SPC Guiding Case No. 93: Case of Yu Huan for Intentional Injury

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Keywords

Criminal / crime of intentional injury / unlawful restriction of personal freedom / justifiable defense / excessive defense

Holding

1. An ongoing act of unlawfully restricting another person's personal freedom shall be determined to constitute the "unlawful infringement" prescribed in Paragraph 1 of Article 20 of the Criminal Law, against which justifiable defense may be exercised.

2. An act of unlawfully restricting another person's personal freedom accompanied by insult and minor beating shall not be determined to constitute a "violent crime seriously endangering personal safety" prescribed in Paragraph 3 of Article 20 of the Criminal Law.

3. In determining whether a defense is excessive, comprehensive consideration shall be given to such circumstances as the nature, means, intensity, and degree of harm of the unlawful infringement, as well as the nature, timing, means, intensity, surrounding environment, and consequences of the defensive act. Where defense is exercised against an unlawful infringement that unlawfully restricts another person's personal freedom and is accompanied by insult and minor beating but is not very urgent, and the defense causes death or serious injury, it shall be determined that the defense "clearly exceeds the necessary limit and causes significant harm" as prescribed in Paragraph 2 of Article 20 of the Criminal Law.

4. In a case of excessive defense, if the case was triggered by the victim's unlawful infringement that seriously degraded another person's personal dignity or desecrated human ethics, this shall be fully considered in sentencing, so as to ensure that the judicial judgment can withstand legal scrutiny and also conform to the notion of social fairness and justice.

Basic Facts

The mother of the defendant Yu Huan, Su, operated Shandong Yuanda Industry and Trade Co., Ltd. ("Yuanda Company") in the industrial park of Guanxian County, Shandong Province, and Yu Huan was an employee of that company. On July 28, 2014, Su and her husband Yu borrowed 1 million yuan from Wu and Zhao, and the parties orally agreed to a monthly interest of 10%. By October 20, 2015, Su had repaid a total of 1.54 million yuan. During that period, because Su's repayments were not timely, Wu and Zhao had instigated the victim Guo 1 and others to demand repayment by such means as stationing themselves in the bicycle shed of Yuanda Company and setting up a stove to cook in front of the office building. On November 1, 2015, Su and Yu again borrowed 350,000 yuan from Wu and Zhao. Of that amount, 100,000 yuan was subject to an orally agreed monthly interest of 10%; for the remaining 250,000 yuan, by signing a house sale contract, a house under Yu's name was used as security, and the parties agreed that if repayment was overdue, the house would be transferred to Zhao. From November 2, 2015, to January 6, 2016, Su repaid Zhao a total of 298,000 yuan. Wu and Zhao believed that the 298,000 yuan was repayment of the interest on the first 1 million yuan loan, while Su and her husband believed it was used to repay the second loan. Wu and Zhao repeatedly urged Su and her husband to continue repayment or complete the transfer of the house, but Su and her husband made no further repayments and did not complete the transfer of the house.

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On April 1, 2016, Zhao, together with the victims Du 2 and Guo 1 and others, changed the locks on Yu's house and forcibly moved in, and Su reported this to the police. Zhao produced the house sale contract, and the police left after mediation. On the morning of April 13 of the same month, Wu, Zhao, Du 2, Guo 1, Du 7, and others moved the belongings out of the house, and Su reported this to the police. When the police handled the matter, Wu claimed that it was a house sale dispute, and the police told both parties to resolve it through negotiation or litigation. After the police left, Wu scolded Su and pressed Su's head down into a toilet near the water level. That afternoon, Zhao and others moved the belongings from the house to the entrance of Yuanda Company. During this period, Su and Yu repeatedly called the mayor's hotline for help. That evening, Yu, through mediation by others, reached an oral agreement with Wu, agreeing to transfer the house to Zhao the next day and to pay another 300,000 yuan, after which the principal and interest of the loan would be fully settled.

