

acquisition of title of possession are possible eventualities to consider in this regard.’ The third condition is that ‘it is not too onerous to demand an obligor to accept the risk that he/she can only prevent undue execution via defense of the claim. This will be successful only when an obligor has succeeded in proving the existence of undue execution.’ A judgment made by the Supreme court 1st P.B., March 31, 1988 Case No. (o) 1293 of 1984, 668 HANREI TAIMUZU 131, and 1277 HANREI JIHO 122, and another made by Supreme court 3rd P.B., May 29, 2007 Case No. (jyu) 882 of 2006 (Yokota Base Case), 1248 HANREI TAIMUZU 117, 1978 HANREI JIHO 7, 1436 SAIBANSHO JIHO 1, quoted the judgment of 1981, thus the position of the Supreme Court in respect of action for future performance has been underpinned.

A judgment made by the Supreme Court 1st P.B., March 31, 1988 Case No. (o) 1293 of 1984, is quite similar as both of these cases consider the question of unjust enrichment from a lease contract of parking lots. The judgment, reversed the decision of the original court a dismissing the plaintiff’s claim. A concurring opinion by Judge Chiba is of interest. Judge Chiba indicates that there are two types of interpretation of the judgment of 1988. The first one is that it applies to all types of claim for undue profit from shared property, regardless of whether the rent in question is the fee for parking lots or not. The second one is that it is dependent on the facts of each case, examining the detail and nature of rent, such as a rental fee for parking lots in this case. Until then, all the judgments are understood to have proceeded on the first interpretation. However, Judge Chiba insists; ‘It is too wide and general to apply the first interpretation to the 1988 case in terms of range.’ and ‘in order not to unreasonably limit eligibility’ the judgment of 1988 should have proceeded on the second understanding.

5. Criminal Law and Procedure

X v. Japan

Supreme Court 1st P.B., February 20, 2012

Case No. (a) 1136 of 2008

1550 SAIBANSHO JIHO 26; 1383 HANREI TAIMUZU 167

Summary:

A case in which the Supreme Court upheld the death sentence in the judgment of the second instance after remand.

Reference:

Penal Code (before the revision by the Act on the Partial Revision of the Penal Code, etc. (Law No. 156 of 2004)), Article 177, 181, and 199; Juvenile Act (before the revision by the Act on the Partial Revision of the Juvenile Act, etc. (Law No. 142 of 2000)), Article 51.

Facts:

This is the case of murder, rape resulting in death, and theft. In this case, on April 14, 1999, the defendant X, then eighteen years old, pretending to conduct the test of a distributing pipe, entered the room of an apartment house in broad daylight and attempted to rape the then-twenty-three-year-old housewife who lived in this room. However, since she bitterly resisted, X murdered her, and then committed sexual intercourse with her. After that, X murdered also her then-eleven-month-old daughter who was intensely crying, and stole that housewife's purse in which she kept regional promotion coupons and others.

In the judgment of the first instance (Yamaguchi District Court, March 22, 2000), the court handed down the sentence of life imprisonment with labor to X. And, in the judgment of the second instance (Hiroshima High Court, March 14, 2002), the court upheld the sentence in the judgment of the first instance. But, in the judgment of the last instance (Supreme Court 3rd P.B., June 20, 2006), the court concluded the assessment of sentence in the judgment of the second instance to be inappropriate, and reversed this judgment and remanded the case to the court of prior instance. As a result, in the judgment of the second instance after remand (Hiroshima High Court, April 22, 2008), the court handed down the death sentence to X. After this judgment, X and his defense counsel made a final appeal to the Supreme Court.

Opinion:

Final appeal dismissed.

This is (a) the case of murder and rape resulting in death. In this case, the defendant *X*, who was then an eighteen-year-old juvenile, attempted to rape the then-twenty-three-year-old housewife and did her violence, such as flinging his arms round her back, in the room of an apartment house in Hikari City, Yamaguchi Prefecture. However, since she bitterly resisted, *X* had his mind set on accomplishing the aim of committing sexual intercourse with her by murdering her. After that, *X* murdered her by strangling her through wringing her neck hard with his hands, and then forcibly committed sexual intercourse with her. And, this is also (b) the case of another murder. In this case, since her then-eleven-month-old daughter was intensely crying in that room, *X* decided to murder this daughter for fear of revealing the perpetration of the crime (a). After that, *X* slammed her down on the floor and then murdered her also by strangling her through wrapping his own string around her neck and wringing it. Furthermore, this is also (c) the case of theft. In this case, *X* stole that housewife's purse in which she kept cash and others, in that room.

In crimes (a) and (b), *X* murdered the housewife and committed sexual intercourse with her, and murdered also her child in order to avoid revealing this perpetration. The natures of these crimes are extremely atrocious, and we cannot find any extenuating circumstances in the motives and developments of these crimes. In these crimes, with the firm criminal intent of rape and murder, *X* trampled the dignity of the housewife and her child, who had not been at any fault for these crimes, and took the lives of these people. We must say that these crimes are cold-blooded, cruel, and inhuman conducts. And also, their consequences were extremely grave. After *X* murdered the housewife and her child, he hid their bodies in a closet in order to delay the revelation of these crimes, and moreover, *X* stole that housewife's purse, as crime (c) shows. In this way, the circumstances after the murder and sexual intercourse are also unsavory. The emotions toward these crimes which the bereaved family feels are extremely intense. Since, in the trial of the original instance, *X* made irrational excuses for his intent in each crime, the manner of murder, and so on, we cannot find the signs of sincere repentance in his attitude. Furthermore, we cannot underestimate the fact that these crimes wielded a major impact over the society as the case in which a mother and

her child of the family living a quiet and happy life were barbarously murdered at home in broad daylight.

In light of these details of this case, after carefully considering the details favorable to *X*, including the fact that *X* was a juvenile at the time of the crime, the one that *X* did not initially planned to murder the housewife and her child, the one that *X* has no prior criminal record and it cannot be said that there is no possibility that *X* is reformed, and the one that *X* sent the bereaved family an apology letter, an indemnification for the damage from the theft committed by him, and so on, *X* bears extremely great criminal liability, and thus the court cannot choose but uphold the death sentence in the original judgment.

Editorial Note:

This case is well known as “*Hikari-Shi-Boshi-Satsugai-Jiken* (the case in which a mother and her child were killed in Hikari City)” in Japan (Hikari City is located in the eastern part of Yamaguchi Prefecture).

The adjudications of this case generated heated debates in the society. Above all things, the husband of the murdered housewife conducted the vigorous campaign to protest over the judgment of the first instance, and also promoted the nationwide movement to protect crime victims and their family members. On the other hand, the defendant’s counsel and some scholars earnestly advocated on behalf of the defendant through a variety of media. Moreover, the judgment delivered upon this case in the Supreme Court in 2006 was criticized by researchers in the field of criminal law. These researchers insisted that the method of applying the standard of selecting death sentence (the so-called *Nagayama* standard) which precedents had formulated was substantially modified in this judgment. Therefore, they blamed the Supreme Court for having not taken the necessary procedure to alter the precedent, in which the Supreme Court has to make a judgment through a full bench.

6. Commercial Law

X v. Y