SPP Guiding Case No. 179: Liu Moumou Case of Drug Trafficking (Second-Instance Protest)

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Keywords

Second-instance protest; crime of drug trafficking; defendant pleading not guilty; exclusion of reasonable doubt; direct revision of judgment.

Holding

Where a people's court acquits a defendant on the ground that there is "reasonable doubt," and the people's procuratorate considers that the evidence on file can form a complete chain of evidence and that the defendant's exculpatory explanation is not supported by evidence, it shall file a protest. At the same time, where it is truly necessary, it shall supplement and improve the evidence, and explain the "reasonable doubt" identified by the people's court, so as to accurately eliminate the "reasonable doubt" and fully support the protest opinions and grounds. For a protest case in which the facts, once clarified, are sufficient to convict and sentence, if it does not exceed the scope of the charges in the indictment, the people's procuratorate may suggest that the people's court directly revise the judgment in accordance with law.

Basic Facts

Defendant Liu Moumou, female, born in June 1982, unemployed.

On December 21, 2015, upon a report by Zhou Mou, the public security organ seized one kilogram of methamphetamine packed in a tea bag on the footrest of the front passenger seat of a vehicle driven by Liu Moumou near a residential community in Panyu District, Guangzhou, Guangdong Province; seized one gold-colored mobile phone from the driver's seat; seized one black mobile phone from Liu Moumou's hand; and seized one black wallet from the front passenger seat, containing eight bank cards. Liu Moumou claimed that she ran a bird's-nest business and that the drugs in the vehicle had been left behind by her friend Zhou Mou, who had just gotten out of the vehicle. The next day, Liu Moumou was placed under criminal detention. Upon questioning by the public security organ, Zhou Mou stated that the drugs in the vehicle belonged to Liu Moumou, that Liu Moumou had asked her to help sell them, and that she had ridden in Liu Moumou's vehicle on the pretext of going to find a drug buyer, and had reported the matter to the police after getting out of the vehicle.

On September 22, 2016, the People's Procuratorate of Panyu District, Guangzhou initiated a public prosecution against Liu Moumou for the crime of illegal possession of drugs, and later amended the prosecution to the crime of drug trafficking. After three court hearings, the People's Court of Panyu District considered that the defendant might be sentenced to life imprisonment or a heavier penalty, and referred the case to the Guangzhou Intermediate People's Court for jurisdiction. On July 4, 2017, the People's Procuratorate of Guangzhou initiated a public prosecution against Liu Moumou for the crime of drug trafficking. After two court hearings, the Guangzhou Intermediate People's Court held that although the drugs involved in the case were found in the defendant Liu Moumou's vehicle, Zhou Mou had just left the front passenger seat of the vehicle involved before making the report, and the drugs had been seized from the footrest of the front passenger seat, so it could not rule out Liu Moumou's reasonable explanation that the drugs belonged to Zhou Mou. Accordingly, the court held that the procuratorial organ's charge that the defendant Liu Moumou committed the crime of drug trafficking was not clear as to the facts and the evidence was insufficient, and on February 2, 2018, it acquitted Liu Moumou at first instance.

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Procuratorate Performance of Duties

(I) Filing and supporting the protest

On February 12, 2018, the People's Procuratorate of Guangzhou filed a protest. On July 31 of the same year, the People's Procuratorate of Guangdong Province supported the protest.

During the review of the protest and after supporting the protest, the People's Procuratorate of Guangdong Province further supplemented and improved the evidence around the points in dispute. First, it examined the relationship between Liu Moumou and Zhou Mou and their economic dealings, further establishing that Zhou Mou lacked the financial means to purchase one kilogram of methamphetamine and had no motive to frame Liu Moumou. Second, by sorting through Liu Moumou's social relationships and five drug-crime-related cases, it discovered that in the drug trafficking case involving Ling Mou and three others, the upstream supplier of the drugs was the same as Liu Moumou's supplier, namely Chen Mou, and it identified Chen Mou's information. After reporting to the Supreme People's Procuratorate and coordinating with the Ministry of Public Security, Chen Mou was successfully arrested. Subsequent investigation of Chen Mou confirmed that Chen Mou had never engaged in the bird's-nest business and was highly suspected of long-term involvement in drug criminal activities, while the seized mobile phone of Liu Moumou showed 28 call records and 26 text-message records with Chen Mou between December 5 and December 21, 2015, before the incident.