On April 14, Yu and Su did not complete the transfer of the house. At around 16:00 that day, Zhao gathered Guo 2, Guo 1, Miao, and Zhang 3 to demand repayment at Yuanda Company. In order to find Yu and Su, Guo 1 called the police, alleging that Yuanda Company had privately carved a financial seal. After the police arrived at Yuanda Company, Su quarreled with Zhao and others over the repayment dispute. The police told both parties to resolve it through negotiation or to file a lawsuit, and then left. After Li 3 received a telephone call from Zhao, he, together with Yao, Zhang 2, and the victims Yan and Cheng, arrived at Yuanda Company. Zhao and others successively shouted in front of the office building, kept watch in the finance room and outside the cafeteria, and held a barbecue and drank alcohol outside the entrance hall of the office building, urging Su to repay. During this period, Zhao and Miao left. At around 20:00, Du 2 and Du 7 arrived at Yuanda Company and drank with Li 3 and others. At 20:48, Su, as required by Guo 1, went to the reception room on the first floor of the office building, accompanied by Yu Huan and company employees Zhang 1 and Ma. At 21:53, Du 2 and others entered the reception room to demand repayment and took away the mobile phones of Su and Yu Huan and placed them on the desk. Du 2 used obscene language to insult Su, Yu Huan, and their family, flicked a cigarette butt onto Su's chest clothing, pulled his trousers down to his thighs to expose his lower body, and turned his body left and right toward Su and others who were sitting on the sofa. After Ma and Li 3 persuaded him, Du 2 put his trousers back on, then took off Yu Huan's shoes and made Su smell them, which Su knocked away. Du 2 also slapped Yu Huan's face with his hand, and other debt collectors pulled Yu Huan's hair or pressed down on Yu Huan's shoulders to prevent him from standing up. At 22:07, company employee Liu called the police. At 22:17, police officer Zhu, leading auxiliary police officers Song and Guo 3, arrived at the reception room of Yuanda Company to understand the situation. Su and Yu Huan identified Du 2 as having beaten Yu Huan, and Du 2 and others denied this and claimed they were collecting a debt. At 22:22, Zhu warned both sides not to fight, then led the auxiliary police into the courtyard to look for the caller, and telephoned the on-duty police officer Xu to report the situation. Yu Huan and Su wanted to leave the reception room with the police, but Du 2 and others blocked them and forced Yu Huan to sit down, which Yu Huan refused. Du 2 and others grabbed Yu Huan's neck and pushed and pulled him to the southeast corner of the reception room. Yu Huan, holding a single-edged pointed knife with a 15.3 cm blade, warned Du 2 and others not to come closer. Du 2 provoked him verbally and approached Yu Huan, and Yu Huan then stabbed Du 2 once in the abdomen, and also stabbed Cheng in the chest, Yan in the abdomen, and Guo 1 in the back, each once, as they surrounded and pressed toward him. At 22:26, the auxiliary police returned to the reception room upon hearing the noise. After repeated orders from the auxiliary police, Yu Huan handed over the pointed knife. After Du 2 and the other three were injured, they were driven by Du 7 and others to the Guanxian County People's Hospital for treatment. At 2:18 the next day, Du 2 died after rescue failed, of hemorrhagic shock caused by laceration of the proper hepatic artery and trauma to the right lobe of the liver resulting from the abdominal injury. Yan's and Guo 1's injuries each constituted serious injury of Grade II, and Cheng's injury constituted minor injury of Grade II.

Judgment

On February 17, 2017, the Intermediate People's Court of Liaocheng City, Shandong Province, rendered Criminal Judgment with Civil Collateral (2016) Lu 15 Xing Chu No. 33, finding that the defendant Yu Huan committed the crime of intentional injury and sentencing him to life imprisonment, with deprivation of political rights for life, and ordering compensation for the economic losses of the civil collateral plaintiffs.

After the judgment was pronounced, the defendant Yu Huan and some of the original civil collateral plaintiffs were dissatisfied and respectively appealed. Upon trial, on June 23, 2017, the Higher People's Court of Shandong Province rendered Criminal Judgment with Civil Collateral (2017) Lu Xing Zhong No. 151: the civil collateral appeal was dismissed and the civil collateral part of the original judgment was affirmed; the criminal part of the original judgment was revoked, and Yu Huan was re-sentenced to five years' fixed-term imprisonment for the crime of intentional injury.

