**CASELAW NO. 18/2018/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 06 November 2018 by the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Appellate judgement No. 331/2018/HS-PT dated 28 May 2018 of Superior People’s Court of Hanoi on the *“Murder”* case with the defendant being Mr. Phan Thanh H, other name: D; born in 1995, residing at C Commune, D District, Binh Dinh Province; having his address at B Hamlet, C Commune, D District, Binh Dinh Province.

- Victim: Mr. Nguyen Anh D.

## Location of contents of the case law:

Paragraphs 1 and 3 of the section *“Findings of the Court”*.

## Overview of the case law:

### Background of the case law:

The defendant was ordered by the traffic police to stop the vehicle to settle the violation but failed to follow such order and drove the vehicle straight through the traffic police officers. When the traffic police officer clung to the rearview mirror of the vehicle, the defendant continued to drive the vehicle with high speed, unexpectedly steered close to the median strip in order to knock the traffic police officer down to the road.

The traffic police officer fell off the vehicle, hit the hard median strip in the middle of the road, and suffered multiple injuries.

### Legal resolution:

In this case, the defendant shall be liable for the crime of *“Murder”* with the sentencing framework factor being *“Murder of on-duty officer”*.

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

Article 93.1(d) of the Criminal Code 1999 (corresponding to Article 123.1(d) of the Criminal Code 2015)

## Key words of the case law:

*“Murder”, “Traffic police” “Murder of on-duty officers”.*

**CONTENTS OF THE CASE**

Pursuant to the charges and the first-instance judgement of the People’s Court of Ha Tinh Province, the contents of the case are summarized as follow:

1. As to the acts of murder:

Implementing a plan of the Traffic Police Department of Ha Tinh Province (PC67), on 30 June 2017, the patrol squad including officers: Vo Hoang N, Nguyen Anh D, Le Ho Viet A and Duong Hai N (officer Vo Hoang Nam is the head of this squad) conducted patrol duties, handled violations relating to traffic safety from Km468 to Km517 of the 1A National Highway. Officer Duong Hoai N was assigned the duty of using the vehicle speed detector number UX027957 to measure the speed of vehicles at Km11+450 of the road bypassing Ha Tinh City, within H Commune, I District, Ha Tinh Province. Officers Vo Hoang N, Nguyen Anh D and Le Ho Viet A were assigned to stop, examine, patrol and handle violating vehicles at 1A Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province.

On 30 June 2017, Tu Cong T and Phan Thanh H operated the towing truck BKS: 77C-016.47 towing a semi-trailer BKS: 77R-001.37 driving from South to North. When reaching the area of Quang Binh Province, the vehicle was operated by Phan Thanh H and Tu Cong T was sleeping in the truck cab. At 15:28 on the same day, while Phan Thanh H was operating the vehicle to Km11+450 in the road bypassing Ha Tinh City, Officer Duong Hoai N used the vehicle speedometer and detected that the towing vehicle operated by H violated the speed limit of 66/60km/h, so he reported and sent images of the violation via mobile phone message to the patrol squad who were on duty at Km488+700 of the 1A National Highway to handle.

At 16:05 on the same day, when the towing vehicle BKS: 77C-016.47 operated by Phan Thanh H arrived at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province. He was signaled to stop by the patrol of the Traffic Police Department of the Police of Ha Tinh Province. After Phan Thanh H had stopped the vehicle, Officer Nguyen Anh D informed and showed images of the violation to him and asked him to present documents. Nonetheless Phan Thanh H asserted that his vehicle did not violate the speed limit, so he did not present documents and then argued with Officer D and other officers in the patrol squad who were on duty. At the same time, Phan Thanh H took his mobile phone displaying images of his vehicle’s speed to compare. The patrol explained but Phan Thanh H still did not accept and continued to argue, then climbed up the vehicle and closed the door (the vehicle was still running). At this time, Officer Le Ho Viet A was standing before the front right side of the vehicle, Officer Nguyen Anh D was standing before the front left side of the vehicle BKS: 77C-016.47 at about 01 meter, gave Phan Thanh H a signal not to drive the vehicle. However, Phan Thanh H failed to comply with such order and unexpectedly drove the vehicle straight through Officer Le Ho Viet A and Officer Nguyen Anh D standing before the front of the vehicle to escape. Seeing that, Officer Le Ho Viet A avoided by jumping to the right roadside, Officer Nguyen Anh D failed to do so, thus, he had to cling to the front left rearview mirror on the hood of the vehicle. Even though Phan Thanh H saw that Officer Nguyen Anh D was clinging to the rearview mirror, he still continued to accelerate the vehicle. When it came to Km488+250 of the 1A National Highway (approximately 400 meters from the starting point), Phan Thanh H’s vehicle was moving in the right lane, although there was no obstacle and no car traveling in the same

