SPP Guiding Case No. 180: Li Mou Case of Robbery, Rape, and Forcible Indecency (Second-Instance Protest)

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Keywords

Second-instance protest; examination and use of circumstantial evidence; electronic data; discovery of new criminal facts; supplementary prosecution.

Holding

In a protest case where there is a dispute over the finding of facts and the application of law, the people's procuratorate shall comprehensively collect, examine, determine, and use evidence, make full use of technical means to collect electronic data, and attach importance to using circumstantial evidence to complete the chain of evidence, so as to ensure the accurate finding of criminal facts and the correct application of law. If, in the course of handling a second-instance protest case, clues to an omitted crime are discovered, they shall be promptly transferred to the public security organ for investigation; where the crime is verified as true, it shall be suggested that the people's court remand the case for retrial, and the people's procuratorate shall file a supplementary prosecution with respect to the new criminal facts, safeguarding the defendant's right of appeal in accordance with law. The people's procuratorate shall strengthen retrospective review and, through handling protest cases, discover and improve problems and deficiencies in the examination of arrest and the examination of prosecution.

Basic Facts

Defendant Li Mou, male, born in November 1986, unemployed.

At about 16:00 on June 26, 2016, victim Rong Mou reported to a police station of the Heping Branch of the Tianjin Municipal Public Security Bureau that Li Mou had stolen 4,000 yuan from her Alipay account. Upon investigation, the public security organ found that from March to June 2016, Li Mou had become acquainted with a number of women through online social platforms. At about 18:00 on June 24, 2016, Li Mou met victim Rong Mou near a shopping mall, and at about 22:00 that day took her to a room in an express hotel that Li Mou had booked. While Rong Mou was asleep, Li Mou used her fingerprint to unlock her mobile phone and stole 4,000 yuan from Rong Mou's Alipay account. Using the same means, Li Mou stole 500 yuan and 1,000 yuan from victims Yu Mou and Chang Mou at the same hotel in March and May of the same year, respectively. On July 13, Li Mou was arrested and brought to justice. On October 18, the public security organ transferred the case to the People's Procuratorate of Heping District, Tianjin for examination and prosecution on suspicion of the crime of theft.

On April 25, 2017, the People's Procuratorate of Heping District, Tianjin initiated a public prosecution against Li Mou for the crime of robbery, charging that on June 24, 2016, Li Mou met victim Rong Mou and, while she was off guard during a meal, put an unidentified substance capable of causing unconsciousness into her drink, and at about 22:00 that day took her to a room in an express hotel. During this period, while Rong Mou was asleep, Li Mou used her fingerprint to unlock and open her mobile phone and transferred 4,000 yuan from her Alipay account to his own Alipay account. Using the same means, Li Mou robbed victims Yu Mou and Chang Mou of 500 yuan and 1,000 yuan at the same hotel in March and May of the same year, respectively.

On March 20, 2018, the People's Court of Heping District, Tianjin rendered a first-instance judgment, finding only the criminal fact that Li Mou secretly stole 4,000 yuan from victim Rong Mou, and, considering that Li

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Mou was able to truthfully confess the criminal facts of theft and that he had returned the stolen money, sentenced Li Mou to one year and eleven months of fixed-term imprisonment and a fine of 4,000 yuan.

Procuratorate Performance of Duties

(I) Filing and supporting the protest

The People's Procuratorate of Heping District, Tianjin considered that the first-instance judgment's finding that defendant Li Mou committed the crime of theft constituted an erroneous finding of facts and improper application of law, and that the sentence was obviously too light; Li Mou's conduct met the constituent elements of the crime of robbery and should be characterized as robbery. On March 30, 2018, the People's Procuratorate of Heping District, Tianjin filed a protest with the First Intermediate People's Court of Tianjin, and requested the First Branch of the People's Procuratorate of Tianjin to support the protest. On September 28, 2018, the First Branch of the People's Procuratorate of Tianjin supported the protest.

During the review of the protest, in response to the disagreement between the procuratorial organ and the court at the first-instance stage — in particular the first-instance court's view that, in the absence of direct evidence in this case, the system of proof built on circumstantial evidence could not exclude reasonable doubt — the First Branch of the People's Procuratorate of Tianjin organized technical personnel to crack the encrypted partition of Li Mou's computer hard drive, which had never been cracked during the first-instance stage, and discovered that Li Mou was also suspected of the crimes of rape and forcible indecency and other robbery crimes committed between 2013 and June 2016, and accordingly transferred the matter to the public security organ for further investigation. Through a large number of extracted indecent photographs and videos, the identities of 15 potential victims were determined, and it was further discovered that a number of women had been raped, molested, and photographed and video-recorded without their knowledge. These victims did not know one another, but their experiences of associating with Li Mou and being victimized were essentially similar, fully corroborating that they had been in a state of "unable to resist and incapable of resisting" after being drugged by Li Mou. At the same time, the investigation approach was changed to search through multiple channels for the ways and means by which Li Mou obtained psychotropic drugs. By retrieving Li Mou's social security card records, it was found that he had repeatedly obtained prescriptions for psychotropic drugs on the grounds of insomnia, depression, and epilepsy, and evidence was collected confirming the objective fact that he had never suffered from any mental illness.

