

current law it is provided explicitly that an exclusive jurisdiction does not include the one by an agreement.

(3) By the way, Art. 18 of the Code of Civil Procedure provides that “[a] summary court, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to the district court that has jurisdiction over the location of such a summary court when it finds it appropriate” and this provision is inextricably linked to Art. 16 Para. (2) of the said law. On the other hand, Art. 17 of the said law provides that “[t]he court of first instance, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to another court with jurisdiction, when it finds it necessary in order to avoid substantial delay in the suit or ensure equity between the parties, while taking into consideration the domicile of each party and witness to be examined, the location of any subject of an observation to be used and any other circumstances concerned” and this provision has a purpose of allowing a court of first instance to transfer a case to another court with jurisdiction in order to protect the interests of the parties and to maintain a public interest where courts with jurisdiction are competing. Moreover, Art. 19 of the said law provides a mandatory transfer. However the provisions of the preceding three Articles shall not apply where a suit is subject to the exclusive jurisdiction of the court before which it is pending; nevertheless the exclusive jurisdiction does not include the one determined by an agreement between the parties (Art. 20 Para. (1) of the said law), hence we can compare this provision to the said proviso of Art. 16 Para. (2).

6. Criminal Law and Procedure

X v. Japan

Supreme Court 2nd P.B.,

April 25, 2008

2006 (A) No. 876

KEISHU Vol. 62, No. 5

Summary:

1. Where expert opinions given by psychiatrists are produced as evidence with regard to the existence or absence and level of a mental disorder, based on which the accused's capacity for criminal responsibility should be determined, and the existence or absence and level of the impact of such a disorder on psychological factors, the court should make a determination by giving due consideration to these opinions, unless there are reasonable circumstances for rejecting them, such as that there is a doubt about the impartiality or ability of the expert witnesses or that there is a problem with the preconditions for the expert opinions.
2. With regard to the act of injury causing death in question committed under the strong influence of hallucinations and delusions due to schizophrenia, even though there are circumstances that imply that the accused had a generally normal ability to judge, such as that the accused was aware that the said act constituted a crime and that he surrendered himself to the police after committing it, it is difficult to determine, only because of the existence of these circumstances, that at the time of the act the accused was not insane but was only in a state of diminished capacity.

Reference:

(Concerning 1 and 2) Article 39 of the Penal Code

Article 39 of the Penal Code

(Insanity and Diminished Capacity)

- (1) An act of insanity is not punishable.
- (2) An act of diminished capacity shall lead to the punishment being reduced.

Facts:

- (1) When the accused, due to schizophrenia, began to display relevant symptoms, such as suffering from visual and auditory hallucinations with regard to the manager of the painting shop where the accused worked before, the accused became enraged with the Victim. On the day of the crime, when the accused went into the painting shop, he thought that the Victim was giggling to see him, as if the Victim were saying to him "What

do you want?” and the accused beat the Victim in the face, etc. a few times and the Victim died.

2. With regard to the mental condition of the accused at the time of the Act, the following opinions of the expert witnesses and other experts were examined as evidence in the first and second instances.

(1) Doctor SATO Tadahiko, who conducted a summary psychiatric test in the investigation process, expressed his opinion in a mental health certificate that he prepared (hereinafter referred to as “Sato’s Expert Opinion”), to the following effect. At the time of the Act, the accused was in an advanced stage of a hallucinatory and delusional state due to schizophrenia and the possibility of his insanity cannot be denied. However, since he behaved reasonably until he committed the Act and he does not show any clear residual changes, it cannot be said that the accused completely lacked the ability to discern right from wrong and the ability to control his behavior. In conclusion, the accused was in a state of diminished capacity at that time.

