

File number: 28 / KSDT

Ha Noi, 08 January 2010

INDICTMENT

HEAD OF THE PEOPLE'S COURT , DISTRICT OF DONG DA

— Pursuant to Articles 36, 166, 167 of the Penal Code of Vietnam (Law on Criminal Proceedings).

— Pursuant to the decision to prosecute criminal case number: 676 of date 9 October 2009 by the Department of Police Investigations – Public Security Police of Dong Da District for the offence of: intentionally causing bodily harm to others as defined by Article 104 of the Penal Code.

— Pursuant to the decisions to prosecute the accused persons bearing numbers: 858 of date 13 October 2009 and 901 of date 30 October 2009 by the Department of Police Investigations – Public Security Police of Dong Da District press charges against Tran Khai Thanh Thuy and Do Ba Tan for the offences of: intentionally causing bodily harm to others as defined by Article 104 of the Penal Code.

Based on the results of the investigation, the following were ascertained:

At approximately 08:30 pm on 08 October 2009, Do Ba Tan came home on a motorcycle and parked it on the sidewalk in front of his house at 46, alley 178, Kham Thien Street – Trung Phung Ward – Dong Da District – Ha Noi. Nguyen Manh Diep (born in 1968, residing at 15, alley 138, Kham Thien Street – Trung Phung – Dong Da – Ha Noi) walked past. Having seen how Tan parked the motorcycle, he suggested Tan move it neatly to one side to make way for pedestrians. This led to a heated argument between Diep and Tan. Tan then used his yellow motorcycle helmet to repeatedly hit Diep in the face. Diep tried to fend off the helmet blows but his effort was in vain. Tran Khai Thanh Thuy (Tan's wife) came out from the house, holding a brick in each hand. Thuy threw the brick in her right hand at Diep, hitting him in the head and causing injury to the occipital area behind the right ear, causing him to bleed.

At that moment, Mr Nguyen Van Thinh (born in 1958, residing at 62, alley 178, Kham Thien Street – Trung Phung – Dong Da – Ha Noi) happened to pass by and witnessed this incident. He stepped in to dissuade any further assaults. Before he was able to execute the dissuasion, Thuy hurled the remaining brick in her left hand at Thinh, hitting him in the right forearm and causing injury. Meanwhile, Tan continued hitting Diep in the face with his motorcycle helmet. Afterwards, Thuy re-entered her house to fetch a wooden stick in the shape of a sword, about 1 metre in length, to bash Diep on the head but instead hit and injured his right arm as he raised it in defence. Thuy then turned to Thinh with the

wooden stick and struck his right arm and back ribs, causing injury. Due to the blow to the head, Diep bled profusely and bystanders had to rush him to hospital. The Public Security Police of Trung Phung Ward arrived at the scene on time to take everyone involved back to the station to resolve the matter (police records numbers 42, 158 to 165, 171 to 180, 184 to 194, 197 to 205, 208 to 217, 271 to 285, 385 to 393).

Mr Nguyen Chi Nhan (born in 1960, residing at 99, Hoang An A Alley – Trung Phung – Dong Da – Ha Noi) witnessed the incident and immediately handed in to the Public Security Police of Trung Phung Ward a concrete brick with dimensions 10 cm x 10 cm x 6 cm which Tran Khai Thanh Thuy used to hurl at Diep (police records numbers 197, 373).

On 09 October 2009, the Public Security Police Department of Investigations of Dong Da District carried out an urgent investigation at the house of Do Ba Tan and Tran Khai Thanh Thuy. Items seized as physical evidence included 1 wooden stick in the shape of a sword, 102 cm long, 3.5 cm wide, 2.5 cm thick, the tip of the sword is 3 cm wide, the stick Thuy used to beat Diep and Think is 1.9 cm thick; 1 yellow safety helmet with a black brim, of the brand PROTEC, is the motorcycle helmet used by Tan to hit Diep (police records number 52). The Department of Investigations could not locate the brick which Thuy allegedly threw at Think.

