SPP Guiding Case No. 261: Case of Ma Moulin for Robbery (Retrial Protest)

Dan Young Business Consultancy — www.danyoungcpa.com

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Keywords

Retrial protest; robbery; defense of innocence; electronic data; indirect evidence.

Holding

Electronic data such as mobile phone communication data may be relevant to the facts of a case, and the special value of electronic data in proving criminal facts shall be fully explored. As to a defendant's defense of innocence, it shall be examined whether the defense is reasonable, whether the reasons for the defense have been inconsistent, and whether the defense can be corroborated by other evidence in the case, and a decision on whether to accept it shall be made based on the specific circumstances. For difficult and complex cases lacking direct evidence, it shall be examined whether the indirect evidence can form a complete chain of evidence and whether reasonable doubt can be excluded so as to reach a sole conclusion.

Basic Facts

The defendant in the original trial, Ma Moulin, male, born in October 1977, unemployed.

The victim, Yi Mou, female, died at the age of 41, who operated a fireworks and firecrackers shop before her death.

Ma Moulin learned of Yi Mou's financial situation through business dealings and gained her trust, and plotted to rob Yi Mou of her property. At around 22:00 on May 25, 2015, Ma Moulin drove a vehicle (borrowed from his cousin Ma Mou) from Hezheng County, Gansu Province to Linxia City, took Yi Mou to Hezheng County, and then carried out the robbery. During this, Ma Moulin robbed Yi Mou of two bank cards and their passwords, suffocated Yi Mou to death by covering her mouth and nose and other means, and buried the body in an abandoned field beside a rural road in Hezheng County. Beginning on the night of the 26th, Ma Moulin, disguised as a woman, used Yi Mou's bank cards to make frequent cash withdrawals totaling RMB 284,000.

On September 2, 2016, the People's Procuratorate of Linxia Prefecture initiated public prosecution against Ma Moulin with the Linxia Intermediate People's Court on suspicion of the crimes of robbery and intentional homicide. In April 2018, the first-instance court held, upon trial, that the procuratorial organ's accusation that Ma Moulin constituted the crimes of robbery and intentional homicide could not be established, and only found the fact that Ma Moulin stole RMB 284,000 using Yi Mou's bank cards, sentencing Ma Moulin to fixed-term imprisonment of 10 years and a fine of RMB 40,000 for the crime of theft. After the judgment was pronounced, the plaintiff in the incidental civil action in the original trial, Wang Moumou (the victim's husband) and others appealed, while defendant Ma Moulin did not appeal. The People's Procuratorate of Linxia Prefecture requested a protest on the ground that the judgment's failure to find the crimes of robbery and intentional homicide was an error in fact-finding. The People's Procuratorate of Gansu Province supported the protest, and the plaintiff in the incidental civil action appealed.

On June 10, 2019, the Gansu Provincial High People's Court ruled in the second instance to dismiss the protest and affirm the original judgment. The court held that the mobile phone that may have been used by

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the suspect to contact the victim multiple times on the night of the incident could not be found, so it could not be confirmed who used it; the whereabouts of the victim after entering Hezheng County in the car driven by Ma Moulin could not be determined, and the existing evidence in the case could not prove a direct relationship between Ma Moulin and Yi Mou's death; the mobile phone used by the victim before her death sent text messages to her family members twice after her disappearance, the specific time of the victim's death could not be determined, and it could not be determined who sent them; it was unclear whether Ma Moulin and the victim had any relationship other than business dealings; the time, place, means and method by which Ma Moulin obtained Yi Mou's bank cards and transaction passwords could not be confirmed; and the tools of the crime could not be found. The evidence in the case did not meet the standard of being reliable and sufficient, and the doubts in the case had not been reasonably excluded, which was insufficient to prove the fact that Ma Moulin robbed and killed the victim Yi Mou.

Procuratorial Performance

(1) Requesting and lodging the protest. The Supreme People's Procuratorate discovered the leads of this case in its work and decided to assign the People's Procuratorate of Gansu Province to conduct a review. Through data recovery and extraction of the multiple damaged mobile phones used by Ma Moulin, and by entrusting the Judicial Appraisal Center of the People's Procuratorate of Lanzhou to conduct analysis and appraisal, the People's Procuratorate of Gansu Province ascertained that the last eight callers to the victim on the day of her disappearance were all Ma Moulin; through re-inspection and investigative experiments of the places involved, and appraisal of the locations of the base stations to which Ma Moulin's mobile phone signals connected before and after the incident, it was confirmed that the operation trajectories of the base station locations of the two persons' mobile phones during the incident period were always consistent; and through supplementary questioning of witnesses and retrieval of evidence such as the vouchers of Ma Moulin's bank loans, it was confirmed that Ma Moulin was fond of gambling, was financially straitened, and still owed more than RMB 400,000 in debts at the time of the incident, further strengthening the evidence that Ma Moulin had a motive to commit the crime. After carrying out the aforesaid work, the People's Procuratorate of Gansu Province held that the fact that Ma Moulin committed the crime of robbery was clear and the evidence was reliable and sufficient, that the original judgment was indeed erroneous, and requested the Supreme People's Procuratorate to lodge a protest on the ground that Ma Moulin committed the crime of robbery.

