

# **EYE OF A JURIST**

## **SUPREME COURT DECISION ON L.A.SUSPICION**

Regarding the core issue of a “shooting incident” in what has been referred to as the “L.A.Suspicion”, the third petty bench of the Supreme Court (the presiding judge, Toshihiro Kanaya) has decided on March 5<sup>th</sup> to dismiss an appeal filed by the prosecutor. Consequently, Mr.Kazuyoshi Miura who has been accused of murder charge was acquitted.

The burden on the court was how the court would evaluate the circumstantial evidences accumulated by the prosecutor when there was no confession or material evidence.

In 1981, Mr.Miura and his wife, Kazumi, were shot by an unidentified assailant in Los Angeles, U.S.A. Kazumi lost consciousness into coma and died one year later. In 1984, when a weekly magazine, Shukan Bunshun reported that the motive of the incident might be the murder attempt by Mr.Miura to collect the insurance, there was a flood of coverage one after another by TV programs such as WideShow, and other weekly magazines and newspapers, all portrayed Mr.Miura as a suspect.

The breakthrough of the investigation came as the incident that happened 3 months before the shooting incident, wherein Kazumi was beaten by a former actress who was also an acquaintance of Mr.Miura. Mr.Miura was arrested and indicted in 1985 because of this incident for attempted murder (convicted with a 6 year sentence). However, the arrest for the shooting incident came as late as 3 years after that in 1988. At the first trial of Tokyo District Court in 1994, Mr.Miura was sentenced to life in prison and the owner of the parking lot was found not guilty.

### **Prosecutor’s allegations that lacked the consistency**

In 1998, at the second trial of Tokyo District Court, the court overturned the ruling of the first trial because of “procedural violation from the viewpoint of the defense in the ruling of the first trial that suddenly recognized a [conspiracy with an unidentified assailant] which was not even alleged by the prosecution”. The court said “there is no clear evidence to find Mr.Miura guilty of instructing a person to actually execute the shooting, and the reasonable doubt remains in order to find Mr.Miura guilty of the crime”, and found Mr.Miura not guilty and the former owner of the parking lot was found not guilty too.

The point that drew attention in the appeal court was the repealing by the prosecution of its allegation of the “former owner of the parking lot” as a co-conspirator of the shooting, which has been forming the bedrock of the evidence. Instead, they switched to conform to the theory of “conspiracy with an unidentified assailant” as adopted in the first trial (added as an additional count at the end of the second trial). As they abandoned the appeal for the former owner of the parking lot who was acquitted in both the first and the second trials, they probably did not have an option but to pursue this route, but it gave an impression of lack of consistency. By alleging the “conspiracy of unidentified assailant”, the prosecution was upsetting their own past and the consistent allegation that “there is no other person than the former owner of the parking lot who carries such a strong suspicion”.

The reason why the prosecution appealed against the life in prison sentencing of Mr.Miura was because of their dissatisfaction of the finding of “the conspiracy with an unidentified assailant”, however, they stressed in the appeal court that “there was no procedural violation in the sentencing at the first trial”, and “there was a precedence violation in the sentencing by the

high court”. However, the third petty bench of the Supreme Court simply rejected it for the reason that “it is not appropriate to apply it here because it is quoting the precedence that is not relevant to this particular case”.

## Circumstantial evidences and the “Detailed Justice”

Various testimonies such as “Mr.Miura approached us for insurance murder” by multiple people, or “I was approached for murder using the similar method as in the case of the shooting incident” by a former actress, occupied the important part of circumstantial evidences. If any of these could be trusted, it suggests that Mr.Miura was searching for accomplices and foretelling the crime, which strongly implicates his involvement in the crime. However, the sentence by the Tokyo High Court placed some doubts on the credibility of some of those testimonies.

For example, the court judged that some of his acquaintances “may have intention to accommodate the views of these TV stations” as they received fees for TV interviews. As for the testimony by the former actress, the court stated that it hesitates to completely trust the testimony, considering the influences by mass media or coaxing by investigators.

Besides those testimonies, the Tokyo High Court pursued meticulous judgment on every single circumstantial evidence. And the most critical finding was the fact that it was virtually impossible to identify any person who fits the description of accomplice.

The third petty bench of the Supreme Court has supported the decision by the High Court following very detailed examinations of the pertinent records.

The prosecution has been complaining about these “detailed justices”. They whine that “for example, in order to prove that a person went from point A to point B, it should be sufficient to prove that the person was at point A at certain time, and after certain period of time, the same person was at point B. However, it is the court’s practice to prove that the person passed a mid point C or even point D or E to get to the conclusion. The more serious the case is, the more timid the court becomes in delivering guilty sentence”.

## L.A. Suspicion and citizen’s judge (jury) system

How to deal with the influence by mass media on criminal cases and how to change the “detailed justice” practice etc are hotly debated contentions while the introduction of the citizen’s judge system is approaching.

A newspaper article that wrote “it is highly probably that this case would end up in the guilty verdict when the citizen’s judge system is introduced in Japan” is inviting wry little smiles among attorneys. It is almost meaningless to discuss if this article might be right or not, but it has to be pointed out that, if the citizen’s judge system is introduced in Japan, it is improbable that the successor to the judge who monitored the case from the first trial and later transferred would write the sentence. In addition, it is important to note that the judgment by citizen’s judges on circumstantial evidences will largely be influenced by the instructions of the judge.

Mr.Miura himself, probably due to his experience in high success rate of libel suits, appears to have a high level of confidence in the Japanese judicial system. He reflected in the press interview following the Supreme Court sentencing that “it was good that proper procedures were followed even though they took a longer time”. On the other hand, he also stated “I agree to introduce the citizen’s judge system so that citizen’s sense will be reflected in the judicial system”.