SPC Guiding Case No. 226: Case of Chen [X] and Liu [X] for Intentional Injury and Abuse

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / crime of intentional injury / crime of abuse / minors / family members / causing serious injury by especially cruel means resulting in serious disability

Holding

1. A minor who is in a relatively stable state of cohabitation with the unmarried cohabitant of a parent shall be found to be a "family member" under Article 260 of the Criminal Law.

2. Where, in the course of habitual abuse, the perpetrator commits serious violence against the victim, subjectively desiring or acquiescing in, and objectively causing, consequences of at least minor injury to the victim, this shall be found to constitute the crime of intentional injury; if, after the injurious act is evaluated independently, the other abusive acts still satisfy the constituent elements of the crime of abuse, the perpetrator shall be punished for both the crime of intentional injury and the crime of abuse by concurrent sentencing for multiple crimes.

3. In a case of intentional injury against a minor, when determining whether the circumstances satisfy the requirement of "causing serious injury by especially cruel means resulting in serious disability" under Article 234, paragraph 2, of the Criminal Law, comprehensive consideration shall be given to factors such as the grade and number of disabilities and the body parts involved, as well as the serious impact of the injurious consequences on the developing body and mind of the minor, and a determination shall be made accurately in accordance with the law.

Basic Facts

The defendant Liu [X] was the mother of the victim Tong [X] (a pseudonym, female, born March 2014). After Liu [X]'s divorce, Tong [X] was directly raised by Liu [X]. In November 2019, Liu [X] met the defendant Chen [X], and they later fell in love and cohabited.

On February 13, 2020, the defendant Chen [X] became displeased because Tong [X] had a video chat with her father, and he slapped and kicked Tong [X]. For this reason, Liu [X] took Tong [X] away from Chen [X]'s residence and proposed breaking up with Chen [X]. On the evening of February 17, Chen [X] came to Liu [X]'s residence and, venting his anger at Tong [X] over the breakup, directly kicked Tong [X] to the ground after entering the door, and then kicked Tong [X]'s head, body and legs several times violently. The next day, Liu [X] took Tong [X] for medical treatment. Tong [X] was diagnosed with contusion of the forehead and contused laceration of the chin. Thereafter, to avoid Chen [X], Liu [X] took Tong [X] to temporarily stay at a friend's home. During this period, Chen [X] repeatedly apologized to Liu [X] and begged for forgiveness. On March 20 of the same year, Liu [X] and Chen [X] resumed their relationship, and moved with Tong [X] into Chen [X]'s residence to live.

Afterward, during their cohabitation, the defendant Chen [X] frequently injured Tong [X] without cause or under various pretexts such as disciplining the child, by means of punching and kicking, beating with a washboard, and burning with cigarette butts, causing multiple injuries to Tong [X]'s body. Chen [X] also frequently punished and abused Tong [X] by means such as making her kneel on a washboard for long periods, swallowing cigarette butts, freezing, starvation and humiliation. The defendant Liu [X], as Tong [X]'s

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mother, failed to effectively stop this, indulged Chen [X]'s injury and abuse of Tong [X], and sometimes participated in it, causing minor injuries to Tong [X].

In mid-May 2020, the defendant Chen [X] was bathing Tong [X]. Because Tong [X] felt the water temperature was uncomfortable, Chen [X] deliberately repeatedly adjusted the water temperature to the highest and lowest settings and poured it over Tong [X]. The defendant Liu [X] heard Tong [X] screaming and entered the bathroom to check; Chen [X] falsely claimed the water was not hot, and Liu [X] closed the door and left. After the bath, Chen [X] took Tong [X] out of the bathroom and made her kneel as punishment. Liu [X] discovered that large areas of blisters had been scalded onto Tong [X]'s body, but she only applied burn ointment and did not send her for medical treatment in time. It was not until late that month, when Tong [X]'s wounds became severely infected, that the two defendants sent her to the hospital for treatment. Later, after someone reported the matter to the police, the two defendants were arrested and brought to justice.

Upon expert appraisal, the degree of the burns and scalds over Tong [X]'s entire body reached Grade II serious injury (superficial scarring and pigment changes remained on the facial scald, with a disability grade of seven), and there were additionally five Grade I minor injuries (three of which involved a disability grade of nine) and five Grade II minor injuries. It was further ascertained that the medical expenses, nutrition expenses and the like incurred by the victim Tong [X] during treatment totaled RMB 202,767.35.

