

CHEA VICHEA'S MURDER: BORN SAMNANG & SOK SAM OEUN TRIAL ISSUES AND TRANSCRIPT

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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENCE OF HUMAN RIGHTS

Born Samnang and Sok Sam Oeun Trial Issues

The August 1, 2005 trial and convictions of Born Samnang and Sok Sam Oeun for the murder of trade unionist Chea Vichea was marked by violations of fair trial rights and a lack of credible evidence. The following are some of the main issues raised by the trial:

1. Failure to hear prosecution witnesses in court

Prosecution witnesses (with the exception of several police officers who testified primarily to deny Born Samnang's testimony of police mistreatment and bribery) did not appear in court. The judge instructed that written statements by them be read to the court, which meant that their testimony was presented as evidence without an opportunity for defense counsel to challenge it through cross-examination. This violated Art. 24.1 of the 1992 UNTAC Penal Code, which states that: "*Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.*"

Witnesses whom the defense were unable to cross-examine at the trial included: several persons who alleged (in written statements) that Born Samnang and Sok Sam Oeun knew each other prior to their arrests (which both defendants strenuously denied during the trial); the police chief of Toul Kork district (who was instrumental in the investigation and arrests of the defendants and against whom Born Samnang made serious allegations during the trial); a Ministry of Interior artist who reportedly drew a sketch of Chea Vichea's killer (which allegedly resembled Born Samnang), and the eyewitnesses who reportedly provided the descriptions upon which this sketch was based; and Ministry of Interior forensics officers who conducted ballistics tests on a handgun provided to them by Phnom Penh police.

Written statements by some but not all of these witnesses were read during the trial. By convicting Born Samnang and Sok Sam Oeun, it is evident that the trial judge accepted at least some of these written statements as the truth. He should not have done so without hearing these witnesses in court and providing the defense with the opportunity to cross-examine them.

2. Lack of evidence

- a. There was no eyewitness testimony that the accused were the killers of Chea Vichea. None of the prosecution witnesses whose statements were read to the court placed either defendant at the scene of the crime, or provided any first-hand information of their involvement in the murder.
- b. Defense witnesses provided an alibi for Born Samnang, stating that he was in Neak Loeung (more than 50km from Phnom Penh) on the morning of Chea Vichea's murder. This alibi was consistent with Born Samnang's testimony to the court.
- c. The only evidence presented by the prosecution to contradict this alibi was Born Samnang's initial confessions to police and court officials (in which he had stated that

he left Phnom Penh the day before the crime but returned in the early morning of the crime) and statements from several witnesses (who said that Born Samnang spent the night before the crime at a Phnom Penh guesthouse). As defense lawyers noted, there was a major contradiction between these witness statements and Born Samnang's initial confession. By the end of the trial, it was still unclear whether the prosecution alleged that Born Samnang had spent the eve of the crime in Phnom Penh or that he had returned to Phnom Penh from Neak Loeung on the morning of the crime.

- d. In the case of Sok Sam Oeun, no evidence was presented linking him to Chea Vichea's murder other than Born Samnang's initial alleged naming of him as an accomplice (see below).

3. *Undue reliance on confessions*

The prosecution case rested virtually entirely on Born Samnang's initial confessions to the police and court officials following his arrest. Born Samnang subsequently recanted these confessions – stating that they were extracted under duress – to an investigating judge. During the trial, he continued to reject these confessions and he made detailed allegations of serious police abuses committed to compel him to confess. According to Cambodia's Constitutional and criminal law, confessions which are obtained under duress are not admissible as evidence in court.¹ Furthermore, the criminal law states that confessions cannot be used to convict persons unless they are corroborated by other evidence.²

By convicting Born Samnang, the judge obviously concluded that his initial confessions were valid and not obtained under duress. Putting aside the issue of whether that was a reasonable conclusion to make, the judge was obligated not to convict Born Samnang unless there was sufficient other evidence to corroborate his confession. This was plainly not the case, given the weakness of the other evidence presented, and that prosecution witnesses did not testify and were not able to be cross-examined by the defense.

The case of Sok Sam Oeun is even more clear-cut. The judge's decision to convict him can only have been based upon Born Samnang's initial confession, as there was no other evidence presented to connect Sok Sam Oeun to the murder. As such, Sok Sam Oeun was convicted – in violation of Cambodian criminal law – solely on the basis of a confession by another person.

In addition to the points above, there were a number of serious procedural violations – including that Born Samnang was arrested unlawfully without a court warrant, and that both defendants were kept in pre-trial detention for an unlawfully excessive period (18 months) – in this case.

¹ Art. 38 of Cambodia's Constitution states "Confessions obtained by physical or mental force shall not be admissible as evidence of guilt" & Art. 24.3 of the 1992 UNTAC penal code states "A confession obtained under duress, of whatever form, shall be considered null and void". Art. 38 of the Constitution also states that in "Any case of doubt, it shall be resolved in favor of the accused".

² Art. 24.3 of 1992 UNTAC penal code: "Confessions by accused persons are never grounds for conviction unless corroborated by other evidence".

Unofficial transcript of Born Samnang and Sok Sam Oeun Trial

The following is based on written notes taken during the trial; it is not verbatim and some parts of the trial were inaudible.

Phnom Penh Municipal Court, August 1, 2005

Defendants:

- Born Samnang, 23, single
- Sok Sam Oeun (also known as Boeun), 36, married with one child.

Judge:

- Kong Seth

Prosecutor: Sok Roeun

Defense lawyers:

- Khov Chantha (representing Sok Sam Oeun)
- Chum Sovannaly (Born Samnang),
(Both from Cambodian Defenders Project NGO)

Civil plaintiff's lawyer:

- Peung Yok Hiep (representing of family of murder victim Chea Vichea), from Legal Aid of Cambodia NGO.

Criminal charges: Murder (Art. 3 of Law on Aggravating Circumstances) & Illegal Weapons (Art. 54 UNTAC Penal Code).

Trial

Begins at 8.38am. Defendants BS and SSO are brought to the dock.

In front of the dock are two pieces of physical evidence presented to the court: a K59 handgun and a blue shirt (allegedly worn by BS on the day of the murder).

