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Judgment

In the Name of His Majesty the King

No. 10915/2558

Supreme Court

22nd September 2015

Criminal Case

Between	Public Prosecutor, Office of the Attorney General	Prosecutor
	Mrs. Angkhana Neelapaijit, First Joint-Prosecutor	
	Ms. Sudprattana Neelapaijit, Second Joint-Prosecutor	
	Ms. Prathabjit Neelapaijit, Third Joint-Prosecutor	
	Ms. Kobkusol Neelapaijit, Fourth Joint-Prosecutor	
	Ms. Khrongdham Neelapaijit, Fifth Joint-Prosecutor	Joint-Prosecutors
	Pol.Maj.Ngern Thongsuk, the First Defendant	
	Pol.Lt.Col.Sinchai Nimpunyakampong, the Second Defendant	
	Pol.Sgt.Maj.Chaiweng Paduang, the Third Defendant	
	Pol.Sgt.Rundorn Sitthiket, the Fourth Defendant	
Pol.Lt.Col.Chadchai Liamsa-nguan, the Fifth Defendant	Defendants	

Subject: Gang-robbery, Offence against liberty

The Prosecutor and the five Joint-Prosecutors submitted the Dika Appeal against the Judgment of

The Court of Appeal dated 20th July 2010

The Supreme Court accepted on 24th November 2011

The Prosecutor charged that, on 12th March 2004 after midnight, the five Defendants and company participated in the gang-robbery of Mr. Somchai Neelapaijit, the injured person, by taking away his private car with the license plate number PorNgor 6786 Bangkok valuing 600,000 Baht, a Rolex watch with the value of 277,560 Baht, a Mont Blanc pen with the value of 7,000 Baht and a Motorola mobile telephone with the value of 18,900 Baht, totaling amount of 903,460 Baht. For the gang-robbery act, the five Defendants and company committed assault, pushed and pulled Mr. Somchai into their car and forced him to ride away with them, which was an act of coercing Mr. Somchai to commit an act, surrender and unwillingly go with the five Defendants and company and causing him to fear for his life, body, or liberty. The five Defendants and company committed a violent act against Mr. Somchai until he had to enter into the car and drive away with them. Such assault was intended as a means to conveniently commit the theft or take away the property, be delivered of the property, seize the property, conceal the offence and escape from arrest. The five Defendants and company participated in the use of one car as the vehicle to commit the offence, to take away the property and to escape from arrest. Presently, it is not known whether or not Mr. Somchai is alive. Regarding the car with the license plate number PorNgor 6786 Bangkok, which was part of Mr. Somchai's property, the inquiry officials confiscated it as evidence and returned it to Mr. Somchai's representative. The incident occurred in Hua Mak Sub-district, Bangkapi District of Bangkok. The Prosecutor requested that the five Defendants be convicted pursuant to Article 309 Paragraph Two, Article 340, Article 340 *tri* and Article 83 of the Criminal Code and return or pay the values of the watch, the pen and the mobile telephone in the sum of 303,460 Baht to the injured person.

The five Defendants denied the charge.

During the trial, Mr. Somchai's wife, Mrs. Angkhana Neelapaijit, and Mr. Somchai's children including Ms. Sudprattana Neelapaijit, Ms. Prathabjit Neelapaijit, Ms. Kobkusol Neelapaijit and Ms. Khrongdham Neelapaijit, by Mrs. Angkhana, submitted a motion to the Court requesting to join cause with the Public Prosecutor. The Court of First Instance granted its permission and prescribed Mrs. Angkhana as the First Joint-Prosecutor, Ms. Sudprattana as the Second Joint-Prosecutor, Ms. Prathabjit as the Third Joint-Prosecutor, Ms. Kobkusol as the Fourth Joint-Prosecutor and Ms. Khrongdham as the Fifth Joint-Prosecutor.

The Court of First Instance considered and ruled that the First Defendant was guilty under Article 309 Paragraph One and Article 391 of the Criminal Code. The act of the First Defendant was a divisible offence and shall be punished according to Article 309 Paragraph One of the Criminal Code, which is the maximum punishment pursuant to Article 90 of the Criminal Code. The Court sentenced him to imprisonment for a term of three years. All other requests were acquitted and the charge against the Second to fifth Defendants was dismissed.

The Prosecutor, five Joint-Prosecutors and The First Defendant appealed.

The Court of Appeal reversed the Judgment to dismiss the Prosecutor's charge against the First Defendant and to acquit the motion to join cause of the five Joint-Prosecutors. Other than these shall follow the Judgment of the Court of First Instance.

