SPC Guiding Case No. 32: Case of Zhang Moumou and Jin Mou for Dangerous Driving

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

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Keywords

Criminal / crime of dangerous driving / racing and chasing / aggravated circumstances

Holding

1. Where motor vehicle drivers, for competition, seeking excitement, fighting over a quarrel, or other motives, weave through roads and rapidly chase each other while driving, this constitutes "racing and chasing" as provided in Article 133-1 of the Criminal Law of the People's Republic of China.

2. Although racing and chasing did not cause casualties or property losses, where comprehensively considering serious violations of the Road Traffic Safety Law such as exceeding the speed limit, running red lights, forcible overtaking, and resisting traffic law enforcement, which are sufficient to threaten the lives and property safety of others, this constitutes "aggravated circumstances" in the crime of dangerous driving.

Basic Facts

At about 20:20 on February 3, 2012, the defendants Zhang Moumou and Jin Mou agreed to ride motorcycles out to enjoy the excitement of high-powered motorcycles, agreeing that "the intersection of Lujiabang Road and Henan South Road is the destination; whoever arrives first waits for the other." Thereafter, Zhang Moumou drove an unlicensed high-powered Honda two-wheeled motorcycle (modified), and Jin Mou drove a Yamaha high-powered two-wheeled motorcycle with a fake license plate (modified). They set off from the car shop at No. 99 Leyuan Road, Pudong New Area, Shanghai, drove to the intersection of Yanggao Road and Jufeng Road, turned around and drove southward along Yanggao Road, passed the Nanpu Bridge down to Lujiabang Road, then along Henan South Road through the Fuxing East Road Tunnel and Zhangyang Road back to Zhang Moumou's residence. The whole journey was 28.5 kilometers, passing multiple bus stops, residential communities, schools, and large supermarkets along the way. During the drive, the two defendants repeatedly changed lanes in dense traffic, weaved through traffic, ran multiple red lights, and significantly exceeded the speed limit. When they reached the intersection of Lujiabang Road and Henan South Road, Zhang Moumou and Jin Mou encountered police officers on duty conducting inspections, and drove along Henan South Road through the Fuxing East Road Tunnel and Zhangyang Road to flee. Among them, on the Yanggao South Road Pujian Road overpass (speed limit 60 km/h), Zhang Moumou drove at 115 km/h and Jin Mou at 98 km/h; on the Nanpu Bridge deck (speed limit 60 km/h), Zhang Moumou drove at 108 km/h and Jin Mou at 108 km/h; on the Lujiabang Road approach ramp of the Nanpu Bridge (speed limit 40 km/h), Zhang Moumou drove at over 59 km/h and Jin Mou at over 68 km/h; in the Fuxing East Road Tunnel (speed limit 60 km/h), Zhang Moumou drove at 102 km/h and Jin Mou at 99 km/h.

At about 21:00 on February 5, 2012, after the defendant Zhang Moumou was captured and brought to the case, he truthfully confessed the above facts and provided the public security organ with the mobile phone number of the defendant Jin Mou. After Jin Mou received the telephone notice from the public security organ, he voluntarily surrendered at about 21:00 on February 6 and truthfully confessed the above facts.

Judgment

On January 21, 2013, the Pudong New Area People's Court of Shanghai rendered criminal judgment (2012) Pu Xing Chu Zi No. 4245: the defendant Zhang Moumou committed the crime of dangerous driving and was sentenced to criminal detention of four months, suspended for four months, and fined RMB 4,000; the defendant Jin Mou committed the crime of dangerous driving and was sentenced to criminal detention of three months, suspended for three months, and fined RMB 3,000. After the judgment was pronounced, neither defendant appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held that: in accordance with Paragraph 1 of Article 133-1 of the Criminal Law of the People's Republic of China, "driving motor vehicles on roads racing and chasing, with aggravated circumstances" constitutes the crime of dangerous driving. The "racing and chasing" provided in the Criminal Law generally refers to the act of two or more persons respectively driving motor vehicles, in violation of road traffic safety provisions, rapidly chasing each other on roads for competition, seeking excitement, fighting over a quarrel, or other motives. In this case, from the perspective of subjective driving mentality, the two defendants Zhang Moumou and Jin Mou successively confessed after being brought to the case that they "wanted to find some enjoyment and excitement" and "found psychological satisfaction in weaving through traffic and overtaking"; when facing red lights, they felt "uncomfortable braking, and would overtake every car" and "would change lanes and drive in a zigzag to overtake when there was a car ahead." The confessions of the two defendants corroborated each other with the relevant audiovisual materials, reflecting their competitive mentality of seeking excitement and showing off driving skills. From the perspective of objective conduct, the two defendants drove modified motorcycles of excessive high power, and for the pursuit of speed, repeatedly changed lanes at will, ran red lights, and significantly exceeded the speed limit, and other serious violations. From the perspective of the driving route, the two defendants set off together from No. 99 Leyuan Road, Pudong New Area, to the intersection of Lujiabang Road and Henan South Road to pick up someone, agreeing on the starting point and ending point of the race. In summary, it could be found that the conduct of the two defendants constituted "racing and chasing" in the crime of dangerous driving.

On whether the defendants' conduct in this case constituted "aggravated circumstances," it should be comprehensively analyzed from the specific manifestations, degree of harm, and harmful consequences of their racing and chasing conduct to determine whether the degree of threat to road traffic order and the lives and property safety of an unspecified number of people was "aggravated." In this case, although the racing and chasing conduct of the two defendants did not cause casualties or property losses, from the following circumstances, it constituted "aggravated circumstances" in the crime of dangerous driving: first, from the vehicles driven, the two defendants drove unlicensed and fake-licensed high-powered modified motorcycles; second, from the driving speed, the overall driving speed was very fast, and the speed limit was exceeded by more than 50% on many road sections; third, from the manner of driving, they repeatedly changed lanes, weaved through traffic, and ran multiple red lights; fourth, from the attitude toward law enforcement, the two defendants fled by driving away when checked by police; fifth, from the road sections driven, the Yanggao Road, Zhangyang Road, Nanpu Bridge, and Fuxing East Road Tunnel they passed were all urban main roads, and there were many schools, bus and subway stations, residential communities, large supermarkets, and other sections along the way, with relatively large traffic flow and long driving distance; under the excited mentality of high-speed driving and the tense mentality of evading police inspection, it was very easy to cause major malignant traffic accidents. The above conduct created a certain danger to public traffic safety and was sufficient to threaten the lives and property safety of others, so it could be found that the racing and chasing conduct of the two defendants constituted "aggravated circumstances" in the crime of dangerous driving.

The defendant Zhang Moumou truthfully confessed the crimes after being brought to the case, and could be given a lighter punishment in accordance with law. The defendant Jin Mou surrendered voluntarily, and could

also be given a lighter punishment in accordance with law. Since the two defendants had both recognized the illegality and social harmfulness of their conduct in court, guaranteed not to commit dangerous driving again, repeatedly expressed admission of guilt and remorse, and their conduct had not yet caused harm to the person or property of others, the above judgment was made in accordance with law.

Relevant Legal Provisions

Article 133-1 of the Criminal Law of the People's Republic of China.

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