At the Department of Investigations, Tran Khai Thanh Thuy and Do Ba Tan declared that Tan was beaten by two men while another man bashed Thuy on the head with a brick. According to police records numbers 83, 85, 87, 89, 99, 104, Thuy the accused acknowledged she held a brick and hurled it at a man, hitting him on the head. In police records numbers 79, 81, 97, Thuy confirmed that she held a brick but did not throw it at anyone. In police records numbers 91, 285, Thuy stated she held a brick and hurled it toward a second man but missed entirely; additionally, in the above-mentioned police records, Thuy confirmed she held a wooden stick to strike but did not cause any injury to the victims. As for Do Ba Tan, he denied any action of using the safety helmet to cause injury to Diep (police records numbers 119 to 136, 271, 275, 279).

The Department of Investigations gave Thuy and Tan the opportunity to identify Diep and Think in a police lineup, the result: Thuy was only able to identify Mr Nguyen Manh Diep and reported he was one of the two men who bashed Tan on the night of 08/10/2009 (police records number 256). Tan, the accused, could only identify Mr Nguyen Manh Diep and claimed he was one of the two men who beat Tan and Diep was the one who bashed Thuy in the head with a brick (police records number 267). Afterwards, Tan professed that a second man (not Diep) was actually the one who struck Thuy in the head on the night of 08/10/2009 (police records number 377).

The Department of Investigations permitted Thuy and Tan to confront Mr Nguyen Van Think, and as a result, Thuy and Tan both confirmed that Mr Nguyen Van Think was not the person who bashed them on the night of 08 October 2009 in front of their house (police records numbers 279, 285).

As for injuries of My Nguyen Manh Diep, according to the Injury Certificate with reference number 185 dated 13 October 2009 which was provided by the General Hospital of Dong Da:

- Conscious, good communication, no paralysis, glasgow 15 points
- Headache, dizziness, nausea
- Injury sustained to the right occipital area caused the skin to tear, measuring approximately 3 cm x 0.5 cm, the edges of the wound are rough and variegated, pulverized with excessive bleeding. 3 stitches were applied to the wound.
- Bruised and torn skin to the area behind the right ear, oozing blood
- The right side of the lower lip contained 3 traces of scratched skin, varying in length from 0.5 cm to 1.0 cm
- Chafing of the skin of the right cheek, approximately 1 cm in length
- Chafing of the skin towards the back of the right forearm, approximately 10 cm in length and oozing blood
- Swollen and bruised right wrist, measuring 3 cm in diameter.

According to the medical report number 708 dated 23 October 2009 provided by the Forensic Medical Centre of Ha Noi which concluded:

- The wound to the right occipital area, behind the right ear 3%
- Facial injuries on the right side (temporary) 2%
- Low level neurasthenia post injury (temporary) 8%
- Injuries possibly caused by an angular object.

Ratio of damage to health: 13% (report number 237).

As for injuries to My Nguyen Van Thinh, according to the Injury Certificate number 184 of 13 October 2009 supplied by the General Hospital of Dong Da:

- Conscious, good communication, no nausea, no paralysis, glasgow 15 points
- Pain felt in the lower, right ribs and the right side of the waist. Increased pain upon applying pressure, no sign of swelling, no indication of bruising. Soft belly, no signs of swelling or reaction.
- Swelling and bruising observed to 1/3 midway on the inner side of the right forearm, measuring approximately 4 cm x 2 cm.

According to Hanoi Medical Centre's medical report with reference number 706 of 23 October 2009, which concludes:

- Rubbed ribs to the right back and right arm (temporary) 2%
- Maybe caused by a wound-causing object.

The percentage of damaged health: 2% (report number 239)

Tran Khai Thanh Thuy's injuries, at Trung Phung District Police station, Thuy refused to have her injuries examined and did not ask the police to get her an examination certificate (report no.78 of 09 October 2009) until 30 October 2009, when the accused Thuy suggested to be examined (report no. 95). According to the injuries exam certificate number 206 dated 02 November 2009 of Dong Da hospital:

- Conscious, good communication, no nausea, no paralysis, glasgow 15 points
- Movement, normal feeling
- The right top temple area has 1 old scar. Its size is 1x0.2cm. Dry scar, no swelling, no infection, no pain.

