



UNOFFICIAL TRANSLATION BY MWRN's JUSTICE: KOH TAO MURDER CASE FUNDRAISER

Koh Tao Case Verdict

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For Court Use

(31)

Court Verdict



Black number case: 2040 / 2557

Red number case: / 2557

In the name of His Majesty the King

Koh Samui Provincial Court

Dated 24th of December B.E. 2558 (2015)

Criminal Case

Between

Public Prosecutor of Koh Samui Province
the Plaintiff

and

Mr. Zaw Lin or Zoren, no surname the First Defendant
Mr. Wai Phyu or Win, no surname the Second Defendant

Subject: Offences of murder, rape, theft, Offences against the Immigration Act

The Plaintiff claims that both Defendants have jointly violated the law by committing several offences, namely; during early B.E. 2554 (2011) until mid B.E. 2555 (2012) of unspecified date and time, the First Defendant, a foreigner of Myanmar nationality, illegally entered the Kingdom of Thailand via an unspecified sub-district and district of Ranong province, which was not through the prescribed channels, immigrations,

/ designated areas, ports, stations ...

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designated areas, ports, stations and channels for persons to enter or exit the Kingdom, which was not permitted by the officers on duty, and did not possess a valid passport or any other valid documents equivalent to a passport, which violates the law. After the First Defendant has illegally entered the Kingdom of Thailand, the First Defendant has continuously resided in the Kingdom of Thailand at the Workers' Campsite at Baan Chaloke, Koh Tao sub-district, Koh Phangan district, Surat Thani province, up until the night hours before noon of 3rd October B.E. 2557 (2014), without due permission from the officers, which violates the law. The incident occurred at an unspecified sub-district and district of Ranong province and it relates to Koh Tao sub-district, Koh Phangan district, Surat Thani province. During mid B.E. 2555 (2012) of unspecified date and time, the Second Defendant, a foreigner of Myanmar nationality, illegally entered the Kingdom of Thailand via an unspecified sub-district and district of Ranong province, which was not through the prescribed channels, immigrations, designated areas, ports, stations and channels for persons to enter or exit the Kingdom, which was not permitted by the officers on duty, and did not possess a valid passport or any other valid documents equivalent to a passport, which violates the law.

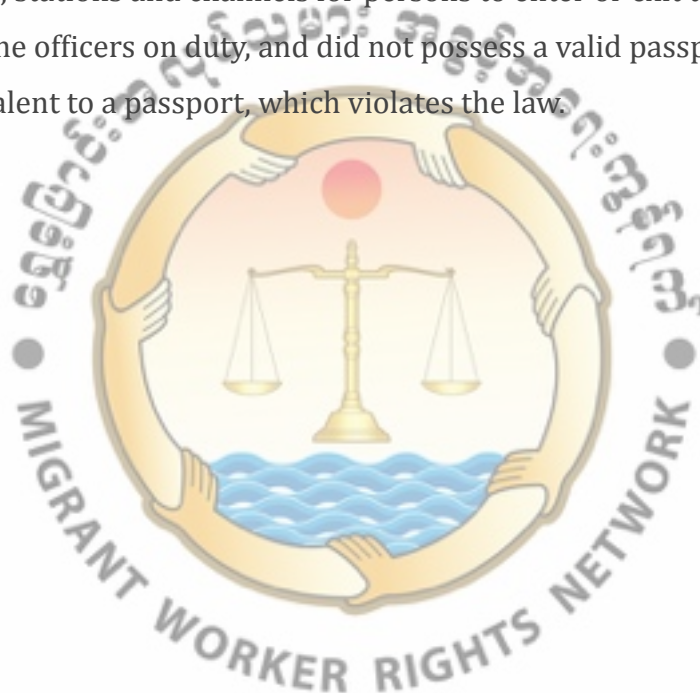
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After the Second Defendant illegally entered the Kingdom of Thailand, the Second Defendant has continuously resided in the Kingdom of Thailand at the Workers' Campsite at Baan Chaloke, Koh Tao sub-district, Koh Phangan district, Surat Thani province up until the night hours before noon of 1st October B.E. 2557 (2014), without due permission from the officers, which violates the law. The incident occurred at an unspecified sub-district and district of Ranong province and relates to Koh Tao sub-district, Koh Phangan district, Surat Thani province. Subsequently, during the night hours before noon of 15th September B.E. 2557

(2014), both Defendants intended to murder Mr. David William Miller by jointly using one hoe as a weapon to beat, strike and harm the life of Mr. David numerous times. The hoe hit Mr. David on the head and the face, causing death to Mr. David. And both Defendants jointly raped Ms. Hannah Victoria Witheridge by jointly harming her by force, grabbing, holding down the body, punching the face and the body, and used the hoe as a weapon to harm the body of Ms. Hannah, causing her to fall unconscious and be unable to defend herself. Then, both Defendants took turns to

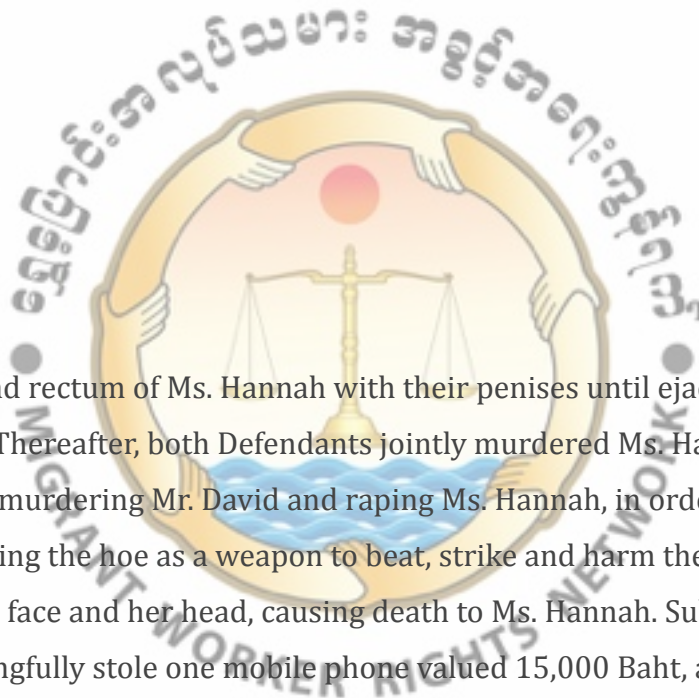
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penetrate the vagina and rectum of Ms. Hannah with their penises until ejaculation, which amounts to gang rape. Thereafter, both Defendants jointly murdered Ms. Hannah to conceal other offences, namely murdering Mr. David and raping Ms. Hannah, in order to avoid penalty for such offences, by using the hoe as a weapon to beat, strike and harm the life of Ms. Hannah numerous times on her face and her head, causing death to Ms. Hannah. Subsequently, the Second Defendant wrongfully stole one mobile phone valued 15,000 Baht, and a pair of sunglasses valued 1,000 Baht, both belonging to Mr. David. The incident occurred at Koh Tao sub-district, Koh Phangan district, Surat Thani province. On 3rd October B.E. 2557 (2014), police officers arrested both Defendants on arrest warrants, and seized one mobile phone and one hoe as evidence. The mobile phone and the hoe were then held in the custody of the officers. The Plaintiff pleads the Court to punish the Defendants according to sections 83, 91, 276, 288, 289, 334, 335 of the Penal Code, and sections 4, 5, 7, 11, 12, 18, 58, 62, 81 of the Immigration Act B.E. 2522 (1979), that the Second Defendant return or reimburse the value of one mobile phone worth 15,000 Baht and one pair of sunglasses worth 1,000 Baht, which was

/ not yet ...

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not yet returned to the relatives of Mr. David - the Deceased, and to return the mobile phone and return the hoe to the original owner.

Both Defendants pleaded not guilty. When the witness for the Plaintiff was examined, the Second Defendant nonetheless admitted to the charge of illegally entering the Kingdom not via channels and time as prescribed by law, illegally entering the Kingdom without a valid passport and without due permission and illegally entering the Kingdom not through due immigration process, not completing the forms as required by law, and the charge of being a foreigner residing in the Kingdom without due permission.

The Plaintiff presented his case for the Court's consideration that, on 15th September B.E. 2557 (2014), at approximately 6.00 hrs, Pol. Lieut. Chakraphan Kaewkao, Investigator on duty at Koh Phangan Provincial Police Station, Surat Thani province, being in charge as the Head of Civil Service Bureau at Koh Tao sub-district, Koh Phangan district, was informed by Mr. Montriwat Tuwichian that the bodies of two foreigners had been found near the reef on Sairee Beach, located at Moo 1 Koh Tao sub-district. The officer went to inspect the reported scene and found the bodies of two foreigners near the reef, in the vicinity of the

/ statue ...

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statue of King Rama V. The officer verified information with the foreign friends, and identified that the 2 Deceased were Mr. David William Miller, the First Deceased and Ms. Hannah Victoria Witheridge, the Second Deceased. Both of the Deceased are British nationals who traveled to Koh Tao during the period before the incident according to their passports, the Evidence Document marked as Jor. 64. The body of the First Deceased was found naked, floating in the sea near the beach. Approximately 12 metres away to the south, the body of the Second Deceased was found with her shirt and skirt pulled to waist level. There were also signs of sexual violation. The heads and faces of both Deceased had numerous serious wounds caused by being struck by a hard and solid object. There were significant amounts of bloodstains and human flesh spread throughout the reef on which the body of the Second Deceased was found, as well as a large pool of blood on the sand. And there was a pile of clothes, believed to be of both the Deceased, placed on the reef at the crime scene. According to the Report of Crime Scene Investigation, the Evidence Document marked as Jor. 9, Pol. Lieut. Chakraphan reported to Pol. Lieut. Col. Prachum Ruengthong, Supervisor of Koh Phangan Provincial Police Station, and instructed Doctor Chasith Yoochat M.D., General Practitioner of Koh Tao Medical Hospital to conduct an autopsy of both the Deceased; thereafter, coordinating with

/ officers ...

