SPC Guiding Case No. 144: Case of Zhang Namula for Justifiable Defense

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 29, 2020.

Keywords

Criminal / justifiable defense / special defense / murderous assault / acquittal

Holding

1. Where a person uses a lethal weapon to attack another's vital parts, seriously endangering the personal safety of another, the act shall be determined as "murderous assault" under Article 20, paragraph 3 of the Criminal Law, and the relevant provisions on special defense may be applied.

2. Where multiple persons jointly carry out an unlawful infringement and some of the infringers have been subdued while the other infringers are still continuing the infringement, defense may still be exercised.

Basic Facts

Zhang Namula and his elder brother Zhang 1 both worked in Xiqing District, Tianjin. On January 11, 2016, Zhang 1 and a third party, Li Moumou, were involved in a motor vehicle traffic accident. After the accident, Li Moumou fled the scene. During the handling of the accident, Zhang Namula's side considered that the traffic police were slack in dealing with the matter. Thereafter, Zhang Namula heard that Zhou Mouqiang had connections at the traffic police department, and through the fishpond owner Niu Mou he contacted Zhou Mouqiang and asked him to "put in a word" with the traffic police, which Zhou Mouqiang agreed to do. On March 10, while Zhang Namula was handling the dispute at the traffic police department, he quarreled with a traffic police officer. At that moment Zhou Mouqiang happened to call Zhang Namula, and Zhang Namula, thinking that Zhou Mouqiang could overawe the police, asked the officer to answer Zhou Mouqiang's call directly. This displeased Zhou Mouqiang, who immediately hung up. The next day, Niu Mou warned Zhang Namula over the phone to be careful, as Zhou Mouqiang would not let the matter rest.

At around 8 a.m. on March 12, Zhang Namula, his brother Zhang 1, and Zhao Mou were chatting in a small hut by the fishpond in Xiqing District, Tianjin. Zhou Mouqiang gathered Cong Mou, Zhang 2, and Chen Mou 2xin; Cong Mou drove, and they brought two machetes that Chen Mou 2xin had prepared in advance, arriving at Zhang Namula's temporary residence (which was divided into an inner room and an outer room). The four first entered Zhang Namula's residence to confirm that Zhang Namula was inside, then returned to the vehicle and took out the two machetes prepared beforehand. Zhou Mouqiang and Chen Mou 2xin each held a machete, and Cong Mou and Zhang 2 respectively picked up a shovel and a hammer from beside the fishpond and entered Zhang Namula's residence again. Zhang 1 went forward and stopped Zhang 2, who was at the back, in the outer room, and the two began to fight. Zhou Mouqiang, Chen Mou 2xin, and Cong Mou entered the inner room and together pulled Zhang Namula toward the outside, while Zhang Namula struggled backward to break free. At that moment, seeing that Zhang Namula refused to come out, Zhou Mouqiang and Chen Mou 2xin swung their machetes at the back of Zhang Namula's head; Zhang Namula grabbed a sharp knife from the tea table and stabbed Chen Mou 2xin in the chest. Chen Mou 2xin staggered back into the outer room after being stabbed and then fell to the ground. In the meantime, Cong Mou struck the back of Zhang Namula's head with the shovel. Seeing Chen Mou 2xin fall, Zhou Mouqiang and Cong Mou ran out of the house. Zhang Namula put the knife back where it had been. At that point he saw that Zhang 2 was still fighting with his brother Zhang 1 outside the house; to prevent Zhang 1 from being beaten,

Source: https://www.danyoungcpa.com/spc-guiding-case-144-china/

he went outside, picked up the shovel by the door, and knocked Zhou Mouqiang, who was swinging a machete, into the fishpond. After Zhou Mouqiang climbed ashore, Zhang Namula again knocked him into the water, ultimately causing a comminuted fracture of the proximal segment of Zhou Mouqiang's left ulna; Zhou Mouqiang's machete fell into the fishpond. By then, Zhang 1 had already seized the hammer from Zhang 2's hands and knocked Zhang 2 into the fishpond. Zhang Namula then called the police and waited at the scene. Chen Mou 2xin, after being sent to the hospital, died of hemorrhagic shock caused by a single-edged sharp instrument piercing his heart. Zhang Namula's scalp injury constituted a minor injury, and Zhou Mouqiang's left ulna injury constituted a first-degree minor injury.

Judgment

On December 13, 2017, the Xiqing District People's Court of Tianjin rendered Criminal Judgment with Incidental Civil Claims (2016) Jin 0111 Xing Chu No. 576, sentencing the defendant Zhang Namula to twelve years and six months' fixed-term imprisonment for the crime of intentional injury. The defendant Zhang Namula appealed on the ground that his acts constituted justifiable defense and did not constitute a crime. On December 14, 2018, the Tianjin First Intermediate People's Court rendered Criminal Judgment with Incidental Civil Claims (2018) Jin 01 Xing Zhong No. 326, revoking Criminal Judgment with Incidental Civil Claims (2016) Jin 0111 Xing Chu No. 576 of the Xiqing District People's Court of Tianjin and acquitting Zhang Namula.

Reasoning

The court in its effective judgment held that Zhang Namula's acts constituted justifiable defense, and moreover constituted special defense under Article 20, paragraph 3 of the Criminal Law. In this case, Zhang Namula counterattacked under circumstances where Zhou Mouqiang, Chen Mou 2xin, and others had suddenly broken into his private premises and were committing a serious unlawful infringement. Zhou Mouqiang, Chen Mou 2xin, and the other two had all prepared the instruments of the crime in advance; when they entered the scene, two of them were each holding a machete of about 50 centimeters in length, one was holding a shovel, and one a hammer, while Zhang Namula's side was entirely unprepared. After Zhou Mouqiang's side broke into the house, they immediately dragged Zhang Namula and, when Zhang Namula turned around and struggled backward, used the weapons they had brought to strike and chop the back of his head. Judged from the number of the infringers, the weapons they held, and the parts of the body they struck, and assessed at the level of understanding of an ordinary person, it should be held that the unlawful infringement had already reached the degree of actually endangering Zhang Namula's personal safety and threatening his life, and it fell within "murderous assault" under Article 20, paragraph 3 of the Criminal Law. In order to stop the ongoing unlawful infringement, Zhang Namula grabbed a knife that he ordinarily used in daily life and stabbed the unlawful infringer; this was justified and constituted justifiable defense.

In addition, the surveillance video showed that after Chen Mou 2xin fell, Zhou Mouqiang ran outside the house but continued to swing his machete; at that time the danger to the personal safety of Zhang Namula and his brother Zhang 1 had not been entirely eliminated, and Zhang Namula's act of injuring Zhou Mouqiang outside the house still constituted an act of defense.

Pursuant to Article 20, paragraph 3 of the Criminal Law, where a person takes defensive action against an ongoing murderous assault, homicide, robbery, rape, kidnapping, or other violent crime that seriously endangers personal safety, causing injury or death to the unlawful infringer, this does not constitute excessive defense and the person does not bear criminal responsibility. In this case, although Zhang Namula's acts resulted in one death and one injury, they were justifiable defense acts to stop the unlawful infringement, and he does not bear criminal responsibility in accordance with law.

Relevant Legal Provisions

Article 20 of the Criminal Law of the People's Republic of China.

Source: https://www.danyoungcpa.com/spc-guiding-case-144-china/

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.