According to the medical report number 777 of 20 November 2009 of Hanoi Medical Centre, which concludes:

- The head injuries 3%
- Maybe caused by an injury-causing angular object

The percentage of damaged health: 3% (report No. 240)

Do Ba Tan, according to the body examination report (report no.143 of 08 October 2009), there was no sign of injury found on Tan's body. At Trung Phung police station, Tan refused to have his medical examination and refused to have his injury examined (report no. 118 of 09 October 2009) until 27 October 2009, when the accused Tan suggested and was approved by the police of Dong Da to be referred to have his injury examined (report no. 142). According to the Exam Cert No. 208 of 04 November 2009 of Dong Da hospital:

- Conscious, good communication, no nausea, no paralysis, glasgow 15 points
- Complaints of headaches, face aches, and pains in the chest
- No signs of swelling or bruises over: head, face, chest, no breathlessness
- **X-ray:** chest: no sign of injury in the chest bone frame. No sign of fluids, lungs fluids. Heart not swollen.

2. CT scan of the head: currently no visible, unusual images of the skull and brain detected by the CT scan.

According to the conclusion of the forensic report number 766 dated 23 November 2009 from the Ha Noi Forensic Center:

- Injury of soft tissue to areas of the head, face and chest (temporary) 3%
 - Injury possibly caused by the collision or beating of a soft object.
 - **Ratio of damage to health: 3%** (report number 241).

Mr Nguyen Manh Diep and Mr Nguyen Van Thinh both declared upon being physically assaulted by Thuy and Tan, they did not fight back. Thinh and Diep suggested that Tran Khai Thanh Thuy and Do Ba Tan be brought to trial before the law and also suggested Tan and Thuy to compensate for the injuries inflicted on them.

Upon investigation, all the witnesses stated they did not see the Tan and Thuy being beaten. Diep and Thinh did not hit Tan and Thuy.

Based on the documents from the investigation, there is not enough evidence to conclude that Mr Nguyen Manh Diep and Mr Nguyen Van Thinh caused bodily harm to Do Ba Tan and Tran Khai Thanh Thuy, and insufficient evidence to suggest who caused injuries to Do Ba Tan and Tran Khai Thanh Thuy.

According to all documents and evidence gathered, including the testimonies of the victims, witnesses, testimonies of those involved, and the exhibits of the case, conclusion from the forensic examinations amongst other materials investigated, there are enough basis to conclude.

CONCLUSION

At approximately 8:30pm on 08 October 2009, Do Ba Tan arrived home on his motorcycle and parked on the walkway in front of his house at 46, alley 178, Kham Thien Street – Trung Phung Ward – Dong Da District – Ha Noi. At that moment, Mr Nguyen Manh Diep (born in 1968, residing at 15, alley 138, Kham Thien Street – Trung Phung Ward– Dong Da District– Ha Noi) passed by and seeing this occurrence, suggested to Tan to move the motorcycle neatly to one side to create a walkway, leading to a heated argument between Diep and Tan. Tan acted and used his motorcycle safety helmet to repeatedly hit Diep in the face, causing injury. Simultaneously, Tran Khai Thanh Thuy (Tan’s wife) threw a concrete brick, and used a wooden stick to bash Mr Nguyen Manh Diep and Mr Nguyen Van Thinh (born in 1958, residing at 62, alley 178, Kham Thien Street – Trung Phung ward – Dong Da district– Ha Noi, a passer-by wanted to intervene) causing injuries to Diep on the occipital area behind the right ear and his right forearm, and injuries to Thinh’s right forearm and right back ribs.

According to the examination conclusion given by the Forensic Centre of Ha Noi: the ratios of damage to the health of Mr Nguyen Manh Diep and Mr Nguyen Van Thinh were 13% and 2% respectively. Diep and Thinh called for the prosecution of Tan and Thuy for their behavior and intentionally caused bodily harm to others and put forth their wish to be compensated for the injuries sustained (the specific requests will be presented in court).

