

Foundation of Legislative Science With Frequent Misjudged Cases

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ABSTRACT

"Ensuring that every guilty person is subject to criminal punishment and protecting innocent people from criminal prosecution" is the ultimate goal of formal justice. In recent years, cases of unjust, false and wrong have occurred frequently in China, exposing various problems in Chinese judicial system. From the external factors, this paper analyzes the judicial environment, the level of judicial expertise, the quality of the people handling the case and so on are all the influencing factors of misjudged cases; it also holds that different concepts of handling cases will also lead to different results. Based on the perspective of the Huge Injustice Case and the Zhao Zuohai Case, this article presents its own opinions on the causes and solutions of unjust, false and wrong cases based on the actual judicial system, mainly including whether to adopt the new legislation of post-conviction DNA testing and regulate the procedure of crime scene investigation, etc., and it also offers the author's own views on whether China should learn from America's innocents project to improve its practice.

Keywords: misjudged criminal cases, system, idea

I. INTRODUCTION

Since modern times, China's legal system has become more and more perfect, but there are still many cases of unjust, false and wrong in judicial practice. In today's society ruled by law, wrongly releasing a guilty person does not necessarily bring much negative impact, but misjudging an innocent person will bring tremendous negative impact. In the worst case, the fair and strict image of the courts and procuratorates will be greatly reduced, resulting in public distrust of the political and legal departments and those in power.

Inevitably, there is no corresponding mechanism for unjust, false and wrong cases in China. Similar cases are exposed by chance. Either the person who has been declared dead returns or the real murderer of the case is caught. In reality, only one or two of the hundreds of wrong and false cases are exposed, and the possibility of being vindicated is even smaller. Liu Renwen, a researcher at the Institute of Law of the Chinese Academy of Social Sciences and director of the Criminal Law Office, said: "The primary reason for the formation of unjust, false and wrong cases in China is torture and confessions. Such systematic wrong cases are due to the non-standard Chinese litigation system." In the author's opinion, apart from the common phenomenon of torture and extortion of confession, most wrong and false cases cannot escape two factors — external factors and conceptual factors.

II. EXTERNAL FACTORS

As can be seen from the various types of wrong and false cases over the years, the external factors leading to the wrong cases mainly include the following aspects.

A. Lack of a good judicial environment

Du Peiwu, a Kunming policeman who had been charged with two lives with shooting his wife and lover, said: "Under the high pressure of 'murder must be found out' by the superior, under the presumption of guilty prejudice by the case-handling organ, under the reckless torture of the investigators, there are no unconfessed 'confessions' and no unbreakable cases. Even all 'guilty evidence' can be 'manufactured', the purpose of which is for the case-handling personnel to complete the task for 'solving the case' until they have achieved merit, reward and promotion."

In the past few years, the Ministry of Public Security put forward the principle of "the murderer must be found out". The starting point is naturally good, but it will inevitably conflict with the authenticity of the law. The case handlers use illegal methods to quickly obtain strong evidence. The use of torture to extract confessions and phishing law enforcement have seriously violated the inherent rights of criminal suspects. Under the guidance of this wrong concept, the case-handling personnel unilaterally pursued such indicators as the detection rate and the arrest rate, and

gave up true judicial justice. Therefore, they produced "Huge Injustice Case" and "She Xianglin Case".

B. Lack of scientific judicial expertise

Taking the two cases of Zhao Zuohai and She Xianglin as examples, there are unidentified bodies in both cases. The judiciary determined the identity of the deceased without authorization (at least not) of the unidentified body. In the case of Zhao Zuohai, due to the serious corruption of the body, the police conducted four DNA tests on it and failed to determine the identity of the deceased, but still insisted that the deceased was Zhao Zhenshang, which shows that the subjective assumption was extremely strong. Despite the fact that there were many loopholes in the evidence when the case was finalized, and the court left room for the judgment, the two were exempted from the death penalty, but the suspected crimes existed. Zhao Zuohai was sentenced to death sentence with reprieve and She Xianglin was sentenced to 15 years in prison.

