

Current Topics of Japanese Law

1. Molestation Case and Presumption of Innocence

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Molestation is a malicious crime that hurts victims. However, since it is sometime difficult to obtain a physical evidence of molestation, there is a tendency to give greater weight to the testimony of the victim compared to other crimes. During an investigation by police, drawing a unilateral, hasty conclusion is strong. Of course, molestation is a crime, and there are premeditated and habitual offenders. On the other hand, it is said that victims have been known to misunderstand, fail to make the correct identification (a crime of another person), and extremely submit false reports with intention to entrap a suspected person.

The first principle of any criminal procedure is to give the person the benefit of the doubt. If that is true, then why does the principle of the presumption of innocence fail to function in molestation cases? Though Articles 31 to 41 of the Constitution of Japan, which constitute almost one-third of the provisions pertaining to human rights and which provide sufficient security pertaining to criminal procedures, the understanding of the public regarding the rights of a suspect and defendant is not always adequate.

In practice, the simple accusation that a person is a molester (“he/she is a molester !”) will result in the arrest of an individual based on a violation of the nuisance prevention ordinance and the crime of forcible indecency (Article 176 of the Penal Code). In most molestation cases, the defendant is found guilty. One day, a person may suddenly lose his social status and means of livelihood from a misunderstanding or misidentification. Though the mission of judges is the finding of innocence, there is a strong tendency in molestation cases to conclude from the beginning that the suspect is guilty. The condition of packed trains in Japan similar to a locked room. A person who is suspected of molesting a woman usually faces an overwhelming disadvantage.

On April 14, 2009, the Third Petty Bench of the Supreme Court quashed the sentences of imprisonment in the first and second instances and delivered a judgment of not guilty to a university professor who was accused of the crime of forcible indecency because of the molestation of a high school girl on a train. This judgment was the first determination that “specially careful determination is required” regarding a case of molestation on a packed train. As the reasons to do so, the judgment cites that (a) objective evidence is difficult to collect, such as physical evidence of harm and identification of the molester, (b) a statement from the victim is the only evidence in most molestation cases, (c) and if a person is a molester based on a report of harm by a victim, effective protection is difficult to provide.

The judgment was a split decision 3 to 2 acquitting the defendant by a narrow margin. Two judges wrote a concurring opinion and the other two judges wrote a dissenting opinion. Judge A and judge B indicated that the fixed rules of a criminal court to give a person the benefit of the doubt and the principle of proof beyond a reasonable doubt required for conviction are, in the final analysis, to prevent false accusations. In the dissenting opinion, judge C and judge D emphasized the victim’s circumstances of difficulty in avoiding the situation and patience due to the loss of nerve and shame.

A petty bench of the Supreme Court is composed of five judges. With respect to the reliability of the victim’s statement, the argument between 2 and 2 appeared to be endless, so judge E sided with the conclusion for acquittal without stating the reasons. Consequently, the judgment of innocence was issued with a narrow margin of 3 to 2.

Judge E supposedly voted for acquittal in consideration of whether there had been proof beyond a reasonable doubt in finding the defendant guilty. If judge E had sided with the dissenting opinion, the defendant would have been found guilty with the majority opinion at 3 to 2. The judgment of not guilty with a slight difference makes us acknowledge again the importance of the principle that there is no option but to come to the conclusion to acquit unless there is proof beyond a reasonable doubt.

Signs of distress by the respective judges are evident in both the dissenting and concurring opinions. The opinions of the judges regarding

the feelings of women are in opposition. The decision means that the determination in a molestation case is difficult. Therefore, if only a statement as testimony was available, a careful evaluation would be required in the judicial procedure.

In connection with the above topics, I have also doubts about the recent campaign to eradicate molesters. The problem with such a campaign is similar to the eradication of terrorism. Both molestation and terrorism are vicious crimes. However, it is still fresh in our memories that in the United States, the eradication of terrorism changed to the eradication of terrorists before anyone knew, which led to the infringement of the rights of in the dissenting opinion Arab residents. When looking at the documents on the implementation of the campaign to eradicate molesters (October 24, 2011), the responsible organizations were railway operating companies and police agencies. During the campaign, the focus was on the control of molesters, and suspects were exposed. Among such suspects, victims of false accusations may have been included. Railway operating companies should focus more on creating an environment where molestation is difficult by reducing congestion during commuting hours rather than cooperating with police agencies on the eradication of molesters.

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2. Recent Developments Concerning Corporate Takeover Rules in Japan

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Traditionally in Japan, hostile takeovers were almost non-existent, due to the common perception in the society that employees form an integrated part of the corporate structure, and the practice of intra-company stock ownership within the same enterprise group, intended for