Five defense witness (BS' girlfriend, her mother & her brother, BS' sister, and a friend of BS) are called in and given instructions by the judge to wait outside the court until their turn to testify.

No prosecution witnesses are called in.

Police officers Heng Vathana (deputy chief, Toul Kork district police, Phnom Penh), Ly Rasy (first deputy chief, Minor Crimes Bureau, Phnom Penh Municipal Police), along with at least one other police officer and several prison guards, are seated directly behind BS and SSO (where they remain throughout the trial).

The civil plaintiff in the case, Chea Mony, brother of Chea Vichea, is present.

Prosecutor reads his opening statement. Summary:

Prosecutor says BS and SSO killed Chea Vichea on Jan 22, 2004. They rode a moto together to the scene of the crime; SSO drove the moto and BS fired the gun, shooting Chea Vichea 3 times with a K59 handgun. Prosecutor refers to a police report dated January 22, 2004, and a report from a police search of a house on Jan 28, 04. The suspects were arrested that day, Jan 28.

Prosecutor says that BS confessed to the crime, naming SSO as his accomplice. They rode a moto together to go and shoot CV, according to this confession.

Prosecutor notes that SSO has denied that he ever knew BS before their arrests, but witnesses say otherwise. Prosecutor also notes that eyewitnesses saw two people on a moto and one of them shoot CV [implying that this is consistent with BS's initial confession, in which he identified SSO as his accomplice].

Prosecutor refers to a police report on the confiscation of a handgun [found near a tree in a ricefield in Russey Keo district, Phnom Penh] which was allegedly the murder weapon.

Born Samnang testifies, questioned by the **Judge**:

BS [speaking rapidly and emotionally, his hands raised in a *sompeah* gesture of respect]: I was arrested at 1am [morning of Jan 28, 2004] at my girlfriend's village in Neak Loeung [more than 50km from Phnom Penh]. The police ordered me to thumbprint a confession. The police provided the gun [the alleged murder weapon which, according to the police, BS told the police where to find]. Then I went to PJ prison for one night. The next day I was transferred to the police station for the press conference [at which he and SSO were shown to the press, and both denied their involvement in the murder]. I denied I was involved in the killing [at the press conference].

At the start, I had no choice so I accepted what the police prepared for me. At the police station, they said they would take care of me. [They said] that when the trial came, there would be no punishment for me. I denied [when he was first arrested] that I was involved in the killing [but the police made him confess].

Judge: How can you prove that someone said that they would take care of you?

BS: It was verbal; they did not put anything in writing to say this. Three police officers told me this: Vathana [present in court, sitting behind BS], one police photographer, and one other policeman who I don't know.

When the police first questioned me, I did not confess. Then they instructed me to give a short statement [saying] I am the one who killed Chea Vichea. I confessed as they told me to. [But really] I did not do it. I don't know Sok Sam Oeun. I don't know about any Dream moto. I never met Sok Sam Oeun or heard his name [before my arrest]. I never went out [to restaurants, etc] with him.

J: Do you have a moto?

BS: I don't know.

J: When you [confessed to the] police, what moto did you say [you used during the killing]?

BS: C100 moto.

BS: I didn't say anything about the gun. [When the police took him to 'find' the gun], there was a Viva moto and a Camry car already there. I heard people talking on walkie-talkies to each other. They took a picture of me and the gun.

J: Where did you get the gun from?

BS: I never had the gun. They told me what to say. They told me to say I had the gun and Sok Sam Oeun was my driver.

J: Where did you get the gun?

BS: I never had the gun. They had it organized already. They took me to the place and told me what to say. When I was taken there [to the place where the gun was found], there were already 3 police officers there before I arrived. The gun was lying in a ricefield.

Prosecutor questions Born Samnang:

P: Do you know Tun & Oeun [the latter may be referring to SSO: unclear]

BS: No.

P: Did the police beat you?

BS: They beat me and wrote something on paper. I don't know what they wrote. They took my hand and forced me to thumbprint it.

P: Chea Vichea was killed on Jan 22, 2004. Where were you from Jan 21-23?

BS: I was at the Ly Ly guesthouse [in Toul Kork, Phnom Penh] from the 19th. I left the guesthouse on the morning of the 21st and I went to Neak Loeung then. I paid \$5 a night at the Ly Ly.

P: Did any girl or friend come to see you there [at guesthouse]?

BS: No.

P: [Unclear. Question about why BS had been at the guesthouse and whether he had stolen from his family/relatives?]

BS: I used to work at a [pharmaceutical] company. I took \$5,000 from my company. [Because of this] my family disowned me. The police got my photo from my family [his family sent a report and a photo to the police to disown him, prior to Chea Vichea's killing]. I didn't know that my family did not recognize me any more. I only [discovered this] when I was in the police station and a man named Rasy [present at court] told me.

On the 22nd [day of killing], I was with my girlfriend in Neak Loeung.

P: What was your room number at the guesthouse?

BS: I don't remember.

P: It was a room upstairs?

BS: It was a room overlooking the road. I met reception when got the room there.

P: They must have given you a key. You should remember the room number.

Judge: What did the police instruct you to say?

BS: That I was the responsible for the killing. But [it's not true and] I did not get \$1,500 [as recorded in his confession].

*Judge instructs court clerk to read to the court the **statement/confession BS made to the police** following his arrest. Summary: The confession says that he killed Chea Vichea with a K59 gun. He and SSO rode on a black and white C100 moto. BS fired 2 shots [3?] at CV. Afterward, he and SSO separated and were supposed to meet up together at a guesthouse; BS could not remember the name of the guesthouse. BS took the gun and went to hide it somewhere. Then he took a taxi to Neak Loeung. A man named 'Touch' had promised him and SSO \$5,000 to do the killing. 'Touch' asked them to commit the killing because he had a personal dispute with Chea Vichea. BS said in the confession that his parents had abandoned him because he stole something [money from their house?].*

BS [to judge]: I did not give that confession. They made me give my thumbprint three times. I didn't know what was written. I was afraid of being beaten. What I confessed was just to say whatever I needed to say. The police prepared it all. Then they took me to where the gun was and took photos and asked me to thumbprint [the confession]. On the day of the press conference [at Phnom Penh Municipal Police Commission, Jan 29, 2004, the day after the arrest of BS and SSO], I did not recognize that confession. I told [the journalists] that I did not do the shooting. Before the press conference, the police me that my parents will not help me. They said 'To help yourself, you must help the police. Only the police can help you.'