The person who has been declared dead is resurrected, reappears in just a few years, and is surprisingly similar in terms of identification, torture, confession by torture, and political and legal commission intervention. This phenomenon cannot be simply regarded as an accident. Or, it is precisely because of the police's subjective insistence that these cases are wrong again and again.

C. Some case-handling personnel have insufficient abilities

In recent years, China's various fields have developed rapidly, gradually integrating with international standards, and cases of disciplinary violations have also gradually involved various fields such as economy, philosophy, and real estate; In addition, the means of committing crimes are becoming more and more superb, showing the characteristics of high technology and high intelligence. Discipline inspection and supervision personnel have been working in the same department for a long time, the knowledge structure is too single, the knowledge in other fields is too little, and the ability is not comprehensive.

D. Judges' "ruling power" is too free

China's current "Criminal Law" and other legal provisions use a lot of vague words such as "may" to give the final ruling power to the judge, but there is no practical and effective constraint on the judge's ruling power. Some people with bad intentions use property bribes to determine the "can" change, allowing judges to freely distort the law and escape themselves from the sanctions of the law, but most civilians do not enjoy this kind of uncertainty.

The public prosecution and law departments can do most of the things that should be done, because they must be able to do it from the perspective of fairness and justice. For example, most of the "Provisions on Effectively Preventing Unjust, False, and Wrong Cases" have introduced this kind of situation. Article 3 stipulates that if there is evidence that should be excluded during investigation, review, prosecution and trial, it shall be excluded according to law, and it shall not be used as a basis for requesting approval for arrest, approving or deciding to arrest, transferring for review and prosecution, and making a prosecution decision and judgment. Confessions of criminal suspects and defendants collected by illegal methods such as torture and confessions, and witness statements and victim statements collected by illegal methods such as violence and threats shall not be used as the basis for finalizing the case. After this "shall", even if the case handlers do not do so, they will not be punished.

Therefore, if you really want to strongly constrain the case-handling personnel of the public security organs, it is necessary to make some changes to the provisions and replace the uncertain words with positive and practically guaranteed words, such as "must", "have to", etc., and the punishment must be of a warning level. If they don't do this, those who deal with the crime will still do their own thing, and there would be no difference from no regulation.

E. The excluding rules for illegal evidence exist in name only

If the police are collecting evidence without legal procedures, it may have a very large impact on the outcome of the case, and may even seriously affect the impartiality of justice. In order to standardize the relevant evidence collection activities of judicial staff, China's legislature writes the rule of excluding illegal evidence into the "Criminal Procedure Law". However, in actual cases, in order to obtain relevant evidence as soon as possible to close the case as soon as possible, the case handlers often take illegal means such as torture and confessions against the suspect to collect false testimony contrary to the real situation. Perhaps the phenomenon of illegal forensics is so rampant because of the concealment of the interrogation. It is precisely because of this concealment that the procuratorate cannot play its supervisory role, resulting in the phenomenon of frequent occurrence of wrong cases.

F. The system of investigating the responsibility for unjust, false and wrong cases is virtually useless

China stipulates this system, the purpose of which is to let the staff of the judicial organs who have caused grievances and mistakes due to their own mistakes in the process of handling the case bear their own

responsibilities, and to not only severely punish the dereliction of duty, but also alert other judicial personnel to deal strictly with the law effect. However, this idea is too idealistic. Taking the case of the Hujiletu Injustice in Inner Mongolia in 2005, the real murderer, Zhao Zhihong, had already admitted the facts of the crime and had gone to the scene to testify, but the case did not start the retrial procedure for a long time. It is because the personnel involved in the case have been trying to prevent the case from being turned over for their own benefit. The staff who created this tragic case in that year not only did not receive the severe punishment they deserved, but also received promotion to varying degrees.