Reasoning

The court's effective judgment held that the defendant Yu Huan's act of stabbing Du 2 and the other three with a knife was an act of stopping an ongoing unlawful infringement and was defensive in nature; his defensive act caused the serious consequences of one death, two serious injuries, and one minor injury, clearly exceeding the necessary limit and causing significant harm, and constituted the crime of intentional injury, for which he should bear criminal liability in accordance with the law. In view of the fact that Yu Huan's act constituted excessive defense, that Yu Huan truthfully confessed the main crimes after being brought to justice, and that the victim had the serious fault of insulting Yu Huan's mother by despicable means, Yu Huan should be given mitigated punishment in accordance with the law. The original judgment was correct in finding that Yu Huan committed the crime of intentional injury and the trial procedure was lawful, but the facts were not found comprehensively, part of the criminal items applied the law incorrectly, and the sentence was excessively heavy; therefore, Yu Huan was re-sentenced to five years' fixed-term imprisonment in accordance with the law.

There were two main focal points of dispute concerning the application of law in this case: first, the nature of Yu Huan's stabbing, that is, whether it was defensive, whether it was special defense, and whether it was excessive defense; and second, how to determine the conviction and sentence.

I. The nature of Yu Huan's stabbing

Paragraph 1 of Article 20 of the Criminal Law of the People's Republic of China (the "Criminal Law") provides: "An act undertaken to stop an ongoing unlawful infringement in order to protect the state's or the public's interests, or one's own or another person's personal, property, and other rights from an ongoing unlawful infringement, which causes harm to the unlawful infringer, constitutes justifiable defense and does not bear criminal liability." It can be seen from this that the establishment of justifiable defense requires the concurrent satisfaction of the following five conditions: first, the cause of defense, namely that an unlawful infringement actually exists. An unlawful infringement means an assault or harm contrary to law, including both criminal acts and general unlawful acts, and including both acts infringing upon personal rights and acts infringing upon property and other rights. Second, the timing of defense, namely that the unlawful infringement is ongoing. "Ongoing" means the period during which the unlawful infringement has already begun and has not yet ended. No defense may be exercised against an unlawful infringement that has not yet begun or has already ended; otherwise the defense is untimely. Third, the object of defense, namely the unlawful infringer himself. The object of justifiable defense can only be the unlawful infringer himself, and no defensive act may be exercised against a person other than the unlawful infringer. Where an unlawful infringement is jointly committed, the joint infringement has an integral character, and justifiable defense may be exercised against each joint infringer. Fourth, the intent of defense, namely the purpose of stopping the unlawful infringement, with defensive awareness and will. Fifth, the limit of defense, namely that the necessary limit has not clearly been exceeded and significant harm has not been caused. That is to say, the conditions for the establishment of justifiable defense include objective conditions, subjective conditions, and limit conditions. The objective and subjective conditions are qualitative conditions, determining the "just"

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nature of justifiable defense and its preconditions; an act not satisfying these conditions is not justifiable defense. The limit condition is a quantitative condition, determining the “appropriateness” requirement and reasonable limit of justifiable defense; an act not satisfying this condition still has a defensive nature but is not justifiable defense, and constitutes excessive defense. An act of excessive defense has the precondition of defense and the purpose of stopping the unlawful infringement; it is only that, in the process of stopping the unlawful infringement, the intensity of the defensive act was not reasonably controlled, clearly exceeding the necessary limit of justifiable defense and causing undue significant harmful consequences, thereby transforming into a criminal act harmful to society. Based on the facts and evidence found in this case and the relevant provisions of the Criminal Law, Yu Huan’s stabbing, although defensive in nature, constituted excessive defense.

First, Yu Huan’s stabbing was defensive in nature. At the time of the incident, Du 2 and others were continuously committing the unlawful act of restricting the personal freedom of Yu Huan and Su through unlawful detention, accompanied by acts insulting their personal dignity and pushing and slapping Yu Huan; after the police arrived at the scene, when Yu Huan and Su wanted to leave the reception room with the police, Du 2 and others prevented the two from leaving and pushed, pulled, and surrounded Yu Huan, and even when Yu Huan warned with a knife, they still provoked him verbally and approached him. The unlawful infringement required for justifiable defense objectively existed and was ongoing; Yu Huan stabbed with a knife under circumstances in which his personal freedom was unlawfully infringed and his personal safety faced a realistic threat, and the objects of his stabbing were all persons who, after his warning, still approached and surrounded him. Therefore, it could be determined that his act was an act undertaken to stop an ongoing unlawful infringement in order to protect his own and his mother’s personal rights, satisfying the objective and subjective conditions of justifiable defense and having a defensive nature.