The Prosecutor submitted the Dika Appeal which was endorsed by the Attorney General to appeal on the matter of fact.

The five Joint-Prosecutors submitted the Dika Appeal which was permitted to appeal on the matter of fact by the judges who had adjudicated and signed on the Judgment of the Court of First Instance.

The Supreme Court has examined the file and held a consultative meeting. The fact undisputed by the two parties at the Dika stage may be preliminarily established that Mr. Somchai Neelapaijit was a lawyer and the Chairman of the Muslim Lawyers Club and his office was located at House No. 24/157 Soi Ratchadapisek 32 or Soi Ahpapirom, Ratchadapisek Road, Jom Pol Sub-district, Chatuchak District, Bangkok. Prior to the incident, Mr. Somchai had assisted alleged offenders and represented the defendants in several national security-related cases. On the date of the incident, 12th March 2004 at 20.30 hrs., Mr. Somchai alone drove his car, green Honda Civic with the license plate number PorNgor 6786 Bangkok, from Chaleena Hotel in Soi Lad Prao 122 of Wang Thong Lang Sub-district, Wang Thong Lang District, Bangkok, heading to spend the night at the house of his friend's brother in Suan Son Village which was about 3 kilometers away. On the way when Mr. Somchai was parking his car on the roadside in front of Mae La Pla Phao Restaurant, Ramkhamhang Branch, several male perpetrators participated in violently forcing him to enter into their car and Mr. Somchai has been missing up to now. Later on, at daytime of 16th March 2004, Mr. Somchai's car was found parked on Kampaeng Petch 2 Road behind

the Bangkok Bus Terminal (Mor Chit 2) in Lad Yao Sub-district, Chatuchak District, Bangkok, as shown in photo exhibit Jor.89, and the five Defendants were alleged to have participated in the commission of the offence against Mr. Somchai.

In this case, the first matter of the Dika of the five Joint-Prosecutors that requires adjudication is whether or not the First Joint-Prosecutor, who is the legitimate wife of Mr. Somchai, and the Second to the Fifth Joint-Prosecutors, who are his legitimate children, are entitled to file a motion to join cause with the Prosecutor. The Court finds that, as Mr. Somchai is the injured person directly injured by the commission of the offence by the perpetrators, he has the power to file a criminal case or file a motion to join cause with the Public Prosecutor pursuant to Articles 28 and 30 of the Criminal Procedure Code and if Mr. Somchai is unable to take such action his ascendant, descendant and wife shall have the cause of action to act on his behalf. Nevertheless, the law provides certain important criteria in Article 5 (2) of the Criminal Procedure Code that an ascendant, a descendant or a spouse may act on behalf of the injured person specifically in respect of the criminal offence which causes the injured person to death or injury to the extent that he / she is unable to act by himself / herself. In relation to this matter and upon consideration of the Prosecutor's charge, it is established that the Prosecutor accused the five Defendants and company of participating in the commission of gang-robbery against Mr. Somchai and the commission of assault by pushing and pulling Mr. Somchai into the car of the five Defendants and company which coerced Mr. Somchai to unwillingly enter into the car of the five Defendants and company by causing him the fear of danger to life, body and liberty. It is not currently known whether or not Mr. Somchai is alive. Although the charge demonstrated that the five Defendants and company participated in the act of assault against Mr. Somchai, the Prosecutor however did not confirm in the charge that Mr. Somchai is dead. Accordingly, it may not be held that Mr. Somchai was assaulted to death as defined by the law. Furthermore, it was not established by the Prosecutor's charge that the participatory commission of assault by the five Defendants and company by pushing and pulling Mr. Somchai into the car of the five Defendants and company caused Mr. Somchai to be injured to the extent of inability to act by himself. In addition, despite that in 2009 the Bangkok Civil Court adjudged Mr. Somchai to have disappeared which is deemed to be dead according to Article 62 of the Civil and Commercial Code, it is a legal death and not a result of the assault according to the fact. When the wife and the descendants of Mr. Somchai respectively filed a motion to join cause with the Prosecutor in 2004 and 2005, it was not established, factually, that Mr. Somchai was

assaulted to death or injury to the extent of inability to act by himself. Moreover, the Prosecutor's statement to the Court of First Instance as shown in the trial record dated 12th July 2004 admitted that Mrs. Angkhana, Mr. Somchai's wife, was not an injured person entitled to join cause with the Prosecutor. As a result, the Judgment of the Court of Appeal that acquitted the motions of Mrs. Angkhana, the First Joint-Prosecutor, and Mr. Somchai's children, the Second to the Fifth Joint-Prosecutors, was rightful and legitimate under the criteria prescribed in Article 5 (2) of the Criminal Procedure Code. The Dika Appeal of the five Joint-Prosecutors in respect of this matter is therefore inadmissible and the five Joint-Prosecutors had no right to file the motion to join cause with the Prosecutor from the first instance. The five Joint-Prosecutors were not entitled to submit the appeal and the Dika Appeal. The Supreme Court thus does not necessarily consider other matters in the Dika Appeal of the five Joint-Prosecutors.