III. IDEAL FACTOR

A. *Despising DNA identification*

Nowadays, DNA identification has become an extremely important detection tool. After excluding various force majeure and accidents, DNA identification is the most convincing evidence. However, many judicial personnel in China do not believe in DNA identification. The number of cases using this detection method is very small, and there are not many types of cases. In the case of Huge Jiletu, the seminal stains of the criminal suspects have been extracted from the body of the female deceased. However, the investigators did not compare the DNA of the spermatozoa with that of the Huge Jiletu, because they believed that the existing evidence and confessions were enough to prove that the Huge Jiletu was the murderer. If they could believe the accuracy of DNA identification, and do a DNA identification before conviction, they can eliminate the suspicion of Huge Jiletu, and this would not lead to this misjudged case.

B. *Presumption of guilt*

Investigators in China are often accustomed to the preconceived idea. After the initial determination of the criminal suspect, they follow the principle of subordination of the suspect, subjectively assume that the suspect is indeed the perpetrator, and then collect evidence from this idea. Whether this can collect evidence related to the suspect, it is aimed at the suspect, which is equivalent to having determined the target of the crime, plus the tendency of most judicial personnel to be "wrong in order to not release", resulting that the unjust, false and wrong cases are inevitable.

In summing up the lesson in Zhao Zuohai's case, Zhang Liyong, president of the Henan Provincial High People's Court, clearly pointed out "not insisting on the principle of no punishment in doubtful cases" is one of the reasons leading to wrong cases.

C. *Case handlers lack professional idea*

As the person handling the case, everyone's working methods and attitudes towards the case will have a more or less influence on the outcome of the case. In judicial practice, many cases of unjust, false and wrong cases often occur because of the lack of faith in the law and the profession, and the inability to resist the temptation from money or the pressure from other parties, resulting in these tragedies.

To change the current situation of frequent misconduct in society today, it is very necessary to improve the specific handling rules, but it is not enough to improve the handling rules. It is also necessary to take corresponding measures to reform the existing system.

The first is to standardize the relationship between judicial power, legislative power, and executive power. Nowadays, legislation, judiciary, and administration are scientifically configured, but judicial power is in a clearly weak position compared with the other two powers. It is precisely this weak position of the judicial power that makes it easy to be violated by other powers during the exercise. Taking the Zhao Zuohai case as an example, during the trial of the case, the three public prosecution laws could not reach a consensus on the case. Finally, the Political and Law Commission intervened in the meeting to unify the understanding, and eventually made the final decision on the case according to the opinions of the public security on the case. From this perspective, judicial power is extremely vulnerable to administrative power infringement. When other powers are involved in the case, it is easy to use its own advantages to influence and interfere in the case trial process. Therefore, to optimize the allocation of judicial power, it is necessary to standardize the relationship between judicial power and the other two powers, improve the current situation of judicial power, and realize judicial freedom.

The second is to regulate the external configuration of judicial power. Because the law does not have strict regulations on how to exercise the powers of the NPC, as a result, in the practical activities, it often occurs that members of the people's congresses or individual deputies of the people's congresses are often abnormal to cases approved and transferred by judicial organs. In this way, the supervisory power ultimately falls on the superior leaders of the public prosecution law system. Some of these leaders accept bribes and some have good relations with the subordinates, and are unwilling to really exercise the supervisory power. In this case, the people who are most vulnerable to unfair treatment do not have the right to supervise in the true sense, and can only be left to the discretion of the case handlers. As it know to all, the supervision of the relevant judiciary by state power organs is the highest level of legal supervision recognized by China's laws. If this

kind of supervision is not strictly regulated, it will inevitably cause power imbalances and abuse of supervisory power. Therefore, it is necessary to strictly regulate the external allocation of judicial power, so as to achieve the goal of optimizing the reform of judicial power allocation.

