province, and the proceedings at the trial, the case details are summarized as follows:

At approximately 16:00 on May 31st, 2016, Phan Đình Q, who held a Class C driving license, was driving a 6-ton truck (license plate 38C-073.05) on National Highway 1A, heading from Đ Commune to T Commune. Traveling in the same direction as Q was an electric motorcycle (license plate 38MĐ1-218.54) operated by Hoàng Đức P, riding on the lane designated for pedestrians and non-motorized vehicles. When Q drove to Km 584 of National Highway 1A in T Commune, A District (at the intersection with T Commune), he suddenly turned right onto an inter-communal road towards the People's Committee of T Commune. Simultaneously, Hoàng Đức P was also approaching. Due to Q's failure to observe carefully when making the turn, his truck collided with P's electric motorcycle, causing it to be pulled under the truck. After the collision, Q stopped the truck, got out, and walked around to the passenger side to check. He saw a person lying under the truck, with the head facing the gate of T Commune and the feet towards National Highway 1A, the right arm extending outside, and the rear passenger-side wheel pressing on the shoulder and neck of P, whose left cheek was touching the road. After observing P lying in a dangerous position for about a minute, Q got back into the truck, engaged first gear, and drove forward, causing the truck to run over P's head, resulting in a skull fracture and immediate death.

Regarding the criminal act of the defendant Phan Đình Q, the People's Court of Kỳ Anh District, Hà Tĩnh Province, initially conducted a first-instance

trial under the charge of "Violation of Traffic Regulations", as prosecuted by the People's Procuracy of Kỳ Anh District. However, based on the examination results at the trial, the Trial Panel of the People's Court of Kỳ Anh District determined that Q's act constituted "Murder" and returned the case file to the People's Procuracy of Kỳ Anh District. The case was then to be transferred to the provincial level for investigation and prosecution of Phan Đình Q for the crime of "Murder." This decision was made because, after causing a traffic accident involving Hoàng Đức P, Q, upon inspection, saw the victim P trapped under the car in front of the wheels, a clearly dangerous situation. Instead of preserving the scene and attempting to extricate the victim for immediate medical attention, Q chose to drive the car forward, accepting the risk of running over the victim. As a result, Hoàng Đức P was crushed by the rear wheel of the car, sustaining a fatal skull fracture. Phan Đình Q demonstrated a clear understanding of the imminent danger to the victim's life if he were to continue driving with the victim still trapped under the car, as evidenced by his multiple statements during the investigation.

The Scene Examination Report at 17:35 on May 31st, 2016, in T Commune, A District, Hà Tĩnh Province, indicated:

The scene of the accident was at Km 548 of National Highway 1A, at the intersection with the road leading to the gate of T Commune. Using milestone 548 on National Highway 1A as a fixed point, the road edge on the right side of National Highway 1A from south to north was used as the reference axis.

Measuring perpendicularly from the fixed point towards the south to the tire skid mark was 76.8m. The black skid mark was straight, 3.0m long, and 0.2m wide, extending from south to north. The skid mark ended 1.0m from the right edge of the road, with the end point coinciding with the right road edge.

Measuring from the end of the skid mark northwards to the center of the rear wheel of the electric motorcycle is 1.0m. The electric motorcycle lay tilted to the right on the asphalt, within the intersection area between National Highway 1A and the road leading to the People's Committee of T Commune. The front of the motorcycle was facing northeast, while the rear faced southwest. The distance from the center of the rear wheel to the right edge of the road was 1.3m, and from the center of the front wheel to the right edge of the road was 2.1m.

The center of the front wheel of the electric motorcycle was aligned with the center of the front wheel on the driver's side of Q's truck. The truck was positioned along the right edge of the road leading to the People's Committee of T Commune, with its front facing east and rear facing west. The distance from the center of the front wheel on the driver's side to the right edge of the road was 38.6m, and from the center of the rear wheel on the driver's side to the right edge of the road was 35.5m. Measuring from the center of the front wheel on the driver's side of Q's truck southwards to the center of a broken plastic piece was 0.4m. The broken plastic piece was black, with a length of 0.43m and a width of 0.37m, and the distance from the center of the plastic piece to the right edge of the road was 0.75m.

