

## **CASE LAW DRAFT NO. 02/2024**

### **On the determination of the charge of "Theft of Property"**

*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 Appellate Criminal Judgment No. 116/2023/HS-PT dated March 31<sup>st</sup>, 2023, of the High People's Court in Đà Nẵng concerning the case of "Murder" and "Theft of Property" involving the defendant HỒ MINH Đ.

#### **Location of the Case Law's Content:**

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

#### **Summary of the Case Law:**

##### ***- Factual Background:***

The competent authority, upon finding the defendant in violation of traffic regulations, documented the offense and impounded the defendant's vehicle. Subsequently, the defendant secretly entered the impound area of the competent authority to retrieve his vehicle and hide it.

##### ***- Legal Resolution:***

In this case, the Court must determine that the defendant committed the crime of "Theft of Property".

#### **Relevant Legal Provisions:**

Clause 1, Article 173 of the 2015 Penal Code (amended and supplemented in 2017).

**Keywords:**

"Theft of Property"; "Violation of traffic regulations"; "Theft of own property being held by a competent authority".

**CASE DETAILS**

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

In accordance with the patrolling and public order maintenance plan in T Commune, H District, Khánh Hòa Province, on June 25<sup>th</sup>, 2022, at approximately 11 a.m., Mr. Hoàng Văn Y, Deputy Chief of Police of T Commune, along with the patrol team, encountered Cao Thị Thanh N on an inter-village road (in N Hamlet, T Commune), riding a Suzuki Raider motorcycle belonging to Hồ Minh Đ (who possesses a certificate for severe hearing and speech disability). The motorcycle lacked a license plate, helmet, or driver's license. The patrol team conducted an inspection, documented the violation, and temporarily impounded the motorcycle, relocating it to the storage facility of the People's Committee of T Commune for administrative processing.

Around 1 p.m. on July 8<sup>th</sup>, 2022, Hồ Minh Đ arrived at the People's Committee of T Commune riding a Sirius motorcycle with license plate 79X1-02891, accompanied by his friend C, to retrieve the impounded Suzuki Raider. Gesturing towards the Committee building, Đ instructed C to wait outside while he entered the Commune police headquarters to retrieve the motorcycle. Observing the unattended state of the Suzuki Raider within the storage facility, Đ quietly accessed the area, reconnected the motorcycle's electrical components, and started it. He signaled C to ride the Sirius motorcycle back to C's residence, while Đ rode the Suzuki Raider to his own home in B Hamlet, K Commune, H District, for concealment.

Around 3 p.m. on July 9<sup>th</sup>, 2022, T Commune police discovered the

absence of the impounded Suzuki Raider and promptly initiated a search and verification operation. By approximately 6 p.m. that day, Mr. Hoàng Văn Y, accompanied by Mr. Cao Văn T, Mr. Cao Xuân N, Mr. Trần Thanh T1, and Mr. Đào Quang T2 (all from T Commune police), collaborated with the H District K Commune police to inspect Hồ Minh Đ's residence, where the Suzuki Raider was found. The motorcycle was temporarily seized and transported back to T Commune police for further processing. Upon encountering the task force at his residence, Đ absconded.

At approximately 7 p.m. on the same day, after the task force departed from Đ's residence, Đ returned home, retrieved a 27 cm knife, affixed it to the Sirius motorcycle with license plate 79X1-02891, and rode to the house of Đinh Minh T3, a friend in the same hamlet, to acquire a machete. He secured the machete onto the motorcycle's exhaust. Subsequently, Đ pursued Mr. Hoàng Văn Y. Upon reaching the vicinity of Mr. Bo Bo T4 and Ms. Bo Bo Thị H's residence (N Hamlet, T Commune, H District), Đ spotted Mr. Y riding the Suzuki Raider motorcycle from H Town towards T Commune. Riding alongside, Đ used his right hand to grab and pull Mr. Y's left hand, causing him to fall off his motorcycle. Đ then turned back, halted, dismounted, and brandishing the knife in his right hand, subdued Mr. Y, stabbing him four times in the right shoulder and left shoulder regions. Inside her home, Ms. Bo Bo Thị H heard the commotion and illuminated Đ with her mobile phone's light. Subsequently, Đ fled towards H Town on the Sirius motorcycle. Locals transported Mr. Hoàng Văn Y to the hospital, but he succumbed en route to H District General Hospital (Exhibits 122-148, 234).