Prosecutor: When I asked you before whether you ever stole anything from other people [from relatives?], you said no. But in your confession to the police, you said you took a moto from your cousin?

BS: My confession is not true. I speak the truth now. I used to cheat someone's moto [?]. When I was interviewed by the investigating judge, I had an NGO lawyer. This police confession was forced out of me. My interview with the investigating judge with the NGO lawyer present was not forced. [From this and subsequent testimony, it seems that BS was interviewed twice by the investigating judge. On the first occasion, when BS had a private lawyer present who had been appointed by the court and whom he did not trust, BS continued to admit to the killing. On the second occasion, when he had a CDP NGO lawyer whom he trusted, he recanted all previous confessions and denied the killing].

BS: The police promised me that I would be in prison for only one year if I confessed.

P: What confession do you recognize and which do you deny? The words about killing, even in your confession in court with a lawyer [the first interview with investigating judge, with a private lawyer], you still deny them?

BS: Yes. I deny all my confessions until I had an NGO lawyer. At court, when I had my lawyer from an NGO, I said [to the investigating judge] that I reject all my previous confessions.

P: What time did you check out of the guesthouse and go to Neak Loeung?

BS: About 10am, on the 21st of January. At the time [I checked out] the guesthouse owner was burning joss sticks. I went to Neak Loeung and stayed there until the 25th. At that time [of his confession to the police], I did not tell the truth. I told them what they made me say. I reject that confession. When I had the lawyer, I told the truth. I was in Neak Loeung from the 21st to the 27th, [except] on the 25th I came to Phnom Penh with the brother of my girlfriend, and then I went to Saang [district of Kandal] to get \$5 from someone who owed me, [and then returned to Neak Loeung].

Judge instructs court clerk to read out BS' statement when he was first interviewed by the court prosecutor. Summary: I went to drink with Sok Sam Oeun and then I went to Ly Ly guesthouse and then I went to Neak Loeung to say there one night [on the 21st, the eve of the killing]. Then I came back to Phnom Penh on the 22ⁿ. I left at 6am and got to Phnom Penh at 9am [CV was killed shortly after 9am] and met Oeun at Ly Ly. He asked me can you kill a man? Someone will pay us \$5000 to do that. I asked him who was to be killed? Oeun told me a man named Chea. We went to near Independence Monument. Oeun had a backpack with \$750 in it. He said that's all the money we have been paid so far. We went to the newspaper stall, and Oeun pointed out the target to me. I got off the moto and from about 3 meters away, I shot him from the front 3 times. After the shooting, we were supposed to go to Ly Ly separately. Oeun told me to wait there till 11am and he would bring the rest of the money to me there. At 2pm [when Oeun had not showed up], I left the guesthouse and called a moto dop to take me somewhere. I don't remember the name of the village. I told the moto driver to stop because I needed to urinate, then I left the moto and

walked to a palm tree and threw the gun away there. I went back to Ly Ly about 3pm. Oeun did not come to Ly Ly, so I decided to go back to Neak Loeung.

Judge: When you were questioned by the prosecutor, were the police inside the room?

BS: No, the police were outside.

*Judge instructs court clerk to read **BS' first interview with investigating judge**. In it, BS says he met someone [apparently SSO] in Srey Pao's shop/restaurant in Toul Kork. He did not give me his phone number but I told him if you want to see me you come to Ly Ly guesthouse, I'm always there. I had not gone home [to his family] since the 18th. I know my parents abandoned me from that day. I used to work at Samnang pharma [pharmaceutical company] with Johnny & Alex. I worked there for one month. On Jan 22 in the morning, I returned to Phnom Penh [from Neak Loeung] and went to Ly Ly. I arrived there about 8am, and I met Oeun. He asked me can you kill a man? \$5,000 payment for us. I asked name of target? Chea. At the first stage, we were given \$1,500 for the two of us to share. Oeun drove the moto. He gave me \$750. Later, I went to Saang and Prey Touch to change my clothes many times.*

BS [to judge]: I never received that money. All that confession, I was told to say.

J: After shooting the victim, where did you go?

BS: I had a [private] lawyer when I was interviewed by the investigating judge [first time], but I knew that afterward I would have to go back to custody. I had no choice but to still say the same [to continue to confess].

*One of the defense lawyers asks the judge to have the court clerk read the **second and final statement of BS to the investigating judge**, dated Feb 25, 2004. That statement says: I deny all previous confessions. I was told to say those things but I did not commit anything. I did not know Sok Sam Oeun. In my confession, I said that we drove the moto toward the south. The police to me say that in my confession. Everything I said, even about what clothes I wore, is false. They told me. At the police station, a man named Rasy told me. And Heng Peo [former municipal deputy police commissioner, now police commissioner] told me that whatever the court sentences me to, let them do and he will help to release me. The police gave me 70,000 riels. They told me [before going to court or press conference?] 'Don't show your fear, just pretend to be a normal person.'*

Defense lawyer **Chum Sovannaly** questions **Born Samnang**:

CS: [?]

BS: I went to Neak Loeung to my girlfriend's house. I didn't know which house it was [never been there before] but I called by phone to find out. I got a taxi to Neak Loeung from Chbar Ampeou market. I borrowed \$10 from my friend Roun [to get the taxi]. I arrived at Neak Loeung about noon. I met the brother of my girlfriend, and he took me to my girlfriend's house. In the morning of the 22nd, I went to pick guava fruit with Hong [his girlfriend] and some other people, from 7-10am.

CS: You are a strange prisoner? They [the police] look after you, give you things?

BS [Nearly in tears]: I'm not a real killer. I'm the fake killer, the plastic killer. After I carry out my duty, they will destroy me. They told me they would put me in the prison for only one year. This is how they cheated me.

Defense lawyer **Khov Chantha** questions **BS**:

KC: You told the judge that your police confession naming Sok Sam Oeun was not true?

BS: Yes. I first met Oeun at the police station of Toul Kork [after their arrests]. I never knew him before.