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officers from Evidence Investigation Bureau 8 of Surat Thani province to inspect the crime scene and collect the evidence for further examination; by roping off a large crime scene and covering the area where a dry log underneath a pine tree is located. Due to the fact that the tide was rising at the crime scene, it was necessary to move the First Deceased's body out of the water and to move the Second Deceased's body to the sand dune where the tide could not reach. In moving the bodies, the instructions of Evidence Investigation Bureau 8 officers were duly observed. Subsequently, Pol. Lieut. Chakraphan and Pol. Lieut. Col. Somsak Noorod, Investigation Officer, together with the General Practitioner jointly conducted an initial autopsy. Both Deceased were found to have been attacked on the head and the face. Bruises were also found on the vulva of the Second Deceased. The General Practitioner recommended transferring the bodies of both Deceased for further forensic examinations, then prepared an autopsy report, the Evidence Document marked as Jor. 21. The officers, together with Pol. Maj. Prasong Sartprasert, Evidence Investigation Bureau 8 Officer, then collected the evidence at the crime scene. Three cigarette butts, one used condom, one black right-foot flip-flop, a plastic bag and a hoe with wooden stick with bloodstains on it were found in the vicinity of the dry log and underneath the pine tree. All items were seized as exhibits. Then, the officers collected

/ DNA

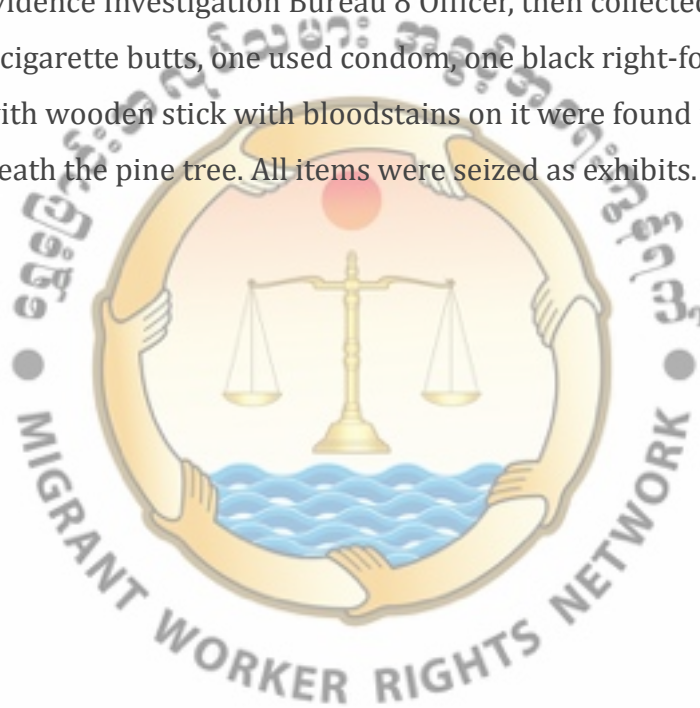
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DNA samples from the bloodstains of both Deceased and from the exhibits and subsequently transferred them to the Central Evidence Investigation Bureau, National Police Headquarters for further examination according to the Report of Criminal Case Exhibits, the Evidence Document marked as Jor. 28 Page 5 to 7. After having conducted an initial autopsy of both Deceased, Pol. Lieut. Col. Somsak issued a warrant to transfer the bodies of both Deceased to



the Institute of Forensic Medicine at the Police General Hospital, National Police Headquarters, for further examination as to the cause of death and to collect evidence from the bodies, according to the Official Notes, the Evidence Document marked as Jor. 58. Pol. Lieut. Chakraphan submitted the Investigation Report to Pol. Lieut. Col. Somsak as per police regulations applying to serious criminal cases. Thereafter, the Provincial Police Region 8 Headquarter officially appointed the Provincial Police Region 8 Co-Division to conduct the investigations and interrogations of this case, having also appointed Pol. Lieut. Chakraphan as one member of the Investigation Panel, as per the copy of Order of Appointment, the Evidence Document marked as Jor. 39. The Institute of Forensic Medicine received the bodies of both Deceased on 16 September B.E. 2557 (2014). Pol. Col. Dr. Pawat Prateepwisarut M.D., Vice-Director of the Institute of Forensic Medicine, conducted a forensic examination of the bodies of both Deceased. On the body of the First Deceased, 2 oblique, jagged tear wounds were found on the back upper-right part of the scalp. Jagged tear wounds on both left and right temples and jagged tear wounds on the

/ right ...

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right cheekbone were also found. The cheekbones, eye socket and upper jaw were broken and deformed. Water was found in both left and right parts of the chest. The cause of death was determined as the result of head wounds caused by a blunt object together with drowning. As for the body of the Second Deceased, deep jagged tear wounds were found on the head, and left and right side of the face. The depth of the wounds reached to the brain. Forehead bones, left and right eye sockets were broken and deformed. The upper and lower jaws were broken and deformed. A tear at the lower part of the vulva, of 1.5 x 0.5cm in diameter, bruises from the perineum to the rectum, of 1.5 x 1cm in diameter, and a mark resembling a bite wound at

the right nipple were found. The cause of death was determined to be as a result of serious head wounds caused by a blunt object. Further opinion of being sexually abused, raped via vaginal and rectal penetration was added. It was therefore imperative to collect semen and seminal fluid samples by using cotton buds to collect fluid samples from the vagina and rectum and a saliva sample from around the nipple. The samples were then transferred to the Blood, Biochemical and Gunpowder Soot Testing Unit, supervised by Pol. Col. Watee Aswutmangkun, for examination. The Investigation Panel was subsequently informed that the DNA of more than 1 offender were found, from which the cotton buds were used to collect samples on right nipple, vagina and rectum of the Second Deceased. The Unit then stored findings for subsequent comparison. According to the

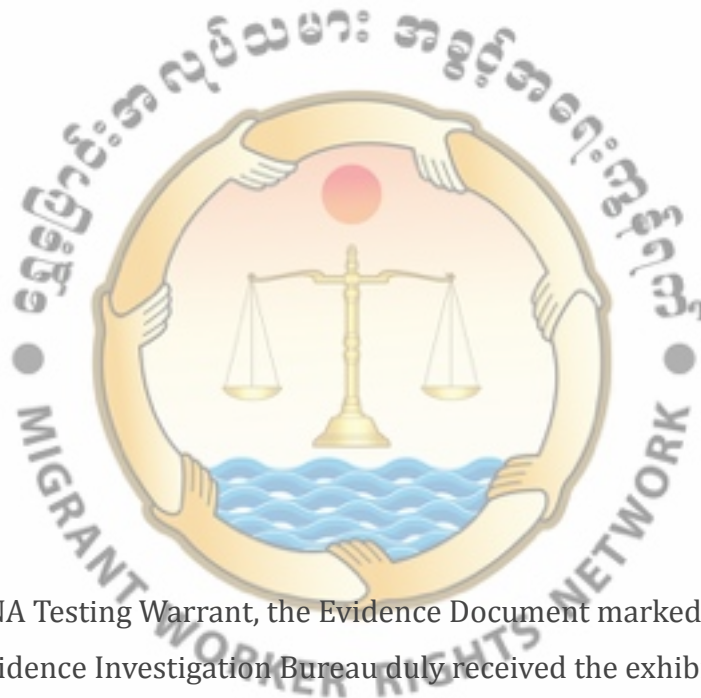
/ Autopsy ...

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Autopsy Report and DNA Testing Warrant, the Evidence Document marked as Jor. 22 and Jor. 24, once the Central Evidence Investigation Bureau duly received the exhibits, Pol. Lieut. Col. Kewalee Chantaphan, Central Evidence Investigation Officer, conducted an examination of the bloodstains of both Deceased and the exhibit. From the result of DNA Testing and Matching, it was found that the DNA on the exhibited hoe matched the DNA of both Deceased, the DNA found in the outer side of the used condom matched the DNA of the Second Deceased, and the DNA of more than 1 person was found on the exhibited cigarette butts, according to the Examination Report, the Evidence Document marked as Jor. 11. After having appointed the Investigation Panel, Pol. Col. Cherdpong Chiwpreecha, Investigation Officer, started by investigating CCTV footages her the crime scene, and collected DNA samples of persons residing and working near the crime scene, including fishery workers, for testing and matching with the offenders' DNA. When checking the offenders' DNA against the database,

officers were informed that the offenders were likely to be Asian. The Investigating Officers thus focused on this and collected DNA samples only from Asian men. In close examination of CCTV footage before the incident, it was found that the First Deceased was carrying his mobile phone and sunglasses with him at the time prior to death. According to the

/ CCTV ...

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CCTV footage, the Second Deceased was found walking into the AC Bar with her friends at 00.15 hrs, whereas the Second Deceased walked into the AC Bar at 02.08.37 hrs. Thereafter, both Deceased were never found walking out of the Bar until their bodies were found. It was thus reasonably believed that both Deceased left the Bar through the back door and walked along the beach until reaching the crime scene. Therefore, the murder presumably occurred between 2.15 hrs and 5hrs. From close examination of CCTV footage during the time prior to the incident, both Defendants and a friend named Mr. Mau Mau rode on a motorcycle together, carrying the exhibited guitar and stopped off to buy beer and cigarettes at a Seven-Eleven shop, which was not far from the crime scene. They then rode the motorcycle towards the crime scene. Moreover, CCTV footage showing the area in front of Good Health Shop and Intouch Shop, which are near the crime scene, also recorded the image of a suspected topless running man, the Evidence Document marked as Jor. 46 Page 19 to 22. In close examination of the footage, the suspected running man did not run to the area in front of the AC 2 Shop, which also had a CCTV camera. Only the shadow of a man running into the shortcut which could access Mau Mau's house was visible. On 1st October B.E. 2557 (2014), Pol. Col. Cherdpong and associates took

/ Mr. Mau Mau ...

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Mr. Mau Mau for interrogation and found that prior to the incident, Mr. Mau Mau and both Defendants had gone out to play the guitar, drink beer and smoke near the dry log underneath the pine tree. Thereafter, Mr. Mau Mau exchanged his shirt with the Second Defendant and borrowed the motorcycle to ride to his girlfriend's place. Upon coming back home, Mr. Mau Mau found both Defendants were asleep. Pol. Col. asked Mr. Mau Mau to take him to the house to meet both Defendants. Upon arriving, only the First Defendant was there. From interrogations, the First Defendant could not show his passport and admitted to having illegally entered the Kingdom. The police then detained the First Defendant and seized his clothes and the motorcycle used on the night of crime for further inspection. The police interrogated the First Defendant via a Burmese Translator named Mr. Kamol Uzon, the Evidence Document marked as Jor. 52, and subsequently charged the First Defendant with illegally entering and residing in the Kingdom without due permission, according to the Arrest Record, the Evidence Document marked as Jor. 36. As for the Second Defendant, the police were informed of him having left Koh Tao on a night boat and that he would reach Surat Thani at around 6 hrs. of 2nd October B.E. 2557 (2014), therefore coordinating with Investigation Officers of Surat Thani province to follow up. The Second Defendant was found hiding on the night boat. The police then took his picture and sent it to Mr. Mau Mau for verification.