After stabbing Mr. Hoàng Văn Y, Hồ Minh Đ fled the scene, discarding the knife into the river while crossing the T Suspension Bridge (in H Town). He proceeded to conceal the machete in sugarcane fields (in Đông Hamlet, Sông Cầu Commune, H District) and then fled on his motorcycle to K Pass in H District to evade capture. Around 8 a.m. on July 10<sup>th</sup>, 2022, Đ was apprehended by the Investigative Police Agency while hiding in B Hamlet, K Commune, H

District (Exhibits 98, 100).

According to Forensic DNA Analysis Report No. 3193-2022/ADN from the Hồ Chí Minh City Forensic Center, which examined various evidence including: Hoàng Văn Y's blood sample; a pair of "NIKE" sandals with beige soles and red-beige straps (submitted by Hồ Minh Đ); fingernail and toenail samples from Hồ Minh Đ; and a black long-sleeve jacket with brown fur lining and elastic cuffs (submitted by Hồ Minh Đ), it was concluded that Hoàng Văn Y's DNA was found on the left cuff of the jacket (Exhibit 27).

The Forensic Autopsy Report No. 308/TT-TTPY dated July 18<sup>th</sup>, 2022, from the Khánh Hòa Provincial Forensic Center determined that Hoàng Văn Y's cause of death was respiratory and circulatory failure resulting from a penetrating wound to the back that caused lung perforation. The direction of the wound was from back to front, outside to inside, right to left (Exhibit 12).

According to the Asset Valuation Report No. 3173/KL-HĐĐGTS dated August 16<sup>th</sup>, 2022, from the Asset Valuation Council in Criminal Proceedings of Khánh Hòa Province, the assessed value of the red-black Suzuki Raider motorcycle, chassis number 11ANJV108137, engine number CGA1508220, with license plate 79D1-539.68 as of July 8<sup>th</sup>, 2022, in H District was 22,800,000 VND (Exhibit 46).

In the First-instance Criminal Judgment No. 129/2022/HSST dated December 7<sup>th</sup>, 2022, the People's Court of Khánh Hòa Province rendered the following decisions:

Pursuant to points d and n, Clause 1 of Article 123, and Clause 1 of Article 173 of the Penal Code; points b, p, and s, Clause 1 and Clause 2 of Article 51; and Article 55 of the Penal Code:

- Hồ Minh Đ was sentenced to life imprisonment for the crime of "Murder".

- Hồ Minh Đ was sentenced to 9 months in prison for the offense of "Theft of Property".

The combined sentence imposed on Hồ Minh Đ is life imprisonment, effective from the date of detention, July 10<sup>th</sup>, 2022.

Additionally, the first-instance judgment addressed matters concerning the handling of evidence, civil liabilities, court fees, and the right to appeal in accordance with the law.

On December 20<sup>th</sup>, 2022, Mr. Hoàng Văn T, acting on behalf of the legal representatives of the victims Mrs. Luân Thị H1 and Mrs. Nguyễn Thị H2, filed an appeal seeking the death penalty for Hồ Minh Đ and a comprehensive investigation into any accomplices and acts of concealment or failure to report the crime.

During the appellate hearing, the appellant maintained the appeal.

The representative from the High People's Procuracy in Đà Nẵng recommended that the Appellate Court reject the appeal and uphold the first-instance judgment.

The defense counsel argued for the dismissal of the appeal and the affirmation of the first-instance judgment.