KC: Did you ever go out with him before, to restaurants?

BS: No, never. I never knew him. I only know him from the police station and the prison. Firstly, in prison we were separated but later we stayed together.

KC: Did you change your confession before you were together in the prison or after?

BS: I changed my confession on the 25th [Feb]. I wrote a report. This was the real story. I sent a copy to [investigating judge] Heng Thirith and to my mother and to my NGO lawyer.

[Policemen] Rasy, Vathana and Song came to meet me in prison. They said they will give me money and girls [bring girls to the prison for him]. I received a lot from them. Sometimes \$20-30, sometimes 100,000 riels, sometimes \$100-200. The police told me that if I stuck to my confession, I would in prison for one year, and afterward I would get a job with the police.

Civil plaintiffs' lawyer, **Peung Yok Hiep**, questions **Born Samnang**:

PYH: [?]

BS: I received money from Song [Hun Song, police chief of Toul Kork district].

PYH: Why did you receive/take money?

BS: If I didn't take it, it would mean that I didn't cooperate with them. I was worried about my security in prison. I also needed money for my health in prison.

PYH: You should not have taken money from anyone. This is bribery. Under the lawyer, both the giver and taker of bribes commit a crime.

BS: On the first day, I didn't accept any money. [...] Many people know that I'm not the real killer.

PYH: On the day of the event [killing], you were not there. You were somewhere else. But sometimes you confessed [to the killing]...

BS: I confessed because they forced me. [I confessed falsely] from the 31st [?] to the 25th of February. I deny all my confessions before Feb 25.

PYH: What did [investigating judge] Hing Thirith do?

BS: I asked him to help me. I said I am an innocent, pure person and Heng Peo and Rasy arrested me [unfairly].

L: What paper did the investigating judge write to you?

BS: He released me. And a few days later he was fired. A few days later [after charges were dropped by Hing Thirith], Song and Rasy came to see me in prison and said 'What did you say to the investigating judge for him to drop the charges?'. Rasy said 'Now the investigation will not proceed, so we cannot help you. The judge was fired already, so how about you, a small fish? We can do anything.'

BS: I have many witnesses [...] The newspaper seller [eyewitness to the murder] said it was not me.

Sok Sam Oeun testifies, questioned by the **judge** and **prosecutor**.

SSO: When this event happened [Jan 22, 2004], it was Chinese New Year, so I had joined a party with my friends [in Phnom Penh]. This was from 8-9 in the morning until 11, then I went to have another drink until about 1 o'clock. There were 10-20 people at the party. I borrowed a moto from [a friend named] Map and I went with my child to the market.

[Unclear: SSO mentions something about Bavet in Svay Rieng province. Also mentions the names 'Rasy' and 'Doeun'. The former is apparently policeman Ly Rasy; the latter is apparently an informant who provided information to Toul Kork police implicating SSO. SSO also refers to using a red Viva moto, and not a black moto.]

SSO: I never knew Born Samnang until I was in police custody, when the police said to me 'This is your accomplice'.

Court clerk reads out SSO's statement to police while in police custody. Summary: In Jan 2004, I came to live with my sister Vanna in Toul Kork. Suong Sopul was a neighbor of my sister. [Suong Sopul is a Fucinpec military officer whose son Viseth/Seth was a friend of SSO. SSO was staying at Suong Sopul's house at the time of his arrest.] Suong Sopul is aged about 50, and he's in the stone [thmar si daek - a type of stone] business. I asked him for help to find a job. His son is named Seth, aged 33, who used to work at the Royal Phnom Penh Hotel. On the 22nd, I didn't know/meet Nang [?]. I took a moto with Seth to find out about the stone business. I heard about the Chea Vichea killing. I went there [to killing scene] to look [unclear: on the day of the killing, or possibly on another day?]. I wore a white shirt. I know the two people named Doeun and Pao. Pao is a good person. Doeun is not a good person, not a friend.

Court clerk reads SSO's statement to the prosecutor: [On the day of the killing], I took a red moto to Boeng Keng market with my wife and children to buy clothes. In the afternoon/night, I met Douen, aged 33. Doeun called me to look at stones. When I arrived at Doeun's house, there were no stones, just two or three friends of Doeun's drinking wine there.

SSO [angrily, referring to BS]: We are human beings with a conscience. Why did someone accuse me? I cannot accept this because I am innocent.

SSO: [To judge/prosecutor] In my statement [to police or prosecutor?], they wrote that I was eating and drinking with Doeun. I asked them to remove that statement, but they did not. They kept it there to accuse me.

Prosecutor: Did you know Tun?

SSO: No.

P: Did you know Born Samnang?

SSO: No.

SSO: They [police] hit me with a gun to my head. And they pressed a gun against my head; I still have the mark. [Apparently two separate occasions: once being struck with a gun and once having a gun held to his head.] How can I say I knew Born Samnang when I never knew him?

Like how could I say that I am a child of someone if I am not? a-Policeman [derogatory term], he kicked me once.

I think something was eliminated from my statement, from what I said.

At the prison, we were/are separated. Born Samnang stayed in the high-class place [received preferential treatment]. I stayed in the low-class place.

Judge: Have you ever used drugs?

SSO: No.

One of the **defense lawyers** questions **Sok Sam Oeun**:

Lawyer: [?]

SSO [close to tears]: I swear I never knew him, I never knew Born Samnang. If I knew Born Samnang [and am telling a lie], let me melt/disappear.

Civil plaintiff's lawyer, **Peung Yok Hiep**, questions **Sok Sam Oeun**:

L: [?]

SSO: I was not there [at Chea Vichea's killing]. I have witnesses: Seth and his wife and parents in law, Map and his family, more than 10 people.

L: Are the witnesses here at court?

SSO: I don't know.

SSO: I have denied this killing in all my interviews. I was not forced to say anything. I denied it. I was hit on the head with a gun [to try to get him to confess]. Even if I die, I will die with my honesty.

Prosecutor questions **Sok Sam Oeun**:

P: [?]

SSO: a-Doeun called to Sopul to say that there's a man who has some stone [unclear what day he's talking about]. Doeun said can you come to see it? I went there but I did not see any stone. There were a few people drinking alcohol there. Some were in police and soldiers' uniforms.

