Journal of Siberian Federal University. Humanities & Social Sciences 4 (2012 5) 506-510
~ ~ ~

УДК 343.61

Can a Crime Foreseen by Part 4. Article 111 of the Criminal Code of the Russian Federation be Defined as Committed by a Group of Persons?

Alexander V. Uss and Dmitry S. Kurenev*
Siberian Federal University
79 Svobodny, Krasnoyarsk, 660041 Russia [1]

Received 4.11.2011, received in revised form 11.11.2011, accepted 20.01.2012

As a result of analysis of a certain published criminal case, the authors of the article come to the conclusion that from the point of view of the current criminal law it is impossible to classify a crime foreseen by Part 4 Article 111 of the CC RF on the feature of its being performed by a group of persons.

Keywords: Group of persons, crime with two forms of guilt, concerts, complicity, deliberate infliction of grave injuries to a person's health that leaded to the death of the victim by negligence.

"Criminal Law" journal (2011, No. 3) once published an article by A. Shiryaev titled "Criminal Responsibility for the Crimes Foreseen by Part 4 Article 111 of the Criminal Code of the Russian Federation Committed by a Group of Persons", in which the author analyses the theory of causal relation and guilt identification problems and researches the criminal responsibility of the crime participants in a certain precedent[1].

We would like to take part in the discussion concerning the following case and express our attitude to the problem studied in the article from the point of view of legal evaluation of the actions taken by the participants of the crime.

The fact pattern of the case is the following: B. and S., on the one part, entered into a conflict with M. and Sh. In the process, S. stroke several blows on the face, head and body of M. with his fists. B., acting in concert with S., having found a piece of board on the crime scene, hit the occipital region of M.'s head with it. M. fell down, and S. and B. started to beat him, striking their blows simultaneously. S. was kicking M. in the face, on the head and on the body, while B. was hitting M., who was lying on the ground, with the board on the head and body. The medical examination showed that the reason of the death was a closed craniocerebral injury with a heavy brain contusion, haemorrhage into the matter and ventricles of the brain. The direct cause of the trauma and M.'s death was the blows stricken with a hard blunt object. Such consequences are not typical for kicks or fist blows. According to the circumstances of the case, the only one who was hitting the victim with the board was B.

The preliminary investigation bodies stated that the actions of B. and S. can be qualified under Part 4 Article 111 of the Criminal Code of

* Corresponding author E-mail address: Seedorf87@yandex.ru

the Russian Federation performed by a group of persons. However, the court altered the actions interpretation of the crime: the actions of S. against M. were qualified under Item "a" Part 2 Article 116 of the CC RF, and the actions of B. were qualified under Part 4 Article 111 of the CC RF, so that the "group of persons" feature was excluded from the formulation.

In his article, A. Shiryaev disagrees with the legal evaluation of the actions of B. and S. that was preferred by the court and supposes that the actions of S. were correctly qualified by the interrogation officer as under Part 4 Article 111 of the CC RF as joint participation in the present crime. He points out that the "performance by a group of persons" feature foreseen by Item "a" Part 3 Article 111 of the CC RF is totally analogous to the feature of gang murder foreseen by Item "g" Part 2 Article 105 of the CC RF. The author of the article considers this conclusion to be right because infliction of grave injuries and murder are both intentional violent crimes that have common objective reasons and the same conditions of criminal responsibility incurrence if performed by a group of persons.

As we see it, identifying the actions of S. and B. under Part 4 Article 111 of the CC RF with the qualifying feature of "performed by a group of persons" is too judgemental as it does not fully consider the peculiarities of the crime and the concept of complicity in a crime, formulated in Article 32 of the CC RF.

In his article, A. Shiryaev sets a question, whether it is possible to claim that S. and B. were embraced in their intent that was to inflict grave injury to the victim's health? The fact pattern of the case allows us to claim that after B. had hit M. in the occipital part of his head with a board and S., observing that, started to kick M. in the face, on the head and the body jointly with B., then on the stage of committing the objective part of the crime the implicit agreement to inflict grave injury of the victim's health occurred, so that it can be identified as a crime committed by a group of persons without preliminary conspiracy (Part 1 Article 35 of the CC RF)

The circumstances of the crime, considered as a whole (the instrument of crime, kicking the victim on the head, the number of stricken blows and the intensiveness of the actions of the accused) push us to the conclusion that continuing the joint bodily blows with B. after B. had hit the victim on the head with a board, S. could realise the injurious character of both his actions and the actions performed by B.; moreover, seeing the instrument used by B. and the localization of the joint blows on the head M., S. foresaw the imminence of the grave injury inflicted to the health of M., and, as the story of the case suggests, wished for it to happen out of hooligan motives. This way, S. and B. were embraced with the intent to inflict grave injury to M.'s health.

