

Xin Hua City Jia Yi District People's Court

Criminal Judgement

(2022) X0108 xing chu (刑初 Criminal first instance) No. 24

Public Prosecuting Authority: Xin Hua City Jia Yi District People's Procuratorate

The defendant John, male, was born on XX, XXXX, ID number XXXXXXXXXXXXXXXXXXXX, high school education, domicile XXXXXXXXX, and worked as a mechanic at XXXX auto repair shop before the incident. For the crime of theft on 1 February 2018 was sentenced to one year and six months of imprisonment, on 31 July 2019 he was released. He was released on bail pending trial (suspicion of intentional homicide) on 27 March 2021.

Defender Jin, Jun Cai, lawyer of Xin Hua City Zheng Yi Law Firm.

The defendant Mary, female, was born on XXXX, XXXX, ID number XXXXXXXXXXXXXXXXXXXX, high school education, domicile XXXXXXXXX, worked as a dog trainer for XXXX company before the incident, and was arrested on 27 March 2021 on suspicion of intentional homicide. She was released on bail pending trial on 16 April 2021

Defender Liang, Shi Yun, Xin Hua City Zheng Yi Law Firm.

The defendant Jack, male, was born on XX, XXXX, ID number XXXXXXXXXXXXXXXXXXXX, high school education, domicile XXXXXXXXX, was a student of No.44 Middle School before the incident, and was charged with the crime of obstructing prosecution and punishment and endangering public safety by dangerous means. He was arrested on 27 March 2021 and under pre-trial detention on 23 April of the same year. He is currently detained at the Jia Yi District Detention Center in Xin Hua City.

Defender Shang, Jun, lawyer, Xin Hua City Legal Aid Centre.

The Xin Hua City Jia Yi District People's Procuratorate filed an indictment with the Court on 26 July 2021, charging Defendants John and Mary with the crime of intentional homicide, and Defendant Jack with the crimes of obstructing prosecution and punishment and endangering public safety by dangerous means. The court filed the case on 2 August 2021, applied ordinary procedures, formed a collegial court according to law, and conducted the trial in closed session. Xin Hua City Jia Yi district people's procuratorate assigned procurator Li, Ming Liang to appear in court for the public

prosecution service. Defendant John and his defender Jin, Jun Cai, Defendant Mary and her defender Liang, Shi Yun, Defendant Jack and his defender Shang Jun, all appeared in court to participate in the proceedings. Now the court hearing has been completed. The Prosecution alleges that on 26 March 2021, at approximately 22:30 hours, the defendants John, Jack (John's brother) and Mary argued with the victim, Bill, at the Blue Moon bar. After exiting the bar, Bill scratched the bonnet of John's car in the car park with a screwdriver he had taken from his car, John got out of his car, grabbed Bill's screwdriver and shouted at Bill: "I'm going to kill you, you bastard!" He then stabbed Bill several times in the direction of the chest and abdomen with the screwdriver but missed, and when Bill slipped and fell to the ground, Mary fell on top of Bill and John cut Bill's carotid artery with the screwdriver causing a haemorrhage. Mary placed her hands on Bill's neck and was later removed by Bill's friends. Bill was later saved.

After John cut Bill, Jack dragged John to the car and drove off to help John escape; neither of them fastened their seat belts. Jack had no driver's license and little driving experience. He drove away from the crime and he drove at an average speed of 130 kilometres per hour on a dimly lit main street in the city centre without turning on the headlights, he did not slow down at several intersections, and ran red lights continuously. When he suddenly saw a pedestrian (Olivia) crossing the sidewalk, Jack braked but was too close to Olivia and she flew through the air, Olivia's head hit a wall and as a result, died immediately. It was determined that she suffered multiple fractures of her skull and extensive brain damage. John, who was not wearing a seatbelt, suffered multiple broken bones when his car struck Olivia as Jack slammed on the brakes and John hit the windshield. Jack suffered fractured ribs when his car struck the victim, Olivia, due to a popped airbag.

In support of the indictment, the Prosecution provided the Court with evidence, such as the defendants' statements, witness testimonies and expert opinion.

