5. Criminal Law and Procedure

a. Criminal Law

1. A ruling in which the criteria for sentencing in capital punishment cases were clearly indicated.

Decision by the Second Petty Bench of the Supreme Court on July 8, 1983. Case No.(*a*) 1505 of 1981. Case of theft, homicide, robbery and homicide, attempt to the crime of robbery and homicide, a violation of the Firearms and Swords Control Act, a violation of the Explosives Control Act. 37 *Keishū* 609.

[Facts]

The defendant in this case stole a pistol from the U.S. Navy base. Then, using the pistol, he committed four homicides during October and November, 1968. In April, 1969, he attempted to commit the crime of robbery and homicide and was arrested. The defendant was nineteen years old when he committed these crimes.

The court of first instance sentenced the defendant to death after ten years' examination. But the court of appeals reversed the judgment of the original instance, instead sentencing the defendant to penal servitude for life. The court of appeals held as follows:

"A court may sentence a defendant to death only when the circumstances of the case are so severe that any court cannot but presume that he deserves the death penalty. In the case before us, considering the following circumstances which are favorable to the defendant as confirmed by the court of first instance and this court of appeals, the death penalty may not be considered proper: (1) The offenses of the defendant of this case were not part of a long-term pattern. And considering his unfortunate surroundings and life history, it can be said that the defendant's

mental maturity at the time of the offenses was substantially that of a juvenile under 18 years of age. Therefore, in dealing with this case, the court must refer to Article 51 of the Juvenile Law. (2) The offenses should partly be attributed to the lack of welfare policy of the state and society. (3) The defendant got married after the decision of the court of first instance, and some changes have occurred in his heart. (4) The defendant published his memoirs written in prison, and paid consolation money to some of the bereaved families of his victims by royalties on the book."

[Opinions of the Court]

1. (Judgment in this case)

The defendant's *corpus delicti* and criminal responsibility are remarkably severe. Therefore, even considering the favorable circumstances pointed out by the court of appeals, it may not be concluded that it is unjust to sentence him to death. The court of appeals erred in allowing a specific acknowledgement and general assessment of the facts to serve as a premise for sentencing. It thus made a serious underestimation in sentencing.

2. (On the criteria in applying capital punishment)

Under our present criminal law which has institutionalized capital punishment, the court may sentence a defendant to death when it weighs the following elements as a whole and concludes that the criminal responsibility of the defendant was so extreme that capital punishment is inevitable both from the viewpoint of the proper balance between crime and punishment and from that of general crime prevention. The elements to be evaluated are: the type of crime, the motive, the methods of offense (especially the obstinacy and brutality of the means of murder), the seriousness of the result of the offense (especially the number of victims), the suffering of the bereaved family, the social effects of the offense, the age of the offender, the offender's previous criminal record, the circumstances of the offender after the offense, and so on.

[Comment]

1. The significance of the judgment in this case lies in the fact that it was the first time the Supreme Court concretely laid down the criteria for applying capital punishment.

There are seventeen types of crimes in the Japanese Criminal Code which provide for the death penalty, penal servitude, and imprisonment as statutory penalties. Therefore, it is necessary for the court to decide whether or not it should employ the death penalty when these crimes are committed. But the criteria for such a decision are not included in the Criminal Code. Up to this case, the Court had never established its own criteria.

Originally, the Japanese Criminal Code did not contain any regulations concerning the sentencing criteria for any criminal case, and a judge had wide-range discretion in sentencing. Up to this case, judges had made sentencing decisions by referring to Article 248 of the Code of Criminal Procedure. So-called "quotations for sentencing" had been formed in previous instances. On the other hand, Article 48 of the Draft of the Reformed Criminal Code aims at the following regulations about sentencing, in order to make decisions more rational and appropriate to the crimes: (1) A penalty must be assessed in proportion to the criminal responsibility of the offender. (2) In sentencing, the age, character, career, and surroundings of the offender, as well as his motive and method, and the impact on society of the offense, the attitude of the offender after his offense, and other factors, must be considered. Additionally, the penalty to be applied must be of use for controlling future offenses and encouraging reformation of the offender. (3) Courts must be especially cautious in applying the death penalty.