Another matter for consideration according to the Dika Appeal of the Prosecutor is whether or not the five Defendants committed the offence as charged. In this regard, the Prosecutor proved the guilt of the five Defendants by bringing three major types of evidence to the Court. First, the Prosecutor attested the motive for committing the offence. Second, the Prosecutor produced both eye-witnesses and circumstantial witness to testify about the behaviors of the perpetrators. Third, the Prosecutor presented the records and the coordinates of the mobile telephone usages of the five Defendants as the evidence to support the charge. The Supreme Court shall orderly adjudicate the evidence produced by the Prosecutor as follows:

First, the Prosecutor attested that, during 17th – 23rd February 2004, police officers including the First Defendant had arrested 5 persons namely Mr. Makata Harong, Mr. Sukri Maming, Mr. Abdulah Arbukaree, Mr. Manaseh Mamah, and Mr. Sudeerueman Maleh on the charges of committing an offence against national security and participating in the commission of treason, separatism, school arson and weapons robbery from the 4th Armed Forces Development Battalion in Joh Ay Rong District, Narathiwat Province, according to the copy of the arrest record, exhibit Jor.129. Afterwards, the police officers brought the 5 alleged offenders for detention at the Tanyong Provincial Police Station and forced them to confess by various means of assault. The First Defendant was one of the officers assaulting the offenders while the Fifth Defendant was appointed to be an investigating official in the case according to the Order of the Royal Thai Police, exhibit Jor.128. Later when the police officers brought the 5 offenders for detention at the Crime Suppression Division and the Bang

Khen Police School in Bangkok, the First and the Fifth Defendants who were police officers under the Crime Suppression Division verbally threatened some offenders to not reverse their statements. Mr. Somchai, in his capacity of a lawyer and Chairman of the Muslim Lawyers Club, became aware of the assault and threat against the offenders so he went to visit and inquire the fact from them at the two detention places. Having heard the information and considered the bodies of the offenders, Mr. Somchai believed that they had been assaulted and threatened by police officers to coerce them to confess. Mr. Somchai therefore rendered his assistance by preparing petitions in pursuit of justice for the offenders to sign and sent to several concerned agencies including the Minister of Interior and the Royal Thai Police Commissioner-General, according to the copy of the petitions, exhibits Jor.3 and Jor.6 respectively. Such action of Mr. Somchai inevitably caused the First and the Fifth Defendants discontent leading them to contact the Second to Fourth Defendants, who used to be subordinates of the Fifth Defendant, to participate in the commission of the violent act against Mr. Somchai as in this case. The Court finds that, while the above attestation of the Prosecutor by having Mr. Sukri, Mr. Abdulah, Mr. Manaseh, and Mr. Sudeerueman, who were alleged offenders in the offence against national security, testify in confirmation that the First Defendant had assaulted and coerced the witnesses to confess and the Fifth Defendant had verbally threatened Mr. Sukri, the fact cannot be established from the examination of the contents in the copy of the petitions, exhibits Jor.3 and Jor.6 that Mr. Somchai, who prepared the two petitions, specified the names of the First and the Fifth Defendants as the police officers assaulting and threatening the offenders. Apart from that, if thoroughly reviewing the two petitions, it is found that the First and the Fifth Defendants, who did not know and were not acquainted with Mr. Somchai, could not be aware that Mr. Somchai was the person who had prepared the petitions for the offenders since he had not signed the petitions. Besides, the First and the Fifth Defendants were not subjected to any effect on their official positions as a result of the action of Mr. Somchai. They were not inquired or disciplinarily punished and were not criminally prosecuted on the ground of assaulting and threatening Mr. Sukri and company. Although Mr. Somchai never had personal conflicts with anybody as stated in the Prosecutor's Dika Appeal, the evidence of the Prosecutor as examined by the Court does not indicate that Mr. Somchai's action had constituted damage or negative consequence to the First and the Fifth Defendants. As such, the matter attested by the Prosecutor that the First and the Fifth Defendants had the motive to get rid of Mr. Somchai by participating with the Second to Fourth Defendants to commit such offence is the vague allegation with no ground to support its credibility.