The Prosecution considered that the acts of the defendants John and Mary had violated the provisions of Article 232 of the Criminal Law of the People's Republic of China, constituting the crime of attempted intentional homicide, with John as the principal offender and Mary as an accessory; and that the acts of Jack had violated the provisions of article 114 and article 310 of the Criminal Law of the People's Republic of China, constituting the crimes of endangering public security by dangerous means and the crime of obstructing prosecution and punishment.

During the trial, the prosecution assumed that defendant John used a weapon to stab vital parts of the victim with the intent to kill thus establishing the offence of intentional homicide. In view of the attempt, the prosecutor argued, he could be given a lighter punishment, but because John has prior convictions, a sentence of fixed-term imprisonment for the crime of theft, and the attempted homicide was committed within five years after having completed the prior sentence, he qualifies as a recidivist. The prosecution therefore recommended that he be sentenced to four to six years imprisonment. The accused Mary, the prosecutor continued, provided assistance to an attempted homicide and is liable for aiding and abetting. For this crime the prosecutor recommended a suspended three-year prison sentence and placement under probation; the accused Jack knew that John had committed a crime but still helped him to escape,

which constitutes the crime of obstructing prosecution and punishment; then, helping to escape resulted ultimately in endangering public safety and in a traffic accident with fatal consequences. This act establishes an offence of endangering public safety by dangerous methods. The prosecution recommended a sentence of six months of detention for obstructing prosecution and punishment also, and that the crime of endangering public safety should carry a sentence of four to six years imprisonment.

The defendant John remained silent throughout the proceedings. His defence put forward the following arguments: 1. John acted in self-defence; 2. even if John had committed a crime, it would have been merely intentional assault; 3. The fact that the acts remained at the stage of an attempt should result in a mitigating circumstance; and 4. the victim himself had been at fault, which should result in a mitigating circumstance for John.

The defendant, Mary, argued that she did not commit an offence. Her counsel argued also that Mary did not constitute a crime, and put forward the following arguments: 1. Mary did not have the intent to kill, and did not constitute the crime of intentional homicide; 2. Mary fell on top of Bill because she wanted to separate John and Bill, not to help John; 3. Mary saw the victim bleed and then immediately covered his wounds with her hands, which also proved that she did not intend to kill Bill.

The defendant Jack admitted the facts charged by the prosecution but did not agree with the charges and sentencing recommendations of the prosecution. His defence counsel put forward the following defence opinions: 1. Jack had no intention to harm Olivia and the offence shall be culpable driving causing serious damage or injury 2. The prosecution claimed separate sentences for endangering public safety and obstruction prosecution and punishment, but, as these offences had been established through one act, only one sentence should be imposed 3. Jack is a minor; 4. Jack has confessed to the circumstances.

It was found at the hearing:

(i) Facts of intentional homicide

On 26 March 2021, at approximately 22:30 hours, the accused John, Jack (John's brother) and Mary (John's girlfriend) were at the Blue Moon bar when John, while intoxicated, argued with the victim, Bill. Later, in the car park outside the pub, Bill scratched the bonnet of John's car with a screwdriver he had taken from his car, and John grabbed Bill's screwdriver and shouted at Bill: "I'm going to kill you bastard!". In the meantime, Mary pushed Bill and shouted, "Why are you provoking him, you idiot?" John tried to stab Bill several times in the chest and abdomen with a screwdriver, but missed. Bill and Mary fell together and John stabbed John in the neck with the screwdriver cutting Bill's carotid artery causing a haemorrhage, and Mary put pressure on Bill's bleeding neck with her hand. Mary left the scene and John and Jack fled the scene. Bill was resuscitated and survived.

The evidence to prove the above facts is:

1. Mary's statement and defence:
2. Jack's statement and defence:
3. Bill's statement:

4. Bob's testimony:
5. Testimony of Ben:
6. Peter's testimony
7. Bill's medical records:
8. Expert's opinion:
9. Criminal judgment: on 1 February 2018, a people's court sentenced John to one year and six months' imprisonment for the crime of theft.

