

Summary of Judgment No. 104 (Phnom Penh Appeal Court)

Date of Issuance: November 12, 2012

Keywords: Premeditated Murder, Not Present at the Location During the Commission, Minor, Trial *in Absentia*.

Dates: The judgment subject to the appeal was in May 2011. The appeal case was in October 2012. The hearing was in October 2012, and the date of the judgment issuance was November 2012.

Facts and Decision: This is an appeal filed by one convict (a minor) against Judgment No. 48 (J) dated May 12, 2011, of the Phnom Penh Municipal Court. The Appeal Court had issued Judgment No. 46 Kr II dated February 24, 2012. Six other convicts (one of whom was a minor) filed an objection against the Appeal Court's Judgment No. 46 Kr II dated February 24, 2012.

The representative lawyer claimed that the client did not commit the act. The lawyer also asserted that the police report was based on hearsay from citizens at a coffee shop. The Prosecutor requested the Trial Chamber to consider the matter (p. 5).

Reasoning: 3. *The defense lawyer for the accused raised the point that his client did not commit the crime of premeditated murder, and this defensive conclusion had already been fully considered by the Municipal Court.* 5. *All the accused did not provide exculpatory evidence that could be considered for their acquittal from the charges.*

Note on Burden and Standard of Proof: This case involves the burden and standard of proof. According to the law and in line with the principle of presumption of innocence, the suspect does not have the burden to present exculpatory evidence. However, the suspect can present evidence regarding excuses, such as stating that they were not at the scene of the incident.

It is not possible for a suspect to be required to show the constituent elements of the offense as part of presenting a defense.

Further Questions to Consider: What constitutes exculpatory evidence?

Recommended Further Reading: Burden and standard of proof, the principle of presumption of innocence, and excuses, summary of PP court judgement no. 48.