direction before him, H unexpectedly steered heavily to the left, changed the direction of the front of the vehicle close to the hard median strip in the middle of the road, aiming to knock Officer Nguyen Anh D down to escape. At that time Officer Nguyen Anh D was clinging onto the rearview mirror with both of his hand, his legs did not have any support so when the vehicle was unexpectedly steered, he was thrown off the vehicle and hit the hard median strip, then fell onto the road surface.

After unexpectedly steering and throwing officer Nguyen Anh H onto the road, Phan Thanh H still did not stop, continued to operate the vehicle to escape, failed to comply with the order to stop from the patrol squad. Only at Km488 of the 1A National Highway, when the Traffic Police Force of the Police of Ha Tinh Province used specialized vehicles to block him, Phan Thanh H then stopped the vehicle but still did not comply and continued to argue with the on-duty officers. He then got on the vehicle, closed the door refusing to cooperate, then operated the vehicle to block the road causing traffic jams. The Police Department of L District cooperating with the Traffic Police Department of the Police of Ha Tinh Province compelled Phan Thanh H to operate the vehicle to the roadside and brought him to the Police Office of L District to handle.

Consequence: Officer Nguyen Anh D was seriously injured and was taken to the General Hospital of Hong Linh Commune, then transferred for treatment at the Viet Duc Friendship Hospital, on 10 July 2017 he was transferred for treatment at General Hospital of Ha Tinh province and was discharged from the hospital on 18 July 2017.

The process of Phan Thanh H carrying out such acts was recorded via a mobile phone by Mr. Tran Trung D, residing at 102 M Street, N District, Hanoi, who was a passenger on a taxi BKS: 37A-304.84 of Mai Linh taxi.

*- In Report on Forensic Medical Examination No. 87 dated 18 September 2017 of the Forensic Medical Examination Center of Ha Tinh Province as to Mr. Nguyen Anh D’s injuries, it was determined that:*

+ Traumatic brain injury: left frontal lobe impacted, right vertebral bone being fractured;

+ Top of the head with scar wound size of 2.5cm x 0.2cm; right temporal lobe with scar wound of 1.5cm x 0.2cm;

+ X Ray: Image of 1/3 left fibula being broken having bony callus.

Conclusion: The current injury level of the body caused by this incident is 40%. (BL: 139, 140).

During the investigation process, Phan Thanh H presented that the vehicle operated by H did not violate the speed limit, based on the VTR01 travel monitoring device installed on the towing vehicle BKS: 77C-016.47 reflecting that, on the road bypassing Ha Tinh City, the towing vehicle BKS: 77C-016.47 traveled at a speed less than 60km/h. However, VTR01 travel monitoring device installed on the towing vehicle BKS: 77C-016.47, which meets the national standards QCVN31:2001/GTVT issued in accordance with the Circular No. 08/2011/TT-BGTVT dated 8 March 2011 of the Ministry of Transport, has ± 5km/h error and updates the vehicle’s speed every 10 seconds. Meanwhile, the vehicle speed detector

number UX027957 verified according to the Certificate of Accreditation No. V08.KD.525.16 dated 29 September 2016 of Vietnam Metrology Institute, has technical features of measurement as follow: Range of measurement of 8 – 320 km/h, accuracy level ± 2km/h and direct measurement of the speed of the traveling vehicle.