Second, Yu Huan’s stabbing did not constitute special defense. Paragraph 3 of Article 20 of the Criminal Law provides: “Where a defensive act is undertaken against an ongoing assault, murder, robbery, rape, kidnapping, or other violent crime seriously endangering personal safety, causing injury or death to the unlawful infringer, it does not constitute excessive defense and does not bear criminal liability.” Under this provision, the precondition for the application of special defense is the existence of a violent crime seriously endangering the personal safety of oneself or others. In this case, although Du 2 and others committed personal infringements such as unlawfully restricting personal freedom, insulting, and lightly beating Yu Huan and his mother, these unlawful infringements were not violent crimes seriously endangering personal safety. First, the unlawful infringements such as unlawfully restricting personal freedom and insulting committed by Du 2 and others, although infringing upon the lawful rights and interests such as personal freedom and personal dignity of Yu Huan and his mother, were not of a nature that seriously endangered the personal safety of Yu Huan and his mother; second, the coercive or beating acts by Du 2 and others such as pressing down on shoulders and pushing and pulling, although infringing upon the personal safety and right to bodily health of Yu Huan and his mother, were only minor violent infringements, and were neither unlawful infringements against the right to life nor situations of serious infringement upon the right to bodily health of Yu Huan and his mother, and therefore did not constitute violent crimes seriously endangering personal safety. Third, Su and Yu had voluntarily borrowed from Wu through the coordination and guarantee of others and had voluntarily accepted the 10% monthly interest proposed by Wu. There was no fact that Su and Yu were forced to borrow at high interest from Wu, and no fact that Wu forced Su and Yu to borrow. This clearly differed from the judicial interpretation provision that obtaining another person’s property by violent or coercive means in the name of lending is punished as robbery. It could thus be seen that the various unlawful infringements committed by Du 2 and others satisfied the precondition for exercising general defense but did not satisfy the precondition for exercising special defense; therefore, Yu Huan’s stabbing did not constitute special defense.

Finally, Yu Huan’s stabbing constituted excessive defense. Paragraph 2 of Article 20 of the Criminal Law provides: “Where justifiable defense clearly exceeds the necessary limit and causes significant harm,

criminal liability shall be borne, but the punishment shall be mitigated or exempted." It can be seen from this that excessive defense is a situation in which, under the objective and subjective preconditions of justifiable defense, the defensive counterattack clearly exceeds the necessary limit and causes the excessive result of serious injury or death. In determining whether a defense "clearly exceeds the necessary limit," a comprehensive analysis and determination shall be made from such aspects as the nature, means, intensity, and degree of harm of the unlawful infringement, as well as the nature, timing, means, intensity, surrounding environment, and consequences of the defensive act. In this case, although Du 2's side had a larger number of people, the intent of their unlawful infringement was to pressure Su and her husband to demand repayment of the debt, and they did not carry or use any instrument during the debt collection process; before police officer Zhu and others entered the reception room, Du 2's side committed against Yu Huan and his mother acts such as unlawfully restricting personal freedom, insulting, slapping Yu Huan's face, and pulling his hair, and their purpose was still to pressure Su and her husband to repay as soon as possible; when the police entered the reception room, the two sides did not have an intense confrontation or physical conflict, and after the police warned that they must not fight, Du 2's side did not say or do anything indicating a fight; while the police left the reception room to look for the caller, both Yu Huan and the debt collectors could clearly see, through the glass of the reception room, the flashing lights of the police car parked in the courtyard, and should have known that the police had not left; when Yu Huan warned with a knife that they should not press closer, Du 2 and others, although provoking him verbally and surrounding him, did not carry out an intense attack. Therefore, the unlawful infringement Yu Huan faced was not urgent or serious, yet he used a single-edged pointed knife with a 15.3 cm blade to stab four people in succession, causing one death, two serious injuries, and one minor injury, and one of the persons was stabbed in the back. It should therefore be determined that Yu Huan's defensive act clearly exceeded the necessary limit and caused significant harm, constituting excessive defense.