P: Do you know Puth [Muth?] and Phirun?

SSO: No.

P:?

SSO: I did not go into the house [of Doeun]. I just sat on the moto. I did not enter the house.

Judge calls policeman **Heng Vathana** to testify. Questioned by **judge** and **prosecutor**.

HV: We interviewed some witnesses to the shooting. Everything we did we asked for permission to do from our superiors. We compared the photograph of Born Samnang [given by BS' family when they sent a report to the police to disown him, prior to the killing] to the description [of Chea Vichea's killer] from witnesses. We suspected him. He has committed crimes in the past. He stole money.

[Responding to BS' allegations that police gave him cigarettes/money in prison] The police have no right to see prisoners in prison. If the police did this, it would be a crazy thing.

Why does Born Samnang deny his confession? All confessions came from our investigation, we got them within 48 hours of detention [after arrest]. I deny all that they [BS and SSO] have said. If the police held a gun at his head [SSO], it would not cause any marks. [Some observers thought that HV was admitting that police held a gun to SSO; others thought he was talking theoretically and just saying that if that had happened, it would not have left any mark].

[Asked about forensics tests done on the K59 handgun found by police] That is the duty of the technical/forensics police. They should examine the gun to say if it is the one which killed Chea Vichea [he does not state whether this has been done and what the result is.]

After the killing of Chea Vichea, we made sketches of the killers based on witnesses' testimony. This led to the arrest of Born Samnang and Sok Sam Oeun. And then we confiscated the gun.

Heng Vathana questioned by defense lawyer **Chum Sovannaly**:

CS: Why did Toul Kork district police investigate this case? The killing occurred in Chamkarmorn district?

HV: Informants reported information to the local police [Toul Kork]. Our superiors permitted us to investigate it.

CS: [Asks the question again] But Toul Kork district is a long way from Chamkarmorn. Prampel Makara district is closer to Chamkarmorn, other districts are closer, but Toul Kork is far away?

HV: Information was reported to local police. We received orders from above.

CS: Who ordered to you?

WV: We work in cooperation [with other police districts]. Witnesses reported information to local police. We had top orders to our police station to investigate, but still we cooperated with other districts. Sourn Chheangly [then Municipal Police Commissioner] ordered us.

CS: [Question about arrest warrant]

HV: The police have the right to invite suspects for questioning. If the questioning produces evidence, we can ask for orders to arrest them. There was no arrest warrant.

CS: When the police searched the house [referring to the house of BS' girlfriend in Neak Loeng at the time of his arrest], was there a search warrant?

HV: [unclear]

BS: [Interrupting, appealing to HV]: I was not arrested on the street. I was arrested at 1 o'clock in the morning while I was sleeping. Please take pity on me and tell the truth.

CS again asks HV whether he had a house search warrant. HV appeals to the judge and says he doesn't want to answer more questions from the lawyer. The judge tells HV that he should just try to answer whatever questions he can.

CS: Did the prosecutor participate with the police when the police found the gun [in a ricefield on the outskirts of Phnom Penh after allegedly being led to the site by BS]?

HV: A report was sent to prosecutor about when the gun was found [does not directly answer the question]

CS: Did the police pay money to BS [in prison]?

HV: No

BS [Interrupting]: They gave me cigarettes, they gave me money, instant noodles, and other things, and told me what to say. Vathana brought me a girl one time when Song [Vathana's boss] was too busy [to come to the prison himself].

Defense lawyer **Khov Chantha** questions **Heng Vathana**:

KC asks about a witness named *Din Doeun* and whether the police investigated him. HV says the police did not interview or investigate him initially, but only when the investigating judge asked the police to. Someone had told the investigating judge about *Doeun*.

KC [going over to HV and showing him a police interview record]: Is this your name on the bottom of this document?

HV [looking at the document, which records a police interview with *Doeun*]: Yes. I had forgotten, but now I can say that we did interview him.

[As well as *Din Doeun*, the interview record refers to the name *Pol Samith* and the name *Pao* – other people?]

Civil plaintiff's lawyer **Peung Yok Hiep** questions **Heng Vathana**:

PYH notes that the reports of the police are provided as information to the court [and judges are not obligated to accept them as evidence] and asks if there is other evidence against the defendants such as a forensics report showing that the gun found by police was the murder weapon? HV replies that he doesn't know the result of the forensics tests, as this is not his responsibility.

PYH: Is that the gun which killed Chea Vichea?

WV: I have some confidence that it is, but to be sure we need to rely on the expertise from the technical/forensics office. I just came here to court today because the judge asked me to. We gave the gun to the technical police and other relevant departments. I don't know the result.

PYH: Are you sure that you did not give money to Born Samnang?

WV: No, I did not give money.

Defense lawyer **Chum Sovannaly** questions **Heng Vathana**.

CS asks questions about the police sketch of the man who shot Chea Vichea, which the police say was drawn based on descriptions from eyewitnesses to the killing. HV's answer [unclear] seems to be that the source of the sketch was a cyclo driver who saw the killing. The Ministry of Interior drew the sketch, not the Toul Kork police.

As HV finishes his testimony and goes to sit down, SSO gets up and, pointing at him, says: "He's the one who threatened and kicked me."

Policeman **Ly Rasy** testifies. Questioned by **judge** and **prosecutor**.

LR: I was involved in the investigation. We never lured or made promises to Born Samnang. We are not the owner of this case after it was sent to the court. We have no relation to the case any more after that. Why would I be involved in giving money and girls to Born Samnang?

Born Samnang [interrupting]: This guy didn't give me girls. But he used to give me money in PJ prison and he used to threaten me.

One of the **defense lawyers** questions **Ly Rasy**:

LR: I never went to PJ prison to meet Born Samnang.

A **PJ prison official** [possibly the director; his name and position was not given] testifies at request of the judge.

As the prison official moves forward to testify, another prison officer sitting behind BS walks up to BS and raps him once on the back – an apparent instruction to keep quiet.

PJ prison official: I have never seen Toul Kork police officers coming and giving money to Born Samnang.

Defense witness 1, Nguyen Thi Noeung, mother of BS' girlfriend, testifies.