Second, in relation to the Prosecutor's eye-witnesses, Ms. Chaweewan Yuthahan, Mr. Adirek Yimwadee, Ms. Kamolthip Promwee, Ms. Sunand Khongkhem and Mr. Montree Khaokhong testified that, on the date and at the time of the incident, the five witnesses were walking on the pathways of Ramkhamhang Road to their houses and when they passed the Mae La Pla Phao Restaurant, Ramkhamhang Branch, and were in front of house number 2367 which was the residence of the owner of the Bunrod Brewery Company, Limited as shown in the brief map of the crime scene, exhibits Jor.49 and Jor.53, they saw 2 cars parked close to the pathways next to each other with about 1 foot distance. The first car was green Honda Civic and the back car was bigger than the first car and of dark color and filter glass with emergency light on. When Ms. Chaweewan walked by the back car to the front car she saw Mr. Somchai, according to the copy of the photograph on exhibit Jor.25, walking from the front car to the back car. The five witnesses did not pay attention as they did not think that there would be a serious incident. Nevertheless, when the five witnesses walked pass the two cars for 30 – 50 meters away they heard a man's voice crying for release so they turned around and saw 4 – 5 men standing near the back car. One of the perpetrators, who was big and tall with a bald front head wearing a black jacket over a white T-shirt, hand-pushed Mr. Somchai into the back car through the left rear door. Mr. Somchai apparently resisted but was finally pushed into the car thereafter the perpetrators shut the back car's door. While one perpetrator drove Mr. Somchai's car towards Lum Salee Intersection, the back car made a U-turn in front of Hua Mak Police Station. A few days later, the five witnesses learned from newspapers and television that Mr. Somchai was a lawyer who had been abducted from the crime scene. The five witnesses believed that the witnessed incident on that night should be related to Mr. Somchai and therefore they reported to police officers. Then, police officers took the five witnesses for questioning whereby Ms. Chaweewan and Mr. Direk gave statements as shown on the documentary evidence, exhibits Jor.48 and Jor.54 respectively, that the perpetrator who had pushed Mr. Somchai looked similar to the First Defendant. In addition, the Prosecutor produced another witness named Mr. Sien Iamsam-ang who was a security guard at house number 2367 to testify that on the date and at the time of the incident while he was on duty he heard unusual noise of the car brake which could be due to the car crash. The witness thus stood up to watch and saw two cars parked in front of the house on his guard. There were 3 – 4 men walking around the back car. Ten minutes later, the witness heard a woman's scream so he stood up to watch again and saw the left rear door of the back car open with some people pushing and pulling. Shortly after, the two cars left the scene heading towards Lum Salee Intersection. Later on, the police came and questioned him

where at the inquiry stage the witness gave a statement to the inquiry officials that the man who had pushed another man looked alike the First Defendant and the man who had driven the front car away looked similar to the Second Defendant. The Court considers that, although the 6 Prosecutor's witnesses are eye-witnesses who saw the incident, the thorough review of the witnesses' testimonies has found that all the witnesses were unable to see or remember the faces of the perpetrators and unable to confirm that the five Defendants were the joint perpetrators. The reason for them to not able to recognize the perpetrators is likely that the witnesses only saw their sides from the far distance at night time and the perpetrators quickly committed the offence in about 5 seconds as affirmed by the Prosecutor's witnesses including Ms. Chaweewan, Mr. Direk and Ms. Kamolthip. Furthermore, the witnesses did not pay attention for they did not anticipate the incident to occur and the witnesses had never seen or known the perpetrators before. The facts established by the testimonies of the Proecutor's eye-witnesses are justified and credible and do not manifest in a manner to favor or help the five Defendants to be acquitted. According to the Prosecutor's Dika Ms. Chaweewan gave a detailed statement at the inquiry stage by clearly describing the identification and the dress of the perpetrators and also stated when looking at the photograph of the First Defendant that he looked similar to the perpatrator who had pushed Mr. Somchai. As regards Mr. Direk, he stated after looking at photos and watching the video of the search of the First Defendant's house that the First Defendant was like the perpetrator who had pushed Mr. Somchai. The statements at the inquiry stage of the two witnesses as shown in the records of statements, documentary evidence exhibit Jor.48 and Jor.54, were therefore more credible than the court testimonies and could establish that the First Defendant was one perpetrator. In this regard, the Court holds that the court testimonies of the witnesses are considered the best evidence or the primary evidence owing to the fact that the evidence were taken openly before the Court and all parties. Additionally, the parties were provided the opportunity to fully find and prove facts from the witnesses in all aspects. The witnesses' statements at the inquiry stage are considered hearsay or secondary evidence since they were given in the absence of the Defendants whereby the Defendants did not have the chance to hear or argue. Regarding the statement at the inquiry stage of Ms. Chaweewan according to the record, exhibit Jor.48, while the fact reveals that Ms. Chaweewan gave statements for 3 times and each time mentioned the First Defendant as appeared in the Prosecutor's Dika, Ms. Chaweewan only stated that the perpetrator who had pushed Mr. Somchai had a figure similar to the First Defendant. This is not a strong confirmation that the first Defendant was the perpetrator seen by the witness. Besides, Ms. Chaweewan testified in the Court that the