From the center of the plastic piece northwards to the center of a bloodstain was 0.7m. The red bloodstain was 1.3m long and 0.5m wide, located on the asphalt road leading to the People's Committee of T Commune. The distance from the center of the bloodstain to the right edge of the road was 5.3m.

From the center of the bloodstain northwards to the center of the victim's head was 0.4m. The victim was lying on his back, with his head facing east and feet facing west, on the asphalt road leading to the People's Committee of T Commune. The distance from the center of the victim's head to the right edge of the road was 5.1m, and from the center of the right heel to the right edge of the road was 3.7m.

- The Autopsy Report for Hoàng Đức P, conducted at 17:45 on May 31st, 2016, at Km 548 of National Highway 1A, T Commune, A District, recorded: The head and face were deformed, with a fractured skull, brain tissue extruding from the skull, broken cervical vertebrae, and a fractured left clavicle. The abdomen and chest had multiple abrasions and lacerations with bleeding, while the limbs, genitals, lower abdomen, back, and buttocks showed no injuries.

- The Forensic Examination Report No. 74/TgT dated June 5th, 2016,

from the Forensic Center - Department of Health of H concluded: The cause of death for Hoàng Đức P was a fractured skull, with the skull flattened on the left side, and the head and face completely deformed. The victim died on the spot.

- The Vehicle Inspection Report for the truck indicated: Scratches on the outer surface of the front passenger-side tire, measuring 40x3.5cm; two scratch marks on the metal bar beneath the air tank and battery guard on the passenger side, measuring 64x3cm and 53x3cm, extending from front to rear; the outer surface of the rear passenger-side tire was stained with a reddish-brown substance (suspected blood), measuring 32x23cm.

- The Vehicle Inspection Report for the electric motorcycle indicated: The plastic footrest cover for the battery compartment was dislodged from its mounts and broken; the left side plastic cover of the motorcycle body was missing; the rear right mudguard was deformed and shifted from right to left, from the rear to the front; the rear wheel axle was broken and deformed, with metal wear marks; the metal bar fixing the rear mudguard was bent and deformed; the right rear shock absorber was bent, deformed, and the outer surface of the spring was worn; the outer surface of the right rear tire had a scratch mark measuring 30x5cm; the right side plastic cover of the motorcycle body was scratched and worn, measuring 47x3cm; and the tip of the right brake lever was worn.

According to Asset Valuation Report No. 19/HĐĐG dated July 29th, 2016, from the Asset Valuation Council in Criminal Proceedings, the total damage to the electric motorcycle, Philips 133S (license plate MĐ1 218.54), of P was assessed at VND 2,810,000.

Evidence include:

- One used truck, THACO brand, green color, license plate 38C-073.05.
- One used electric motorcycle, Philips 133S brand, license plate MĐ1 218.54.

During the investigation, Hoàng Mạnh H (the father of the victim Hoàng Đức P) demanded total compensation of VND 199,245,000. The family of defendant Q had compensated VND 70,000,000.

In the First-instance Criminal Judgment No. 41/2018/HSST dated November 19th, 2018, the People's Court of Hà Tĩnh Province ruled: Phan Đình Q was guilty of "Murder." Pursuant to Clause 2, Article 93; Points b, Clause 1, Clause 2, Article 46 of the 1999 Criminal Code, the court sentenced Phan Đình Q to 12 years of imprisonment, with the term starting from the date of temporary detention on December 27th, 2016.