(II) Protest opinions and grounds

The procuratorial organs of Tianjin considered that the first-instance court's finding was improper, namely that "it cannot be confirmed that defendant Li Mou put an unidentified substance into the victim's drink; it cannot be confirmed that the victim's blood and urine contained an unidentified substance capable of causing unconsciousness; it cannot be confirmed that the victim's property was robbed in a state of 'unable to resist and incapable of resisting'; and the reasonable explanation that there was legitimate economic dealing between Li Mou and the victim cannot be excluded, so the crime of robbery charged by the procuratorial organ cannot be established." The key to distinguishing the crime of theft from the crime of robbery in this case lay in whether the defendant used means other than violence or coercion to render the victim unable to resist, so as to rob the property. The evidence on file was sufficient to prove that defendant Li Mou constituted the crime of robbery rather than theft, and that Li Mou, using his habitual means of drugging the victim into unconsciousness with premeditation and preparation, repeatedly committed the crimes of robbery, rape, and forcible indecency. The specific grounds are as follows:

1. The evidence on file was sufficient to prove that defendant Li Mou put a drug capable of causing unconsciousness into the drink. The restaurant surveillance video, the victims' statements, and the witness testimony corroborated one another, confirming that Li Mou went out to buy drinks to give to the victims before or during the meals with the victims; a number of Li Mou's classmates, friends, and fellow detainees in the same cell confirmed that Li Mou had "boasted" to them about the criminal fact of drugging women and

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having sexual relations with them; and the social security card drug-purchase records and witness testimony all confirmed that Li Mou purchased psychotropic drugs despite not suffering from the relevant illnesses.

2. The existing evidence could prove that there was no legitimate economic dealing between the victims and Li Mou. As to the transfer amounts, a number of victims confirmed that the Alipay transfer amounts contradicted the split-the-bill consumption amounts claimed by Li Mou; as to the transfer times, the victims confirmed that they did not need cash during that period and that there was no necessity to obtain cash from Li Mou after transferring money; as to the state at the time of the transfers, a number of victims stated that they experienced dizziness and confusion at the time, were later taken to a hotel or their residence and fell asleep, and were in a state of unconsciousness during the transfer period, so they could not have actively transferred money to Li Mou, and some victims only discovered the fact that they had transferred money to Li Mou when questioned by the public security personnel.

3. The evidence on file had formed a complete chain of evidence. The victims' experiences in the process of associating with Li Mou and being victimized were highly similar: all of them went from dizziness to confusion to complete unconsciousness after drinking water or a drink provided by Li Mou, and the victims did not know one another, so this special experience could not possibly be coincidental; the search and browsing records on Li Mou's mobile phone confirmed that he had repeatedly searched for information such as "is it useful to call the police if I suspect I was drugged but have no evidence," "are there surveillance cameras on the 5th floor of a certain fashion plaza and in the cinema," and "what are the symptoms of a woman who has been drugged"; after committing the crimes, in order to evade legal sanctions, Li Mou had also consulted a lawyer online in the victim's name about the legal consequences of "transferring money from Alipay without consent"; a number of victims confirmed that, during their association with Li Mou or when meeting for meals, Li Mou had persuaded them to change their mobile phone payment password to fingerprint payment; and the victims' statements that they were in a state of unconsciousness at the time of the incident were consistent with the photographs and video recordings on file and corroborated by the pharmacology and efficacy of the drugs confirmed by expert opinions. It was reasonable that no drug residue was extracted from victim Rong Mou's body because nearly 48 hours had passed since the report and the drug had been metabolized.

In sum, the evidence in the case as a whole proved that defendant Li Mou specifically made the acquaintance of young women through online social platforms, targeted an unspecified pool of victims, and simultaneously associated with a number of victims. During such association, he persuaded them to change their phone screen lock to fingerprint unlocking, purchased psychotropic drugs and booked hotel rooms in advance, observed the victims' mobile phone payment methods and probed for their payment passwords after meeting them, put psychotropic drugs into their drinks, and then took the victims, who became confused after drinking, to hotel rooms to commit the crimes.

(III) Remand for retrial and supplementary prosecution

On September 29, 2018, the First Intermediate People's Court of Tianjin adopted the procuratorial organ's opinions, ruled to set aside the original judgment, and remanded the case for retrial. On May 31, 2019, the People's Procuratorate of Heping District, Tianjin filed a supplementary prosecution, charging that between 2013 and 2016, defendant Li Mou, by putting psychotropic substances into drinks to render the victims unconscious, robbed victim Wu Mou of 1,500 yuan from her bank card; forcibly had sexual relations with four persons, namely Li Moumou, Liu Mou, Chang Mou, and Yu Mou; and forcibly molested one person, Yang Mou.