inquiry officials had shown to her only one photograph of the First Defendant, according to the copy on exhibit Jor.47. As such, that Ms. Chaweewan pointing out the photograph of the First Defendant and stating that the First Defendant looked alike the perpetrator who had pushed Mr. Somchai hence implies the manner of inducing and leading by the inquiry officials and Ms. Chaweewan's statement related to the First Defendant is apparently doubtful and may not be trustfully admitted as the truth. Concerning the statement given at the inquiry stage of Mr. Direk according to the documentary evidence exhibit Jor.54, other than being contrary to his court testimony that he was unable to remember the perpetrator as the incident had occurred so fast and in the dark and he did not pay attention, the witness further stated that he had made several statements to the inquiry officials which were inconsistent depending on their guidance. Therefore, the statement at the inquiry stage of Mr. Direk that implicated the First Defendant also lacks credibility as well as that of Ms. Chaweewan. Since Mr. Sien was another Prosecutor's witness who provided fact about the First Defendant at the inquiry stage, it is deemed expedient to adjudicate it at the same time concerning the admissible weight of the statement at the inquiry stage of Mr. Sien according to the documentary evidence exhibit Lor.88. In this regard, the fact has been established that at the inquiry stage Mr. Sien gave his statement to the inquiry officials twice. At first, he stated that the perpetrator pushing another man into the car was a man of muscular figure, about 170 centimeters tall, white skin, short hair in back and long on top, and over 40 years old but he could not remember the face. On the second time, Mr. Sien watched the video on the search of the First Defendant's house and stated that the perpetrator pushing another man into the car had a big figure like the First Defendant but he did not see the face. The Court finds that Mr. Sien's two statements had the same content as that of Ms. Chaweewan. Specifically, the witness did not strongly confirm that the First Defendant was the perpetrator seen by the witness and at the trial stage Mr. Sien testified only that he had seen 3 – 4 perpetrators walking near the back car before the pushing and pulling without mentioning their appearances. Mr. Sien's statement at the inquiry stage thus may not be admitted to the detriment of the First Defendant. While the Prosecutor further appealed in the Dika that the statements of the witnesses including Ms. Chaweewan, Mr. Direk and Mr. Sien were of sufficient weight to establish that the Second to the Fourth Defendants were present in the group of perpetrators, the Court considers that the statements of the three witnesses as referred to by the Prosecutor were the statements given by two witnesses at the inquiry stage which were inconsistent with the facts contained in their court testimonies. Additionally, having reviewed the statements at the inquiry stage of Ms. Chaweewan according to the