On the 21st of January 2004, it was Chinese New Year and Samnang came to stay with my family. He knew my daughter. About 9 o'clock he came to my house. He stayed at my house until the day of his arrest. On the 22nd, he went to the other side of the river to pick guava fruit with other people. He was arrested on [the morning of] the 28th at about midnight.

[To questions from defense lawyers]. When he first arrived at Neak Loeng on the 21st, he didn't know my house [never been there before], but he phoned to us to find out. I answered the phone and he thought I was his girlfriend [her daughter]. I said 'Why do you come call me darling? I'm her mother, not your girlfriend'.

[To questions from civil plaintiff's lawyer about guava fruit picking on the 22nd:] He was there with many people, not only my daughter. They caught the ferry from the east bank to the west bank, and went to a guava plantation near the riverfront. Samnang went there with my daughter and three other children in my family.

Defense witness 2, Nguyen Thi Hong, BS' girlfriend, testifies.

He was at my house from the 21st of January. We knew/met each other in Phnom Penh. I used to live in Phnom Penh. I was at my aunt's barber shop [when BS met her]. My house is in Neak Loeung. I went back there to live in 2004. Samnang came to my house only the one time [arriving on the 21st]. He didn't know where the house was, so I gave him a phone number to call to contact us.

Defense witness 3 [name unclear], goldsmith, a friend [cousin?] of BS:

I was the one who gave a photo of Samnang to the police on Jan 27 [when they came looking for BS in Phnom Penh to arrest him]. I tried to find Samnang to tell him to come home, because he had never come home [since he left the family home prior to Chea Vichea's killing]. The police said they wanted Born Samnang to come home so they could give him reeducation. The police said I should tell him to come home.

Defense witness 4, [name unclear], sister of BS:

I was the one who took the report and photo of Samnang to the police for the family to disown him [on or around Jan 17, 2004]. Later the police came to try to find him. They said they wanted him to come home.

Defense witness 5, [name unclear], younger brother of BS' girlfriend.

Born Samnang was in Neak Loeung with my sister for 7 or 8 days from the 21st of January.

Trial breaks for lunch at 11.45am and resumes at 2.41pm.

Court clerk reads a **police report** on the crime scene examination. It says that 2 gun cartridges and 1 bullet was recovered from the scene.

Civil plaintiff **Chea Mony**, brother of Chea Vichea, makes statement to the court:

CM says that some property was stolen from his brother's body after the shooting. CM says that the police gave him CV's moto and telephone, but some of the \$700 which CV had on him at the time was missing.

CM: I don't believe these two [BS and SSO] are guilty. They have witnesses that they were not there [at the time of the crime]. There are also witnesses to the shooting, but they don't come to court today because they don't believe that these are the real killers.

Chea Mony questioned by his lawyer **Peung Yok Hiep**:

PYH: Before the shooting, were there any threats to your brother?

CM: A text message was sent to my brother on Dec 26, 2003. It said 'I will kill you'. The authorities told my brother that the message came from a telephone number belonging to a person with a lot of power. They told him that he should go away from Cambodia for his safety.

Chea Vichea told me and other relatives 'I will not stay alive, I have been threatened 3 times'. [...] One time, someone came up to him and lifted up his shirt to show a gun to my brother. The lady who sells newspapers [at the newspaper stall where CV was killed] is a witness. She had warned him not to read newspapers in her place because it was dangerous. He had already told me 'This country cannot provide justice and security for me.' The newspaper seller told me that these two [BS and SSO] are not the real killers.

I want \$50,000 compensation [from the killers] and I want the authorities to get the real killers for me. According to the reports and evidence [at court today], there is not enough to convict these two. I ask the court to drop the charges against them. The prosecutor and the police should work to find the real killers. The court and the government must find the real perpetrators for me and my brother to have peace.

Defense lawyer **Khov Chantha** questions **Chea Mony**:

KC asks what phone number the threatening text message came from. CM produces the telephone in court and opens the text message, which is still saved in it. The message was from the phone number 012-987-794.

CV: I am 100% sure we should be able to find out whose number that is. The police told me that the owner of the phone was a *neak mien* [rich person]. I called the number once. The person who answered said he was in Kampong Cham. Later I called again and he said he was in Phnom Penh. I asked my friend, a foreigner to call the number, and [...] Now the phone is shut off/disconnected. The date of the text message is 22 July 03 [different date than CM first said; the latter is apparently the correct date]. It says 'a-Dog. I will kill you. You're a-Sam Rainsy Party'.

CV takes the phone up to the judge for him to read the text message.

Defense lawyer **Chum Sovannaly** requests to the judge that Toul Kork district police chief Hun Song and the MOI sketch artist should testify at the trial. Judge does not respond.

Court clerk reads a **Ministry of Interior forensics report** on a gun recovered by Toul Kork police. The report says that a bullet fired by police from the recovered gun is positively matched to a bullet taken from CV's body. Two bullet cartridges were taken from the scene of the crime, numbered 3885 and 2184. [Unclear: something about the cartridges coming from a K59 gun or a

P63 – the cartridges can be fired from either gun?] Police test fired the recovered gun three times, and the marks on the cartridges matched the marks on the cartridges taken from the crime scene.

Clerk reads a police statement from a **witness from Ly Ly guesthouse** [name unclear, but probably the owner, named Sovan]: Witness says BS came to stay at the guesthouse about 8pm on January 21, 2004. The next morning he left the guesthouse and after a while he came back. BS acted like a suspicious person, and the witness suspected that he would try to steal a moto. BS wore a white cap and a blue shirt. He stayed in room 104, a room with a double bed.

Judge asks **BS** if he had gone to a restaurant in Toul Kork? BS replies that he can't remember the name of the restaurant.

Clerk reads police statement from a **Ly Ly guesthouse housekeeping staff** [name unclear but probably Col/Pol Meth, referred to later by the prosecutor in final conclusions]. He/she saw BS at the guesthouse, and gave him a towel. Witness is not sure when he left the guesthouse. Later, the witness saw BS' photo [after arrest] in the news media, and that he was suspected of killing CV.