Along with that, it is worth noticing that legally the crime foreseen by Part 4 Article 111 of the CC RF, joint participation in which is being imputed upon S., is a crime committed with *two forms of guilt.*

According to the definition given in Article 26 of the CC RF, if an intentional crime results in grave consequences, which under the law involve a stricter punishment but which were not included in the person's intent, then criminal responsibility for such consequences shall ensue only in cases where the person has foreseen the possibility of their onset, but expected without valid reasons that they would be prevented, or in cases where the person has not foreseen, but could and should have foreseen the possibility of the onset of these consequences. By and large, such crime shall be deemed to be committed wilfully.

Out of the definition quoted above we can see that a crime committed with two forms of guilt legally implies that the grave consequences which under the law involve a stricter punishment

(in the present case, the death of the victim) were not included in the intent of any of the persons participating in the crime commission. For this reason, in the present case qualifying the actions of the guilty persons under Part 4 Article 111 of the CC RF would mean that the joint intent only included implying grave injury of the victim's health, and the death of the victim was beyond their intent. Together with that, according to Article 32 of the CC RF, complicity in a crime is the joint participation of two or more persons in the commission of a deliberate crime. Firstly, the guilty persons must have the intent to commit the crime jointly; secondly, the crime itself must be deliberate.

Analysing every term included into the definition of "deliberate joint participation" and "deliberate crime", let us study the opportunity to qualify the actions of B. and S. as joint participation in the crime foreseen by Part 4 Article 111 of the CC RF.

To prove his point of view, A. Shiryaev points out that in this criminal situation the participatory nature of the actions performed by S. and B. provided the grave result, while the actions performed by each of them were the prerequisite for the result. However, it is necessary to note that the joint character of the actions must bear both objective and subjective character. The subjective side of the crime, speaking in the most general way, is the reflection (or the possibility of reflection) of the objective features of the committed offence in the subject's conscience, and characterizes the attitude of the subject towards it[2].

Article 32 of the CC RF explains how the persons guilty in committing a crime subjectively evaluate the criminal action performed in complicity with other persons. So, as it is stipulated by the law, the participants must evaluate the criminal action they perform together with other persons as deliberate. Studying the present provision of law, it is worth emphasizing that in the modern science there is an established opinion that criminal intent can only be direct[3], which means that all the participants anticipate the criminal result and make effort to achieve it.

However, the crime components foreseen by Part 4 Article 111 of the CC RF, on the contrary, imply manslaughter of the victim through negligence, which excludes the intention of the guilty to reach the criminal result. Negligence implies that the consequence was not desirable by the guilty, and the common effort was not aimed at it. For this reason, the death of the victim in this case is not the result of the deliberate joint criminal behaviour of two or more persons, which means that the first analysed feature of the crime complicity stated in Article 32 of the CC RF, "deliberate joint participation", is absent in this case.

Some authors think that the emphasis on the deliberate character of the crime committed by the accomplices is not an obstacle to qualify the actions of the guilty under Part 4 Article 111 of the CC RF as joint participation in the crime, because the exception mentioned in Article 27 of the CC RF points out that in general such crimes are considered to be committed deliberately. So, in the opinion of V. Komissarov and I. Dubrovin, as the law classifies such crimes as deliberate, the consequences must be imputed in the executors' guilt, no matter which one of them committed it (especially if the actions of all the guilty are in causal relations with the consequences)[4].

R.A. Sorochkin holds on to a similar opinion: studying the rules of treating crimes with two forms of guilt, he notices that literal interpretation of the criminal law allows participation concerning negligent consequences of a deliberate crime. The occurrence of the negligent grave consequence cannot be taken as an excessive act of the executor. The provisions of Article 27 of the CC RF, being a special norm for

Article 36 of the CC RF, consider the negligence concerning a grave consequence as a part of the intent to commit a crime, recognizing a crime with two form of guilt as deliberate as a whole and are to be applied in case of contradiction with the provisions of Article 36 of the CC RF[5].

However, even though Article 27 of the CC RF underlines the deliberate character of such crimes, to our mind, this circumstance does not allow us to recognize the fact of participation in the crime foreseen by Part 4 Article 111 of the CC RF. As it is obvious from Part 1 Article 24 of the CC RF that determines the forms of guilt, Russian criminal law recognizes only two such forms, which are intent and negligence. Taking this into account, it is impossible to agree with R.S. Sorochkin who supposes that the provisions of Article 27 of the CC RF consider negligence concerning the grave consequence as a *part of the common intent to commit a crime*, as both intent and negligence are independent forms of guilt, the intellectual and will content of which are fully described in Articles 25 and 26 of the CC RF. To our mind, it leaves no more opportunity for one form of guilt to be accepted as a part of the other. The exception formulated in Article 27 of the CC RF that claims that the crimes committed with two forms of guilt are in general regarded as deliberate, is, to our mind, a fiction that the legislative body had to use to unite these crimes under one of the categories (Article 15 of the CC RF), where the form of guilt is one of the classification criteria depending on their character and danger for the society.