documentary evidence, exhibit Jor.48, the Court is of the opinion that the witness provided confusing and inadmissibly inconsistent statements. In particular, the witness firstly stated on 31st March 2004 that she could not remember the description of other perpetrators than the one who had pushed Mr. Somchai while secondly on 18th April 2004 the witness mentioned that the perpetrator who had driven Mr. Somchai's car away looked like the Fourth Defendant. On 21st April 2004, the witness retracted her statement to be that the perpetrator who had driven Mr. Somchai's car had similar hair style and figure as the Second Defendant. Since the statements of Ms. Chaweewan in themselves contradicted and were dubious reflecting her uncertainty, Ms. Chaweewan's statements related to the Second and the Fourth Defendants hence may not be admissible. With regard to the statement of Mr. Direk according to the documentary evidence, exhibit Jor.54, the fact appears that the witness gave three statements. In the first statement given on 31st March 2004, the witness said that he was not certain about the description of other perpetrators than the one who had pushed Mr. Somchai. The second statement was given on 12th April 2004, after the witness had seen the photographs of the Second to the Fourth Defendants, that he was unable to remember their faces. Thirdly on 23rd April 2004, the witness gave a statement after watching the video on the search of the houses of the Second to the Fourth Defendants that the Second to the Fourth Defendants were the group of persons being present with the First Defendant at the crime scene and the Second Defendant drove Mr. Somchai's car away. Based on the above, the Court finds that in the first two statements the witness did not provide the fact that the Second to the Fourth Defendants had been present at the crime scene but the witness retracted his third statement that he could remember, without any supporting reason, the Second to the Fourth Defendants being present at the crime scene. It is considered suspicious. Furthermore, the witness testified in the court in response to the cross-examination by the defence lawyer that on 12th April 2004 he had not given a statement in accordance with the inquiry officials' expectation and therefore he was called for the third inquiry. In the light of such court testimony of Mr. Direk who was the Prosecutor's witness, it shall be regarded as evidence to indicate that in fact the witness could not remember the perpetrators and did not see the Second to the Fourth Defendants being present at the crime scene, with reference to his court testimony. Mr. Direk's statements at the inquiry stage concerning the Second to the Fourth Defendants thus lack sufficient weight to be admitted. Further is the statement of Mr. Sien according to the documentary evidence, exhibit Lor.88, whereby the fact has been established that the witness gave two statements. In the first statement given on 28th March 2004, the witness only remembered the description of the perpetrator who had pushed Mr. Somchai and

could not remember the others. However, in the second statement on 27th April 2004, he said after watching the video on the search of the houses of the Second to the Fourth Defendants that the perpetrator who had driven Mr. Somchai's car away looked like the Second Defendant. In this regard, the Court considers that, at the trial stage, Mr. Sien did not testify about the description of the perpetrator who had driven Mr. Somchai's car away which was clearly in contrast with his statement at the inquiry stage. Despite the reason given in his statement at the inquiry stage that the Second Defendant had a significant appearance easy to remember as white Chinese, such reason is not reasonable for the appearance of white Chinese can generally be found and is not the extraordinary appearance specifically referred to the Second Defendant. Mr. Sien's statement at the inquiry stage is therefore of insufficient weight to be admitted that the Second Defendant was in the group of perpetrators. With regard to the Fifth Defendant, not only that the Prosecutor's six eye-witnesses did not testify about him but also he never was implicated by these eye-witnesses in any way. Next, in relation to the Prosecutor's circumstantial witness, Pol.Maj.Tinnakorn Kesornbua who was an investigator in this case, he testified that following Mr. Somchai's incident his commander had ordered for reinforcement and called investigating officials of the Metropolitan Police Bureau to assist in tracing the perpetrators. The officials obtained the information that Pol.Lt.Col.Charnchai Likhithkhanthasorn, an inspector of the Crime Suppression Division, had told Pol.Col.Thawee Sodsong who was his former commander that there was a group of persons knowing Pol.Lt.Col.Charnchai gathering at the Crime Suppression Division. Pol.Lt.Col.Charnchai asked these persons about the purpose of the gathering and was told that the group would abduct a lawyer of bandits. This information was reported by Pol.Lt.Col.Wannapong Kotcharak, a police officer of the Crime Suppression Division, to Pol.Maj.Gen.Krisada Phankhongchuen, Deputy Commissioner of the Metropolitan Police Bureau. Additionally, Pol.Col.Weerasak Meenawanich, former Deputy Commissioner of the Metropolitan Police Bureau Division 4, submitted a list of 14 names and mobile telephone numbers of the Crime Suppression policemen who were likely to be involved with the disappearance of Mr. Somchai, including the First, the Third and the Fifth Defendants, to Pol.Maj.Gen.Krisada. Afterwards, Pol.Maj.Gen.Krisada ordered the witness to participate in the investigation by reading the data of the mobile telephone usages and analyzing the connection of the mobile telephone usages by these suspects. Concerning this matter, the Court views that the testimony of the Prosecutor's witness, which mentioned a group of persons gathering at the Crime Suppression Division to commit a violent act against Mr. Somchai, contained no confirmation that the five Defendants were present in the group and

the Prosecutor did not produce Pol.Lt.Col.Charnchai, Pol.Lt.Col. Wannapong, and Pol.Maj.Gen.Krisada to testify in support of the credibility of Pol.Maj.Tinnakorn's testimony. The circumstantial witness in this respect therefore is of no weight to be admissible. Owing to the failure of the Prosecutor's eye-witnesses and circumstantial witness to prove guilt of the five Defendants, the Court thus has to further consider the next evidence of the Prosecutor.

