**CASE LAW NO. 01/2016/AL ON THE CASE OF “MURDER”**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 6 April 2016 and promulgated under Decision No. 220/QD-CA dated 6 April 2016 by the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Cassation Decision No. 04/2014/HS-GDT dated 16 April 2014 of the Judicial Council of the Supreme People’s Court on the “Murder” case with respect to the defendant: Dong Xuan Phuong, born in 1975; residing at No. 11/73, Dinh Tien Hoang Street, Hoang Van Thu Ward, Hong Bang District, Hai Phong City; a construction worker; son of Mr. Dong Xuan Chi and Ms. Duong Thi Thong; taken into custody on 22 June 2007.

Victim: Nguyen Van Soi, born in 1971 (deceased).

**Overview of the case law:**

For the case of accomplices, if it can be proven that the intent of the instigator is to hire other person(s) to cause injury to the victim without any intention to deprive the victim’s life (the instigator only requested injury to the victim’s legs and arms and did not request attacking the vital parts of the body which might cause human death); the accomplices acted according to the requests of the instigator; the death of the victim is beyond the intention of the instigator, then the instigator shall be liable for the crime of “Intentionally inflicting injury” with the [sentencing] framework factor being “causing injury which caused human death”.

**Applicable provisions of laws relating to the case law:**

Article 93.1(m) and (n) of the Criminal Code 1999;

Article 104.3 of the Criminal Code 1999.

**Key words of the case law:**

“Murder”, “Intentionally causing injury”, “Causing harm to the health of other persons”, “crimes of infringing upon human life and health”, “hiring other persons to cause injuries”.

**CONTENTS OF THE CASE**

At around 15:00 on 21 June 2007, the Police of Long Bien District, Hanoi received a report of a case in which a victim passed away in the area for casting the concrete beams for construction of the Thanh Tri Bridge within the area of Group 12, Thach Ban Ward, Long Bien District. The victim was Mr. Nguyen Van Soi (a construction engineer of Construction Joint Stock Company 204 of Bach Dang Construction Corporation. After investigation and verification, the Police of Long Bien District immediately arrested Dong Xuan Phuong.

According to the result of the investigation, both Nguyen Van Soi and Dong Xuan Phuong worked for Construction Joint Stock Company 204 of Bach Dang Construction Corporation (they were assigned to construct Thanh Tri Bridge). Around February 2007, Phuong was drinking alcohol during working hours, was photographed by Soi, using a mobile phone, and was reported to the supervisors. For this reason, Phuong intended to get revenge on

Soi.

On 14 June 2007, Dong Xuan Phuong made a phone call to his friend, Doan Duc Lan, born in 1975 (residing at No. 11 C98 Trai Chuoi, Hong Bang District, Hai Phong City) telling Lan about the conflict and hired him to attack Lan for revenge. Lan informed Phuong that he would introduce another person to carry out the act. In the evening of 17 June 2007, Phuong, from Hanoi, went to Hai Phong to meet Lan and Lan’s friend, Hoang Ngoc Manh, born in 1982 (also known as Thang, residing at So Dau Ward, Hong Bang District, Hai Phong City). Phuong retold the conflict between him and Soi and hired Lan and Manh to beat Soi by using knives to cause injury to Soi’s legs and arms. Dong Xuan Phuong asked for the price, Manh and Lan said that it depends and so Phuong gave Manh VND1,500,000. Lan and Mang agreed.

At around 20:00 on 20 June 2007, Hoang Ngoc Manh with Nam (a friend of Manh; unknown address) went to Hanoi to meet Dong Xuan Phuong. They agreed that they would beat Soi on 21 June 2007. After that, Phuong gave Manh an additional VND500,000 to rent an accommodation. At around 9:00 on 21 June 2007, Phuong led Manh and Nam to the path where Soi would pass on his way to a meeting in that afternoon, afterwards he went back to the company. At around 11.00, Hoang Ngoc Manh came to a street stall at the crossroads of Highway 5 – 1B (Pham Thi Mien’s stall) to hire Mien’s cell phone and called Dong Xuan Phuong to ask for identification of Soi and Soi’s phone number as well. Phuong did as requested. At around 13:00, Manh hired Mien’s cell phone again to contact Phuong, informing him that he had identified Soi and he would carry out the plan alone as Nam had left without any notice. Dong Xuan Phuong agreed with that.