Evidences of the case collected include: 1 motorcycle safety helmet of the brand PROTEC in yellow with black edge; 1 concrete brick with the dimension of 10 x 10 x 6 cm and 1 wooden stick in the shape of a sword measuring 102 cm in length, 3.5 cm wide and 2.5 cm thick, the tip of the sword was 3 cm wide and 1.9 cm thick; items which Tan and Thuy used to cause injury to the victims.

Hence, there is sufficient evidence to confirm the following offences committed by the defendents identified below:

1. Surname and name : Tran Khai Thanh Thuy born: 1960
Registration: House A2 – C33 – Collective Housing
Zone of the Water Resources Consulting Company, Trung
Liet Ward, Dong Da District,

Ha Noi.
 Residential address : 46, alley 178, Kham Thien Street, Trung Phung Ward, Dong Da District, City of Ha Noi.
 Occupation : Freelance writer
 Nationality : Vietnamese Ethnicity: Kinh Religion: none
 Father : Tran Khai Tuan (deceased)
 Mother : Le Thi Thanh Phong
 Husband : Do Ba Tan
 Children : 2 (born in 1991 and 1997)
 Previous convictions : + On 21 April 2007 PA24 Public Security Officer of the City of Ha Noi detained for ‘conducting propaganda against the government of the Socialist Republic of Vietnam _ On 21 April 2008. Investation temporarily suspended.
 + On 31 January 2008 The People’s Court in the City of Ha Noi sentenced her to 9 months and 10 days in jail for the offence of ‘disrupting public order’.
 In custody – interrogation: 8 October 2009

2. Surname and name : Do Ba Tan born: 1959
 Reistration : House A2 – C33 – Collective Housing Zone of the Water Resources Consulting Company, Trung Liet Ward, Dong Da District, City of Ha Noi.
 Residential address : 46, alley 178, Kham Thien Street, Trung Phung Ward, Dong Da District, City of Ha Noi.
 Occupation : Kim Dong Primary School Teacher
 Nationality : Vietnam Ethnicity: Kinh Religion: none
 Father : Do Ba Chuoc (deceased)
 Mother : Nguyen Thi Xuan (deceased)
 Wife : Tran Khai Thanh Thuy
 Children : 2 (born in 1991 and 1997)
 Previous convictions : none
 – Accused but released on bail.

The above behaviour of Tran Khai Thanh Thuy and Do Ba Tan violated the law by committing ‘Intentionally harming others’. The crime committed and subsequent penalty are defined by regulations found under Section 2 (Subsections a and i of Item 1), Article 104 of the Penal Code.

Article 104 defines:

1. Anyone found to have intentionally caused bodily harm or damage to the

health of others whereby the ratio of injury is between 11% and 30% or less than 11%, but belongs to one of the following circumstances, will be sentenced to 3 years of re-education without imprisonment or fulfill a jail term between 6 months and 3 years.

- a) Usage of a dangerous weapon
- i) Hooligan in nature

2. Committed the offence of intentionally causing bodily harm or damage to the health of others whereby the ratio of injury is between 31% and 60% but belongs to one of the circumstances defined in Subsections a to k of Item 1, will be sentenced between 2 and 7 years imprisonment.

Due to the above reasons:

DECISION

Prosecute before the People's Court of the District of Dong Da to trial both the defendants **Tran Khai Thanh Thuy** and **Do Ba Tan** for the offence of 'Intentionally causing injury' under Section 2 (Subsections a and i of Item 1), Article 104 of the Penal Code.

Attached to this indictment are:

- ± The case file consisting of 1 volume , with numbered pages from 1 to ...

Recipients:

- The People's Court of Investigation in the City of Ha Noi.
- Bureau of Investigations.
- The defendants
- Case file.
- Investigation file in regards to the criminal case.
- A copy for filing.

Signed by:
Head of the People's Court of Investigation
District of Dong Da
City of Ha Noi

Deputy Chief
Nguyen Thi Minh Nghia