The third is to implement the principle of presumption of innocence. Nowadays, the principle of presumption of innocence has been internationally recognized as the basic principle of international criminal law. Article 14, paragraph 2, of the Covenant on Civil and Political Rights provides for this: "Everyone charged with a criminal charge shall have the right to be regarded as innocent until proven guilty according to law." However, in actual judicial practice, it is difficult to see the principle of presumption of innocence. On the contrary, the basic principles seen are all presumptions of guilt and those suspected crimes. The principle of presumption of guilt can also be seen everywhere in the Huge Jiletu Injustice Case and Zhao Zuohai cases. In order to establish the principle of presumption of innocence in a full sense, it is necessary to use existing resources, draw on international criminal justice standards, and update Chinese criminal law norms in accordance with international criminal justice standards.

The fourth is to establish a remedy mechanism for wrong criminal cases. In the 1980s, the US "Innocent Rescue Plan" made the US government aware of the serious consequences of wrongful convictions, so the US government decided to take relevant legislative measures. First, it was to ensure that people who were wrongly convicted could receive relief in a timely and effective manner. Through these measures, the phenomenon of erroneous conviction in the United States was effectively prevented and controlled.

These measures mainly include post-conviction DNA testing legislation, standardization of crime scene investigation procedures, standardization of the entire person identification rules, and the formulation of the "Innocent Protection Act 2004". Through these measures, the United States has enabled more innocent people to get rid of the crime and go out of prison.

Coincidentally, China has also established a series of mechanisms for misjudged criminal cases. Although it is impossible to achieve a one-step process in practice, China has proceeded from both theory and practice, drawing on the precedents provided by the US "Innocent Plan" and gradually enriching the contents of the framework system and establishing a relatively perfect criminal wrong case relief mechanism.

IV. CONCLUSION

In summary, the occurrence of misjudged criminal cases is caused by a variety of reasons. People should

see the essence of the incident through these superficial phenomena, formulate practical and effective measures to reduce the occurrence of wrong cases, enhance people's trust in the law, respect for judicial authority, and ultimately make contributions on building socialism in China to safeguard social fairness and justice.

References

- [1] Zhou Yuefei, The Current Situation, Causes and Countermeasures of Criminal Misjudged Cases in China — Taking Huge Injustice Case as an Example [A]. *Legal System and Society*, 2015, 8. (in Chinese)
- [2] Yin Hongwei, Unjust, False and Wrong Cases Occur Frequently, Giving Birth to a New Image of Politics and Law [J]. *Rule by Law and the Society*, 2010(8): 39-41. (in Chinese)
- [3] Lv Ping, An Analysis of System after the Frequent Misjudged Cases — Taking the Case of Zhao Zuohai as an Example [J]. *Journal of Railway Ministry Zhengzhou Police College*, 2010. 3. (in Chinese)
- [4] Wu Hailan, Research on the Exclusion of Criminal Illegal Evidence in China [D]. Hebei University, 2013. (in Chinese)
- [5] Lu Jielai, Research on Related Issues of "Zero Confession" [J]. *Forestry Public Security*, 2012, 4. (in Chinese)
- [6] He Jiahong, He Ran. Evidence Issues in Criminal Misjudgements—Empirical Research and Economic Analysis [J]. *Tribune of Political Science and Law (Journal of China University of Political Science and Law)*, 2008, 26(2): 3-19. (in Chinese)
- [7] Li Jianming. The Metaphysics in the System of "Wrong Judgment Investigation" [D], *Cass Journal of Law*, 2000. (in Chinese)
- [8] Zhou Yongkun. Misjudged Investigation System and the Construction of a Country Ruled by Law—A Sociology of Law Reflections [J]. *Law Science*, 1997 (9): 7-11. (in Chinese)
- [9] Wei Shengqiang. Where to go to investigate the wrong case? Thinking about the accountability system of judges in China [J]. *Law Science*, 2012 (9): 55-64. (in Chinese)