Different sources rightfully notice that the structure of Part 4 Article 111 of the CC RF unites two of the deeds with their substantive constituent elements: deliberate infliction of grave injury (the first consequence) and manslaughter (the second consequence)[6]. For this reason negligence does not lose its independent character and is not regarded as a part of intent as it was mistakenly suggested by R.A. Sorochkin.

Therefore it is suggested that the issue of participating in the crime foreseen by Part 4 Article 111 of the CC RF has to be solved in its application to every consequence included into Article 111 of the CC RF, which are deliberate infliction of grave injury on one hand and manslaughter on the other hand.

Considering that the grave consequence that according to the law (Article 27 of the CC RF) foresee stricter punishment and are not included into the intent of the guilty (in the present case, it is the death of the victim) and are committed by negligence, the classification of the actions under Part 4 Article 111 of the CC RF with the feature of its being committed by "a group of persons" will contradict to the second analysed provision of Article 32 of the CC RF that states that complicity is possible only for deliberate crimes.

Therefore, in the analysed example the actions of S. had to be qualified under Item "a" Part 3 Article 111 of the CC RF as deliberate infliction of grave injury committed by a group of persons, and the actions of B., under Part 4 Article 111 of the CC RF without the feature "committed by a group of persons".

---

1 Ширяев А. [A. Shiryaev] Уголовная ответственность за преступления, предусмотренные ч. 4 ст. 111 УК РФ, совершенные группой лиц // Уголовное право. 2011. № 3 // СПС «КонсультантПлюс».

2 Кудрявцев В.Н. [V.N. Kudryavtsev] Общая теория квалификации преступлений. М., 2004. P. 147.

3 Питецкий В.В. [V.V. Pitetskiy] Субъективные признаки соучастия в преступлении // Избранные труды. Красноярск, 2006. P. 113.

4 Комиссаров В., Дубровин И. [V. Komissarov, I. Dubrovin] Проблемы ответственности соисполнителей за совместные преступные действия и их вредные последствия // Уголовное право. 2003. № 1. P. 28.

5 Сорочкин Р.А. [R.A. Sorochkin] Правила квалификации преступлений с двумя формами вины // Российский следователь. 2007. № 24 // СПС «КонсультантПлюс».

6 Борзенков Г. [G. Borzenkov] Как применять ч. 4 ст. 111 УК РФ // Уголовное право. 2009. № 5. P. 15.

References

Борзенков Г. [G. Borzenkov] Как применять ч. 4 ст. 111 УК РФ // Уголовное право. 2009. № 5.

Комиссаров В., Дубровин И. [V. Komissarov, I. Dubrovin] Проблемы ответственности соисполнителей за совместные преступные действия и их вредные последствия // Уголовное право. 2003. № 1.

Кудрявцев В.Н. [V.N. Kudryavtsev] Общая теория квалификации преступлений. М., 2004.

Питецкий В.В. [V.V. Pitetskiy] Субъективные признаки соучастия в преступлении // Избранные труды. Красноярск, 2006.

Сорочкин Р.А. [R.A. Sorochkin] Правила квалификации преступлений с двумя формами вины // Российский следователь. 2007. № 24 // СПС «КонсультантПлюс».

Ширяев А. [A. Shiryaev] Уголовная ответственность за преступления, предусмотренные ч. 4 ст. 111 УК РФ, совершенные группой лиц // Уголовное право. 2011. № 3 // СПС «КонсультантПлюс».

Возможна ли квалификация преступления, предусмотренного ч. 4 ст. 111 УК РФ, по признаку его совершения группой лиц?

А.В. Усс, Д.С. Куренев
Сибирский федеральный университет,
Россия 660041, Красноярск, пр. Свободный, 79

В результате анализа опубликованного конкретного уголовного дела авторы приходят к выводу о невозможности с точки зрения действующего уголовного закона, квалифицировать преступление, предусмотренное ч. 4 ст. 111 УК РФ, по признаку его совершения группой лиц.

Ключевые слова: группа лиц, преступление с двумя формами вины, соисполнительство, соучастие, умышленное причинение тяжкого вреда здоровью, повлекшее по неосторожности смерть потерпевшего.