[At request of civil plaintiff's lawyer], Judge instructs clerk to read the statement to the investigating judge of newspaper seller **Var Sothy, an eyewitness to CV's killing**. Summary: I saw the moto [of the killers] stop near my newspaper stall. I don't remember the color of the moto so well. I was standing about 1 meter from Chea Vichea. There were no other people there at the time. The killer got off moto and came to my stall. He looked at a newspaper for a little while. Then he shot Chea Vichea from the front. The perpetrator did not say anything to Chea Vichea, just shot. The killer wore a white shirt. He fired from about 1 meter from Chea Vichea, who was sitting down reading a newspaper at the time. The killers escaped on the moto which drove away from the south to north direction. After the killing, the police came many times to question me. They arrested the suspects quickly, but did not come to see me again then. Why didn't they ask me to go and see the faces of the perpetrators they arrested to see if they are the real killers or not? Heng Peo said they were the real killers – why? [...] I did not see the moto driver well, I cannot say what clothes he wore and I did not see the moto clearly. But the killer did not wear a helmet [ie. she saw him clearly]. When they [the police] wrote the report of what I said, they asked me to thumbprint without reading the report to me first. Why did the authorities arrest the killers, when the killers were not pointed out by me? After their arrests, I was not asked by the police to identify them. I remember the face of the killer. He stood about one meter in front of me. He did not shoot immediately. He stood there and read a newspaper – he read at least one article – before he fired. No one was there except for Chea Vichea, the killer and me.

Court clerk reads a statement from a **witness from Ly Ly guesthouse** [name unclear, but probably Son Sopharith, receptionist, referred to by the prosecutor in his final conclusions]. The witness says that BS stayed at the guesthouse on night of Jan 21 and he disappeared the next day. On the night of Jan 22, the witness saw the news on television about CV's killing and later, on January 29, the witness saw BS' face on television after he was arrested. Witness recognized him as being the person who stayed at the guesthouse.

Court clerk reads a **witness statement** [name unclear but probably Phirun, referred to by the prosecutor later. Witness is a neighbor of SSO or BS?]: The witness says BS and SSO are drug addicts. Witness says he has seen them go to a rental house [guesthouse?] and drink and use drugs together. Witness says that he has bought drugs for them sometimes. Witnesses say that one day he read the newspapers about CV's death, and he suspected SSO and BS were the killers.

Court clerk reads a **witness statement** [name unclear but probably either Oeun/Doeun, referred to by the prosecutor later]: Witness says he knew BS and SSO and they were always smoking drugs and talking about killing. One of them [SSO or BS?] told witness that when he was at the border, he ate the flesh of human beings and he was a drug trafficker. Witness: "So when I saw him on television [after his arrest] I knew he was the one who killed Chea Vichea."

Judge questions Born Samnang and Sok Sam Oeun:

SSO: I swear before you that I never knew Born Samnang before. When I hear a report like the ones just read out, I wonder how they can just make up a story like that? It's unbelievable.

Prosecutor's final conclusion:

After listening to the all the reports and evidence, I can make my conclusion that they are guilty.

Firstly, I have listened to the denials of BS and SSO but according to the police reports from witnesses, [what BS and SSO say] is the opposite of what the police have really found. BS said that he never knew SSO, but there are witnesses and the policeman Vathana who say they knew each other and they used drugs with each other.

Oeun [name unclear, presumably Doeun?] said that BS and SSO always drunk together. When they drink, they always talk about guns and killing. Phirun [another witness] told the police that [Sok Sam] Oeun asked him to go and buy drugs to smoke. And that he always talked about killing. Vathana said that Oeun [SSO or someone else?] said that Born Samnang is his god-brother. The people who said this rented a house next door to [SSO or BS?]. All 3 witnesses say the opposite of what the accused say.

Secondly, the girlfriend of BS and her mother and the other witnesses say that BS went to Neak Loeung before the day of the event. This is in line with what BS said to the police [that he went to Neak Loeung on the 21st and returned to Phnom Penh early the next morning]. The 3 witnesses [staff at the guesthouse] said that BS stayed at the guesthouse until the 22nd [that he did not leave on the 21st]. These witnesses are Sovan, the guesthouse owner; Son Sopharith, the receptionist; and Col [Pol?] Meth, the housekeeper. It's not me who say this, but the witnesses who say it.

Thirdly, the confession of BS: He confessed when he was interviewed by the prosecutor. Today, he said the authorities forced him. This is the right of the accused [to say this]. He said he rejects the previous confessions. When he was interviewed the second time with a lawyer, he rejected all his previous confessions. I am the prosecutor in charge of filing these charges. If he had rejected the charges in front of the prosecutor and the investigating judge [the first time], I would have nothing to say. If you think his confession is not valid, I have nothing to do. If you think his

confession/statement with his [NGO] lawyer is valid, it's up to you. But I don't understand why he said that the lawyer provided to him [at first] by the judge is not valid. But he says that his statement made with his NGO lawyer present is valid. Both lawyers should be valid!

BS is a *neak karaoke* [person who hangs out at karaoke parlors] and a thief.

According to the cyclo driver, bicycle repairer and the barber who are witnesses to the shooting, they confirmed that, after seeing pictures of this man [BS] on television, he is [the killer]. [Statements of these eyewitnesses to the killing were not read out in court.]

Fourthly, there is the forensic evidence to say that CV was killed with that gun. If [BS] denies all the statements he made to the police and others, then he has to deny the forensics evidence too.

Defense lawyer **Chum Sovannaly**'s final conclusion.

Firstly, I want to say that witnesses to the killing said that the killer wore a white shirt, but that shirt [pointing to the prosecution evidence sitting in front of the judge's bench] is a blue shirt.

The killing of CV is not related to my client [BS]. According to the statements of he and SSO, and the statements they made at the appeal court [during bail application hearings], he said that he was not there. [His friend named] Roun took him from the guesthouse to Chbar Ampeou. At Chbar Ampeou, he borrowed \$10 off Roun [to get a taxi]. In Neak Loeung, he found his girlfriend's house through the phone number she gave him. He talked to her mother by phone, and his girlfriend's brother went to pick him up and bring him to the house. On the 22nd, he went to the guava plantation. The statement of BS is in line with these witnesses. BS has an alibi.