The above evidence has been cross-examined during the court hearing, the court confirms the evidence insofar as it corroborates each other.

(Note: In Chinese criminal judgments, when ordinary procedures are applied in a criminal trial, detailed evidence must be listed in the reasoning section of the judgement, and only when guilty plea proceedings (summary procedures) are applied in the trial is it permissible to list only a catalogue of the evidence in the reasoning section and to omit the specific content of the evidence. This judgement was a judgement applying the ordinary procedure, but in order not to repeat the facts of the case too much, only the catalogue of evidence was listed and the specific content of the evidence was omitted.)

(ii) Facts of obstructing prosecution and punishment, endangering public security by dangerous methods

At about 22:00 hours on 26 March 2021, after John stabbed Bill, Jack, who witnessed the incident, dragged John into his car. Although Jack did not have a driver's licence and lacked driving experience, he drove away at a high speed and without lights to prevent John from being arrested and imprisoned again. He jumped traffic lights and finally and despite heavy braking hit Olivia, who walked a zebra crossing. The victim, Olivia, who was knocked off the road at the turn and died immediately after landing. According to the Xin Hua City Forensic Appraisal Centre Olivia suffered multiple skull fractures and extensive brain damage. When Jack stepped on the brakes John who did not wear a seatbelt hit the windscreen, which caused multiple fractures. Jack suffered fractured ribs when his airbag popped after the impact.

The evidence to prove the above facts are:

1. Jack's statement and defence:
2. Testimony of Oswald:
3. Testimony of Bob:
4. An expert evaluation opinion: the vehicle at the moment of hitting the speed of 120km/h.
5. An expert evaluation opinion: Olivia died as a result of multiple skull fractures and massive brain damage caused by external impact.
6. John's medical records: John suffered severe fractures of the skull, neck, arms and ribs.

The above evidence has been examined in court, and the evidence of mutual corroboration part, the Court has confirmed.

The Public Prosecution Office also provided the registration form of the

investigating authorities, the decision to file a case, the arrival of the case, household registration information and other evidence, which were examined in court and confirmed by this Court.

In the light of the charges brought by the Public Prosecution Office, the defendant's arguments and the defence's arguments, the following findings are made on the disputes between the prosecution and the defence:

1. Concerning the self-defence opinion raised by John's defence counsel. This court believed that the defendant John got out of the car when Bill damaged his vehicle, grabbed the screwdriver from Bill's hand and stabbed Bill. This behaviour had a certain defensive nature. However, when Bill slipped to the ground and Mary fell on Bill, the danger and urgency of the unlawful violation faced by John were removed. John's subsequent actions did not have the nature of legitimate defence and constituted an illegal infringement of other people's rights to life and health. Therefore, the legitimate defence opinion put forward by John's defence counsel shall not be adopted.

2. Regarding the opinion of John's defence counsel on the crime of intentional injury. This court believes that John stabbed Bill in the vital part of the neck with a weapon, his intention to kill was obvious, and death was not caused only because of timely treatment. Combined with John's degree of drunkenness, his remarks about killing Bill before the attack, and his subsequent objective behaviour, based on the principle of correspondence, it should be found to be attempted intentional homicide. Therefore, the opinion proposed by John's defence counsel that the crime should be classified as intentional assault shall not be adopted.

3. Regarding the opinion raised by Mary and her defence counsel that the crime did not constitute a crime. This court believes that the existing evidence is insufficient to prove that Mary had the subjective intention to assist John in infringing the victim and that objectively Mary acted to prevent the conflict and rescue the victim. The public prosecution found insufficient evidence to charge Mary with intentional homicide. Therefore, the opinions of innocence put forward by Mary and her defence counsel were adopted.

4. Regarding the opinion that the charge proposed by Jack's defence counsel was a traffic offence. The court held that Jack, without a driving licence and lacking driving experience, drove on the streets of the city centre by dangerous methods such as speeding and running red lights, with an utterly reckless attitude towards the possible harmful consequences, which was an intentional crime and caused one death and one serious injury, and that he should be convicted of endangering public safety by dangerous methods. Therefore, the opinion of Jack's defence counsel that the offence was a traffic offence was rejected.