### **COURT'S OPINION:**

[1] Based on the case details; the evidence in the case file verified during the trial; and the results of the litigation at the trial, the Appellate Panel assessed:

[2] Regarding the merits:

[3] At the appellate hearing, the defendant admitted to the actions as described in the first-instance judgment. The defendant's statements were consistent with the witnesses' testimonies and other evidence in the case file,

providing sufficient basis to conclude: Around 1 p.m. on July 8<sup>th</sup>, 2022, taking advantage of the lack of supervision at the storage area of the People's Committee of T Commune, Hồ Minh Đ secretly stole a Suzuki Raider motorcycle (chassis number 11ANJV108137, engine number CGA1508220) without a license plate, valued at 22,800,000 VND, which was being temporarily held by the T Commune police, H District, Khánh Hòa Province, and hid it at his home (B Hamlet, K Commune, H District).

[4] Around 7 p.m. on July 9<sup>th</sup>, 2022, after Mr. Hoàng Văn Y, Deputy Chief of T Commune police, coordinated with K Commune police, H District, to work at Hồ Minh Đ's house and seized the Suzuki Raider motorcycle, returning it to the T Commune police headquarters, Hồ Minh Đ chased after Mr. Hoàng Văn Y. Upon reaching the area in front of Mr. Bo Bo T and Ms. Bo Bo Thị H's house in N Hamlet, T Commune, H District, Đ used his motorcycle to approach and pull the handlebar, causing Mr. Hoàng Văn Y to fall. Đ then got off the motorcycle, held a knife, and repeatedly stabbed Mr. Hoàng Văn Y in the right and left shoulder areas, penetrating his back and causing lung perforation. As a result, Mr. Hoàng Văn Y died from respiratory and circulatory failure.

[5] Thus, the defendant took advantage of the lack of supervision to secretly steal the Suzuki Raider motorcycle, which was temporarily held by the T Commune police, H District, Khánh Hòa Province, and hid it at his home. The first-instance court's determination that the defendant committed the crime of "Theft of Property" under Clause 1, Article 173 of the Penal Code is well-founded and lawful.

[6] The defendant was aware that Mr. Y was a Commune police officer performing his assigned duties of retrieving the defendant's motorcycle (a traffic violation vehicle) for processing in accordance with the law. However, the defendant intentionally used a knife to repeatedly stab the victim's back and shoulder areas, leading to Mr. Y's death. Therefore, the People's Court of Khánh Hòa Province's conviction of Hồ Minh Đ for "Murder" under points d, n

Clause 1 Article 123 of the Penal Code is well-founded, with the correct individual and charge.

[7] Regarding the appeal from the lawful representative of the victim, the Appellate Panel finds:

[8] In terms of sentencing the defendant, Hồ Minh Đ's criminal acts were exceptionally severe, causing the death of an individual in the performance of official duties, inflicting considerable loss and suffering upon the victim's family, and violating the property management rights of the competent authority. Consequently, a notably severe punishment is warranted to effectively combat criminality. The appellant contended that the defendant lacked a severe disability and committed murder from a base motive after being caught stealing. Therefore, they sought the death penalty for the defendant. However, given the evidence and circumstances, it was established that the defendant suffers from severe hearing and speech impairments. While the defendant did commit two criminal acts, there was insufficient basis to classify them as base. During both the investigation and trial stages, the defendant exhibited remorse and confessed. Additionally, the defendant's parents provided compensation in the amount of VND 150,000,000 to the victim's representative, thereby meeting the mitigating circumstances under points p and s, Clause 1 and Clause 2 of Article 51 of the Penal Code. Therefore, the first-instance court's decision to impose life imprisonment for "Murder" and a 9-month prison term for "Theft of Property" upon the defendant Hồ Minh Đ was both rigorous and legitimate. As a result, the appeal for increasing the sentence to the death penalty is unmeritorious and cannot be upheld.

[9] Regarding the request to investigate accomplices and actions of concealment or failure to report the crime: Based on the evidence gathered throughout the investigation and trial, it was established that the defendant acted independently in perpetrating the crime, devoid of any collaborative planning or assistance. Consequently, no grounds exist to assert the presence of

accomplices. Following the crime, the defendant was apprehended the morning after the incident, with individuals cognizant of his actions urging him to surrender and voluntarily provide the pertinent evidence. Therefore, no grounds exist to assert acts of concealment or failure to report the crime. During the appellate trial, the lawful representative of the victim maintained the appeal, yet failed to present any novel evidence to substantiate their claims. Consequently, the appeal on these grounds is unfounded and cannot be sustained.