At around 14:16 on the same day, Manh hired Mien’s cell phone to call Soi and ask for a meeting at the area for casting concrete beams. When Soi arrived, Manh used a sharp knife to stab twice into the back of Soi’s right thigh causing Soi’s death.

At Report on Forensic Test No. 146/PC21-PY dated 17 July 2007, the Criminal Technical Department – Police of Hanoi concluded: the victim had two wounds in the back of his right thigh, the higher wound penetrated 3 centimeters into the thigh muscle, the lower wound cut the femoral artery and vein which caused excessive bleeding. Cause of the death: uncontrolled hemorrhagic shock due to serious injury of femoral artery.

In addition, during the investigation, Dong Xuan Phuong stated: Beside the personal conflict between him and the victim, his action of hiring people to stab Soi was also due to Mr. Ngo Van Toan (the deputy executive committee of the Thanh Tri Bridge project) inciting him because Toan and Soi also had conflict. The investigation body took Toan’s statement where Toan denied the alleged involvement. As a result, the investigation body had no basis to conclude that Toan was related to the case.

Doan Duc Lan and Hoang Ngoc Manh escaped, the investigation body issued an arrest warrant and decision to suspend the investigation of Doan Duc Lan and Hoang Ngoc Manh. They would be dealt with later after being arrested.

During the investigation, Construction Joint Stock Company 204 and its staffs voluntarily donated to support the victim’s family with the total amount of VND123,000,000 of which the funeral expense is VND63,000,000 and 3 passbooks for Soi’s family with the total deposits of VND60,000,000.

In First-instance Criminal Judgment No. 164/2008/HSST dated 17 November 2008, the People’s Court of Hanoi applied Article 93.1(n) and Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong seventeen (17) years of imprisonment for the crime of “Murder”.

Dong Xuan Phuong is compelled to compensate for mental loss of the victim’s family the amount of VND32,400,000 and provide financial support to the victim’s two (2) children and mother.

After the first-instance judgment, the defendant, Dong Xuan Phuong, submitted an appeal to the higher court.

The victim’s legal representative, Ms. Nguyen Thi Thanh, submitted an appeal to propose a more severe punishment and higher compensation.

In Appellate Criminal Judgment No. 262/2009/HSPT dated 5 May 2009, the Appellate Court of the Supreme People’s Court in Hanoi applied Article 250.1 of the Criminal Procedure Code to set aside the first-instance judgment in order to reinvestigate under general procedures.

In First-instance Criminal Judgment No. 167/2010/HSST dated 31 March 2010, the People’s Court of Hanoi applied Article 93.1 and Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong seventeen (17) years of imprisonment for the crime of “Murder”.

Dong Xuan Phuong is compelled to compensate the following amounts: VND34,583,000 for the funeral expenses, VND39,000,000 for mental loss of the victim’s wife and children and monthly financial support to the victim’s mother and children.

After the first-instance judgment, Dong Xuan Phuong appealed the judgment to ask for reducing the level of punishment and reconsidering the case because Manh had not been arrested and thus, there was not sufficient basis to assert that Soi was killed by Manh.

On 13 April 2010, the victim’s wife, Ms. Nguyen Thi Thanh, submitted an appeal against the judgment to propose a more severe punishment for the defendant and larger compensation from him.

In Appellate Criminal Judgment No. 475/2010/HSPT dated 15 September 2010, the Appellate Court of the Supreme People’s Court in Hanoi applied Article 93.1(m), (n) and

Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong with life imprisonment for the crime of “Murder”, compelled Dong Xuan Phuong to pay compensation for mental loss with the amount of VND43,800,000 and affirmed the other relevant rulings on compensation.