(IV) Outcome of the protest and subsequent circumstances

On December 20, 2019, after trial, the People's Court of Heping District, Tianjin adopted the protest opinions and the charging opinions of the people's procuratorate, found defendant Li Mou guilty of the crime of robbery and sentenced him to 15 years of fixed-term imprisonment with two years of deprivation of political

rights and a fine of 200,000 yuan; found him guilty of the crime of rape and sentenced him to 15 years of fixed-term imprisonment with two years of deprivation of political rights; and found him guilty of the crime of forcible indecency and sentenced him to three years of fixed-term imprisonment. The sentences were combined, and it was decided to execute a fixed-term imprisonment of 20 years with four years of deprivation of political rights and a fine of 200,000 yuan. After the first-instance judgment was pronounced, Li Mou appealed. The First Intermediate People's Court of Tianjin, in its second-instance ruling, dismissed the appeal and affirmed the original judgment.

In response to the management loopholes in Li Mou's fraudulent purchase of psychotropic drugs, the First Branch of the People's Procuratorate of Tianjin issued a procuratorial recommendation to the competent health administrative department in accordance with law, promoting the health administrative department to carry out special rectification of drug use management and to issue rules for the management of psychotropic drugs. It communicated and coordinated with the Municipal Women's Federation and invited professional psychological counselors from the Women's Legal and Psychological Assistance Center to provide psychological counseling to the victimized women. In response to the problems existing in the process of prosecution and charging in this case, it established a reporting mechanism for the examination and prosecution of major, difficult, and complex criminal cases and a consultation mechanism for criminal protest cases, further improving, standardizing, and enhancing the quality of case handling and improving case-handling effectiveness.

Guiding Significance

(I) Attach importance to collecting objective evidence, including electronic data, make full use of circumstantial evidence, and combine the other evidence on file to form a complete chain of evidence to prove the facts of the case.

Where a crime is established on the basis of circumstantial evidence, the evidence on file shall corroborate one another, the reasoning based on the evidence shall conform to logic and experience, reasonable doubt shall be excluded in finding facts based on the evidence, and the evidence in the case as a whole shall form a complete chain of evidence, so as to make an accurate determination. For each item of circumstantial evidence, its authenticity and legality shall be confirmed, the relevance between the evidence and the facts and between the evidence and the evidence shall be fully explored, and the probative force of the circumstantial evidence shall be enhanced. In the process of collecting and fixing evidence, attention shall be paid to collecting and using electronic data to prove the crime, realizing the effectiveness of technology-empowered procuratorial work in completing the chain of evidence, pursuing omitted crimes and omitted offenders, and charging and proving crimes.

(II) If new criminal facts are discovered in the course of handling a second-instance protest case, the people's procuratorate shall transfer the matter to the public security organ for investigation; where they are verified as true, it shall suggest that the people's court remand the case for retrial, and the people's procuratorate shall file a supplementary prosecution.

If, in the course of a second-instance protest, the people's procuratorate discovers that the facts of the original judgment are unclear and that there are new criminal facts, it shall request the public security organ to investigate and transfer the case for prosecution. In order to fully safeguard the defendant's right of appeal with respect to the supplementary-prosecuted criminal facts, the people's procuratorate shall suggest that the second-instance court rule to set aside the original judgment and remand the case for retrial, and after the public security organ concludes its investigation and transfers the case for examination and prosecution, the people's procuratorate shall file a supplementary prosecution, thereby both comprehensively, accurately, and forcefully combating crime and safeguarding the defendant's right of appeal in accordance with law.

(III) In handling protest cases, strengthen retrospective review and discover and improve problems and deficiencies in arrest and prosecution work.

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To handle every case with high quality and efficiency, factual evidence is the foundation and premise. Some protest cases expose problems in the examination of arrest and the examination of prosecution, such as insufficiently careful examination, lax gatekeeping, and inadequate presentation of evidence. The people's procuratorate shall, through handling protest cases, strengthen retrospective review, promptly analyze and study the causes of these problems, and improve, standardize, and enhance them, so as to improve case-handling capability and ensure the quality of case handling.

Relevant Legal Provisions

Criminal Law of the People's Republic of China, Articles 236, 237, 263 and 264.

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

Criminal Procedure Rules of the People's Procuratorates (for Trial Implementation) (effective in January 2013), Articles 368, 582, 584 and 589 (now Articles 334, 583, 584 and 589 of the Criminal Procedure Rules of the People's Procuratorates, effective in 2019).

Provisions on the Work of Procuratorial Recommendations of the People's Procuratorates (effective in 2019), Articles 3 and 11.

Procuratorial organs handling the case: First Branch of the People's Procuratorate of Tianjin; People's Procuratorate of Heping District, Tianjin.

Procurators handling the case: Qi Yingping, Chen Bo, Li Yanling.

Case drafters: Du Guowei, Bai Chun'an, Lu Xu.

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