SPC Guiding Case No. 225: Case of Jiang [X] (Justifiable Defense)

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

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Keywords

Criminal / justifiable defense / minors / school bullying / defensive intent / limits of defense

Holding

1. In distinguishing between defensive conduct arising from school bullying and mutual fighting, the principle of the unity of subjectivity and objectivity shall be adhered to, and the perpetrator's subjective intent and the nature of his or her conduct shall be accurately determined by comprehensively considering such circumstances as the cause of the incident, whether he or she was the principal party at fault, and whether others were assembled to participate in the fight, in combination with the possible reactions of minors of the same age group in similar situations. The finding of defensive intent shall not be affected merely because the perpetrator was unwilling to show weakness in the face of bullying or used an implement to fight back.

2. When determining whether the defense "clearly exceeded the necessary limit," a reasonable judgment shall be made on the basis of the specific circumstances at the time of the defense, from the perspective of the general cognition of minors of the same age group, comprehensively considering such circumstances as the nature, means, intensity and harmful consequences of the unlawful infringement in the school bullying and the timing, means, intensity and injurious consequences of the defense, and taking into account the balance of strength between the parties.

Basic Facts

The defendant Jiang [X] (a pseudonym, then 14 years old) was a second-year junior high school student at a certain middle school in Hunan Province. Because Jiang [X] chatted with a female classmate during a spring outing, Hu [X], a student in the adjacent class of the same grade, believed that Jiang [X] had provoked his girlfriend and demanded that Jiang [X] buy cigarettes and apologize, otherwise he would beat Jiang [X]. Jiang [X] later bought a pack of cigarettes for Hu [X], but Hu [X] rejected them as unsatisfactory, and thereby developed an intent to beat Jiang [X].

On the morning of May 17, 2019, before morning reading class, Sun [X], a classmate at odds with the defendant Jiang [X], together with others, called Jiang [X] to the toilet under a pretext and threatened to beat him. Jiang [X] responded with words showing unwillingness to show weakness (after the incident he explained that he was stalling for time, planning to run away after school). After morning reading class that day, when Jiang [X] was using the toilet, Sun [X], Hu [X] and others again pulled and dragged Jiang [X] and kicked him once. They then dispersed because class time had arrived. After the second class, Sun [X] invited classmates Zhang [X], Hu [X] and others to help beat Jiang [X], and pointed out Jiang [X], who was then in the toilet, to Zhang [X].

After lunch, Sun [X] again invited the victims Chen [X]jia, Chen [X]yi, Wu [X] and others to help beat Jiang [X]. Subsequently, Sun [X] and seven others went to the classroom to look for the defendant Jiang [X], while the other eight waited in the toilet. Jiang [X] refused to go; Sun [X] said that if he did not go they would forcibly take him away, and Jiang [X] was forced to follow, hiding a multi-function folding knife (not a controlled knife, with a blade about 4.5 centimeters long) that a classmate used to open medicine bottles in his right sleeve. After arriving at the toilet, Sun [X], Hu [X], Zhang [X] and the victims Chen [X]jia, Chen [X]yi, Wu [X] and 15 others in total surrounded Jiang [X]. Chen [X]jia grabbed Jiang [X] by the neck, threw him to the ground, straddled him and beat him, and Sun [X], Hu [X], Zhang [X] and others rushed forward to kick

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and beat him. After being beaten by the group, Jiang [X] pulled out the folding knife and swung it wildly, stabbing Chen [X]jia in the lower back and slashing Wu [X]'s thigh. After the beating lasted about one minute, the crowd dispersed. Jiang [X] got up from the ground and sat against the low wall of the squat toilet, when Chen [X]yi, standing behind Jiang [X], slapped him; Jiang [X] then turned and stabbed Chen [X]yi once in the abdomen with the folding knife, and Zhang [X] and others beat Jiang [X] again before leaving. Chen [X]jia, Chen [X]yi and Wu [X] were later sent to the school clinic for treatment. Upon expert appraisal, the degree of injury of Chen [X]jia and Chen [X]yi was Grade II serious injury, and the degree of injury of Wu [X] was minor injury. On August 7 of the same year, Jiang [X] surrendered to the public security authorities.