After accepting the case, the Supreme People's Procuratorate viewed the places involved on the spot, held discussions with investigators, forensic doctors and the original handling personnel, comprehensively and deeply understood the process and details of case handling, and verified whether Ma Moulin had surveyed the burial site before the incident; interrogated Ma Moulin on multiple occasions and held that his defense of innocence was inconsistent and contradicted the evidence in the case; and, regarding Ma Moulin's defense that the victim was taken away by her husband Wang Moumou in Hezheng County on the night of the incident, retrieved the signal trajectory of Wang Moumou's mobile phone during the incident period and, in combination with other evidence, confirmed that Wang Moumou had not been to Hezheng County during the incident period, excluding the possibility that Wang Moumou committed the crime.

Upon discussion and decision by the Procuratorial Committee of the Supreme People's Procuratorate, on December 18, 2023, the Supreme People's Procuratorate lodged a protest with the Supreme People's Court.

(2) Protest opinions and reasons. The Supreme People's Procuratorate held that the original judgment's conviction and punishment of Ma Moulin for the crime of theft was indeed erroneous, that the fact that the defendant in the original trial Ma Moulin killed Yi Mou for money was clear and the evidence was reliable and sufficient, and that he should be convicted and sentenced for the crime of robbery. The reasons were as follows:

1. The detection process of this case was objective, natural and logical. After the victim's disappearance, her relatives reported to the police that a mobile phone bound to the victim's bank card at home showed that a

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large amount of cash had been withdrawn. Surveillance video confirmed that at around 22:00 on May 25, 2015, the victim took the car borrowed by Ma Moulin from his cousin to Hezheng County and then disappeared; beginning late at night on the 26th, Ma Moulin, using the victim's bank card and disguised as a woman, made frequent cash withdrawals at bank ATMs in multiple places in Linxia Prefecture, and Ma Moulin was identified as a major suspect and arrested. The public security organs seized the victim's bank card and RMB 320,000 in hidden cash at Ma Moulin's home, and extracted the women's clothing he used for his disguise. The evidence in the case proved that Ma Moulin returned the car involved to his cousin in the early morning of the 26th, that the public security organs found the victim's body several dozen meters near the place where the car was returned, and extracted the victim's bloodstains from inside the car. The process of identifying and arresting Ma Moulin for the crime was natural and consistent with common sense.

2. Ma Moulin had a motive to rob the victim of her property. He was fond of gambling, had purchased on credit more than RMB 200,000 of firecrackers from the victim in large quantities before the crime, and sold the firecrackers at a price below cost to cash in, in addition to other debts of more than RMB 200,000.

3. Ma Moulin surveyed the scene before the crime, carefully selected the time of the crime and designed the route of the crime, which was a premeditated crime, and disguised himself after the crime. Before the crime, Ma Moulin used his relatives' mobile phone and obtained and used a mobile phone SIM card under the victim's name to contact the victim privately; before the crime, he reported the victim's husband Wang Moumou for bigamy to the public security organs multiple times, intending to interfere with or mislead the public security organs' investigation. In addition, he had gone to the burial site to survey it, chose the time when the victim was home alone to commit the crime, deliberately borrowed another person's vehicle to take the victim out of the city, stopped separately at his home, near the bank and at the burial site, and after causing the victim's death, rented a vehicle and, disguised as a woman, withdrew a large amount of the victim's cash late at night, and impersonated the victim to send text messages to her relatives to create the false appearance that the victim was still alive.

4. Ma Moulin was always with the victim during the incident period. The last person to contact the victim before her disappearance was Ma Moulin. From the night of the incident, when the victim took the vehicle driven by Ma Moulin, the mobile phone signals of the two persons were in a merged state throughout; after arriving in Hezheng County, they had long stays at Ma Moulin's home, near the bank and at the burial site; and the victim's bloodstains were extracted from the vehicle driven by Ma Moulin. Ma Moulin's defense that he handed the victim over to Wang Moumou on the night of the incident was found untrue upon investigation.

5. Ma Moulin's defense of innocence was unreasonable and self-contradictory. Ma Moulin denied that he had a close relationship with the victim, but defended that the victim voluntarily gave him the bank cards and passwords to help withdraw money, yet he disguised himself as a woman, rented another person's vehicle and made withdrawals in another place late at night. His defense was clearly contrary to common sense and reason.

