SPP Guiding Case No. 217: Supervision Case on the Investigation of Intentional Injury by Zeng Moujia et al. and Correction of Omitted Co-Suspects

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Supreme People's Procuratorate Guiding Case No. 217 (Batch 53, 2024)

Keywords

Investigation supervision at the second-instance stage; correction of omitted co-suspects; separate handling of cases; written explanation of circumstances.

Holding

In handling criminal cases, the people's procuratorates shall carry out the duty of investigation supervision throughout the entire litigation process, including investigation, arrest approval, prosecution, first-instance trial and second-instance trial. The procuratorates shall strengthen review and supervision over the public security organs' application of "separate handling of cases," and shall handle the matter differently according to the circumstances. Where clues concerning a fugitive criminal suspect subject to "separate handling of cases" are discovered, the procuratorate shall promptly transfer the clues and urge the public security organ to capture the suspect and ascertain the criminal facts. Evidence used to prove the facts of a case shall be collected and preserved in accordance with law, and shall not be replaced by a "written explanation of circumstances." Where review reveals that a public security organ has replaced statutory evidence with a "written explanation of circumstances," the procuratorate shall supervise the public security organ in promptly re-collecting and preserving the evidence in accordance with law.

Basic Facts

Defendant Zeng Moujia, male, born in October 1984, a food delivery worker.

Defendant Zeng Mouyi, male, born in February 1987, a worker, the younger brother of Zeng Moujia.

Defendant Qin Moumou, nicknamed "A Jun," male, born in May 1984, a worker, who had previously been sentenced to three years and six months of fixed-term imprisonment for the crime of assembling a crowd to fight and was released on January 5, 2011 upon completion of his sentence.

At noon on June 22, 2011, Zeng Mouyi had a conflict with his female coworker Tian Moumou and became involved in a dispute with Tian Moumou's friend Kuang Moumou and others. Zeng Moujia and Zeng Mouyi then invited Kuang Moumou and others to a restaurant for dinner that evening at around 6:00 p.m. on the pretext of resolving the dispute. Meanwhile, Zeng Mouyi informed "A Jun" of the plan to retaliate against Kuang Moumou and others and invited "A Jun" and others to the scene. That evening, the two sides quarreled at the restaurant. Zeng Moujia, Zeng Mouyi and "A Jun," respectively wielding the fruit knife and iron bar brought by "A Jun," stabbed and struck Kuang Moumou and others, causing Kuang Moumou to die from massive blood loss from a ruptured right lung, and causing minor injuries to two others. After the incident, Zeng Moujia, Zeng Mouyi, "A Jun" and others fled.

On June 23, 2011, the Huicheng District Branch of the Huizhou Municipal Public Security Bureau of Guangdong Province opened an investigation into the "injury case of Kuang Moumou and others" and registered Zeng Moujia, Zeng Mouyi, "A Jun" and others as fugitives. On September 26, 2019, the Huicheng District Public Security Branch captured Zeng Moujia and Zeng Mouyi. On December 11, the Huicheng District Public Security Branch concluded the investigation and transferred the case to the Huicheng District People's Procuratorate for review and prosecution against Zeng Moujia and Zeng Mouyi on suspicion of the

crime of intentional injury. After the Huicheng District People's Procuratorate reported the matter upward, on February 5, 2020, the Huizhou Municipal People's Procuratorate initiated a public prosecution against Zeng Moujia and Zeng Mouyi with the Huizhou Municipal Intermediate People's Court for the crime of intentional injury. On November 24, the Huizhou Municipal Intermediate People's Court sentenced Zeng Moujia and Zeng Mouyi to death with a two-year reprieve and fourteen years of fixed-term imprisonment respectively for the crime of intentional injury. Both Zeng Moujia and Zeng Mouyi appealed.

Procuratorate Performance of Duties

(1) Discovery of clues. After receiving the case file transferred by the Guangdong Provincial Higher People's Court, the Guangdong Provincial People's Procuratorate, upon reviewing the case materials and hearing the grounds of appeal, found the following potential problems in the first-instance case. First, a co-suspect was omitted. The evidence on file proved that "A Jun" had provided the instruments of crime and had directly committed the injurious act, and should be pursued for criminal liability as a co-defendant in the intentional injury case of Zeng Moujia and Zeng Mouyi; the file contained clues such as Zeng Mouyi's written report that could help ascertain "A Jun's" identity, yet no effective investigation and capture work had been carried out against him during the investigation stage, and he had been determined as "at large" and subject to "separate handling of cases" throughout the review for prosecution and first-instance judgment. Second, the form of evidence was unlawful and non-standard. The public security organ had failed to prove the whereabouts of the instruments of crime and certain facts requiring witness testimony and victim statements through statutory evidence, but had simply replaced such evidence with "written explanations of circumstances," which did not conform to the statutory form of evidence and evidence collection requirements.

(2) Correction of the omitted co-defendant. To address the omission of the co-defendant at the first-instance stage, the Guangdong Provincial People's Procuratorate carried out investigation and verification of Zeng Mouyi's reported clues. Upon interrogation, Zeng Mouyi stated that although he did not know "A Jun's" real name, he knew that "A Jun" was surnamed Qin, was originally from Guizhou, and had been released from Huizhou Prison not long before; and that while he was at large, he had also been in contact with "A Jun's" younger brother "Qin Moubing" and had kept the mobile phone number, making it possible to ascertain "A Jun's" true identity and capture him. On April 21, 2021, the Guangdong Provincial People's Procuratorate transferred the identity information clues of "A Jun" and other evidence materials discovered at the second-instance stage to the public security organ, and recommended that the public security organ promptly ascertain "A Jun's" true identity and capture him. On May 17, the public security organ, after Zeng Mouyi's identification, captured "Qin Moumou (A Jun)."