In this case, Phan Thanh H was responsible to comply the order, present documentations in compliance with the requests of the on-duty officers. If he disagreed with the result of the resolution, then he could submit a complaint. However, due to the fear of being detected that he was using a forged driver’s license, Phan Thanh H did not comply and committed a crime.

1. As to the acts of forging documents of agencies and/or organizations:

Around October 2016, Phan Thanh H (having a Class C driver’s license) was accepted by Tu Cong T to be an assistant driver of towing vehicles to come with T to deliver goods. During process of being an assistant driver, Tu Cong T saw that H can operate towing vehicles, but Phan Thanh H was not old enough to be licensed with a Class FC driver’s license. Around February 2017, Tu Cong T took Phan Thanh H’s photo and contacted a stranger in Hai Phong City to forge Class FC driver’s license No. 520144004729 having the name of Luu Van C and photo of Phan Thanh H with the price of VND2,500,000 and then handed it to H to use in dealing with and deceiving when being inspected by competent authorities.

On 30 June 2017, when working with the Investigation Police Agency of the Police of L District, Phan Thanh H has presented a forged Class FC driver’s license named Luu Van C (born in 1991; residing at O Town, D District, Binh Dinh Province). At the same time, both Phan Thanh H and Tu Cong T stated that H’s name is Luu Van C in order to deceive investigation agency. Therefore, the Investigation Police Agency of the Police of L District issued legal procedure decisions against Phan Thanh H with the fake name of Luu Van C.

During the investigation, it was also determined that: At 16:50 on 22 April 2017, at Km1060 + 400 of the 1A National Highway within Quang Ngai Province, Phan Thanh H operated the towing vehicle BKS: 77C-103.69 towing a semi-trailer 77R-014.65 and violated *“Turning without signaling”* and used forged driver’s license No. 520144004728 with name Luu Van C to deceive the patrol squad of the Traffic Police Department of the Police of Quang Ngai province.

- *In the Conclusion of the Assessment Report No. 10 dated 05 July 2017, the Criminal Technical Office of the Police of Ha Tinh, it was determined that*: The driver’s license No. 520144004729 named Luu Van C, born on 10 June 1991, residing in O Town, D District, Binh Dinh Province issued on 18 November 2015 was a forged driver’s license (BL: 91).

### The seizure exhibits include:

* 01 (one) FREIGHTLINER branded towing vehicle, BKS:77C-016.47, type number: CL 120064S, red paint, machine number: 0933U0841843, frame number: 6CV36LX06844 and other related documents;
* 01 (one) forged driver’s license (plastic card) No. 520144004729, Class FC with name Luu Van C;
* 01 (one) forged driver’s license (plastic card) No. 5201600087, Class C with name Phan Thanh H, issued by Department of Transport of Binh Dinh Province;
* 01 (one) identity card No. 215341305 with name Phan Thanh H issued by the Police of Binh Dinh Province;
* 01 (one) ARBUTUS branded mobile phone, gold color, touch screen, IMEI numbers: 355052654004631, 355052654004649, used machine;
* 01 (one) Kingston branded USB, 8GB capacity, on the surface are the letters DT101 G2 storing a Video file: IMG-1245.MOV with the duration of 00 minutes 37 seconds.
* 01 (one) Apacer branded USB, 8GB capacity storing 02 Video files: IMG-0507.MOV with the duration of 02:58 minutes and IMG-0509.MOV with duration 03 minutes 04 seconds.
* 01 (one) Kingston branded USB, 8GB capacity, on the surface are the letters DT101.G2 storing a Video file: IMG-1689.MOV with the duration of 05 minutes 10 seconds.

The Investigation Police Agency of the Police of Ha Tinh Province returned the towing vehicle BKS: 77C-016.47 and other related documents to the owner being the Transport and General Trading Co., Ltd; 03 (three) USBs were being stored with the case file, other exhibits were transferred to the Civil Judgment Enforcement Agency of Ha Tinh Province for management.