Third, a matter requiring adjudication is that whether or not the data of the mobile telephone usages and the coordinates of the mobile telephone usages of the five Defendants can be admitted as evidence to punish them and to what degree. The fact has been established by the examination of the two parties that at the time of the incident all five Defendants were policemen. The First Defendant served at the Crime Suppression Division and used the mobile phone numbers 0-1337-2534 and 0-6382-1102, whereby the latter was registered with the name of Mr. Jaturong Pliennikorn. The Second Defendant was an investigation inspector at the Crime Suppression Division and used the mobile phone number 0-1889-1479. The Third Defendant was a squad leader at the Tourism Police Division and used the mobile phone number 0-1315-4809. The Fourth Defendant was a squad leader at the Crime Suppression Division and used the mobile phone number 0-1684-9265. The Fifth Defendant was the Sub-Division 4 Deputy Superintendent of the Crime Suppression Division and used the mobile phone numbers 0-26567-3838 and 0-1378-9634, whereby the latter was registered with the name of Mr. Pichet Ardhthong. Regarding the data of the mobile telephone usages and the coordinates of the mobile telephone usages of the five Defendants which mean the locations or the premises where the five Defendants used their mobile telephones, the Prosecutor attested with the emphasis on 12th March 2004, the date of the incident. Based on the testimony of Pol.Maj.Tinnakorn, the witness, after he had been ordered to take part in the investigation he found that on the date of the incident the five Defendants had used their mobile telephones to contact one another constantly from around 7.00 hrs. in the morning until the time of the incident during 20.30 – 21.00 hrs. When the witness analyzed by comparing the data and the coordinates of the mobile telephone usages of the five Defendants against the data of the mobile telephone usages of Mr. Somchai and several locations whereto Mr. Somchai had been on business, it was apparent that the coordinates of the mobile telephone usages of the five Defendants were in the manner of stalking Mr. Somchai's movement, as shown on the chart of mobile telephone usages as exhibit Jor.110. Such chart was drawn up by the witness in conformity with the data of the mobile telephone usages and the coordinates of the mobile telephone usages, exhibits Jor.111, Jor.114 and Jor.115, with

the data on exhibit Jor.111 was the truly accurate data which Pol.Lt.Gen.Bunyarith Rattanaporn, Deputy Commissioner-General, had coordinated with and obtained from the Advanced Info Service Company, Limited (Public Organization). Concerning the data on exhibits Jor.114 and Jor.115, the two documents were summoned by the inquiry officials from the Advanced Info Service Company, Limited (Public Organization) and the Digital Phone Company, Limited, respectively, and certified by Mr. Vissarut Paratthakorn, a legal expert of the Advanced Info Service Company, Limited (Public Organization). Upon receipt of the data and the coordinates of the mobile telephone usages of the involved persons, the witness, Pol.Lt.Gen.Bunyarith, Pol.Maj.Gen.Krisada and Pol.Maj.Gen.Rewat Tannanond, who supervised the investigation, jointly drew up a chart demonstrating the mobile telephone usages, exhibit Jor.110, which was reviewed and certified by Mr. Surajit Thipprom, a special expert of the Telephone Organization of Thailand, that the calculation of the coordinates of the mobile telephone usages of the five Defendants as contained in the chart drawn up by the witness was theoretically accurate. It thus led to believe that the five Defendants had conspired in the planning and commission of a violent act against Mr. Somchai on the date of the incident. On this basis, the Court views that neither the data of the mobile telephone usages of the five Defendants on the date of the incident nor the coordinates of the mobile telephone usages of the five Defendants on the date of the incident were the information recorded by Pol.Maj.Tinnakorn, the Prosecutor's witness, or that the usages of mobile telephone by the five Defendants were not directly witnessed by Pol.Maj.Tinnakorn. They were the information that Pol.Maj.Tinnakorn had received from other persons or agencies. As a result, the documentary evidence of the Prosecutor in respect of this matter was merely the hearsay evidence whereof the Prosecutor bore the burden of proof to clarify that such documentary evidence was the evidence showing genuinely accurate data and contained weight sufficient to be deemed credible and admissible. Nevertheless, upon consideration of the data of the mobile telephone usages and the coordinates of the mobile telephone usages, exhibit Jor.111, which were claimed by Pol.Maj.Tinnakorn to be the truly accurate information obtained by Pol.Lt.Gen.Bunyarith from the Advanced Info Service Company, Limited (Public Organization), the Court finds that the concerned document was not the original but instead it was a photocopied document without certification of accuracy by any staff of the Advanced Info Service Company, Limited (Public Organization). Furthermore, the Prosecutor failed to adduce staff of this company and Pol.Lt.Gen.Bunyarith who had obtained the document from it to testify in confirmation of the accuracy of the document and the information contained therein. This documentary evidence of the Prosecutor is therefore