(2) On the other hand, Doctor SAKAGUCHI Masamichi, who was ordered by the court of the first instance to conduct a psychiatric examination of the accused, expressed his opinion in the written expert opinion that he prepared and the testimony that he gave in the trial (hereinafter referred to as “Sakaguchi’s Expert Opinion”), to the effect that at the time of the Act, the accused was in a serious hallucinatory and delusional state due to schizophrenia, and committed the Act directly under the influence of such a state; in conclusion, the accused was insane at that time. With regard to the fact that the accused carried out activities in real life relatively well and seems to have behaved rationally before and after the Act, Doctor Sakaguchi states that this is a phenomenon called “double orientation” in psychology and not rare, and that there is no contradiction between the fact that the accused, in the stage leading up to the Act, behaved rationally to a certain extent, and the fact that the accused committed the Act directly under the influence of the hallucinatory and delusional state due to schizophrenia.

(3) In the prior instance, Doctor HOZAKI Hideo, who examined the case records provided by the public prosecutor, including the materials mentioned in (1) and (2) above, expressed his opinion in his testimony at the trial before the court of prior instance and his written opinion (hereinafter

referred to as “Hozaki’s Opinion”), to the effect that at the time of the Act, the accused was not in a serious condition caused by chronic schizophrenia, but only in a state of diminished capacity.

(4) Doctor FUKATSU Ryo, who was ordered by the court of prior instance to conduct a psychiatric examination of the accused, referred to the expert opinions and opinions mentioned in (1) to (3) above and conducted medical examinations and tests for the accused, and then expressed his opinion in the written expert opinion that he prepared and the testimony that he gave at the trial (hereinafter referred to as “Fukatsu’s Expert Opinion”), to the following effect. The accused was suffering schizophrenia, and while frequently having abnormal experiences in the acute stage, he gradually cherished a delusion that the Victim was his “major persecutor” and recognized the Victim as a person who slanders the accused in various ways and obstructs his efforts to find a job. The Act happened when the accused attacked the Victim in order to stop such obstructive acts by the Victim, and although the Act cannot be said to have happened under the direct control of hallucinations and delusions, it is obvious that the Act could have never happened if there was no schizophrenia. The accused, on one hand, was aware that “it is wrong to do violence and cause injury or death to people,” while on the other hand, he committed the assault due to abnormal experiences. In view of this, it is difficult to say that the accused had the ability to discern right from wrong, and even if he had such an ability at all, he is deemed to have completely lacked the ability to behave according to such discernment.

3 (1) The judgment of the first instance, relying on Sakaguchi’s Expert Opinion, found that the Act happened under the direct control of violent hallucinations and delusions and he was insane at the time of the Act, and rendered an acquittal to the accused. The public prosecutor filed an appeal against this judgment. The judgment of prior instance, finding that the accused was not insane but was only in a state of diminished capacity, quashed the judgment of the first instance on the grounds of errors in fact-finding and sentenced the accused to imprisonment with work for three years.

(2) The reasons attached to the judgment of prior instance are as follows. In the background of the accused’s motive for committing the Act (threatening the Victim with a few blows to stop the Victim from making a fool of

him), the behavioral process until he actually committed the Act, the manner of commission of the crime (beating the Victim a few times with his fist), and the reason why he soon left the scene of the Act (there was a passer-by), there is nothing particularly abnormal, and these circumstances are understandable enough. Although the accused had a false experience of being made to "Call the Victim," he did not have a false experience of being made to "Beat the Victim," and therefore his auditory and visual hallucinations cannot be directly connected to the commission of the Act. In addition, the accused remembers in detail the Commission as well as the situations before and after that and it can be said that his mind was almost clear at that time, and what is more, it can be found that he was aware that the Commission constituted the commission of a crime. Also in light of the facts that the accused surrendered himself to the police after committing the Act and that he spent his social life relatively well and had a willingness to work, even if the accused was suffering from schizophrenia at the time of the Commission, he cannot be found to have been insane due to this disease but can only be found to have been in a state of diminished capacity. Sakaguchi's Expert Opinion and Fukatsu's Expert Opinion are inadmissible.