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When Mr. Mau Mau saw the picture, he confirmed that it was the Second Defendant who had joined him drinking beer at the dry log on the night of the crime. Under interrogation the Second Defendant admitted that he did not have a passport. The police then detained him and further interrogated him via a Burmese Translator named Mr. Myat Nang, no surname. The Second Defendant was subsequently charged with having illegally entered and resided in the Kingdom without due permission, and of working without a valid work permit, according to the Arrest Record, the Evidence Document marked as Jor. 36, Page 3. While under detention, the police officer collected buccal swab samples from both Defendants for DNA testing and to match with the DNAs of the offenders, which were found in the body of the Second Deceased. Both Defendants consented to DNA sample collection, as per the Statement of Consent for DNA Collection and the Warrant for Examination of Exhibits, the Evidence Document marked as Jor. 18, Jor. 19, and the Case Photographs, marked as Jor. 47 and Jor. 48. Thereafter, the Second Defendant was brought to the Region 8 Provincial Police Station for further interrogation. The Second Defendant confessed via the Translator that he and the First Defendant had jointly murdered both Deceased and raped the Second Deceased. The Second Defendant described the scenarios while committing offences and gestured accordingly, as in the Case Photographs marked as Jor. 33 and recorded in the VCD marked as Wor. Jor. 20. Pol. Lieut. Col. Nattapong Romsai and Pol. Col. Wichob Kerdkliang,

/ Officers ...

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Officers in the Investigation Panel treated the interrogation of the Second Defendant as a witness, provided that the result of DNA testing and matching with the offenders' DNAs was still pending. The Second Defendant admitted that he took the mobile phone from the crime scene and passed it to his friend named Mr. Ren Ren. As for the sunglasses, he had already broken them and thrown them away, according to the Record of Testimony of the Second Defendant as Witness, the Evidence Document marked as Jor. 51, Page 1 to 4. Moreover, the Second Defendant admitted that he was the suspected man that appeared in the CCTV footage and signed his name to confirm accordingly, the Evidence Document marked as Jor. 56. Having been informed likewise, Investigating Officers on Koh Tao went on to verify the facts as the Second Defendant had testified. The Officers found the First Deceased's mobile phone in a smashed and broken condition in the back yard of Mr. Ren Ren 's house. The phone was then seized as an exhibit and dispatched for further examination, according to the Records of Damaged Properties and the Report of Exhibit Examinations, the Evidence Document marked as Jor. 29 and Jor. 30. Pol. Col. Krishna Pattanachoen verified the IMEI number of the exhibited mobile phone via coordination with officers at the British Embassy of Thailand, considering together with the testimony of Mr. Christopher Alanware, a friend of the First Deceased, and was able to identify that

/ the mobile phone ...

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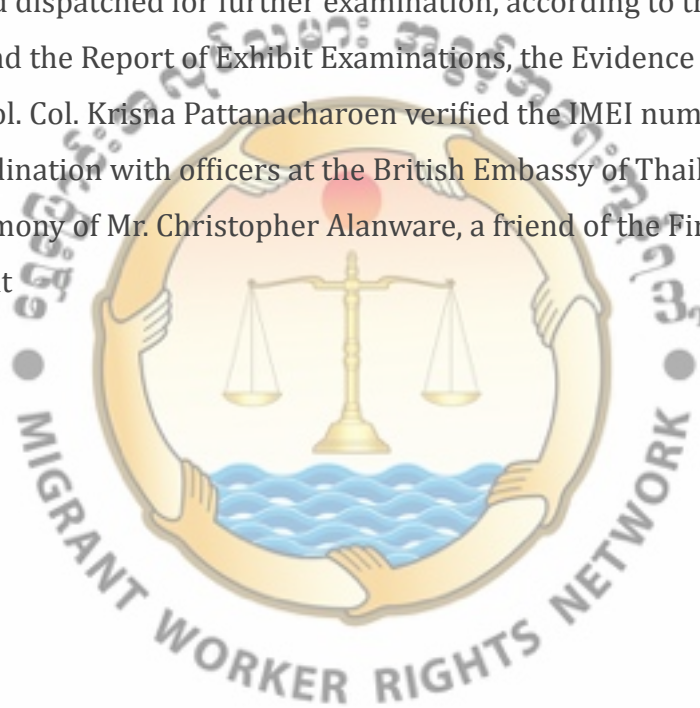
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the mobile phone did in fact belong to the First Deceased, according to the Record of Testimony, the Evidence Document marked as Jor. 55. On the same day, the First Defendant confessed that he and the Second Defendant had jointly committed the offences in this case.

Pol. Lieut. Col. Somsak and Pol. Lieut. Col. Tanongsak Aksornsom, Interrogating Officer,
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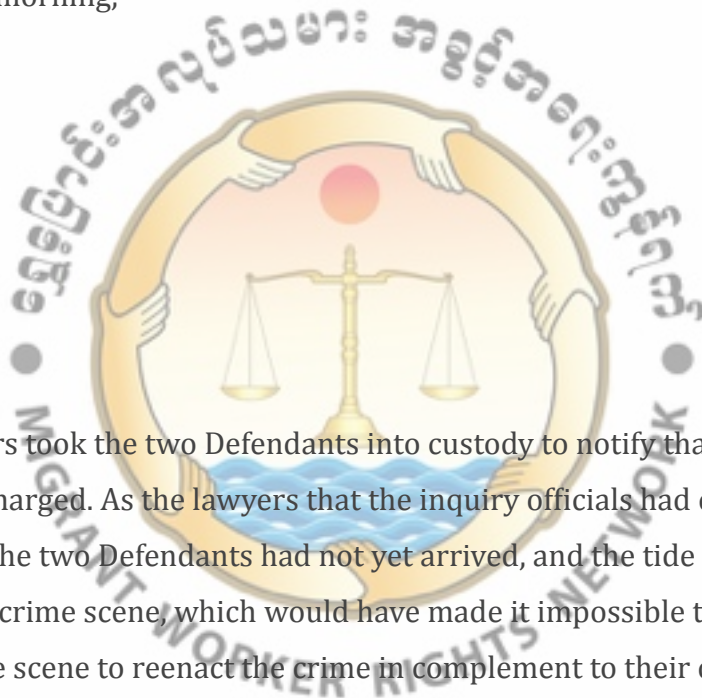


thereby interrogated the First Defendant as a witness, according to the Record of Testimony of the First Defendant as Witness, the Evidence Document marked as Jor. 50 Page 1 to 3. Subsequently, the DNA Test Results of both Defendants were reported to match the DNA of the offenders and the exhibits collected from the crime scene. Pol. Lieut. Col. Somsak thus issued a request to the Investigating Officers at the Investigation Bureau, National Police Headquarter, to interrogate the DNA examiners as evidence, in order to justify the Request for Arrest Warrant against both Defendants, for the charges of jointly intentionally murdering other persons, jointly raping another person using any form of threat and/or harm whereby that person is unable to defend themselves, jointly raping another person in the form of gang rape causing death, and jointly stealing at night time. The Court issued the Arrest Warrant against both Defendants on the morning of 3 October B.E. 2557 (2014), according to the Request for Arrest Warrant and the copy of Arrest Warrant, the Evidence Document marked as Jor. 35. Moreover on the same morning,

/ the Investigating ...

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the investigating officers took the two Defendants into custody to notify that the two Defendants had been charged. As the lawyers that the inquiry officials had contacted to witness the inquiry of the two Defendants had not yet arrived, and the tide was rising to almost the point of the crime scene, which would have made it impossible to take the two defendants to the crime scene to reenact the crime in complement to their confession, the investigating officers therefore took the two Defendants to the reenactment at the crime scene first. At the time Mr Kamol and Mr Mynt Nang were the two Defendants' translators. The reenactment was conducted as portrayed in the reenactment report and the reenactment memorandum, in Document Jor.32. Afterwards, Police Lieutenant Colonel Thanongsak informed the two Defendants of their rights as the accused and informed them of the charges against them, stipulated in the arrest warrants for the two Defendants, through a Translator and in the presence of a lawyer. The investigating officers also informed them of additional charges which were of illegally entering the Kingdom via an unlawful passage and illegally residing in the Kingdom without permission. The two Defendants understood the charges and confessed to every charge, according to charges notice and the affidavits in Document Jor.37,



Jor.50, page 4 to 6 and Document Jor.51, page 5 to 7. After the investigating officers had concluded their interrogation of the two Defendants, the investigating officers arranged for Mr Chasit M.D. to perform

/ a medical examination

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a medical examination of the two defendants for reference. The result of the medical examination did not indicate that the two defendants had been injured or assaulted, according to the affidavits and photographs in Document Jor.40 and Jor. 68, dated 10 October 2015. Police Lieutenant Colonel Thanongsak notified the two Defendants of an additional charge — of jointly murdering other persons with the intention to conceal the other offenses, through a Burmese translator and in the presence of a lawyer. The two Defendants thoroughly understood the charge and confessed to the crime, according to the affidavits in Document Jor. 50, page 7 and Document Jor. 51, page 8. Subsequently, on 21 October 2014, the two Defendants lodged a complaint with the public prosecutor, who later ordered a re-inquiry of the two Defendants. On 6 November 2014, Police Lieutenant Colonel Thanongsak conducted a re-inquiry of the two Defendants, who denied all the charges and claimed that they had confessed as a result of threats and assaults, according to the affidavits in Document Jor.50, page 8 to 9 and Document Jor.51, page 9 to 11.