doubtful and defective. For the data of the mobile telephone usages and the coordinates of the mobile telephone usages, exhibits Jor.114 and Jor.115, the Court is of the opinion that although the two documents were the copies certified by Mr. Vissarut, a legal expert of the Advanced Info Service Company, Limited (Public Organization), Mr. Vissarut who was the Prosecutor's witness testified and admitted that he had not involved with the arrangement of such documents and did not know who had arranged for these documents. The witness further testified that he had never seen the original documents and did not know whether the information contained in the copies of the documents were truly accurate and consistent with the originals or not. Since exhibit Jor.111 was not a certified copy and exhibits Jor.114 and Jor.115 were the copies certified by the person who had not involved with their arrangement and had no knowledge or expertise regarding the data and the coordinate of mobile telephone usage, exhibits Jor.111, Jor.114 and Jor.115 as produced to the Court by the Prosecutor thus are considered incomplete documentary evidence pursuant to the criteria prescribed in Article 238 Paragraph One of the Criminal Procedure Code. They may not be admitted as evidence as raised in the Dika Appeal of the Prosecutor and accordingly the chart demonstrating the mobile telephone usages, exhibit Jor.110, drawn up by Pol.Maj.Tinnakorn on the basis of the information contained in the three documents is regarded the evidence of no weight and credibility. Concerning the Prosecutor's further Dika that the data of the mobile telephone usages, exhibits Jor.58 to Jor.62, which Pol.Maj.Gen.Rewat had sought cooperation from the mobile service providing company was of sufficient weight to establish that the First to the Third Defendants were the joint perpetrators, and on the date of the incident the five Defendants had made 75 calls to one another by their mobile telephones which were unusually excessive and suspicious that the five Defendants were stalking Mr. Somchai, the Court sees that the data of the mobile telephone usages, exhibits Jor.58 to Jor.62, were the photocopied documents not certified by anybody and no staff of the company who had arranged for such documents or was aware of the contents of the documents testifying as a witness. Hence, they may not be admitted as evidence based on the abovementioned reason. In relation to the claim by the Prosecutor that as the five Defendants had used their mobile telephones to continually call one another for 75 times on the date of the incident it was thus reasonable to believe that the five Defendants had participated in the commission of a violent act, the Court is of the opinion that the Prosecutor did not have any witness who had seen or confirmed that on the date of the incident the five Defendants had jointly stalked Mr. Somchai consecutively from the morning until the time of the incident. Besides, a mobile telephone is something that can be easily used by any person who is not the owner and the

Prosecutor has no evidence to prove that the conversations of the mobile telephone users were part of the conspiracy to commit the offence as charged. The Prosecutor's claim is thus vague and may not be admitted as the firm truth. Apart from the adduction by the Prosecutor of the three major matters as mentioned above which cannot prove guilt of the five Defendants, the attestation by the Prosecutor concerning small matters does not indicate that the five Defendants were involved with the robbery and the disappearance of Mr. Somchai, as seen that police officers did not find Mr. Somchai's property in the possession of the five Defendants or the five Defendants did not have any knowledge or involvement with it. In addition, the examination of Mr. Somchai's car did not find any fingerprint, palm-print, hair, fur and blood of the five Defendants stained or fell inside Mr. Somchai's car. The Prosecutor's evidence as orderly adjudicated above therefore lack admissible weight to punish the five Defendants. The Supreme Court hereby upholds the Judgment of the Court of Appeal that dismissed the charge against the five Defendants and acquitted the motion of the Five Joint-Prosecutors to join cause with the Prosecutor. The Dika Appeal of the Prosecutor and the Joint-Prosecutors is inadmissible.

Uphold the Judgment.

Mr. Panuwat Supaphan

Mr. Somyos Khemthong

Mr. Somsak Khunlerdkij

Remarks: The President of the Supreme Court's letter of verification is attached.

Decided Case No.10915/2558

The Supreme Court

4th November 2015

I hereby verify that this case was adjudged by Mr. Somsak Khunlerdkij based on a consultative meeting of a quorum which agreed upon, as shown by the signatures in the draft Judgment. However, since Mr. Somsak Khunlerdkij vacated the office prior to the signing of this Judgment, it is recorded thereof as evidence.

Mr. Weerapol Tungsuwan

President of the Supreme Court