The Jishou People's Procuratorate of Hunan Province charged the defendant Jiang [X] with the crime of intentional injury and initiated a public prosecution before the Jishou People's Court of Hunan Province. The defendant Jiang [X] and his defender contended that Jiang [X], when subjected to school bullying, carried out defensive conduct and caused injury to the unlawful infringers, which constituted justifiable defense, and that he should not bear criminal liability in accordance with the law.

Judgment

On July 6, 2020, the Jishou People's Court of Hunan Province rendered a criminal judgment, finding that the conduct of the defendant Jiang [X] constituted justifiable defense and acquitting Jiang [X]. After the judgment was pronounced, the Jishou People's Procuratorate of Hunan Province filed a protest. During the second instance, the People's Procuratorate of the Xiangxi Tujia and Miao Autonomous Prefecture of Hunan Province applied to withdraw the protest. On November 9, 2022, the Intermediate People's Court of the Xiangxi Tujia and Miao Autonomous Prefecture of Hunan Province rendered a criminal ruling, permitting the withdrawal of the protest.

Reasoning

The defendant Jiang [X] was forced to carry a folding knife and go to the scene after being bullied by multiple students, and fought back with the knife when faced with a group beating. Comprehensively considering all the circumstances of the case, his conduct should be found to constitute justifiable defense, and he should not bear criminal liability.

First, Jiang [X] was forced to fight back when subjected to school bullying, and had defensive intent. Faced with the bullying of Sun [X] and others, Jiang [X] was clearly in a coerced state. In addition, although Jiang [X] had spoken words showing unwillingness to show weakness in the face of the bullying of Sun [X] and others, this alone cannot be used to find that Jiang [X] actively provoked the dispute. Considering the physical and mental characteristics of minors and in light of the specific situation in which Jiang [X] was placed, Jiang [X]'s isolated remarks alone cannot be used to find that he had the intent to fight, thereby negating his defensive intent.

Second, Jiang [X] carried out the defense while being beaten, which satisfied the temporal requirement for justifiable defense. Jiang [X]'s two knife-counterattacks both occurred within the time period in which the unlawful infringement was actually occurring: (1) Faced with encirclement by 15 people, he was grabbed by the neck, thrown to the ground, and beaten by the group, and the unlawful infringement had actually occurred. (2) After Jiang [X] was knocked to the ground and beaten by the group for about one minute, although the group beating temporarily stopped, he was still slapped from behind by the other party, and the unlawful infringement was obviously still ongoing and had not ended. In sum, when Jiang [X], under the circumstances of being beaten by the group and being slapped after being knocked to the ground, used an implement to defend himself, the unlawful infringement was ongoing, satisfying the temporal requirement for justifiable defense.

Finally, Jiang [X] defended himself with a knife because he was being beaten, and did not clearly exceed the necessary limit. Jiang [X] was forced to carry out the defense under the circumstances of being beaten. Although the unlawful infringers did not use implements and Jiang [X] used a knife to fight back, the folding

knife used by Jiang [X] in defense was not a controlled knife, while the other side numbered as many as 15 people, the strengths of the parties were disparate, and Jiang [X] was knocked to the ground and beaten by the group twice in succession. Jiang [X], in desperation, defended himself with the knife; his means were reasonable, and his counterattack was limited to resisting the unlawful infringement rather than actively attacking the other side, with a degree of restraint in his means. Therefore, on the whole, the defensive conduct did not clearly exceed the necessary limit.

In addition, under the Law on the Protection of Minors and relevant provisions, schools shall establish a system for the prevention and control of student bullying, and carry out education and training on the prevention and treatment of student bullying for faculty and students. For incidents of student bullying, the bullied students and surrounding classmates shall report to teachers and parents in a timely manner; schools shall immediately stop student bullying conduct and handle it in accordance with the law, and guardians shall strengthen discipline and education of the students who carried out the bullying and cooperate with the school and relevant departments in handling it. Where a school or guardian fails to perform its duties in accordance with the law, it shall bear the corresponding legal liability in accordance with the law.

Relevant Legal Provisions

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

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