The two Defendants testified in the interrogation that the Defendants are Myanmar nationals and were born in Rakhine State. The two Defendants use Burman-Rakhine dialect as their main language and they can use central Burmese language. They can understand English at

/ a simple level

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a simple level, relating to issues of daily life and to their occupation. They cannot speak, read or aurally comprehend Thai language. The First Defendant entered the Kingdom of Thailand in approximately 2012 while the Second Defendant entered the Kingdom of Thailand in approximately 2011 via Chumpon Province and Ranong Province, respectively. The two defendants work on Koh Tao Island. The First Defendant is permitted to reside in the Kingdom, according to Document Lor.14 and Lor.68. On the date and time of the crime, the

First Defendant was an employee at Brother Shop and the Second Defendant worked at Safety Stop Shop. On 14 September 2014, the First Defendant went to work as normal at the shop and at 22 pm the First Defendant decided that the next day was his designated day-off as an employee, so he telephoned the Second Defendant, inviting him to drink beer together. The First Defendant brought the exhibited guitar to Mr Mau Mau's house and walked to AC2 Shop, where Mr Mau Mau was working and he saw the Second Defendant at the shop. They waited for Mr Mau Mau to finish work and the two Defendants and Mr Mau Mau bought three bottles of beer and some cigarettes at a shop. They returned from the shop, picked up the guitar and rode a motorcycle to the beach where there was a dry log. The location was rather dark, vision was

/ limited to a distance

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limited to a distance of five meters away. The two Defendants and Mr Mau Mau were playing the guitar, drinking beer and taking turns smoking the same cigarette for about an hour. Mr Mau Mau departed, while the two Defendants were finishing their beer. Later the two Defendants left to buy two more beers at about 1 am on 15 September 2014. Mr Mau Mau returned with a bottle of wine and was sitting with them for a short while and then he borrowed the motorcycle and rode off to see his girlfriend. The two Defendants remained sitting there for a while. At that time there was a light rain shower and the Second Defendant wanted to return home. The two Defendants were walking along the beach and upon reaching the Maya Bar, the First Defendant had a headache so he asked if the Second Defendant would take a dip in the sea. The First Defendant left the guitar on the porch of the AC2 Shop and took a dip without taking his clothes off, whilst the Second Defendant took his top off and placed it on the top of his shoes and joined the First Defendant in the sea. At the same time, there was a fire skipping rope show at AC Bar with an audience of about 20. The two Defendants were taking a dip in the sea for about 15 minutes and they did not notice anyone passing them along the beach. When they were getting out of the water, the Second Defendant noticed that his shirt and shoes had disappeared. The Second Defendant looked for the said items but could not find them. The First Defendant went to retrieve his guitar but discovered that the guitar had disappeared. The two Defendants were looking for their lost items on foot, yet they could not find them, so they walked to Mr Mau Mau's house via a small lane, as depicted in the exhibited Evidence List WorJor.23,

/ as depicted

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as depicted in the exhibited Evidence List WorJor.23, which is a shortcut to Mr Mau Mau's place. Upon arrival the two Defendants did not find Mr Mau Mau at home. The First Defendant went inside the house and dried his shirt on a rope cloth rail and discarded his trousers on the floor, then went to bed. The Second Defendant then returned to look for his lost items because the shirt that was misplaced belonged to Mr Mau Mau, who had exchanged the shirt [with him] earlier, while they were drinking beer. Also, he needed his shoes to wear for work. Nevertheless, the Second Defendant did not find such items. Upon his return to Mr Mau Mau's house, he found a mobile phone dropped on the beach between AC2 Shop and Maya Bar, so he kept it. The Second Defendant met Mr Mau Mau before he reached the house, so he told Mr Mau Mau about the misplaced shirt. Both the Second Defendant and Mr Mau Mau arrived home at about 4 am. The two Defendants slept at Mr Mau Mau's house until the morning. When they got up, they did not see Mr. Mau Mau. The First Defendant saw a motorcycle key by the side of his head, so he drove and dropped the Second Defendant at the Second Defendant's house and rode back to his house at Moo Baan Chalok Kao village. At about 8 am, the Second Defendant showed Mr Ren Ren the mobile phone he had retrieved and told him that he had found it at the restaurant. The Second Defendant tried to turn the mobile phone on but he could not because he did not have the passcode. Then, he left the mobile phone to be recharged at

/Mr Ren Ren's house

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Mr Ren Ren's house. After the murder news in Koh Tao spread, the Second Defendant told the truth to Mr Ren Ren that he found the mobile phone near where the incident had happened. Then, the Second Defendant slept over at the First Defendant's house and returned to Mr Ren Ren's house again to ask about the phone. Mr Ren Ren said he had smashed and destroyed the phone and thrown it away because he did not want to be implicated in the crime. The Second Defendant was disinterested and did not ask further. The two Defendants went to work regularly until the end of September 2014. On 1 October 2014, the First Defendant returned

from work and slept at his house with six other friends. On 2 October 2014, at 1 am, while the First Defendant was sleeping in the said house, about ten police officers came and handcuffed him. The officers also confiscated his messenger bag and the shirt he wore to swim in the sea water on the date of the incident. Within the bag, there were a passport, an identification card and a work permit belonging to the First Defendant. Earlier the First Defendant had just taken his passport to a friend in Surat Thani province to renew his permit, which must be done every three months. The police officers escorted the First Defendant to a building where he met Mr Kamol Uzon, the Plaintiff's first witness.

/ Mr. Kamol ...

(22)

Mr Kamol conversed with the First Defendant in central Burmese language. The police officers showed him a video and asked if he was the one in the video. Meanwhile, the police brought Mr Mau Mau into the room. The First Defendant confirmed that he was Mr Mau Mau's friend and that he had been playing the guitar, drinking beer and swimming in the sea before returning to sleep at Mr Mau Mau's place. The police officers did not believe his testimony and asked if he had murdered the two victims. When the First Defendant denied it, he was tortured by being handcuffed, stripped naked, blindfolded and left in a cold air-conditioned room. Then, the First Defendant's head was covered by a plastic bag to suffocate him. The First Defendant was tortured for about an hour. A police officer put something in the First Defendant's oral orifice without any prior notice, while the translator also did not inform him. The First Defendant signed a consent for DNA sample collection, Document Jor.18, without having the translator read the content to him. The translator asked if the First Defendant had murdered the victims. When the First Defendant denied this, the translator attacked him and threatened that he would be assaulted, killed and thrown into the middle of the sea. However, if the First Defendant confessed to the murder, he would be imprisoned only four to five years. Next, the translator told him that the Second Defendant had been arrested and that the First Defendant could talk to him on the phone. The Second Defendant said he had been severely beaten until he had almost been killed. The Second Defendant left his job at the end of September and contacted a friend.

/ on the provincial mainland...

in Surat Thani for a job. After being informed of his new job, on the 1st October 2014, around 21 hrs, when the Second defendant was awaiting his company in the night ferry to the mainland, police officers approached him and asked for his passport. The Second Defendant was arrested and taken to police station, where the plaintiff's witness, Myat Nang, provided him with Burmese translation. Without permission, the officer collected the Defendant's buccal swab sample. After the collection, the Second Defendant was questioned and tortured. He was undressed, beaten and attacked on the testicles, forcing him to confess to committing murder. With utter fear of the threat, embarrassment and pain, the Second Defendant reluctantly confessed. Neither Defendant was informed of the charge during the investigation nor told of the right to have a lawyer. On October the 3rd, both Defendants were taken to the crime scene by investigating officer for the re-enactment of the crime. They were accompanied by a Burmese translator dictating them to do as instructed and not to give any interviews to the press. Both defendants performed their gestures to identify the crime scene as dictated by the translator who controlled them by hands at all times, as in captions from the crime-scene photographs.

After re-enactment, the Defendants were investigated by officers, without being given information of their legal rights or a lawyer. Translation of the testimony was not interpreted verbally. The comparison of the DNA results of the suspect have never been given to the defendants by the investigating officer.

Officers arrested First Defendant without any warrant and both Defendants were not informed of their legal right prior to the investigation. This is considered as unlawful arrest and investigation. DNA samples were collected without their consent and considered as unlawful. Such evidence is therefore inadmissible. Examination prior to confinement shows injuries to the bodies of both defendants, as in Jor 31 document. Both defendants later met their lawyer and translator they trust. The defendants claimed they were innocent and that they had been tortured during the arrest process. Their lawyer wrote a request to the attorney and both defendants then pleaded not guilty.

After reviewing the evidence and witnesses of both parties, plaintiffs and defendants, it has been concluded that, on the 14th September 2014, around midnight, an unknown number of criminal(s) had brutally attacked the First Deceased, Mr. David William Miller on his head and face with a blunt object, and the Second Deceased Miss Hannah Victoria Witheridge, until she was severely injured and subsequently passed away at Sairee beach, Moo 1, Tambon Koh Tao, Amphoe Koh Phangan, Suratthani. The body of the First Deceased was found floating in the

water not far from the beach. The body of the Second Deceased was found semi-naked on the beach, with t-shirt and skirt pulled to waist level with signs of sexual violation. According to crime scene investigation report, Jor 9 document, both victims are British nationals, who were visiting Koh Tao on vacation, according to their passports, Jor 64. Pol.Lt. Jakrapan Kaewkhao, the investigating officer who registered the case, along with the local volunteering rescue team, moved both deceased bodies away from the rising tide. Pol.Lt. Jakrapan, Pol.Lt.Col. Somsak Noorawd, investigating officer and Doctor Chasit Yoohad, from Koh Tao Hospital had performed an autopsy at the scene. According to the death certificates of victims, Jor 21 document, Pol.Lt.Col. Somsak had authorized a further autopsy at the Forensic Institute, Police Hospital, Thailand National Police Department, as in Jor 58 document.

Subsequently, Pol.Lt.Col. Somsak, Pol.Lt. Jakrapan and Pol.Maj. Prasong Satraprasert and scientific crime detection team, region 8, Surat thani, investigated the crime scene and collected evidence including; 3 cigarette butts, 1 used condom, 1 right-sided black flip-flop, 1 plastic sack, 1 blood-stained hoe with a wooden handle, found lying nearby a dry log. Police officers collected evidence and performed DNA testing from victims' bloodstains. The evidence was sent to the Scientific Crime Detection Center, Thailand National Police Department – Evidence Collection Log. Jor 28 document, from sheet 5 – sheet 7. Scientific Crime Detection Center made the crime scene report under document Jor 9.