* Regarding civil liability: Pursuant to Article 42 of the 1999 Criminal Code; Articles 307, 604, 605, 606, and 610 of the Civil Code; and Resolution No. 03/2006/NQ-HĐTP dated July 8th, 2006, of the Judicial Council of the Supreme People's Court, the court ordered Phan Đình Q to compensate the victim's family, represented by Hoàng Mạnh H, a total amount of VND 175,455,000 (deducting VND 70,000,000 already paid), requiring an additional compensation of VND 105,455,000.

* Regarding the handling of evidence: Pursuant to Article 41 of the 1999 Criminal Code; Clauses 1 and 2, Article 106 of the 2015 Criminal Procedure Code.

- The court ordered the restitution of VND 200,000,000, representing the proceeds from the sale of the truck (license plate 38C-073.05) by the family of the defendant, Phan Đình Q, which was the vehicle operated by the defendant during the commission of the crime.

- The court returned the electric motorcycle, Philips 133S (license plate 38MĐ1 218.54), to Hoàng Mạnh H (father of P).

Additionally, the first-instance court ruled on court fees and informed the defendant, the lawful representative of the victim, and other interested parties of their right to appeal according to the law.

After the first-instance trial:

On November 26th, 2018, the defendant Phan Đình Q appealed, claiming innocence. The defendant asserted that the first-instance court wrongly convicted him of "Murder" and argued that he should only be charged with "Violation of Traffic Regulations".

On November 30th, 2018, the legal representative of the victim appealed, requesting an increase in the defendant's prison sentence, as the first-instance court's sentence was deemed too lenient.

On November 29th, 2018, interested parties in the case, Mr. Nguyễn Tiến A (the defendant's father-in-law) and Ms. Nguyễn Thị D (the defendant's wife), filed an appeal requesting a reconsideration of the VND 200,000,000 restitution ordered by the first-instance court.

On December 17th, 2018, the Chief Procurator of the High People's Procuracy in Hà Nội filed Appeal Decision No. 06/QĐ-VC1-HS, requesting the High People's Court in Hà Nội to consider the aggravating circumstance of "Committing a Crime in a Thuggish Manner," as per Point n, Clause 1, Article 93 of the 1999 Criminal Code, and increase the defendant's sentence accordingly. During the hearing, the prosecutor amended this request, advocating instead for the application of Point q, "Committing a Crime for Despicable Motives," and a corresponding increase in the defendant's sentence.

During the appellate hearing, the defendant, Phan Đình Q, maintained his innocence, contending that his actions constituted a "Violation of Traffic Regulations," not murder. However, his assertions were inconsistent, as he also admitted at various points during the proceedings that after exiting the vehicle and assessing the scene, he had determined that the victim was deceased.

The representative of the High People's Procuracy in Hà Nội, upon review of the legal basis of the First-instance Judgment and further examination at the appellate trial, affirmed that the first-instance court's conviction of Q for "Murder" was legally sound. The defendant's denial of the murder charge was

characterized as an attempt to evade more severe criminal liability. The representative emphasized the reprehensible nature of the defendant's actions, asserting that the defendant, motivated by a desire to ensure the victim's death, deliberately and callously drove over the victim with the vehicle. Consequently, the representative requested that the appellate court disregard the application of Point n, Clause 1, Article 93, and instead apply Point q, Clause 1, Article 93 of the Criminal Code, to increase the defendant's sentence.

The defense attorney for Phan Đình Q, Lawyer Nguyễn Văn Đ, requested the appellate court to thoroughly and cautiously review the defendant's actions, rejecting the Chief Procurator's appeal and upholding the first-instance court's judgment, thus not convicting Q of murder but of violating traffic regulations.

The legal representative for the victim, Lawyer Nguyễn Khắc T from the A Law Office under the H Bar Association, requested the appellate court to uphold the first-instance judgment and accept the Chief Procurator's appeal to increase the defendant's prison sentence.

Upon a thorough review of the documents and evidence within the case file, the results of the cross-examination and questioning during the trial, and a comprehensive assessment of the submitted documents, evidence, and opinions presented by the prosecutor, defense counsel, victim's legal representative, and other litigants.