6. The deficiencies and doubts in the evidence in this case as found by the original judgment could all be reasonably explained. First, the original trial court held that the victim's mobile phone still sent messages to her family many days after her disappearance, and the possibility that they were sent by the victim could not be excluded. Upon review, the victim's relatives confirmed that the victim contacted her relatives by phone calls and had no habit of sending messages. Moreover, in this case, after the victim's mobile phone sent messages to her relatives, the phone was switched off when the relatives called back, which was abnormal. In addition, the two messages were sent on the day the victim was killed and a few days after her death, and the sending locations were both near Ma Moulin's home. Comprehensive judgment shows that the aforesaid messages were sent by Ma Moulin using the victim's mobile phone. Second, as to the problem that the tools of the crime, some traces of the crime and physical evidence could not be found: because Ma Moulin had an extremely strong counter-investigation awareness and was arrested only one month after the crime, during which there was sufficient time to destroy the criminal evidence, it was normal that some evidence could not

be extracted. Third, as to the problem that the evidence in the case could not determine the details of the victim's death: Ma Moulin refused to admit guilt after being brought to justice, and the specific process of the victim's death could not be ascertained; however, comprehensively considering all the evidence in the case, this did not affect the determination of the main fact that Ma Moulin used violence to cause the victim's death.

(3) Protest result. On January 31, 2024, the Supreme People's Court instructed the Gansu Provincial High People's Court to conduct a retrial. The People's Procuratorate of Gansu Province applied for electronic data appraisers to appear in court to testify on the professional issues of the base station location trajectory appraisal. On December 4 of the same year, the Gansu Provincial High People's Court rendered a judgment adopting the procuratorial organ's protest opinion, revoking the original judgment and ruling, sentencing defendant Ma Moulin to death with a two-year reprieve for the crime of robbery, depriving him of political rights for life, confiscating all his personal property, and restricting commutation. It also ordered him to compensate the plaintiff in the incidental civil action funeral expenses of RMB 27,226.5.

Guiding Significance

(1) Fully explore the special value of electronic data in proving criminal facts, and pay attention to examining the relevance between electronic data such as mobile phone communication data and the facts of the case such as the time, place, cause and process of the crime. The relevance between electronic data and the facts to be proved shall be screened and determined, irrelevant information shall be removed, and electronic data closely related to the case shall be supplemented and collected in a timely manner. The examination and determination of the authenticity of electronic data shall be strengthened through verification of the original carriers of electronic data and authenticity checks. Relevant electronic data shall be deeply explored; for example, electronic data such as the victim's mobile phone communications can help discover criminal suspects, determine their movement trajectories and specific locations during the crime period, sort out interpersonal relationships and capital flows, and help restore the cause and process of the crime. For highly specialized electronic data, specialized technical departments shall be entrusted to appraise and precisely analyze the relevant electronic data, so as to deeply explore the probative value of the electronic data.

(2) As to a defendant's defense of innocence, it shall be examined whether the defense is reasonable, whether the reasons for the defense have repeatedly changed, and whether the defense can be corroborated by the evidence in the case, and a decision on whether to accept it shall be made based on the specific circumstances. Where a defendant pleads innocence, but his conduct is significantly abnormal — for example, the defendant and the victim appear in a remote place late at night, the defendant withdraws money late at night disguised as a woman, or impersonates the victim to send text messages — and he also defends that the bank card passwords were voluntarily disclosed by the victim, or that the victim was taken away by others, such conduct is clearly contrary to common sense and reason and contradicts the evidence in the case, and shall not be accepted in light of the evidence in the case. In terms of the method of review, active falsification may be carried out: for defenses whose truth is unclear and doubtful, where the existing evidence is vague or weak and cannot directly confirm or overturn them, targeted evidence supplementation shall be carried out around the doubts pointed to by the defense, exhausting the means of investigation, and corresponding determinations shall be made based on the supplemented evidence. For defenses that are stable, consistent with common sense and possibly true, the key to review lies in corroboration testing: the defense shall be incorporated into the whole evidence system of the case for review and comparison, and if the defense can be corroborated by other evidence, it shall be accepted.

(3) For difficult and complex cases lacking direct evidence, where indirect evidence is used to decide the case, a complete chain of evidence shall be formed, excluding reasonable doubt so as to reach a sole conclusion. For cases lacking direct evidence such as confessions of guilt and where indirect evidence is used to decide the case, the basic review path of "evidence being true, the chain being closed-loop, reasoning being rigorous and the conclusion being exclusive" shall be followed. That is, all indirect evidence

used to decide the case must be lawfully obtained and verified as true, and the evidence must corroborate one another to form a continuous and complete closed-loop chain of evidence. The scattered indirect evidence shall be mapped, with the timeline and conduct chain as the thread, to the various links of the case such as the motive, conduct, process and consequences of the crime, ensuring that each link of the case is supported by one or more pieces of indirect evidence. It shall be examined whether the contradictions between the evidence can be reasonably explained, and doubts that cannot be excluded or clearly explained shall be promptly supplemented with investigation or excluded. The application of the rules of logic shall ensure rigorous and flawless reasoning, and the rules of experience applied shall be objectively recognized rules of life, industry practices and professional common sense; the rules of logic and experience shall verify each other to ensure that the reasoning conforms to common sense, common conditions and common reasoning, ultimately reaching the standard of proof of "beyond a reasonable doubt".

Relevant Legal Provisions

Article 263 of the Criminal Law of the People's Republic of China.

Article 50, Article 55 and Article 254 of the Criminal Procedure Law of the People's Republic of China (as amended in 2018).

Article 140 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Fa Shi [2021] No. 1).

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