Considering this as a serious offence, Pol.Lt. Jakrapan assigned the case to Pol.Lt.Col. Somsak. Region 8 provincial police division appointed co-operation team to investigate the case, according to Letter of Appointment, Jor 39. On the 17th September 2014, Pol.Col. Dr. Pawat Prateepwisarut, Deputy Director of the Forensic Science Institute, performed an investigation and collected specimens from the bodies of both the deceased.

Specimens from vaginal and rectal fluid and saliva from the areola of the Second Deceased were submitted to department of forensic biology, under the supervision of Pol.Col. Watee Asawutmangkub. Pol.Col. Watee tasked the DNA analysis committee to perform examination, letter of appointment Jor 22, Pol.Gen. Kewalee Chakrabandhu, The National scientific crime detection officer examined evidence of both victims' bloodstains from the hoe found at the crime scene.

According to the result, bloodstains from both victims were found on the cotton bud used to wipe from the evidence hoe. The DNA of more than one person appeared on the cigarette butts from the crime scene. Matched DNA of the Second Deceased was found on the evidence condom, in accordance with the evidence response report document Jor 11. Pol.Col.

Choedpong Chewpreecha, investigating officer, investigated and made available the relevant part of case related video retrieved from CCTV cameras, document Jor 1 (Evidence

investigation procedure) Jor 5 and Jor 6 (under the evidence investigation stage) from Jor 44 to Jor 46. On the 19th September 2014, the investigating officer seized the guitar, WorJor 7, as evidence, according to crime evidence collection document Jor 27, Jor 28.

On the 1st October 2014, the Pol. Col. collected testimony from Mr. Mau Mau, as a witness, according to the testimony document Jor 4 (under the Preliminary Witness examination stage). On the 2nd of October, the First Defendant was taken into interrogation by Pol.Col. Choedpong Chewpreechaand for preliminary investigation. The Defendant was then subsequently charged, through a Burmese translator, Mr. Kamol Uzon, on grounds of illegal entry into the country, according to document Jor 35. On the same day, police officers also took the Second Defendant into interrogation and made preliminary investigations through Burmese translator, Myat Nang. During the arrest procedure, the officers collected buccal swab specimens from both defendants for comparison with the results collected from the crime scene evidence and the suspect's DNA found in the Second Deceased's body, in accordance with the Letter of Consent for Specimen Collection, document Jor 18 and Jor 19, along with crime scene photograph, Jor 47 and Jor 48. Under this stage, the process was photographed and video taped in accordance with the Photographs Document Jor 33 and as per recorded VCD, Document WorJor 20. At this stage, the Investigating officers recorded the testimonies of both defendants, as witnesses, details of which as per Document Jor 51, Jor 51 under page one to page four. Officers also seized 1 mobile phone, valued THB15,000 as evidence, investigated as to the serial identification number (IMEI), details of which as per the List of forfeited asset and the Evidence investigation report, Document Jor 29 and Jor 30 respectively.

After the DNA comparison result had been obtained, Pol.Lt.Col Somsak submitted the result to investigating officers, Central Investigation Bureau, in order to obtain written testimony of the relevant DNA verification officer, as in document Jor 67. Subsequently, Pol.Lt.ColSomsak submitted a request to Court to obtain arrest warrants on the charges of jointly intentionally murdering other persons, jointly raping another person using any form of threat and/or harm whereby that person is unable to defend themselves, jointly raping another person in the form of gang rape causing death, and jointly stealing at night time, details as per Document Jor 35. Pol.Lt.Col. Thanonsak Aksornsom, the investigating officer has informed the defendants of their legal right, through the Burmese translators, Kamol Uzon and Myat Nang, with the presence of a lawyer, Mr. Pittaya Yaipet, who witnessed the interrogation, on charges of illegal entry into the country and residing in the country without permission.

Both defendants re-enacted in the crime scene with police escort and photographs taken, as shown in Crime scene photograph Jor 32.

Both defendants gave testimonies under the investigation stage, according to document Jor 50, page 4 to 6 and Document Jor 51, page 5 to 7.

Doctor Chasit examined the defendants' physically and gave written testimony, which is recorded in the Physical Report and photograph Document Jor 40 and Document Jor 68.

On the 10th of October 2014, Pol.Lt.Col Somsak notified the defendants of further charges, through a

p. 31

Burmese translator, named Tiang Khai, and in the presence of an attorney, Mr Thanawith Chirasit, on grounds of jointly and intentionally murdering other persons in order to conceal other offences or to avoid legal conviction. The two defendants testified in an affidavit numbered Document Jor. 50, Page 7 and Document Jor. 51, page 8, dated 21 October 2014 and 24 October 2014. The two defendants subsequently filed a petition requesting for justice, according to Document Lor.17 and Lor. 64. The public prosecutor ordered the investigation official to make an additional inquiry into the two defendants' testimonies. On 6 November 2014, Pol Lt. Col Thanongsak then re-interrogated and obtained an affidavit from the two defendants. The two defendants denied on all the offenses with which they were charged, as sworn in Document Jor. 50, pages 8 and 9 and Document Jor. 51, pages 9 to 11. There is a minimum imprisonment not exceeding five years for the following offenses: of being an alien entering the Kingdom without legal authorization at the point and time of entry; of being an alien entering the Kingdom without a passport and without legal authorization; of entering the Kingdom without inspection by an immigration officer or without submitting the required documents prescribed by law; and of residing in the Kingdom as an illegal foreigner. Since the Second Defendant has confessed, the factual issue therefore become final without any further need to hear other evidence from the plaintiff.

/ Under the Penal

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Under the Penal Code Section 176, paragraph 1, since the fact can be established as charged, that the Second Defendant committed the crime as charged under Clause 1.3 and 1.4, the remaining issues to be considered is whether the two defendants committed the crimes as charged. In this regard, the Court noted that in the course of the plaintiff's witness

examination, the plaintiff could not present any eyewitnesses. The plaintiff's examination indicated that the incident took place late in the night and in a secluded and rather dark area where there were no people passing. Due to the fact that the perpetrators did not take long in committing the crime, it would therefore have been extremely difficult under such an event to find an eyewitness to the crime. It is therefore justifiable that the plaintiff cannot present any eyewitnesses to testify in Court. The plaintiff's examination presented Mr Mau Mau as a circumstantial witness to the scene before the crime took place. Mr Mau Mau, who is a friend of the two defendants, testified and confirmed that on the said date of the incident, he and the two defendants were playing the guitar and drinking beer and smoking cigarettes in the vicinity of the dry log not far from the crime scene. After that, Mr Mau Mau drove off on his motorcycle. The time indicated by Mr Mau Mau's testimony was shortly before the crime was committed. Miss Phornthip Singkhamma, witness for the plaintiff, testified that she saw three persons sitting and playing a guitar at approximately 2am, which

/ supports

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supports and give persuasiveness to the testimony given by Mr. Mau Mau. The facts provided by the testimonies in this regard are in accordance with the timecodes that appear on the from the CCTV camera footage obtained nearby the crime scene. The examination of two defendants cannot confute this fact and that there was no one else nearby except the two defendants. In addition, the point where the two defendants and Mr Mau Mau were sitting was in the same place that Mr O (no surname), the plaintiff's witness, regularly left the exhibited hoe, which is also in the vicinity of the place that the exhibited hoe was found with the two victims's blood stains. Three witnesses for the plaintiff - Investigating officers Police Lieutenant Jakraphan Kaewkhaw and Police Lieutenant Colonel. Somsak Nurord, and Police Major Prasong Sartprasoet, a forensics police officer from Forensic Centre 8, in Surat Thani province – jointly worked together, in a timely manner, to collect exhibited evidence from the crime scene and sent it off for examination at the Central Forensic Bureau at the National Police Headquarters. The results of the DNA tests on the exhibited cigarette butts indicated that the second defendant and Mr Mau Mau had smoked the exhibited cigarettes, which was confirmed by the testimonies of the two defendants that they took it in turns to smoke the same exhibited cigarettes. This indicates that the examination conducted by the Central Forensic Bureau was accurate and correct thus giving weight to the credibility of the test

results and indicating that the test results are admissible. Based on the facts established with regard to the crime scene it can be discerned that the location where the two defendants were sitting

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was only 60 meters away from the crime scene, which is not far. The two defendants had sat in that place for a long period of time, hence, their eyes would have adapted sufficiently well to being in a dark area, as indicated by the First Defendant's affidavit that he could see the performance of shows and lots of people at AC Bar. Images from the CCTVs near the crime scene only showed the two victims walking separately into the AC Bar, yet there was no image of the victims walking out of the bar from the front entrance until the two victims were assaulted and killed at the crime scene. Thus, the assumption that the two victims left the bar from the back entrance and walked along the beach to the crime scene is highly reasonable. Images in Document Jor. 7, page 22 and a map of the crime scene in Document Jor. 8, page 21 portrayed a dry log near the beach. Thus, the route that the two victims took to walk to the crime scene, must have passed the point where the two defendants were sitting. As a result, the two defendants must have seen the two victims walking to the crime scene. Despite the fact that the plaintiff's examination did not present any eyewitnesses to the actions of the two defendants' in detail, the fact that the medical examiner conducted an autopsy on each victim and found the DNA of more than one offender in the second victim's vagina and rectum, is the plaintiff's key evidence, which was obtained by forensic science that

/ can prove

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can prove a person's identity. The scientific testing result is widely accepted. The DNA of the offenders was discovered by Police Colonel Dr. Prawut Prathepwisarut, M.D. a Medical Doctor at the Forensic Institute, who is an authorized and competent official to conduct an autopsy and a medical examination. The examination and the autopsy was conducted before the arrest of the two defendants, thus this evidence existed and was established and legally obtained. Therefore, the DNA test results can (legally) lead to and prove the identities of the offenders.