It can be said that this decision employed similar criteria for sentencing, and appeared to rely closely on the Draft of the Reformed Criminal Code. The criteria have been criticized on the ground that the subjective elements of the crime, i.e. mental maturity of the offender, and so on, are ignored. But most commentators agreed with this decision fundamentally.

2. It seems that the debate over abolishing capital punishment was revived by this decision. At present, however, the abolition of capital punishment is not supported by a majority of the Japanese people. To abolish capital punishment, arguments must be made by reference to the resulting conditions for crime in countries where capital punishment has been abolished, and then attempts must be made to move public opinion in the direction of abolishing it.

[Reference: Criminal Code §9, §11]

2. A case in which the automobile registration file recorded electromagnetically by a computer system was adjudged to qualify as "the original of an authenticated deed" under the Criminal Code, Article 157.

Decision by the First Petty Bench of the Supreme Court on Nov. 24, 1983. Case No.(*a*) 709 of 1982. Case of making a false entry in the original of an authenticated deed, uttering a false instrument or drawing as mentioned in Articles 154 through 157, uttering an instrument or drawing mentioned in Articles 159 and 160. 1099 *Hanrei Jihō* 29.

[Facts]

The two defendants were respectively the head and an employee of the business office of an auto leadership. It was difficult for many of those who bought a car from this business office to have a car newly registered, because they did not have a garage or lived in another prefecture. Therefore, for the benefit of such customers, the defendants, along with seven other employees, forged a written consent to use a plot, which the company rented and used as a parking area, as a garage. The defendants represented that the written consent had been actually approved by the owner of the plot. In due course, they received garage certificates from the chief of a regional police station based on the forged written consent. Then they applied to the District Land Transport Bureaus for new car registrations, although their applications falsely listed both "the main place of

using a car" and "the address of the user", and unjustly entered into the automobile registration file.

[Opinions of the Court]

The original instance judgment on the following two points was appropriate.

(1) The automobile registration file comprising the electronic data processing system which is regulated in the Road Transportation Vehicles Act legally qualifies as "the original of an authenticated deed relating to rights or duties" in Article 157 (1) of the Criminal Code.

(2) The false entry regarding "the main place of using a car" and "the address of the user" in this automobile registration file qualified as "a false entry" under Article 157 (1) of the Criminal Code.

[Comment]

The Supreme Court decided that causing false information to be registered in the automobile registration file, which was electromagnetically recorded, constituted the act proscribed in Article 157 of the Criminal Code. Up to then, lower courts had so ruled in similar cases. But the significance of this decision lies in the fact that the Supreme Court for the first time approved of the position taken by such lower courts.

The point at issue in a case like this is whether or not a computer magnetic disk is considered "a document" as "the original of an authenticated deed." The decisions of lower courts answered in the affirmative for the following reasons:

(1) An electromagnetic record such as a magnetic disk contains intentions and ideas expressed in codes, which are the machine language peculiar to a computer. They are in themselves not visible or legible, but when printed out, they are reproduced as a visible and legible document; thus the reproduced document and the electromagnetic record are inseparably related to each other.

(2) In the light of the function of the automobile registration system and the purposes of the reform of the Road Transportation Vehicles Act in 1969, the automobile registration file and the original register of automobile registration which existed before the reform may be considered identical in substance.

(3) A public agency equips its office with the original of an authenticated deed for the purpose of confirming and authenticating its contents and permitting interested persons to access it. Therefore, the original of an authenticated deed is different in nature from the ordinary document which floats freely from one place to another.

Among current academic theories on the subject, the majority supports the view which understands a computer magnetic disk to be a document simply because of the point (1) above. However, there is a strong objection against this thesis: it is conceptually contradictory to say that a document yet to be reproduced is already a document itself. In this case, the Supreme Court did not make any conclusive decision as to a document. The Court's decision, perhaps, should be understood to limit itself to the scope of Article 157 of the Criminal Code, by emphasizing the above-mentioned points (2) and (3). Therefore, whether or not a magnetic disk should be protected as a document under the crimes of forgery of documents is a question left for a future judgment.

[Reference: Criminal Code §157]

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