Opinion:

The judgment of prior instance is quashed.

This case is remanded to the Tokyo High Court.

1. Concerning the evaluation of Sakaguchi's Expert Opinion and Fukatsu's Expert Opinion

(1) The issue of whether the mental condition of an accused person is the state of being insane or having diminished capacity prescribed in Article 39 of the Penal Code is a legal judgment and should be left exclusively to the court's determination, and what is more, the biological and psychological factors based on which this issue should be determined should also be ultimately left to the evaluation by the court in relation to said legal judgment (See 1983 (A) No. 753, decision of the Third Petty Bench of the Supreme Court of September 13, 1983, Saibanshu Keiji No. 232, at 95). However, with regard to the existence or absence and level of a mental disorder, which are biological factors, and the existence or absence and level of the impact of such disorder on psychological factors,

considering that making a diagnosis of these factors is the duty of clinical psychiatry, if opinions given by psychiatrists as expert witnesses have been produced as evidence, the court should make a determination by giving due consideration to these opinions, unless there are reasonable circumstances for rejecting them, such as that there is a doubt about impartiality or ability of the expert witnesses or that there is a problem with the preconditions for the expert opinions.

(2) Examining Sakaguchi's Expert Opinion and Fukatsu's Expert Opinion from this viewpoint, we can find that both doctors, in light of their relevant knowledge, career and performance, are qualified enough as expert witnesses in charge of psychiatric examination, and what is more, the methods for medical examination including various tests applied in their expert opinions as well as their examination of the prerequisite materials are appropriate, and we cannot find any serious contradiction, mistake or omission in their process of drawing conclusions. Furthermore, the psychiatric knowledge that both doctors rely on cannot be construed to be particularly unique.

...omission...

(2) In short, the judgment of prior instance rejected as inadmissible the expert opinions by Doctor Sakaguchi and Doctor Fukatsu that are in principle reliable enough as explained in (2) for the reasons stated above, and such evaluation of evidence cannot be deemed to be appropriate.

2. Comprehensive determination on the circumstances concerned

(1) The accused cannot be found to have been insane at the time of the Act only because he was suffering schizophrenia at that time, but whether or not he had capacity to assume criminal responsibility and the level of such capacity should be determined by taking into consideration various circumstances concerned comprehensively, such as the medical condition of the accused at the time of commission, his living conditions prior to commission, and the motive and manner of commission (See 1983 (A) No. 1761, decision of the Third Petty Bench of the Supreme Court of July 3, 1984, *Keishu* Vol. 38, No. 8, at 2783). It follows that if whether or not the accused had capacity to assume criminal responsibility at the time of the Act and the level of such capacity can be determined from these circum-

stances, we can say that the aforementioned errors in the judgment of prior instance for its evaluation of evidence never affect the judgment.

...omission...

(2) In consequence, with regard to the Act committed under the strong influence of hallucinations and delusions due to schizophrenia, we must say that it is difficult to determine, only because of the existence of the circumstances pointed out by the judgment of prior instance, that at the time of the Act, the accused did not completely lack the ability to discern right from wrong or the ability to behave according to such discernment but was only in the state of having diminished capacity.

Editorial Note:

This judgment is very important because the Supreme Court supported traditional case law theory. Moreover, this will be applied to layman's court (Saibanin).

7. Commercial Law

X v. Y

Supreme Court 2nd P.B., February 22, 2008

Case No. (ju) 528 of 2008

62 (2) MINSHU 576; 2003 HANREI JIHO 144

Summary:

In this case, X filed the principal action to claim the cancellation of registration for the settlement of a mortgage. Y challenged X's claim, arguing principally that Y had the claim of a loan against X as a secured bond and secondarily that X jointly and severally guaranteed the debts of a third party against Y. The Supreme Court held that Y's claim of a loan against X applies to the commercial claim. It also held that Y's claim ran out of the statute of limitations, because 5 years had already passed from the time for performance.