Police Colonel Dr. Prawut testifies that the two victims were assaulted by a blunt solid object, causing many wounds to their faces and heads. The body of the second victim had a tear around the lower corner of the vulva and an abrasive mark from perineum to anus, the right areola had a bite mark. The witness opined that the said marks indicated rape or involuntary intercourse. For this reason, the witness then proceeded to collect a saliva sample from the areola and a mucus sample from the vagina and rectum and sent the samples to the Blood Biochemistry and Gunshot Residue Analysis Unit to test the seminal fluid, semen compound and DNA. The plaintiff's next witness, Police Colonel Watee Atsawutmangkur, a scientist and director of the Blood Biochemistry and Gunshot Residue Analysis Unit, Forensic Institute testified that

/ the exhibited evidence

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the exhibited evidence from the Forensic Pathology Unit delivered by Police Colonel Dr. Prawut was sent with barcodes so it was impossible to identify whose sample it was. Based on his analysis, traces of semen were found in the vagina and rectum of the Second Deceased. The expert witness conducted a blood test for DNA test results in line with protocol and wrote a report in Exhibit Jor. 24, dated 2 October 2014. The expert witness was ordered to bring the DNA from his unit to compare with that of the two defendants and the DNA of Mr Mau Mau, and the DNA results were brought for the witness's comparison. The witness compared the DNA and found that the DNA found in semen from the Second Deceased's vagina matched the Second Defendant's DNA, while the DNA found in the rectum of the Second Deceased matched the DNA of both defendants. The DNA found in the vagina and rectum did not match Mr Mau Mau's DNA. In Document Jor. 12, the two witnesses testified as experts and as neutral witnesses in the normal course of their official duties and their opinions were based on academic principles. Apart from their affidavits, they also provided examination reports as evidence to confirm that the findings

/ were recorded.

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were recorded. There was nothing suspicious about their testimony. The abovementioned two witnesses for the plaintiff and the two defendants had never seen one another and they did not have any hatred towards each other, thus there are no reasonable grounds that the said two witnesses' testimony are biased and that the relevant evidence was set up by the witnesses to implicate the two defendants without any reasonable truth. The testimonies of the said two witnesses are credible and trustworthy. Police Colonel Dr Pawut, M.D, testified that there was a tear to the Second Deceased's vulva, which is consistent with the report of the second victim's autopsy in the United Kingdom in Document Lor. 31 (page 21), submitted by the defendants, indicating that there was a tear at the vulva. This fact supports credibility to Police Colonel Dr Pawut, M.D,'s testimony is made in a straightforward manner. The DNA testing comparison report between that of the offenders' and the two defendants' in Document Jor.12 indicates that there are 16 matching DNA locations, of which all are DNA on Chromosomes in the locations that can accurately identify a person's identity according to international standards. This therefore proves that the Forensic Institute followed its protocol and used commonly accepted testing equipment.

/ Thus

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Thus, the Court finds the testing result as credible and trustworthy, despite the fact that the plaintiff's examination results did not present a chain of custody document in the examination and the fact that the plaintiff did not calculate the level of confidence in the report, with the similar manner as that of the Ministry of Justice's Forensic Institute's practice, which is the two defendants' trusted institution. However, the difference lies in slightly different format and routines, which is considered as different internal practice in their own institutions. The differences do not contribute to inaccurate and incorrect test results, thus the result from the Forensic Institute and Central Forensic Bureau's credibility has not been damaged or compromised. The defendants' witness, Mr Woravee Wiyawut, M.D., a DNA specialist at the Forensic Institute, also testified in support that the Forensic Institute and the Central Forensic Bureau are both accredited under the ISO 17025, which is the same as the witness's institution and the said two institutions operate in accordance with international standards. Therefore, it lends more plausibility to the plaintiff's examination result that the evidence is credible beyond reasonable doubt. Despite the fact that the test results reported in Document Jor.20, page 5 had a correction

/and additions

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and additions where the two defendants claimed the document had an abnormality, Police Colonel Watee who certified the report, testified that this was the result of typographical errors, which were corrected when they were discovered. The court considered the testimonies and the exhibited document and it was found that the top of the said document, as indicated in Clause 1.3, a cotton swab containing mucous fluid from the rectum, thus the lower table in the column of the evidence Number 1.3 must contain information about mucous tissue from the rectum. The original print indicated from the vaginal tissue is a repeat of the column of evidence Number 1.2. Therefore, it shows that there was a typographical error as the witness testified. The correction was in the detail to reflect the fact. In this regard the detail does not cause any damage or does not reduce the weight of the DNA test results. The two defendants argued that they did not give consent to competent officials to collect their DNA samples, thus this part of the evidence was unlawfully obtained and it is inadmissible as evidence. The plaintiff's examination produced written evidence that the two defendants consented to DNA sample collections, in Document Jor. 18, presented during the examination that

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initially the two defendants had known and consented to have their DNA samples taken from buccal tissue for testing. Myanmar translators also signed as witnesses. Mr Kamol and Mr Mynt Nang, the plaintiff's witnesses, affirmed that the two defendants had signed and consented for the sample collection to taken for testing. Section 226/1 stipulates that if the admission of such evidence will have a more useful effect in providing proof, is significant and credible, it is not forbidden for the court to admit such evidence. The circumstance of the case found that an eyewitness was not available when the incident happened. Only DNA was found in the victim's body. The DNA collection from the two defendants was to identify whether they were the offenders in this case. If the two defendants' DNA did not match that of the offenders, they could not be prosecuted and punished. If the court did not hear the DNA test results, it

could do more damage to the administration of justice. When the DNA results of the two defendants and the DNA of the offenders are matched accurately and correctly as reasoned in the aforesaid consideration then the court can exercise its discretion to admit such evidence. The defense of two defendants is therefore invalid. The two defendants examined a witness,

/ Mr Andrew

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Mr Andrew Jonathan Hall or Andy Hall to testify on the autopsy report of the Second Deceased in Document Lor. 31, claiming that the autopsy report at the United Kingdom did not indicate an abrasive tear on the perineum from the vulva to the anus of the Second Deceased. Mr Andrew also hired an expert from the United Kingdom to conduct a gait analysis of a suspect from CCTV images, comparing that suspect to the second defendant's motion appeared on the video footage on the date of the incident. The result of the gait analysis provided in Document Lor. 47 indicated that the second defendant was not the same man as the suspect. It is found that this witness did not learn the factual issues or was not directly involved with the case, nor is he an expert on autopsy and the analysis of the two reports. Additionally, the witness is merely the coordinator and recipient of the said reports. Almost all of the facts in the testimony are his personal opinions. His testimony constitutes hearsay evidence because he only refutes what has been written in the reports or claims that an expert has informed him of such information. Unless a relevant expert can testify before the court to confirm the information in such reports, the plaintiff cannot cross-examine the witness in order to properly examine the fact. The testimony alone is without any weight and not worthy of being taken in to account. The evidence that the two defendants presented in Court

/ did not have any weight

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did not have any weight to refute the report of the plaintiff's test results. The DNA found in the Second Deceased's vagina and rectum contained the seminal DNA and seminal component of more than one person. Therefore there must have been more than one male offender. Police Colonel Pawat, M.D. confirmed that he had collected mucus fluid externally and internally from the vagina and the rectum separately. Hence, since the two defendants

affirmed that they had not tampered with the crime scene, their matched DNA should not have been found in the victim's vagina and rectum during the body relocation from the crime scene and under the stage of collection of fluid as defended by the defendants. Khunying Pornthip Rojanasunan, M.D. an expert witness for the plaintiff testified, in keeping with academic principles, that seminal DNA can be distinguished from sweat DNA and saliva DNA. Therefore, it is apparent that the DNA found in the Second Deceased's vagina and rectum was different and the DNA category could be identified as coming from a different source compared to the DNA collected from the buccal tissue of the two defendants when they were arrested. Although the DNA testing report in Document Jor. 12, page 5 at vWA DNA location indicated that the DNA from the rectum tissue had [location] Number 18, which is beyond the readings found in the DNA of the two defendants

/ while

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while the location D2S1338 and vWA of DNA collected from the right nipple had two missing loci of DNA location Number 20 and 25 of the Second Defendant. A thorough consideration affirmed that the DNA of the two defendants still matched the DNA of the offenders' semen found in the rectum.

By comparing the DNA from such evidence with the defendants' DNA, the DNA found in the Second Deceased's vagina matched the DNA of the Second Defendant in all 16 locations while the DNA found in the Second Defendant's rectum matched the DNA of both defendants. Additionally, the Second Defendant's DNA matched the DNA of the offender's semen from the vagina in all 16 locations. The missing two locations of the Second Defendant's DNA was only found on the right areola, but it is not the one found in the DNA from the semen in the Second Deceased's vaginal tissue and the rectal tissue. Khunying Pornthip M.D. - witness for the two defendants - testified that excessive numbers in the DNA location can be from DNA contamination or from a seminal mutation. The missing DNA location in some chromosomes could occur as a result of DNA deterioration. Mr Worawee, M.D. - witness for the two defendants - testified that only ten DNA locations can adequately be used to compare a person's identity. Therefore, there are no abnormalities within the findings with regard to DNA to dismiss the fact that the semen DNA did not belong to the two defendants. Moreover, the two defendants did not provide their DNA test results

/ which were sent for a retest

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which were for a re-test by the Forensic Institute to support their defense during the witness cross-examination stage. Therefore, the two defendants' evidence and defense cannot disprove the plaintiff's DNA test results. The two defendants were arrested and had buccal tissue collected for testing on 2 October 2014, which was 17 days after the incident. They have strongly affirmed that they had not tampered with the crime scene and that only buccal tissue was collected for testing. The plaintiff's witnesses, who had conducted the collection and transfer of the tissue sample for testing, testified confirming that protocol was properly followed and confirmed that the samples were sent for testing promptly after collection, and it was therefore unlikely that the investigating police officers and the interrogating police officers, the medical examiners or the DNA scientists could bring semen or seminal fluid located deep in the two defendants' bodies and place it in the Second Deceased's vagina and rectum. During the examination, the plaintiff also testified that the two defendants initially confessed they had jointly murdered the two victims and gang raped the Second Deceased, but still, the police officials only conducted

/ an interrogation

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an interrogation of the defendants only as a witness, not filing the charge of murdering the two victims and raping the Second Deceased immediately. The witness for the plaintiff in this instance explained the need to wait for the results of the comparison between the DNA tests of both defendants and the DNA of the perpetrator(s). This points to the fact that the investigating officers did not file the accusation until there was firm evidence that could incriminate the two defendants. Their actions in this regard by not rushing into case filing or conclusions but by carrying out the case in a proper manner implies that the rights of both the defendants is protected and prevented them from being incriminated without supporting evidence, should the results of the DNA differ from that of the perpetrator(s). And as can be seen from the results of the DNA of Mr Mau Mau which, even though they matched the DNA that was found on the exhibited cigarette butts, did not lead to Mr Mau Mau being charged by the investigating officers because his DNA did not match that of the perpetrators of the crime.