After this case arose, the people's court revoked, in accordance with the law, the guardianship qualification of the victim's mother, Liu [X], over Tong [X], transferred custody from Liu [X] to the victim's father, and arranged for a psychologist to provide regular psychological counseling for Tong [X], and coordinated to resolve issues such as her schooling and living difficulties.

Judgment

On October 13, 2021, the Xinfu District People's Court of Fushun, Liaoning Province, rendered a criminal judgment with incidental civil claims: (1) the defendant Chen [X] was guilty of the crime of intentional injury and was sentenced to fixed-term imprisonment of fifteen years; guilty of the crime of abuse and sentenced to fixed-term imprisonment of two years; with a combined sentence of fixed-term imprisonment of sixteen years to be executed. (2) The defendant Liu [X] was guilty of the crime of intentional injury and was sentenced to fixed-term imprisonment of two years; guilty of the crime of abuse and sentenced to fixed-term imprisonment of one year and six months; with a combined sentence of fixed-term imprisonment of three years to be executed. (3) The defendant Chen [X] shall compensate the plaintiff in the incidental civil action, Tong [X], RMB 202,767.35. After the judgment was pronounced, there was no appeal or protest, and the judgment took legal effect.

Reasoning

The defendant Chen [X] was in a cohabitation relationship with the victim's mother, Liu [X], and he was in a relatively stable state of cohabitation with Liu [X] and the victim Tong [X], having formed a de facto family relationship. During his cohabitation with Liu [X] and Tong [X], Chen [X] cruelly injured and tormented Tong [X] over a long period and frequently, by means of beating, corporal punishment, freezing, starvation, humiliation and the like, with execrable circumstances, which already constituted the crime of abuse. The defendant Liu [X], as Tong [X]'s mother, failed to take effective measures to stop and prevent Chen [X]'s abusive acts, repeatedly indulged them, and sometimes participated, which also constituted the crime of abuse.

In the course of habitual and continuous abuse, the defendant Chen [X] directly injured Tong [X]'s body on multiple occasions by violent means such as burning with cigarette butts, pouring hot water, and punching and kicking, causing serious consequences such as one serious injury and ten minor injuries to the victim. The intentional injury involved could not be evaluated within the crime of abuse and should be punished as the crime of intentional injury. The defendant Liu [X], as Tong [X]'s mother, repeatedly indulged Chen [X]'s injury of Tong [X], and sometimes participated, causing minor injuries to Tong [X]; her conduct likewise

constituted the crime of intentional injury. In addition, the habitual and continuous abusive acts of the two defendants also constituted the crime of abuse. If the criminal conduct of the two defendants were punished only as the crime of intentional injury, their abusive acts could not be fully evaluated; therefore, they should be punished for both the crime of intentional injury and the crime of abuse by concurrent sentencing for multiple crimes.

Under Article 234 of the Criminal Law, where a person causes serious injury to another by especially cruel means resulting in serious disability, the penalty is fixed-term imprisonment of not less than ten years, life imprisonment, or death. In ordinary cases of intentional injury, a disability of grade six or above is generally regarded as “serious disability.” In this case, the degree of bodily injury suffered by the victim was appraised as a grade seven disability, but the victim suffered multiple disabilities from injuries to different parts of the body (one grade seven disability and three grade nine disabilities), and the harm to the minor’s physical and mental health was extremely serious. On this basis, proceeding from the maximum protection of the interests of the minor and upon comprehensive judgment, the circumstances of this case were found to constitute “causing serious injury by especially cruel means resulting in serious disability,” and the defendant Chen [X] was sentenced to fixed-term imprisonment of fifteen years for the crime of intentional injury.

In the joint crime, the defendant Chen [X] played the principal role and was the principal offender. The defendant Liu [X] played a secondary role and was an accessory, who truthfully confessed the criminal facts after being brought to justice, sincerely repented, and pleaded guilty and accepted punishment; moreover, she did not directly participate in Chen [X]’s act of pouring hot water that caused the burns and scalds over Tong [X]’s entire body reaching Grade II serious injury (disability grade seven). Comprehensively considering the motives, means, circumstances, consequences and social harm of the two defendants, as well as their subjective malignancy and personal danger, the court rendered the above judgment in accordance with the law.

Relevant Legal Provisions

Articles 234 and 260 of the Criminal Law of the People’s Republic of China.

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