SPP Guiding Case No. 258: Case of Xin Mou for intentional homicide (retrial protest)

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Decided at the 74th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on April 3, 2026; issued on July 15, 2026.

Keywords

Retrial protest / complaint by the victim's side / intentional homicide / "zero confession" / exclusion of commission by a third party

Holding

For a homicide occurring in a closed space, emphasis shall be placed on determining whether the crime was committed by a stranger or an acquaintance, and whether commission by a third party can be excluded. Where a defendant admits to having been at the crime scene, to having had contact or disputes with the victim, but denies having committed the crime, the corroboration or contradiction between the content of the statement and the evidence on file shall be analyzed in detail, and how to admit it shall be considered comprehensively. Where the evidence on file is sufficient to determine that the crime was committed by the defendant, the defendant's refusal to confess and the difficulty of ascertaining the specific details of the crime shall not affect the determination of the overall facts of the crime.

Basic Facts

The complainant, Zhang Mou, male, was the younger brother of the victim Zhang Moumou.

The original defendant, Xin Mou, male, born in May 1963, was the former general manager of a furniture company in Dalian.

The victim, Zhang Moumou, female, died at the age of 33.

The defendant Xin Mou and the victim Zhang Moumou were in a romantic relationship. Because Xin Mou refused to marry her, and because she had discovered that he had concealed the fact that he continued to live with his former wife after divorce, Zhang Moumou quarreled with Xin Mou on multiple occasions over emotional issues, and the conflicts became increasingly acute. Between about 19:00 on March 5, 2015, and about 4:00 on March 6, 2015, at Zhang Moumou's residence on the ninth floor of a residential community in Dalian, Xin Mou again quarreled with Zhang Moumou over emotional issues; in the course of the quarrel, Xin Mou covered Zhang Moumou's mouth and nose, causing her death by mechanical asphyxiation. Thereafter, Xin Mou, to cover up the crime, threw Zhang Moumou's body down from the building.

On January 13, 2016, the People's Procuratorate of Dalian City, Liaoning Province, initiated a public prosecution against Xin Mou for suspected intentional homicide before the Dalian Intermediate People's Court. On August 1, 2016, the Dalian Intermediate People's Court rendered a first-instance criminal judgment with incidental civil claims, sentencing the defendant Xin Mou to death with a two-year reprieve, with deprivation of political rights for life, for the crime of intentional homicide. After the judgment was pronounced, Xin Mou appealed, and the Liaoning Higher People's Court ruled on December 29, 2016, to remand the case for retrial.

After trial, the Dalian Intermediate People's Court held that the following doubtful points existed in this case: first, the victim's last meal was four to six hours before death, but the time of the last meal could not be determined, and therefore the precise time of death could not be determined. Second, there was no evidence proving the precise time when the defendant left the crime scene. Third, the method and

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instrument of the crime had not been ascertained, and there was no objective evidence proving what external force caused the asphyxiation death. Fourth, the defendant left the residential community where the victim lived at about 4:00, while the victim's body was discovered at 6:20 to 6:40, leaving a gap of about two hours; multiple footprints remained at the victim's residence but were not compared; the whereabouts of the victim's mobile phone were unknown, and there might have been property loss; combined with the fact that the number of matching door keys at the time of the crime could not be ascertained, a reasonable doubt that a third person had entered the scene after the defendant left could not be excluded. The evidence in this case had not reached the degree of reliability and sufficiency, doubtful points among the evidence had not been reasonably eliminated, and the evidence of the whole case had not formed a complete proof system, and was insufficient to prove that the defendant Xin Mou killed the victim Zhang Moumou. On January 24, 2018, the Dalian Intermediate People's Court rendered a criminal judgment with incidental civil claims, acquitting Xin Mou.

On February 13, 2018, the People's Procuratorate of Dalian City filed a protest with the Liaoning Higher People's Court, and the People's Procuratorate of Liaoning Province withdrew the protest on November 13, 2018. On the same day, the Liaoning Higher People's Court ruled to permit the People's Procuratorate of Liaoning Province to withdraw the protest. Later, Xin Mou applied for State compensation.

On November 22, 2018, the complainant Zhang Mou filed a complaint with the People's Procuratorate of Liaoning Province, requesting the revocation of the decision of the People's Procuratorate of Liaoning Province to withdraw the protest and the filing of a protest against the acquittal judgment in the suspected intentional homicide case of Xin Mou. After review, the People's Procuratorate of Liaoning Province held that this case did not meet the conditions for a protest and decided not to protest. The complainant Zhang Mou, dissatisfied, filed a complaint with the Supreme People's Procuratorate on the ground that the existing evidence had already fully proved that Xin Mou was the killer and that it could not have been anyone else.