(3) Follow-up and supervision. After Qin Moumou was captured, he argued that he had not provided the instruments of crime and had not committed the injurious act, which clearly contradicted the statements and evidence of Zeng Mouyi and others. To ascertain the facts of the case, the Guangdong Provincial People's Procuratorate continuously followed the investigation of the case and dispatched personnel to provide opinions on investigation and evidence collection. First, it urged the public security organ to supplement and improve the defendants' statements and victims' statements around the premeditation and consultation among the persons involved, the escalation of the conflict, the process of the fight, the source of the instruments of crime and the details of the injuries inflicted. Second, it urged the public security organ to supplement and improve objective and technical evidence such as on-site inspection and cause-of-death identification.

(4) Standardizing the re-collection of evidence. To address the problem that the public security organ had issued "written explanations of circumstances" in simple replacement of evidence that should have been collected and preserved through statutory forms such as interrogation records, inquiry records, identification records and on-site inspection and examination records, the Guangdong Provincial People's Procuratorate put forward standardized evidence collection opinions to the public security organ, requiring that the relevant

evidence be strictly re-collected and preserved in accordance with statutory procedures. In accordance with the procuratorate's opinions, the public security organ re-investigated and re-collected evidence concerning the case facts covered by more than 40 "written explanations of circumstances" in the first-instance file, and collected, preserved and converted them into lawful evidence conforming to trial requirements in accordance with statutory procedures.

(5) Supervision results. After correcting the omitted co-defendant, supplementing and improving the chain of evidence, and converting the form of evidence in accordance with law, the Guangdong Provincial People's Procuratorate determined upon review that the grounds of appeal in this case could not be established. On August 24, 2021, after a second-instance hearing, the Guangdong Provincial Higher People's Court held that the original judgment in the intentional injury case of Zeng Moujia and Zeng Mouyi was correct in its determination of facts and application of law and appropriate in sentencing, and ruled to dismiss the appeal and uphold the original judgment. On August 21, 2021, under the guidance of the Guangdong Provincial People's Procuratorate, the Huizhou Municipal People's Procuratorate initiated a public prosecution against Qin Moumou with the Huizhou Municipal Intermediate People's Court for the crime of intentional injury. On October 29, the Huizhou Municipal Intermediate People's Court sentenced defendant Qin Moumou to ten years of fixed-term imprisonment for the crime of intentional injury. Qin Moumou appealed. On February 25, 2022, the Guangdong Provincial Higher People's Court dismissed the appeal and upheld the original judgment.

Guiding Significance

(1) In handling second-instance cases, procuratorial organs shall continuously perform the duty of supervision over investigative activities. The supervision duty of procuratorial organs runs through the entire criminal procedure process, including investigation, arrest approval, prosecution, first-instance trial and second-instance trial. In handling second-instance cases, procuratorial organs shall also enhance their awareness of investigation supervision and perform the duty of investigation supervision, and supervise and correct investigative violations in accordance with law. Where omitted offenses or co-suspects are discovered, the procuratorate shall recommend investigation by the public security organ in accordance with law and put forward opinions on investigation and evidence collection.

(2) Supervision over "separate handling of cases" shall be strengthened, and the matter shall be handled differently according to circumstances. When reviewing cases, procuratorial organs shall conduct substantive review of the public security organs' application of "separate handling of cases." Where clues concerning a fugitive criminal suspect subject to "separate handling of cases" are discovered, the procuratorate shall promptly transfer the clues and urge the public security organ to capture the suspect and ascertain the criminal facts. Where the case is at the review for prosecution stage, the procuratorate shall require the public security organ to conduct supplementary investigation or supplementary transfer for prosecution; where the matter is discovered at the second-instance stage, it shall recommend investigation by the public security organ. Where the application of "separate handling of cases" is found to be unlawful or improper, the procuratorate shall put forward written correction opinions to the public security organ. Where a criminal suspect has been at large for a long time or a case remains unsolved after prolonged investigation, the procuratorate may issue letters urging handling in due course.

(3) A "written explanation of circumstances" cannot replace statutory evidence for use as evidence. When reviewing cases, procuratorial organs shall review the contents of "written explanations of circumstances" issued by public security organs. Where review reveals that a public security organ has used a "written explanation of circumstances" in place of statutory evidence to prove the facts of a case, the procuratorate shall urge the public security organ to re-collect and preserve the evidence through statutory procedures and in statutory form; where the public security organ has been negligent in performing its investigation duties by issuing "written explanations of circumstances," the procuratorate shall put forward supervision and correction opinions in accordance with law. A "written explanation of circumstances" may be used for facts

and materials formed after the occurrence of a case and during litigation activities that are truly necessary to explain during case review, such as the legality of evidence collection, the course of detection and case resolution, the course of arrival at the case, the course of capture, and the return of stolen goods and compensation.

Relevant Legal Provisions

Articles 25 and 234 of the Criminal Law of the People's Republic of China; Articles 234 and 236 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment); Articles 342, 448, 449, 551, 552 and 567 of the Rules of Criminal Procedure for People's Procuratorates (2019 Revision); Articles 3, 5, 6, 10, 12 and 14 of the Guiding Opinions of the Supreme People's Procuratorate and the Ministry of Public Security on Regulating the Application of "Separate Handling of Cases" in Criminal Cases (Gao Jian Hui [2014] No. 1); Articles 6, 7, 8, 10 and 13 of the Guiding Opinions of the Supreme People's Procuratorate and the Ministry of Public Security on Strengthening and Regulating Supplementary Investigation Work (Gao Jian Hui [2020] No. 6).

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