COURT'S OPINION:

[1] During the investigation by the Kỳ Anh District Police and the Hà Tĩnh Provincial Police, as well as in the defendant's confession during the first-instance trials at the Kỳ Anh District Court and the Hà Tĩnh Provincial Court, Phan Đình Q admitted to causing the death of Hoàng Đức P on May 31st, 2016, at approximately 16:00. The incident occurred at Km 584 on National Highway 1A, within T Commune, A District, Hà Tĩnh Province, while the defendant was operating a truck in the direction of the People's

Committee of T Commune. While acknowledging his actions, the defendant maintained that he had only committed the crime of "Violation of Traffic Regulations," not "Murder". While acknowledging that he drove the truck over P's head, the defendant asserted that the fatality was an unintended consequence of his panicked decision to drive forward rather than reverse, maintaining that he did not intend to cause the victim's death.

[2] The Trial Panel of the appellate court found: While driving, Q noticed an accident and stopped to investigate. Upon seeing a victim (later identified as Hoàng Đức P) lying in front of the truck's rear wheels on the right side, Q got back into the truck and drove forward, causing the rear wheels to run over the victim's head, resulting in immediate death.

[3] Based on the documents and evidence in the case file, including the testimonies of witnesses such as Mrs. Dương Thị H, Mr. Nguyễn Xuân H, Ms. Phạm Thị T, and Mr. Hoàng Khánh C, as well as the scene diagram, autopsy report, forensic examination reports, and particularly the defendant Q's own confession during the initial investigation, it is found that: During the investigation by the Kỳ Anh District Police and the Hà Tĩnh Provincial Police, as well as in the defendant's confessions at the first-instance trials of the Kỳ Anh District Court and the Hà Tĩnh Provincial Court, the defendant admitted, "When I went down to check, I wasn't sure if the victim under the truck was alive or dead because at that time, I had no basis to determine if the victim was alive or dead" (Exhibit 75). Furthermore, the defendant Q stated that he understood the inherent danger of moving the truck in either direction, as the front wheels would run over the victim again if reversed (Exhibits 64, 65, 69).

[4] The defendant Phan Đình Q further stated: "When I went down to check, I saw the victim lying close to the front of the truck's rear wheels, and the wheels had not fully run over the victim's head; I only saw the victim lying motionless in front of the right rear wheel" (Exhibits 61, 68, 85, 354, 356). Additionally, the defendant Q made several other confessions: "Even though I

knew that moving the truck forward or backward would run over the victim, I still decided to drive over the victim” (Exhibits 58, 61, 64, 65, 69).

[5] Although the defendant Q appealed, arguing that his actions did not constitute "Murder," the Appellate Trial Panel has sufficient grounds to affirm that the defendant Q committed "Murder" as determined by the First-instance Court of the Hà Tĩnh Provincial People's Court. The defendant Q's constant changes in his testimony and his denial of "Murder" were merely attempts to evade criminal responsibility for a more severe crime compared to "Violation of Traffic Regulations". Therefore, the Appellate Court has no legal basis to accept the defendant's appeal and must uphold the "Murder" conviction as determined by the First-Instance Court. The Appellate Court affirms that the defendant Q was not wrongly convicted of the charges as stated in his appeal and his confession at the trial, as well as the defense presented by his lawyer at the first-instance and appellate trials.

[6] Upon consideration of the appeal submitted by the Chief Procurator of the High People's Procuracy in Hà Nội, the Appellate Trial Panel finds that the incident was precipitated by the defendant's negligent operation of the truck, resulting in the victim, P, becoming trapped beneath the vehicle. The defendant, after realizing a collision had occurred, stopped to investigate. Upon observing a person lying in close proximity to the truck's wheels, the defendant failed to respond appropriately to the situation. Instead, he proceeded to drive forward, despite acknowledging the potential dangers associated with both forward and reverse movement. As a direct consequence of this action, the victim, Hoàng Đức P, was run over by the truck, sustaining a fatal skull fracture.