(II) Protest opinions and grounds

The procuratorial organs of Guangdong Province considered that, on the question of the ownership of the drugs found in the vehicle driven by defendant Liu Moumou, the first-instance court had one-sidedly credited Liu Moumou's unreasonable explanation, and then unreasonably suspected that the drugs belonged to witness Zhou Mou, so that the evidence finding that Liu Moumou constituted the crime of drug trafficking did not form a complete system of proof and could not exclude reasonable doubt, and the judgment acquitting Liu Moumou on this basis was clearly erroneous. The evidentiary problems and defects in the investigation work in this case did not sever the chain of evidence; Liu Moumou's exculpatory explanation contradicted the other evidence on file, and the evidence in the case as a whole was sufficient to prove that Liu Moumou had the subjective intent and the objective conduct of drug trafficking. The specific grounds are as follows:

1. The "reasonable doubt" was not truly reasonable. The defendant Liu Moumou's explanation was clearly contradictory to the other evidence on file, and the people's court's acquittal on the ground of "reasonable doubt" was clearly erroneous. Liu Moumou explained that she ran a bird's-nest business and had gone to Shanwei the day before the incident to purchase smuggled bird's nests, yet she could not verify or log into her micro-business account and could not provide the contact information of any downstream micro-business agent or customer; Liu Moumou explained that what she traded with Zhou Mou was bird's nests, but the two spoke in an obscure manner, and the text-message and WeChat records contained a large number of coded words and slang typical of drug transactions, inconsistent with the customary practice of the bird's-nest trade; Liu Moumou claimed that she drove carrying "goods" to sell them, but the only "goods" in the vehicle were drugs and there were no bird's nests; Zhou Mou lacked the financial means to purchase one kilogram of methamphetamine, and Liu Moumou's explanation that the drugs belonged to Zhou Mou was not corroborated by any other evidence. The problems in the investigation work in this case and changes in part of the testimony did not affect the authenticity and objectivity of the evidence, and did not sever the chain of evidence in the case as a whole. In her report call, witness Zhou Mou stated that she knew the reported person Liu Moumou, that she was unwilling to provide her own personal information or make an identification for fear of retaliation, and that she changed part of her testimony during the court hearing; however, she consistently recounted the basic facts of this case, and the evidentiary effect of her testimony could not be denied on this ground.

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2. The evidence on file was sufficient to prove that Liu Moumou had the subjective intent and the objective conduct of drug trafficking. The WeChat voice messages in defendant Liu Moumou's mobile phone submitted by the procuratorial organ at the time of prosecution, the voiceprint appraisal report, the call list, and the bank transaction records, as well as the traffic-monitoring video screenshots of Liu Moumou's round-trip drive to eastern Guangdong, were sufficient to prove that Liu Moumou purchased drugs from lawbreakers in eastern Guangdong and intended to sell them through Zhou Mou on the day of the incident. From the large number of coded words and slang for drug transactions stored in Liu Moumou's mobile phone, it could be seen that she had been engaged in drug transactions for at least one year, and that on the day before the incident there were persons other than Zhou Mou preparing to purchase drugs from Liu Moumou. Taken together with the original evidence and the evidence supplemented and improved during the protest, including the guilty confession of the upstream supplier Chen Mou and Zhou Mou's account of the reasons for changing part of her testimony, the evidence was sufficient to prove that the drugs involved in the case had been purchased by Liu Moumou from Chen Mou in Lufeng City before the incident and brought back to Guangzhou for sale.

It should be noted that this case had been heard seven times across three levels of courts, and that before the court hearing the people's procuratorate had disclosed the new evidence to Liu Moumou and her defense counsel and fully heard the defense's opinions, fully safeguarding the parties' procedural rights in accordance with law. In view of the fact that the facts of this case were clear and the evidence was reliable and sufficient, the People's Procuratorate of Guangdong Province suggested that the Provincial High People's Court revise the judgment and convict the defendant in accordance with law.

(III) Outcome of the protest and subsequent circumstances

On June 7, 2019, after trial, the High People's Court of Guangdong Province rendered a final judgment in accordance with law, adopting the protest opinions and sentencing Liu Moumou to life imprisonment for the crime of drug trafficking.