Further information gleaned from questioning the plaintiff is that while both defendants were under arrest the investigating officers arranged for a Burmese translator for both the defendants and the defendants agree that this was in fact the case and the defendants spoke with the translator in Burmese, which is the language that the defendants speak and can understand well. Mr Kamol Uzon and

/Mr Myat Nang,

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Mr Myat Nang, witnesses for the Plaintiff who were Burmese translators for the Defendants at the arrest and interrogation stages testified to confirm the fact that they clearly understood each other. In the course of witness examination by the plaintiff and the defendants, the Court does not find any convincing evidence that the translators had any bias against the defendants on the issue of their nationality as the Defendants had earlier claimed. In addition, the Court considered that the video footage of the conversation between the Second Defendant and Mr Myat Nang on VCD number Wor. Jor. 20 clearly shows that the Second Defendant is able to communicate back and forth and explain various details effectively to Mr Myat Nang for them to be clearly understood. Both Defendants testified that while they were under arrest and were taken to the crime scene for the re-enactment procedure, the translator threatened to attack and kill them both by various means as well as dictating to them verbally to undertake all the gestures. As the defendants were afraid of such threats, they followed the orders made by the translator. The Court finds that it is clearly seen that the Defendants are able to listen to and talk with and communicate well with both the translators. Therefore the claim by the Defendants is self-contradictory and is considered as not testifying the truth. Apart from this, the Plaintiff also has circumstantial witnesses to the aftermath of the crime, namely Mr Aung Li Zaw or Ren Ren and Mr Ni Ni Aung, friends of the Second Defendant who have testified that the Second Defendant was the one to

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bring the exhibited mobile phone which was the same brand and model as that of the First Deceased on the 15 September 2014 which was the day that the crime took place and only a few hours after the incident. Neither of these witnesses for the Plaintiff had any reason to be biased against the Second Defendant that would have caused them to incriminate the Second

Defendant. Plaintiff also presented evidence relating to the examination of the exhibited mobile phone that can prove that the identification number of the mobile phone was definitely the number of the mobile phone of the First Deceased. In the course of the Second Defendant's witness examination there is no supporting evidence to refute this fact. Furthermore there is corroborating testimony that the Second Defendant did in fact take the mobile phone to Mr Ren Ren, witness for the Plaintiff, but the Second Defendant merely argued that the the phone was found on the ground on the way to Mr Mau Mau's house and that the Second Defendant merely wanted to show it off to his friend. However, based on the fact and circumstances in this case, the First Deceased was attacked while naked and died at the crime scene so it is impossible that the First Deceased dropped his mobile phone in the place where the Second Defendant claims he found the phone. The factual evidence gathered by the Plaintiff's examination shows that the Second Defendant is involved with the exhibited mobile phone belonging to the First Deceased which disappeared from the crime scene. The evidence for the Plaintiff regarding the results of the DNA of the Defendants which matched

/the DNA

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the DNA of the two Offenders, the exhibited items from the crime scene and the circumstantial witnesses from before and after the crime took place all constitute beyond reasonable doubt that the Defendants are the actual perpetrators of the rape of the Second Deceased at the crime scene without any need to rely on the fact or circumstantial evidence under any confession provided by the two Defendants at the stage of their arrest and interrogation. Even though the investigation by the Plaintiff does not show clearly which of the Defendants was the first and which was the second to commit the rape, evidence comes from the testimony of Police Colonel Phawat M.D. that the tear at the bottom corner of the vulva had blood flowing out of it showing that while the Second Deceased was being raped the Second Deceased was still alive, causing her to bleed from the wound and that this tear must have occurred before the fatal blow to her head that resulted in her immediate death. This testimony from the witness for the Plaintiff has been given in accordance with medical standards which are in keeping with the nature of the human body in which blood flows from the wound of a living body. It can therefore be deduced that the tear was inflicted from enforced intercourse in which the Second Deceased put up a struggle as a result of which there was a long tear. Following the results of forensic results it can be clearly ascertained that both Defendants raped the Second Deceased

/to the point that both

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to the point that both reached orgasm and which appeared to be premeditated and that both both took turns in raping the Second Deceased. The two Defendants are therefore guilty of having raped a woman who is not their wife. The wounds to the head and face of the Second Deceased were all shown to be serious wounds matching the kind of injury that would be incurred by an attack with the blade and handle of the exhibited hoe, as Police Colonel Phawat M.D. and Khunying Pornthip M.D. have testified. The discovery of bloodstains from the Second Deceased on the exhibited hoe further lead to the undeniable suspicion that the exhibited hoe was the weapon used in the attack on the Second Deceased. The serious injury caused to her face occurred after the tear wound that occurred during the rape and so it must be concluded that after the Second Deceased was raped at the crime scene she was attacked and killed with the exhibited hoe. The evidence and connected circumstances lead to the conclusion that there can be no other finding than that the two Defendants used the exhibited hoe as a weapon to attack and kill the Second Deceased at the crime scene. Even though the report of the results of the DNA tests conducted by the Institute of Forensic Science according to Document number Lor. 29 summarises the results and conclusions of the examination that the DNA of

/the two Defendants

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the two Defendants did not match the mixed DNA of a male found on the exhibited hoe, this is not significant or inconsistent because the mixed DNA of a male that was found on the hoe matched the DNA of the First Deceased. In this case, and based on the evidence given by the witness for the Plaintiff, Mr O, it transpires that Mr O was the person who regularly used the exhibited hoe and even after the crime has been committed Mr O continued to use the exhibited hoe before it was sent off for examination. However, there was no examination for a match with the DNA of Mr O. With regard to the reason for not finding a match with the DNA of the Offenders on the exhibited hoe, Khunying Pornthip M.D. explained that there could be many reasons for this, such as whether the hands are dry or sweaty which affects whether or not DNA is left on an object, or if the offenders had been wearing gloves or had put a cloth

around the handle of the hoe or even if the handle of the exhibited hoe had been washed before being sent off for examination then DNA might not be found. Therefore the absence alone of the DNA of the Defendants on the exhibited hoe alone is not significant proof to confute the other evidence of the DNA from the sperm of both the Defendants found in the body of the Second Deceased. The Court hears that after the two Defendants raped the Second Deceased they used the exhibited hoe, which is a hard object with a long sharp edge, to repeatedly attack and kill the Second Deceased causing deep wounds to the head,

/and bone

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and bone of the forehead and left eye socket. This points to the fact that both Defendants used the exhibited hoe to attack the Second Deceased with their full force resulting in the death of the Second Deceased and that they had the intention to kill her. Both Defendants are therefore guilty of jointly committing the murder of the Second Deceased in order to conceal their other offense. The facts established by the investigation by the Plaintiff indicate that the First Deceased was attacked at the scene of the crime at almost exactly the same time as the Second Deceased which was the reason why the First Deceased died. The report of the Evidence Document Jor. 11 points to bloodstains from the First Deceased found on the handle of the exhibited hoe, as were those of the Second Deceased and the nature of the injuries on the body of the First Deceased are consistent with injuries that could have been caused by the exhibited hoe. The Court therefore concludes that the two Defendants used the exhibited hoe as a weapon to attack the First Deceased in order to facilitate their rape of the Second Deceased and that they are guilty of the murder of the First Deceased as charged. As for the charge laid against the First Defendant as an illegal alien without permission to enter and reside in the Kingdom according to Articles 11 and 12, the investigation of the Plaintiff has not presented any evidence to support their claim that the First Defendant had never received permission to enter and remain in the Kingdom in the period referred to in the charges. The aforesaid charge against

/the First Defendant

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the First Defendant was informed to him at the stage of his arrest. With reference to the investigation of the First Defendant, there is evidence from his passport, document number

Lor 68, that indicates that the First Defendant received permission to enter and remain in the Kingdom for the period between 4 April 2013 and 3 April 2015 which refers to the period before, and at the time of, the crime. The Plaintiff has no evidence and has not challenged the evidence of the documentation presented, so even though the charge brought by the Plaintiff against the First Defendant indicates that the First Defendant entered the country illegally from the beginning of 2011 to the middle of 2012 and that the First Defendant has also likewise testified that he travelled into the Kingdom from 2012 which was prior to the date that the First Defendant received permission to do so, according to his passport number L 68, the Court cannot take the facts testified by the First Defendant to charge him. As for the charges brought against the Second Defendant for theft at night, the witness for the Plaintiff Mr Aung Li Zaw or Ren Ren testified that only a few hours after the crime had taken place the Second Defendant took the exhibited mobile phone to the witness, claiming that a foreigner had left it behind at the bar. Apart from this, Police Colonel Prachum Rueangthong, witness for the Plaintiff, similarly testified that after he had been informed by police officers that the Second Defendant had confessed to having taken

/the mobile phone

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the mobile phone and sunglasses of the First Deceased to his friend named Mr Ren Ren, the witness and his colleagues therefore went to question Mr Ren Ren and were able to seize the mobile phone belonging to the First Deceased as an exhibit. In relation to the information gathered in connection with this, the witness for the Plaintiff, Police Lieutenant Colonel Natthaphong Romsai, the officer responsible for questioning the Second Defendant and Police Lieutenant Colonel Thanongsak Aksornsom, the investigating officer of the informant and who also joined in the questioning of the Second Defendant, and Mr Phitthaya Yophetch, the lawyer who attended the interrogation of both Defendants that took place on 3 October 2014, has testified consistently in Court that the Second Defendant confessed to the fact that after having attacked and raped the Second Deceased then the Second Defendant took the mobile phone and the sunglasses belonging to the First Deceased. The witness statements for the Plaintiff in this regard all testify to the facts that they have seen and learned and the witnesses for the Plaintiff had no reason to be biased against the Defendants. It would therefore have been difficult for the police officers to undertaken the investigations and made the seizure of evidence that they did without having had the information from the prior supporting witness statements. After having seized exhibited evidence, the police officers immediately

investigated the exhibited mobile phone and the Plaintiff's witness testified to confirm as to Evidence Document number Jor 30 that the identification number or IMEI of the exhibited mobile phone

/matched the number

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matched the number of the mobile phone of the First Deceased. Moreover, Document Jor 77 obtained from the father of the First Deceased made this factual issue more sound and credible. In this regards, the Second Defendant are unable to present any evidence at all to contradict this matter. The evidence brought by the Plaintiff is therefore credible and supports beyond doubts that the exhibited mobile phone is definitely that of the First Deceased. Even though the Plaintiff has no eye-witness to the theft of the exhibited mobile phone from the crime scene by the Second Defendant, the facts from the witness statement for the Plaintiff provide the information that corroborates the fact that the Second Defendant was the person who took the exhibited mobile phone following the crime. When the case indicates that the Second Defendant is the offender who also attacked the First Deceased at the crime scene then the Second Defendant must have easily had the opportunity to steal the mobile phone belonging to the First Deceased at the scene of the crime. However, the Plaintiff has not been able to obtain the sunglasses of the First Deceased as an exhibit and there were no witnesses to the fact that the Second Defendant was involved in the theft of the sunglasses following the crime. As a consequence there is insufficient evidence to convict the Second Defendant of stealing the sunglasses belonging to the first victim as alleged by the plaintiff. The case can only be heard that the Second Defendant only took illegal possession of the...