[7] The Appellate Trial Panel disagrees with the assertion made in the appeal and by the prosecutor during the trial that the actions of the defendant, Phan Đình Q, constituted a crime of a thuggish or particularly heinous nature. The panel concurs with the First-Instance Court's determination that the defendant's actions fall under Clause 2, Article 93 of the Criminal Code, and

therefore finds no basis to accept the appeal seeking the application of Clause 1, Article 93. Regarding the request to increase the defendant's sentence, the Appellate Trial Panel finds that after stopping to investigate, the defendant observed the truck's right rear wheel in close proximity to the victim's neck. Despite being unable to ascertain the victim's condition, the defendant chose to drive forward, resulting in the victim's death. Moreover, throughout the investigation, the defendant failed to provide a truthful account of his actions, demonstrating a disregard for the law while the blameless victim was in a vulnerable position. The defendant's decision to run over the victim is deemed unacceptable. The Appellate Trial Panel finds sufficient grounds to increase the defendant's sentence to reflect the severity of the crime and to ensure both deterrence and prevention. The 12-year prison sentence imposed by the First-Instance Court is considered too lenient, and has caused public discontent within the local community where the incident occurred.

[8] Considering the appeal of the interested party in the case, Ms. Nguyễn Thị D (the wife of the defendant), regarding the reconsideration of the amount of 200 million Vietnamese dong, proceeds from the sale of the car, the Appellate Court finds: The Court of First Instance correctly ordered the restitution of the amount of 200 million Vietnamese dong from the sale of the car (the vehicle involved in the defendant's crime) according to the law; therefore, the appeal of the interested party Ms. Nguyễn Thị D is not accepted, and it is necessary to maintain the decision of the first-instance judgment.

[9] Other decisions of the first-instance judgment that were not appealed or protested have legally taken effect since the expiration of the appeal and protest period.

[10] The defendant's appeal regarding the charge is not accepted, thus he must bear the appellate criminal court fee.

[11] In light of the foregoing and pursuant to Articles 355, 356, and 357 of the Criminal Procedure Code,

IT IS DECIDED:

The appeal concerning the charge against the defendant, Phan Đình Q, is hereby denied, as is the appeal of the interested party, Ms. Nguyễn Thị D. However, the appeal of the victim's legal representative is partially granted, and the protest of the Chief Prosecutor of the Supreme People's Procuracy in Hà Nội regarding the proposed increase in the defendant's sentence is accepted, thus amending the First-Instance Judgment of the People's Court of Hà Tĩnh Province.

Accordingly, the court declares the following:

The defendant, Phan Đình Q, is found guilty of "Murder."

Pursuant to Clause 2 of Article 93, and points b of Clause 1 and Clause 2 of Article 46 of the 1999 Criminal Code, Phan Đình Q is hereby sentenced to thirteen (13) years and six (6) months of imprisonment. The term of imprisonment shall commence on the date of the defendant's initial detention, December 27th, 2016.

Regarding the disposition of evidence: In accordance with Article 41 of the 1999 Criminal Code and points 1 and 2 of Article 106 of the 2015 Criminal Procedure Code, restitution is ordered in the amount of VND 200,000,000, representing the proceeds from the sale of the vehicle used in the crime by the defendant's wife and family.

All other aspects of the first-instance judgment that were not subject to appeal or protest remain in full force and effect, as of the expiration of the appeal and protest period.

The defendant, Q, is obligated to pay VND 200,000 as the appellate criminal court fee.

This appellate criminal judgment shall become legally effective on the date of sentencing, May 16th, 2019.

CONTENT OF THE CASE LAW:

“[2] The Trial Panel of the appellate court found: While driving, Q noticed an accident and stopped to investigate. Upon seeing a victim (later identified as Hoàng Đức P) lying in front of the truck's rear wheels on the right side, Q got back into the truck and drove forward, causing the rear wheels to run over the victim's head, resulting in immediate death.

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