After the judgment became effective, Liu Moumou met with the procurators, confessed and expressed remorse, voluntarily admitted all the criminal facts charged by the people's procuratorate, and identified the upstream supplier Chen Mou. On July 6, 2020, Chen Mou was sentenced by the Guangzhou Intermediate People's Court to death with immediate execution for selling 22 kilograms of methamphetamine; Chen Mou did not appeal, and the sentence was carried out in March 2023. Ling Mou and three others, who had purchased 21 kilograms of methamphetamine from Chen Mou, were sentenced by the Guangzhou Intermediate People's Court to death, life imprisonment, and other penalties for the crime of drug trafficking, and those judgments had become effective.

Guiding Significance

(I) Correctly apply the evidence rule on the exclusion of reasonable doubt.

Reasonable doubt means a doubt based on evidence, logic, and rules of experience, that is, the existence of a realistic possibility that the defendant is innocent. In handling criminal cases, the evidence in the case as a whole shall be examined comprehensively, all factors shall be considered, and reasonable doubt shall be excluded with respect to the facts as found so as to reach a unique conclusion. Where a people's court has improperly applied "reasonable doubt" and rendered an acquittal, the people's procuratorate shall, based on the evidentiary circumstances of the case, carefully examine the grounds on which the court acquitted the defendant. Where it is truly necessary, it shall supplement and improve the evidence so as to accurately eliminate the "reasonable doubt" and fully support the protest opinions and grounds. With respect to a defendant's exculpatory explanation, attention shall be paid to examining whether the explanation is reasonable and whether it contradicts the facts of the case and the evidence. Where a witness changes testimony, a comprehensive assessment shall be made in light of the reasons for the change, the witness's prior testimony, and the corroboration with the other evidence on file. Upon comprehensive review, if the

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case genuinely involves “reasonable doubt,” the principle of presumption of innocence shall be adhered to, and a conclusion of not guilty shall be reached in accordance with law; if the defendant’s explanation contradicts the evidence in the case as a whole, or is not corroborated by any objective evidence, and is inconsistent with rules of experience and rules of logic, it shall be determined not to constitute “reasonable doubt.”

(II) In drug crime cases where the offender pleads not guilty, comprehensively determine the offender’s subjective “knowledge” of the drug crime based on the evidence on file and in light of the actual circumstances of the case.

In handling cases, when determining whether an offender “knew or should have known that the object of the conduct was drugs,” the people’s procuratorate shall comprehensively consider the various objective and actual circumstances of the case, and shall conduct a comprehensive analysis and determination based on evidence such as the process of the drug criminal conduct, the manner of the conduct, and the circumstances and environment at the time the drugs were seized, together with the offender’s age, experience, intelligence, and mastery of relevant knowledge. In addition, the facts serving as the premise for presuming that the offender “knew or should have known that the object of the conduct was drugs” must be proven by reliable and sufficient evidence.

(III) For a protest case in which the facts, once clarified, are sufficient to convict and sentence, if it does not exceed the scope of the charges in the indictment, the people’s procuratorate may suggest that the people’s court directly revise the judgment in accordance with law.

Under Article 236 of the Criminal Procedure Law of the People’s Republic of China, where the facts of the original judgment are unclear or the evidence is insufficient, the court of second instance may, after clarifying the facts, revise the judgment in accordance with law or remand the case for retrial. In judicial practice, where evidence supplemented after the people’s procuratorate filed a protest is corroborating evidence, the facts as found do not exceed the scope of the charges in the indictment, and the case has already been heard on multiple occasions, the relationship between the principle of procedural economy and the protection of human rights shall be considered comprehensively, and the court shall be advised to revise the judgment in accordance with law after ascertaining the facts of the case.

Relevant Legal Provisions

Criminal Law of the People’s Republic of China, Article 347.

Criminal Procedure Law of the People’s Republic of China (2018 Revision), Articles 55, 228, 232 and 236.

Criminal Procedure Rules of the People’s Procuratorates (for Trial Implementation) (effective in January 2013), Articles 582, 584 and 589 (now Articles 583, 584 and 589 of the Criminal Procedure Rules of the People’s Procuratorates, effective in 2019).

Procuratorial organs handling the case: People’s Procuratorate of Guangdong Province; People’s Procuratorate of Guangzhou, Guangdong Province.

Procurators handling the case: He Xiongwei, Chen Shufen.

Case drafters: He Xiongwei, Yu Xiangling, Peng Li.

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