Regarding the cyclo driver [eyewitness to the murder], he said [in a statement to police not read to the court?] that he saw and looked at BS' face 90% [unclear, perhaps means that the cyclo man said he was 90% sure that the BS was the killer].³ It seems the cyclo man was just sitting around and waiting for BS on the day of the killing. Why? Cyclo drivers don't care about looking at people's faces; they just care about making money.

The newspaper seller [eyewitness] said that the killer wore a white shirt. This evidence [in court] is a blue shirt.

Another [prosecution] witness says that on the 21st [at night], she saw BS staying at the guesthouse. BS, in his confession to the police, said that he had left on the 21st for Neak Loeung. BS said he left Phnom Penh on the 21st, but the witness said that BS spent the night of the 21st at the guesthouse.

BS' confession came from force and threats. If he did not confess, the police would beat him. This confession violates the Constitution, which says that any confession obtained by threats or beating is not admissible in court. This confession violates the Constitution.

³ In March 2004, police commissioner Heng Peo identified a cyclo driver named Preap Sokhorn as the source of the eyewitness description from which the police based their sketch of the suspected killer. Preap Sokhorn later told the Cambodia Daily that he in fact did not see the killer's face clearly. He also said that the police did not question him until after the arrest of Born Samnang. See 'Source of sketch didn't see shooter's face', Cambodia Daily, Mar 8, 2004.

At the appeal court, BS had money, hundreds of dollars, with him. Why? Why is it that other prisoners in prison do not have money? Because he was paid to confess by the police. At the appeal court, BS had \$400-500 with him. How could he have that money?

BS was arrested without a warrant, and he was arrested at 1am. This violates the law. The police searched the house [of BS' girlfriend, where BS was arrested] at midnight. This violates the law, Art. 20.⁴ He was arrested unlawfully, and the house searched unlawfully. Any evidence collected then is illegal and it cannot be used against my client. According to Art. 35 of Criminal Procedure Law, the police can find evidence against any person and send it to a judge but they can only arrest [without court order] in *flagrante delicto* cases. BS was not committing a crime when he was arrested. The police investigation to find the gun, the prosecutor did not participate in this. This investigation is illegal under Art 36⁵ because the prosecutor was not present.

Under Arts. 22 and 57 of UNTAC law, those who conduct investigations illegally should be prosecuted.

The police investigation also violated Art. 88 of the Criminal Procedure Law, which says that the investigating judge can request forensic expertise if necessary. The forensics [tests on the gun] should have been requested by the judge, not by the police.

According to Art. 22 of UNTAC law, my client must be released [for procedural violations committed by the police]. I ask the judge to drop the charges.

Defense lawyer **Khov Chantha's** final conclusion:

I don't need to explain the problems with the way that the police gathered evidence. CS has already done that.

All witnesses should have come to this hearing.⁶ Today, none of the prosecution witnesses came to the hearing. The prosecutor used written statements from witnesses as evidence against my client. This is not proper. For example, the witness named Din Doeun. When I asked [policeman] Heng Vathana, he said that he started to investigate this case the day after the killing. But the police interview record of Din Doeun is dated January 17, 2004 [before the murder occurred] and the time of interview is given as 00:00 hours [midnight]. Yet, Heng Vathana, when I questioned him at court today, said that he interviewed Din Doeun after Din Doeun had been invited to be interviewed by the investigating judge. The police record says that the police interview was on January 17 and that it was at 00:00 hours. Everyone knows the police don't interview people at midnight. This is ridiculous. I regret that Din Doeun did not come to court today so that we can find out if he is a real witness or not.

The witness Muth Samith [known as Pol? unclear who this witness is] described Oeun as a male aged 29, 1.70 m tall, with smooth hair combed to one side. SSO does not have smooth hair or combed to one side. The witness named him 'Oeun', which is a very common name. [...] This witness is not here to be questioned.

⁴ 1992 UNTAC Penal Code, which states that, except in the cases of people caught in the act of committing a crime, house searches can only be conducted between 6am and 6pm and with an order of the court.

⁵ Of the Amended Criminal Procedure Law, which states that "all operations by the judicial police are under the guidance and coordination of the prosecutor in the process and procedure of investigation..."

⁶ Art. 24.1 of UNTAC Penal Code requires all witnesses to be heard at trial, and states that they can be cross-examined by defense counsel.

No witnesses implicated my client, only BS who has rejected his confession. BS was with his girlfriend in Neak Loeung on the day of the killing. If BS was not involved in this killing, then my client cannot have been involved.

Civil plaintiff's lawyer **Peung Yok Hiep**'s final conclusion:

The UN found an eyewitness to the killing but she is concerned about her safety so she would not come here today. She is afraid for her safety.

The police reports are for information only, and are not evidence [do not have to be accepted by the judge].

On July 22, 2003, Chea Vichea received a threatening text message. It said 'a-Dog, I will kill you. a-Sam Rainsy Party.'

Var Sothy [the newspaper seller] saw the killer. She saw the face of the killer, and she saw that he was tall. The gunman got on the moto and escaped. The police came very quickly after the shooting. It seems they were prepared already [knew what was going to happen]. There was fighting over the body [between the police and CV's family/friends over who would take custody of the body].

The people who did the forensics tests on the gun did not come to court to testify. This evidence should not be used against the accused.

There is not enough evidence against the suspects. I suggest the court release these two people who are not the real killers.

Judge asks **BS** and **SSO** for final comments:

BS: Please release me. [Investigating judge] Hing Thirith was a brave man. I ask you, judge, to look at that gun [pointing at the gun on display in the court] - that is not my gun! All of this is not true. I was threatened. They told me that my life is [worth] the same as a dog's.

SSO: Please release me. Please be independent [in your verdict]. I am worried about my life and my security. I appeal to the local and international community to protect me. They [police] told me that 'You are just one person out of many'.

Trial ends approx. 4.45pm. **Judge** announces that he will retire to deliberate for 10 minutes and then return with the verdict. After approximately 20 minutes he returns and starts to read the verdict. Judge says there is enough evidence to convict the accused, and sentences them to 20 years in prison. At this point, BS and SSO their families start shouting and wailing. Judge continues to read his verdict inaudibly while the shouting continues. Police physically drag BS and SSO away to a van, as the two men shout for help from King Sihanouk and the royal family.