/ exhibited mobile phone

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exhibited mobile phone. The actions of the Second Defendant are the offense of theft at night. With regard to the Defendants' alibi argument, both Defendants only present their testimonies in Court, without any other witnesses or evidence to support their whereabouts, that the Defendants were not at the crime scene. Details of which are self-contradict and are unable to refute the evidence of the Plaintiff that has clearly shown that both Defendants were the perpetrators of the crime in this case. Under the testimony of both Defendants that claimed that after drinking beer they both wanted to go home and so decided to walk home, but that

then both went for a swim in the sea late at night while it was raining lightly, as the First Defendant has testified, this is unusual for normal people to do under such circumstances, and thus the testimonies are not credible. This gives rise to the belief that their behaviour must instead have been conducted in a way to destroy evidence on the bodies of both the Defendants. Because neither of the defendants have any evidence to support their alibi then it appears only as an invalid alibi argument. The subsequent argument relating to the illegal conduct of the arrest and interrogation of the Defendants, and therefore that case has grounds for dismissal, the Court hear the facts that after the police officers questioned the Defendants in relation to their passports, the Defendants had no
/passports

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passports to show to the police. In this regard the First Defendant similarly testified that it was true that he did not have a passport, giving the reason for this as having previously left his passport with a friend. The fact that neither of the Defendants could show the police any evidence pertaining to their legal immigration was sufficient reason for the police to suspect that both Defendants were illegal immigrants which was a blatant offence and that this was sufficient for the police to arrest them at sight without the need for an arrest warrant. Thus the First Defendant's defense on this issue is and both Defendants have testified in accordance with each other that following their arrest Police Officers found a Burmese Translator for the Defendants. This further indicates that the police undertook their duty correctly and responsibly. Both Defendants have testified to the fact that they spoke with the Translator in Central Burmese and there is therefore no reason to suspect that the Defendants and the Translator could not communicate with each other, as argued. Even though both Defendants argued that they were threatened, beaten and tortured by the Translator and by the police in order to force them into a confession while under arrest, neither Defendant has presented any solid evidence to support on this issue. It is therefore considered by this Court as an invalid argument.

/In regard to the bruises

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In regard to the bruises that the defendants claimed to be discovered by a doctor, it is still unclear as to when they could have occurred or by whom they were caused. According to the

witness examination by the Plaintiff, following the interrogation of both the Defendants the Investigating Officers arranged for Dr Chasit to examine the Defendants as evidence and Dr Chasit testified in this Court as a witness for the Plaintiff, confirming that, based on his examination of both the Defendants, there was no evidence of bruising, that their pulses were normal and that the general health of the Defendants was in the normal range. Upon consideration of the Witness statement and the photographs taken during the examination of the Defendants conducted by Dr Chasit in Evidence Document Jor 68 it can be seen that both Defendants appeared normal and showed no traces of having been assaulted as claimed. The argument of both the Defendants in this regard is groundless. This argument could be easily raised but it is hard to be believed by this Court. In regard to the interrogation stage the facts can similarly be established that the Investigating Officers made available the translator for the Defendants and an Attorney was also present at the interviews of both Defendants for the entire time. Even though the name of Mr Phitthaya Yaipetch, who was the Attorney present during the interviews of both Defendants on 3 October 2014, was not on the list of volunteer attorneys from the volunteer attorney project who attend interviews in criminal cases on behalf of volunteer attorneys in the

/Province of Koh Samui

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Province of Koh Samui, as noted in Document Lor 16, this information was provided by the Witness for the Plaintiff, Mr Phitthaya. The Witness stated that he was the attorney who had received license to perform its duties as attorney from the Council of Attorneys and the Witness had been tasked to perform that duty in his capacity as an attorney. As a result, Mr Phitthaya is therefore regarded as a legally licensed attorney and for his abilities to act as such. Failure by the Investigating Officers to locate an attorney from the list in accordance with the Agreement between the Council of Attorneys and the National Police Bureau as argued by the Defendants, was just a breach of agreement between the two agencies but not a violation of the law. Since the Investigating Officers had made available the attorney to attend the interviews with the two Defendants as required by law and had also made available the translator for both the Defendants without there being any issues of personal conflict as argued by the two Defendants, the Court hears that the stages of the interrogation were conducted legally. Under the arrest stage, the two Defendants only argued that they were assaulted at the time of arrest but did not argue that they were threatened, beaten or tortured at the interrogation. Since the arrest and the interrogation stage are separate proceedings in

the whole process, even if there had been wrong conduct with regard to the arrest stage, the matter must be inquired as a separate case and would not dismiss a legitimate interrogation.

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Given that the interrogation stage was conducted in a legally correct manner the Plaintiff therefore has the right to bring charges and the argument by the two Defendants cannot be heard. Even though the testimonies of the Witnesses for the Plaintiff, Mr Kamol and Mr Myat Nang, accepts that the Witnesses could not read Thai, which might have caused doubt as to whether the Translators would understand and correctly translate the statement of the testimony of the two Defendants or not. In this regard, the relevant evidence presented by the Plaintiff including the map and re-enactment made in accordance with the defendant's confession made prior to the accusation that the Defendants had jointly committed murder and rape. Since any confessions made at the time before both Defendants became legal suspects on the aforesaid crime cannot be admissible to convict the Defendants as argued by the Defendants, the case was determined by the Court based on the above aforementioned facts and circumstances which do not depend upon any of the confessions made by the Defendants under interrogation stage. Therefore, this suspicious and improper part is considered by this Court as not of an important issue devaluing any other aspects of the legally established evidence for the Plaintiff. As for other minor arguments raised by the Defendants, they all have no weight to change the verdict of this Court. With regard to the exhibited hoe and the exhibited mobile phone, even though the two Defendants used the exhibited hoe

/as a weapon

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as a weapon to commit the crime but both the exhibited items are the legal property of other people who are not involved or implicated in any wrongdoing and so should be returned to their owners. Since it can be attested that the Second Defendant stole the exhibited mobile phone belonging to the First Deceased, then the actions of the Second Defendant are deemed illegal and the item shall be returned or the cost of the item be paid to the heirs of the First Deceased in according to Article 438, paragraph 2 of the Civil and Commercial Code. The exhibited mobile phone is of quite a high commercial value. The Second Defendant has not

cross-examined whether or not the exhibited mobile phone is valued at 15,000 baht as stated in the list of valuables relating to the crime, Evidence Document Jor 29. The facts are therefore final that the exhibited mobile phone is worth 15,000 baht. The Second Defendant, liable for his tortious act, must return the exhibited mobile phone to the heirs of the First Deceased. However, the exhibited mobile phone has been damaged and broken into small pieces and is broken beyond use and has been seized for exhibition as evidence the Second Defendant cannot therefore return the exhibited mobile phone to the heirs of the First Deceased in its original state of working order. The Second Defendant must therefore be liable to pay 15,000 baht to the heirs of the First Deceased as requested by the Plaintiff.

/The Judge states ...

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The Court rules that both the Defendants are found guilty under the Articles 288, 289 (7), 276 paragraph three of the Criminal Code together with Article 83. The Second Defendant is guilty under Article 335 (1), first paragraph of the Criminal Code and the B.E. 2522 (1979) Immigration Act Articles 12 (1), 18 paragraph two, 62 paragraph one. Both Defendants have committed a number of offences and are sentenced for each offence under Article 91 of the Criminal Code as follows:

For the crime of jointly murdering the First Deceased both Defendants are sentenced to death penalty.

For the crime of jointly murdering the Second Deceased in order to conceal other criminal acts both Defendants are sentenced to death penalty.

For the rape of a woman who is not their wife both Defendants are sentenced to 20 years of imprisonment each.

For the crime of theft at night the Second Defendant is sentenced to two years of imprisonment.

For each separate crime of entering the Kingdom at an illegal entry point and time, the crime of entering the Kingdom without a passport and without legal permission to do so and for entering the Kingdom not through the legal channel of an Immigration Officer or presenting the correct legal documents, all with the same intention,

/the sentence is ...

the sentence is based on the charge of foreigners entering the Kingdom illegally, under Article 90 of the Criminal Code the Second Defendant is sentenced to 6 months in prison. For the crime of illegally residing in the Kingdom without permission to remain the Second Defendant is sentenced to 6 months in prison. The Second Defendant confessed to the charge of being an illegal immigrant who had entered the Kingdom without permission and the charge of residing in the Kingdom without permission as a result of which his sentence is reduced by half per sentence. With regard to the confession by the Second Defendant of the offence of theft by night, this contributes to the investigation as it led to the recovery of the exhibited telephone. As a result the penalty is reduced by a quarter. Under Article 78 of the Criminal Code the crime of theft by night would result in a prison sentence for the Second Defendant of one year and six months. The Second Defendant is sentenced to 3 months in prison for the crime of being an illegal foreigner entering the Kingdom without permission. Given that both the Defendants have been sentenced to death they cannot be imprisoned on the remaining charges. The Defendants are to be executed as the only sentencing. The exhibited hoe shall be returned to the owner and the Second Defendant must pay 15,000 baht as the value of the exhibited mobile phone to the heirs of the First Deceased. All other charges apart from the above are dismissed.

Mr Monchai Phothong

Miss Nittaya Watthanasiwakul

Miss Phimsasi Jansawang