With the above-mentioned acts, in the Indictment No. 35/CTr – KSDT, on 13 October 2017, the People’s Procuracy of Ha Tinh Province prosecuted Phan Thanh H for the crime of *“Murder”* pursuant to Article 93.1(d) of the Criminal Code and the crime of *“Forging documents of agencies and/or organizations”* pursuant to Article 267.2(b) of the Criminal Code. It also prosecuted Cong T for the crime of *“Forging documents of agencies and/or organizations”* pursuant to Article 267.2(b) of the Criminal Code.

In First-instance Criminal Judgment No. 39/2017/HSST dated 26 December 2017, the People’s Court of Ha Tinh Province ruled to:

1. Convict the defendant Phan Thanh H of the crimes of *“Murder”* and *“Forging documents of agencies and/or organizations”* and the defendant Tu Cong T of the crime of *“Forging documents of agencies and/or organizations”*.

* Apply Article 93.1(d); Article 52.3; Article 267.2(b); Article 46.1(b) and (p), and Article 46.2, Article 47 of the Criminal Code 1999.

To sentence the defendant Phan Thanh H with 08 (eight) years of imprisonment for the crime of *“Murder”* and 02 (two) years of imprisonment for the crime of *“Forging documents of agencies and/or organizations”.*

Apply Article 50.1 of the Criminal Code to combine the penalties of 02 crimes to compel Phan Thanh H to bear the combined penalty of 10 (ten) years of

imprisonment. The imprisonment period shall be calculated from the date of temporary custody and detention (30 June 2017).

* Apply Article 267.2(b) and Article 46.2 of the Criminal Code 1999, sentence the defendant Tu Cong T with 02 (two) years imprisonment. The imprisonment time limit shall be calculated from the date the defendant implements the sentence.

In addition, the first-instance court also determined on handling the exhibits, the court fees and right to appeal.

On 3 January 2018, the defendant Phan Thanh H submitted an appeal requesting to reduce the level of punishment; the defendant Tu Cong T submitted an appeal requesting to reduce the level of punishment and a suspended sentence.

At the hearing, the defendant Phan Thanh H had confessed and admitted to all the acts of murder and acts of forging documents of agencies and/or organizations as stated above. The defendant presented that the first-instance court’s sentence was too strict and proposed the Council of Adjudicators to reduce the level of punishment for the defendant.

The defendant Tu Cong T had confessed and admitted to all the acts of forging documents of agencies and/or organizations as stated above; the defendant presented, the defendant did not have prior criminal record and committed a less serious crime, sincerely cooperated, has repented, compensated the damage, the defendants family was facing hardship. He requested that the Council of Adjudicators to allow the defendant to rehabilitate in his locality.

The representative of the Superior People’s Procuracy of Hanoi opined on the settlement of the case as follows: There is sufficient evidence to conclude that the defendant Phan Thanh H committed the crimes of *“Murder”* and “*Forging documents of agencies and/or organizations”* as provided in Article 93.1(d); Article 267.2(b) of the Criminal Code.

As to the defendant Tu Cong T: Committed the crime of *“Forging documents of agencies and/or organizations”* as provided in Article 267.2(b) of the Criminal Procedure Code.

After evaluating the nature and the seriousness of the offenses of the defendants; reviewing the personal record; mitigating factors of the defendants, the representative of the Superior People’s Procuracy of Hanoi requested the Council of Adjudicators to reject the appeal of the defendant Phan Thanh H, uphold the first-instance court’s judgment; accept the appeal of the defendant Tu Cong T, uphold the sentence and grant a suspended sentence, and set a probation period in accordance with the law.

The lawyer protecting the defendant Phan Thanh H opined: Not debating criminal offense and sentencing framework, requested the Council of Adjudicators for application of mitigating factors in accordance with the Article 46.1(b) and (p), and Article 46.2, Article 47 of the Criminal Code 1999 and to reduce the level of punishment for the defendant Phan Thanh H.

In the arguments, the representative of the Superior People’s Procuracy of Hanoi, lawyers and the defendant held to their opinions.