Regarding the appellate criminal court fees: The lawful representative of the victim is not required to pay appellate criminal court fees.

In light of the foregoing,

**IT IS DECIDED:**

Based on point a Clause 1 Article 355, Article 356 of the Criminal Procedure Code; Resolution No. 326/2016/UBTVQH14 dated December 30, 2016, by the Standing Committee of the National Assembly on court fees and charges.

1. The appeal of the lawful representative of the victim is rejected, and the First-instance Criminal Judgment No. 129/2022/HSST dated December 7, 2022, by the People's Court of Khánh Hòa Province is upheld.

Based on points d, n Clause 1 Article 123, Clause 1 Article 173 of the Penal Code; points b, p, s Clause 1, Clause 2 Article 51; Article 55 of the Penal Code:

- Sentencing the defendant Hồ Minh Đ to life imprisonment for "Murder."
- Sentencing the defendant Hồ Minh Đ to 9 months in prison for "Theft of Property."

Combining the sentences, the defendant Hồ Minh Đ is to serve life



imprisonment. The sentence is effective from the date of detention, July 10, 2022.

2. Regarding the court fees: The lawful representative of the victim is not required to pay appellate criminal court fees.

3. The other parts of the First Instance Judgment that were not appealed or protested have taken legal effect from the end of the appeal period.

The appellate judgment takes legal effect from the date of pronouncement.

### **CONTENT OF THE CASE LAW:**

*“[3] At the appellate hearing, the defendant admitted to the actions as described in the first-instance judgment. The defendant's statements were consistent with the witnesses' testimonies and other evidence in the case file, providing sufficient basis to conclude: Around 1 p.m. on July 8<sup>th</sup>, 2022, taking advantage of the lack of supervision at the storage area of the People's Committee of T Commune, Hồ Minh Đ secretly stole a Suzuki Raider motorcycle (chassis number 11ANJV108137, engine number CGA1508220) without a license plate, valued at 22,800,000 VND, which was being temporarily held by the T Commune police, H District, Khánh Hòa Province, and hid it at his home (B Hamlet, K Commune, H District).*

...

*[5] Thus, the defendant took advantage of the lack of supervision to secretly steal the Suzuki Raider motorcycle, which was temporarily held by the T Commune police, H District, Khánh Hòa Province, and hid it at his home. The first-instance court's determination that the defendant committed the crime of "Theft of Property" under Clause 1, Article 173 of the Penal Code is well-founded and lawful.”*

### **REASON FOR THE DRAFT'S PROPOSAL**

(The Appellate Criminal Judgment No. 116/2023/HS-PT dated March 31<sup>st</sup>, 2023, by the High People's Court in Đà Nẵng regarding the case "Murder" and "Theft of Property" involving the defendant Hồ Minh Đ.)

According to current legal norms, individuals who steal property belonging to others are liable to face legal consequences. However, practical situations often arise where individuals commit traffic violations with their vehicles, resulting in temporary seizure by competent authorities. Subsequently, the violator, who is the vehicle's owner, clandestinely retrieves their vehicle from the temporary storage location and conceals it. This scenario raises debates regarding the criminal culpability of owners who secretly reclaim and hide their vehicles, particularly whether such actions constitute self-theft, the appropriate legal charge, and the identification of the victim.

In this specific case, the defendant violated traffic regulations, leading to the competent authority recording the violation and temporarily impounding the vehicle. Subsequently, the defendant retrieved the vehicle surreptitiously from the storage area and hid it. The court ruled that the defendant had infringed upon the property management rights (temporarily seized) of the competent authority and correctly charged the defendant with "Theft of Property" under existing laws. Consequently, the evolution of jurisprudence in this area is crucial to ensure consistent application of the law in analogous cases.