At Protest No. 13/KN-HS dated 22 July 2013, the Chief Justice of the Supreme People’s Court requested the Judicial Council of the Supreme People’s Court to handle the case according to the cassation procedures and set aside the above appellate criminal judgment on the following parts: crime, punishment and legal costs for appellate criminal procedure upon Dong Xuan Phuong; transfer the case to the Appellate Court of the Supreme People’s Court in Hanoi to conduct the appellate procedure in accordance with the prevailing laws.

At the hearing, the representative of the Supreme People’s Procuracy agreed with the Protest of the Chief Justice of the Supreme People’s Court.

**THE JUDICIAL COUNCIL OF THE SUPREME PEOPLE’S COURT FINDS:**

On the basis of the following evidences: the defendant’s statement during the investigation and at the first-instance and appellate hearings, statements and identification results of witnesses and persons related to the case, report on crime scene examination, record on forensic examination and other relevant documents, there is sufficient basis to conclude that due to conflicts arising from their relationships, Dong Xuan Phuong hired Hoang Ngoc Manh and Doan Duc Lan to stab Nguyen Van Soi by using a knife to cause injury to him for revenge. According to the case records, there is sufficient basis to assert that Phuong only wanted to injure Soi and did not want to deprive his life, also Phuong did not want Manh to randomly and recklessly stab into Soi without regard to any consequence. That was the reason why the defendant only requested Manh to attack the victim’s legs and arms but no other vital parts of the body which are areas that if attacked might infringe upon life of the victim. When carrying out the crime, Manh followed Phuong’s instruction to stab only twice into the victim’s thigh. It is difficult to foresee the death of the victim due to Manh’s offense. The fact that the victim passed away due to uncontrolled hemorrhagic shock was beyond the intention of Dong Xuan Phuong and his accomplice. Dong Xuan Phuong’s offense is regulated in Article 104.3 of the Criminal Code which is the case of intentionally causing injury leading to human death. Therefore, the judgment of the courts at the first-instance and appellate levels that Dong Xuan Phuong committed the crime of “Murder” was not in compliance with the law.

Based on the foregoing and pursuant to Article 285.3 and Article 287 of the Criminal Procedure Code,

**RULES**

To set aside Appellate Criminal Judgment No. 475/2010/HSPT dated 15 September 2010 of the appellate court of the Supreme People’s Court in Hanoi on the following parts: crime, punishment and legal cost for appellate criminal procedure upon Dong Xuan Phuong; to transfer the case to the Supreme People’s Court in Hanoi to reconduct the appellate procedure in accordance with the prevailing laws.

To continue holding Dong Xuan Phuong in custody until the appellate court of the Supreme People’s Court in Hanoi accepts to re-accept jurisdiction over the case.

Other rulings of the appellate criminal judgment mentioned above that have already been effective.

**CONTENTS OF THE CASE LAW**

*“According to the case records, there is sufficient basis to assert that Phuong only wanted to injure Soi and did not want to deprive his life, also Phuong did not want Manh to randomly and recklessly stab into Soi without regard to any consequence. That was the reason why the defendant only requested Manh to attack the victim’s legs and arms but no other vital parts of the body which are areas that if attacked might infringe upon life of the victim. When carrying out the crime, Manh followed Phuong’s instruction to stab only twice into the victim’s thigh. It is difficult to foresee the death of the victim due to Manh’s offense. The fact that the victim passed away due to uncontrolled hemorrhagic shock was beyond the intention of Dong Xuan Phuong and his accomplice. Dong Xuan Phuong’s offense is regulated in Article 104.3 of the Criminal Code which is the case of intentionally causing injury leading to human death. Therefore, the judgment of the courts at the first-instance and appellate levels that Dong Xuan Phuong committed the crime of “Murder” was not in compliance with the law”.*