## FINDINGS OF THE COURT

1. The testimonies admitting guilt by the defendants Phan Thanh H and Tu Cong T match with the testimony of the crime victim, the testimonies of the witnesses, the expert report and other documents or evidence of the case file. Therefore, there is sufficient basis to conclude: At around 16:05 on 30 June 2017, the defendant Phan Thanh H operated a towing vehicle BKS: 77C-016.47 towing a Semi-trailer BKS: 77R-001.37, while arriving at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province, then it was signal to stop by the patrol squad of the Traffic Police Division of the Police Department of Ha Tinh Province for a speed violation (66/60km/h). The defendant Phan Thanh H did not comply since he asserted that his vehicle did not violate speed limit, so he argued and drove the vehicle straight through Mr. Nguyen Anh D and Mr. Le Ho Viet A being on-duty traffic police officers when they were standing in front of the vehicle. Mr. Le Ho Viet A jumped to the roadside and escaped, while Mr. Nguyen Anh D had to cling onto the front left rearview mirror of the vehicle. Phan Thanh H continued to drive the vehicle at high speed, then unexpectedly steered heavily to the left which was close to the median strip in the middle of the road aiming to knock Mr. Nguyen Anh D down to escape. The consequence was that Mr. Nguyen Anh D fell off the vehicle hitting the hard median strip in the middle of the road, then falling off onto the road. Phan Thanh H let the consequences happen and then continued to escape. Mr. Nguyen Anh D had traumatic brain injury, broke his legs, having 40% injury level.
2. Phan Thanh H and Tu Cong T also committed the following acts: The defendant Tu Cong T acknowledged that the defendant Phan Thanh H did not have Class FC driver’s license and was not old enough to be licensed with a Class FC driver’s license, but Tu Cong T has hired a man in Hai Phong (T did not know the name and address) to forge Class FC driver’s license No. 520144004729 with image of Phan Thanh H, but with name Luu Van C. He handed it to H to use in dealing with and deceiving competent authorities when operating vehicles on the road. With the forged driver’s license provided by Tu Cong T, Phan Thanh H used that forged driver’s license twice to deceive the Traffic Police Department of Quang Ngai Province and the Police of L Commune, Ha Tinh Province. Tu Cong T was aware of Phan Thanh H’s acts of using a forged driver’s license to deceive competent authorities as stated above.
3. Given the above-mentioned criminal actions, the first-instance court convicted the defendant Phan Thanh H for the crime of *“Murder”* and the crime of *“Forging documents of agencies and/or organizations”*, the crimes and sentences are specified in Article 93.1(d) and Article 267.2(b) of the Criminal Code 1999, which there is basis and is correct with law.
4. The defendant Tu Cong T was convicted with the crime of *“Forging documents of agencies and/or organizations”* with crimes and sentences as provided in Article 267.2(b) of the Criminal Code 1999, which has basis and correct with the law.
5. Considering the appeals of the defendant Phan Thanh H and Tu Cong T, the Council of Adjudicators, found that: The act of murder committed by the defendant Phan Thanh H was dangerous, directly infringed on human life, negatively impacted the order and safety of public transportation.
6. The act of forging documents of agencies and/or organizations committed by the defendants Tu Cong T and Phan Thanh H directly violated administrative management order, therefore, it must be strictly punished before the law.
7. The defendant Phan Thanh H has a good personal record, with no prior criminal record; during the investigation and at the hearing sincerely cooperated, repented; voluntarily compensated the victim to remedy consequences, the victim requested to reduce the level of punishment for the defendant; the defendant was facing hardship, being of a poor household in the locality; the criminal acts committed by the defendant fall into the category of *“incomplete crime”*; in addition, the defendant also has a grandfather who contributed to the revolution and entitled to similar regime as war invalids. As such, the defendant Phan Thanh H is entitled to mitigating factors in accordance with Article 46.1(b) and (p), and Article 46.2; Article 18 of the Criminal Code 1999. Therefore, there is basis to reduce the punishment level for the defendant of the sentence for the crime of *“Murder”*, but the sentence for the crime of *“Forging documents of agencies and/or organizations”* is upheld.
8. As to the defendant Tu Cong T: Has a good personal record, with no prior criminal record. During the investigation and at the hearing sincerely cooperated, repented; the defendant with the defendant Phan Thanh H’s family compensated the victim to remedy consequences; the defendant was facing hardship and is the main laborer in the family; the defendant has a fixed residence. Considering the above, imprisonment is unnecessary, and rehabilitation of the defendant in his locality also satisfies the conditions to educate the defendant and for general prevention. Therefore, there is sufficient basis to accept the appeal of the defendant Tu Cong T.
9. Other rulings of first-instance judgment not being appealed or protested shall become effective upon the expiration of the time limit for appeals and protests.
10. The defendants Phan Thanh H and Tu Cong T do not need to bear legal costs for appellate criminal procedure.