Procuratorate Performance of Duties

(1) Filing the protest

After accepting the complaint, the Supreme People's Procuratorate held that the original acquittal judgment might be erroneous and decided to file the case for review, and carried out a series of investigation and evidence collection around the complaint and the grounds for acquittal: first, it went to the place of the crime and held discussions with the original investigators and prosecutors to gain an in-depth understanding of the investigation at the time. Second, it re-inspected the crime scene, re-extracted physical evidence such as the slippers left at the scene, and conducted an on-site inspection of the environment of the residential community. Third, it conducted investigative questioning of Xin Mou around the grounds for acquittal and the doubtful points of the case, and achieved major breakthroughs on multiple key issues such as the process of Xin Mou's acquaintance and interactions with the victim, the victim's meal time, and whether Xin Mou changed into slippers upon entering the residence, further strengthening the evidence for determining the case. Fourth, it entrusted the Physical Evidence Appraisal Center of the Ministry of Public Security to re-appraise the unidentified suspicious footprints at the scene. Upon appraisal, the experts tended to determine that the suspicious footprints at the scene were left by Xin Mou. Through the above work, all doubtful points in this case were eliminated.

Upon decision after discussion by the Procuratorial Committee of the Supreme People's Procuratorate, the Supreme People's Procuratorate filed a protest with the Supreme People's Court on February 11, 2022.

(2) Opinions and reasons for the protest

After review, supplementation, and improvement of the evidence, the Supreme People's Procuratorate held that the facts of the defendant Xin Mou's crime of intentional homicide were clear and the evidence was reliable and sufficient, and that the original acquittal judgment was indeed erroneous and should be corrected. The reasons were as follows:

1. Xin Mou had a motive for the crime. The review found that Xin Mou admitted that he had already had an improper relationship with the victim during his marriage, and that the two had very serious conflicts over emotional issues. Short message chat records proved that the two fiercely abused each other, and on the day before the crime the victim threatened to make a scene at Xin Mou's workplace and disclose their relationship; as the head of his workplace, Xin Mou's reputation was threatened.

2. The injurious conduct described in Xin Mou's statement corroborated the objective evidence such as the autopsy expert opinion and the on-site inspection records of the victim. Although Xin Mou refused to admit causing the victim's death after being brought to justice, he consistently stated that he had quarreled and fought fiercely with the victim at the scene that night, and that, to stop the victim from shouting, he had covered the victim's mouth and nose, which corroborated the autopsy opinion proving that the victim had antemortem injuries on the face and around the mouth and nose, and that the victim died of mechanical asphyxiation caused by external force on the mouth and nose.

3. The time of the victim's death could be determined. The autopsy expert opinion indicated that the victim's death occurred about four to six hours after the last meal. The review found that after Xin Mou called the victim at 19:38 on the 5th to ask her to open the door, the victim ate for more than an hour, after which the two began to quarrel and stopped eating. A downstairs neighbor of the victim, Jiang Mou, testified that he had heard a man and a woman upstairs quarreling and fighting that night, intermittently until about 3:00 on the 6th. Combining the above evidence, the time of death could be determined to be between 3:00 and 4:00 on the 6th.

4. The objective evidence on file could establish that Xin Mou left the crime scene only after the victim's death. Xin Mou had repeatedly and consistently stated that the time he left the victim's home was between 3:00 and 4:00 in the morning; at the retrial hearing, he began to argue that he left the victim's home between 1:00 and 2:00 in the morning and wandered around the residential community for a long time until leaving between 4:00 and 5:00 in the morning. It was the early morning of a winter day in northeast China, and Xin Mou suffered from multiple illnesses; his wandering outdoors in the cold for two or three hours without reason was contrary to common sense. Moreover, the review found that mobile phone signal positioning showed that Xin Mou was in the residential community from 19:38 on the 5th to 4:46 on the 6th; Xin Mou called his sister at 4:39 to pick him up, and his departure from the scene was after 4:39, as evidenced by mobile phone call records, the electronic fence data time of the vehicle driven by Xin Mou's sister, Xin Mou's statement, and the testimony of relevant witnesses. Therefore, the precise time when the defendant left the crime scene could be determined, and it was after the time of the victim's death, that is, after 3:00 to 4:00.

5. Combining the evidence of the whole case, a reasonable doubt that the crime was committed by a third party could be excluded. First, this case had the characteristics of a crime committed by an acquaintance: on the night of the crime the victim had contact only with Xin Mou, and Xin Mou also stated that only the two of them were present that night; when the police entered the victim's home the next morning after receiving the report, the door lock was intact and there were no obvious signs of rummaging in the room; apart from the whereabouts of the victim's mobile phone being unknown, the victim's jewelry worn on her person, more than 4,000 yuan in cash in the home, and other property were not lost, so the "possible property loss" considered in the original judgment did not exist; the autopsy also showed no signs of sexual assault; the footprints left at the scene were impressions of indoor slippers; in addition, the victim's body was thrown downstairs after death to fabricate a suicide scene. These facts could rule out the possibility of an accidental intrusion by a stranger and pointed to a crime committed by an acquaintance in the specific time and space. Second, only the genotypes of Xin Mou and the victim were detected at the crime scene, and no DNA of a third person was detected. Third, the original judgment held that the suspicious footprints at the scene were unidentified; upon re-appraisal, the joint expert opinion tended to determine that the suspicious footprints at the scene were left by Xin Mou, and when questioned during the review, Xin Mou expressly stated that he had changed into slippers upon entering the residence, and also stated that if there were slipper

impressions, they were left by him because he had spilled water that night.