5. Regarding Jack's defence counsel's opinion that the crime of obstructing prosecution and punishment and the crime of endangering public safety by dangerous means is guilt by association. The court held that Jack helped John to escape, and his act of obstructing prosecution and punishment was completed when he pulled John into the car and drove away from the scene, and the offence of endangering public safety by

dangerous means was two criminal purposes and two criminal acts, infringing on two different legal interests, and did not belong to the situation of concurrence. Therefore, the opinion of Jack's defence of concurrence is not accepted.

6. Concerning the attempted crime, the victim's fault, and the mitigating circumstances put forward by John's defence counsel, as well as the minor, his confession, and mitigating opinion put forward by Jack's defence counsel, the Court adopts them.

The Court is of the view that the defendant John was unable to handle the dispute calmly and stabbed another person in a vital part with a weapon to deprive him of his life, and that his behaviour constituted the crime of attempted intentional homicide. The facts that the Public Prosecution charged John with the crime of attempted intentional homicide are clear, the evidence is reliable and sufficient, and this court supports them. John had been sentenced to fixed-term imprisonment for an intentional crime, and had committed a crime punishable by fixed-term imprisonment or more within five years after the completion of the execution of the sentence, and was a recidivist, and should be punished severely. Because John's actions remained an attempt, and the victim was at fault for triggering the attack and intensifying the conflict, his punishment was mitigated.

Defendant Mary did not have the intention to kill and objectively did not commit the act of killing, she was not an accomplice of intentional homicide, and did not commit the crime of attempted intentional homicide. The Public Prosecution Office alleges that Mary committed the crime of attempted intentional homicide, yet, the evidence is insufficient, and the Court does not support it.

The defendant Jack knew that John had committed a crime and was still driving the vehicle to help him escape, which constituted the crime of obstructing prosecution and punishment; he drove a motor vehicle at excessive speed, ran red lights, and acted generally in a dangerous manner, knowing the danger and still allowing the harmful consequences to occur, resulting in the serious consequences of one death and one serious injury, and his actions constituted the crime of endangering public safety by dangerous methods, which shall be punished concurrently. The Public Prosecution charged Jack with the crimes of obstructing prosecution and punishment and endangering public security by dangerous means, in the view of the court the facts are clear, and the evidence is reliable and sufficient. Because Jack was less than eighteen years old when he committed the crime, truthfully confessed to all the facts of the crime during investigation and trial, and was a first-time offender, he shall be given a lighter punishment for the crime of obstructing prosecution and punishment and shall be given a lighter punishment for the crime of endangering public security by dangerous means.

Accordingly, by the provisions of articles 232, 310, 114, 65 (1), 23, 17 (4), 69 and 64 of the Criminal Law of the People's Republic of China, the judgement is as follows:

1) The defendant John is convicted of attempted intentional homicide and sentenced to five years' imprisonment.

(The sentence is calculated from the date of execution of the judgment.)

2) the defendant Jack was convicted of obstructing prosecution and punishment

and sentenced to six months imprisonment; he was convicted of endangering public safety by dangerous means and sentenced to four years imprisonment, the court decided that Jack shall serve a total of four years of imprisonment.

(The term of imprisonment shall be calculated from the date of enforcement of the sentence, and if the sentence is to be enforced while in custody, one day's credit shall be given for each day of detention, i.e., from 27 March 2021 to 26 March 2025.)

3) The accused Mary is not guilty and is acquitted.

If this judgement is not accepted, you may, within ten days from the second day of receipt of the judgement, appeal to the XX Municipal Intermediate People's Court either through this court or directly. In the case of a written appeal, one original and four copies of the appeal shall be submitted.

Presiding Judge: Wu Da Yi

Judge: Ou Qing Xi

People's assessor: Li Shu Zhen

31st January, 2022

Judge's assistant: Zhao Ming Cheng

Clerk: Chen Fei