In light of the foregoing,

Pursuant to Article 355.1(b); Article 357.1(e) of the Criminal Procedure Code 2015,

## RULES

1. To accept a part of the appeal of the defendant Phan Thanh H, amending the first- instance judgment.

Applying Article 93.1(d); Article 267.2(b); Article 18; Article 52.3 (Murder); Article 46.1(b) and (p), Article 46.2; Article 47; Article 50.1 of the Criminal Code 1999: To sentence the defendant Phan Thanh H with 07 (seven) years of imprisonment for the crime of *“Murder”* and 02 (two) years of imprisonment for the crime of *“Forging documents of agencies and/or organizations”*. The combined penalty of the 02 crimes is 09 (nine) years of imprisonment. The imprisonment period shall be calculated from 30 June 2017.

1. To accept the appeal of the defendant Tu Cong T, amending the first-instance judgment.

Applying Article 267.2(b); Article 46.1(b) and (p), Article 46.2; Article 60 of the Criminal Code 1999: To sentence the defendant Tu Cong T with 02 (two) years of imprisonment with suspended sentence for the crime of *“Forging documents of agencies and/or organizations”.* The probation period is 04 (four) years upon the date of pronouncement of the appellate judgment. The defendant Tu Cong T is assigned to the People's Committee of O Town (D District, Binh Dinh Province) for supervision and education during probation.

Where the person with a suspended sentence changes residence, it shall be implemented in accordance with Article 69.1 of the Law on Criminal Judgment Enforcement.

1. Other rulings of first-instance judgment not being appealed or protested shall become effective upon the expiration of the time limit for appeals and protests.

The appellate judgment shall become effective upon the date of pronouncement of the appellate judgment.

**CONTENTS OF THE CASE LAW**

*“[1] The testimonies admitting guilt by the defendants Phan Thanh H and Tu Cong T match with the testimony of the crime victim, the testimonies of the witnesses, the expert report and other documents or evidence of the case file. Therefore, there is sufficient basis to conclude: At around 16:05 on 30 June 2017, the defendant Phan Thanh H operated a towing vehicle BKS: 77C-016.47 towing a Semi-trailer BKS: 77R-001.37, while arriving at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province, then it was signal to stop by the patrol squad of the Traffic Police Division of the Police Department of Ha Tinh Province for a speed violation (66/60km/h). The defendant Phan Thanh H did not comply since he asserted that his vehicle did not violate speed limit, so he argued and drove the vehicle straight through Mr. Nguyen Anh D and Mr. Le Ho Viet A being on-duty traffic police officers when they were standing in front of the vehicle. Mr. Le Ho Viet A jumped to the roadside and escaped, while Mr. Nguyen Anh D had to cling onto the front left rearview mirror of the vehicle. Phan Thanh H continued to drive the vehicle at high speed, then unexpectedly steered heavily to the left which was close to the median strip in the middle of the road aiming to knock Mr. Nguyen Anh D down to escape. The consequence was that Mr. Nguyen Anh D fell off the vehicle hitting the hard median strip in the middle of the road, then falling off onto the road. Phan Thanh H let the consequences happen and then continued to escape. Mr. Nguyen Anh D had traumatic brain injury, broke his legs, having 40% injury level.*

*[3] Given the above-mentioned criminal actions, the first-instance court convicted the defendant Phan Thanh H for the crime of “Murder” and the crime of “Forging documents of agencies and/or organizations”, the crimes and sentences are specified in Article 93.1(d) and Article 267.2(b) of the Criminal Code 1999, which there is basis and is correct with law.*