6. Xin Mou's statements changed repeatedly in multiple details, and some statements contradicted other evidence on file, clearly showing deliberate concealment of the truth. For example, on issues such as whether he changed into slippers upon entering the residence and whether he dined at the victim's home, Xin Mou's negative statements contradicted the objective evidence such as the expert opinion on footprints and the expert opinion that his DNA was on the bowls and chopsticks; and Xin Mou's statements changed repeatedly, and he admitted them again during the review. In addition, on matters such as whether the relationship between Xin Mou and the victim was known to others, Xin Mou's statement also contradicted the testimony of witnesses.

(3) Outcome of the protest and subsequent circumstances

On June 2, 2022, the Supreme People's Court ordered the Dalian Intermediate People's Court, Liaoning Province, to retry this case. On December 27 of the same year, the Dalian Intermediate People's Court rendered a first-instance judgment, finding Xin Mou guilty of intentional homicide and sentencing him to death with a two-year reprieve, with deprivation of political rights for life. After the first-instance judgment was pronounced, Xin Mou, dissatisfied, appealed. On March 16, 2023, the Liaoning Higher People's Court rendered a second-instance ruling, rejecting the appeal and affirming the original judgment. The Dalian Intermediate People's Court ordered Xin Mou to return the State compensation. Upon the application of the victim's family, the People's Procuratorate of Liaoning Province granted them State judicial assistance funds in accordance with provisions.

Guiding Significance

(1) For a homicide occurring in a closed space, it shall be analyzed and determined from the course of detection, the characteristics of the crime scene, and other circumstances whether the crime was committed by an acquaintance or a stranger and whether the possibility of commission by another person can be excluded, so as to accurately identify the criminal suspect. A crime committed by an acquaintance generally involves no traces of forcible intrusion, and may be accompanied by redundant acts or counter-investigation measures such as fabricating the cause of death and cleaning and disguising the scene. It is reasonable for an acquaintance to leave biological traces at the scene, and this alone cannot determine that the acquaintance committed the crime; the process of detection generally identifies the defendant through the acquaintance who had the closest final contact with the victim, and may proceed from the motive for the crime, focusing on examining whether the defendant had the spatiotemporal conditions for the crime, the time of the victim's death, whether the two parties quarreled and fought at the scene, whether biological traces of a third person existed at the scene, and whether the scene was cleaned and disguised, so as to exclude the possibility of commission by a third person. A stranger intruding into a closed space to commit a crime generally has a clear purpose such as robbery or sexual assault, and is usually accompanied by characteristics of forcible intrusion, obvious traces of rummaging, and casual handling of the scene. The process of detection generally identifies the perpetrator through the biological traces extracted from the scene; if the perpetrator cannot reasonably explain having been at the scene, or denies having been at the scene, combining the evidence of the whole case can help form the determination that he or she committed the crime.

(2) Where a defendant admits to some conduct such as having been at the crime scene and having had contact or disputes with the victim, but denies having committed the crime, the corroboration or contradiction between the content of the statement and the evidence on file shall be analyzed in detail, and how to admit it shall be considered comprehensively in light of the reasons for and process of the repeated changes in the statement. The content of a defendant's statement shall be compared and analyzed in detail with the evidence on file, especially the objective evidence, to identify points of corroboration and contradiction, and to find factual anchors for determining the motive for the crime, the time of the victim's death, the spatiotemporal conditions of the crime, and the means of the crime, so as to further determine the overall

facts of the crime. Where a defendant's statement changes repeatedly in multiple details, it shall be examined whether the changes are reasonable, whether there are external factors, and whether they are new defenses produced in tandem with learning about the evidence as the litigation progresses. If the defense clearly contradicts the evidence on file and does not conform to common sense and common reason, it can be determined that the defendant is deliberately concealing the truth, further strengthening the determination that the defendant is the perpetrator.

(3) Where the evidence on file can prove that the crime was committed by the defendant, but the specific details of the crime are difficult to ascertain, this shall not affect the determination of the facts of the crime. Attention shall be paid to distinguishing evidence for conviction from evidence for sentencing and evidence of details; where the defendant refuses to admit the criminal conduct and the specific details of the crime cannot objectively be ascertained, emphasis shall be placed on examining whether the core facts related to conviction have been sufficiently proved. Although there are individual doubtful points in the case, where the circumstantial evidence on file can form a complete evidence chain proving that the crime was committed by the defendant, the conclusion is unique, and the possibility of commission by a third person can be excluded, it may be considered that the standard of proof of exclusion of reasonable doubt has been reached. Where the defense raised by the defendant is clearly contrary to common sense and contradicts the evidence on file, it may be rejected in light of the evidence of the whole case and in accordance with logic and rules of experience.

Relevant Legal Provisions

Article 232 of the Criminal Law of the People's Republic of China.

Article 254 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment).

Articles 583, 584, 589, 591, and 593 of the Criminal Procedure Rules of the People's Procuratorates (Gao Jian Fa Shi Zi [2019] No. 4).

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