II. Conviction and sentencing

First, on conviction. In this case, Yu Huan stabbed four people in succession, but the objects of his stabbing were all persons who were surrounding and pressing toward him at the time, and he did not stab other unlawful infringers farther away; he stabbed each unlawful infringer once and did not stab the same unlawful infringer repeatedly. It could thus be seen that Yu Huan's purpose was to stop the unlawful infringement and leave the reception room, and the evidence in the case could not prove that he had the intent to pursue or allow the result of death. Therefore, Yu Huan's acts did not constitute the crime of intentional homicide, but in order to achieve the defensive effect, he took an attitude of letting matters take their course toward the occurrence of the excessive result of causing multiple casualties, which already constituted the crime of intentional injury under circumstances of excessive defense. Determining that Yu Huan's acts constituted the crime of intentional injury was both a requirement of strict application of the law and consistent with the people's notion of fairness and justice.

Second, on sentencing. Paragraph 2 of Article 20 of the Criminal Law provides: "Where justifiable defense clearly exceeds the necessary limit and causes significant harm, criminal liability shall be borne, but the punishment shall be mitigated or exempted." Comprehensively considering such circumstances as the nature of the defended rights and interests, the method of defense, the intensity of defense, the cause of defense, the harmful consequences, the degree of excess, and the surrounding environment in this case, Yu Huan should be given mitigated punishment.

The victim side bore serious fault for triggering this case. Before the case occurred, Wu and Zhao had instigated Du 2 and others to commit acts of insulting Su and disrupting the production and operation of Yuanda Company to pressure for repayment, and Su reported the matter to the police multiple times, but the unlawful debt-pressuring acts of Wu and others did not cease. On the day of the incident, Du 2 and others committed against Yu Huan and Su acts of unlawfully restricting personal freedom, insulting, and intermittently pushing, slapping, and grabbing Yu Huan by the neck. Yu Huan and his mother Su had

suffered pressing, harassment, and insult on successive days, which led to Yu Huan inevitably carrying emotions such as fear and anger when exercising defense. In particular, Du 2's act of exposing his lower body to insult Su bore major fault for triggering this case. On the day of the incident, Du 2 openly insulted Yu Huan's mother Su by exposing his lower body in front of Yu Huan. Although about twenty minutes had elapsed since Yu Huan's defensive act, when Yu Huan stabbed Du 2 and others he inevitably carried the emotion of retaliating against Du 2 for insulting his mother; therefore, Du 2's act of exposing his lower body to insult Su was an important factor triggering this case and should be given primary consideration in sentencing as a circumstance favorable to Yu Huan.

Du 2's act of insulting his mother was seriously unlawful and desecrated human ethics and should be punished and condemned, but Yu Huan, under circumstances in which the police were still investigating at the scene and the police car was still flashing its lights at the scene, in order to leave the reception room and escape the surrounding press, used a knife to stab four people in succession, causing one death, two serious injuries, and one minor injury, and one of the seriously injured was stabbed by Yu Huan in the back. The harmful consequences were serious, and except for Du 2, the other three had not committed any act of insulting Yu Huan's mother. The harm caused by his defensive act far exceeded the lawful rights and interests he protected, and the defense was clearly excessive. Yu Huan and his mother's personal freedom and personal dignity should be protected by law, but Yu Huan's defensive act clearly exceeded the necessary limit and caused the serious consequences of multiple casualties, exceeding the limit permitted by law, and he should bear criminal liability in accordance with the law.

Under the Criminal Law of our country, anyone who intentionally injures another person causing death shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment, or death; anyone whose defense is excessive shall be given mitigated or exempted punishment. As stated above, Yu Huan's defensive act clearly exceeded the necessary limit and caused significant casualties, and mitigated punishment should be imposed within the statutory sentencing range of three to ten years' fixed-term imprisonment in accordance with the law. In view of the fact that Yu Huan truthfully confessed the main crimes after being brought to justice, and that the victim side had the serious fault of insulting Yu Huan's mother by despicable means, which were circumstances warranting lighter punishment, and comprehensively considering the facts, nature, circumstances, and harmful consequences of Yu Huan's crime, Yu Huan was sentenced to five years' fixed-term imprisonment.

Relevant Legal Provisions

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

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