

The Osaka High Court (Chief Judge: Hiroaki Murayama), on 25th October 2019 handed down a not-guilty judgment for a grandmother who was convicted in 2017 for shaking her granddaughter to death. She had always maintained her innocence.

The incident occurred in April 2016. Ms. Yasuko Yamauchi was looking after her two granddaughters at her daughter's home when the younger granddaughter (2 months old) collapsed. The baby died three months later. Ms. Yamauchi was prosecuted for shaking her granddaughter (or applying some kind of external force to the baby's head) and injuring her which resulted in her death. The prosecution based their case on the opinions of doctors who alleged it was shaken baby syndrome (SBS).

The district court, based on the doctors' opinions and testimonies and the "triad" of symptoms, sentenced her to 5 years and 6 months in prison with labor. She appealed the decision.

The attorneys who are also members of the SBS Review Project took the case at the high court. With much research, the defense team found out that the baby had CVST and DIC, a condition in which a blood clot develops in the brain. They did so with a help of two neurosurgeons who also testified for the defendant at the high court.

The high court found factual error in the district court's decision and reversed, declaring that Ms. Yamauchi is not guilty. The court found that there is a reasonable possibility that the baby's symptoms were caused by CVST and DIC.

The high court also touched upon the problematic features of fact-finding based on the SBS hypothesis:

This case shows the danger of fact-finding based on the SBS theory. If the SBS theory is simply applied, it would be a cause for a mechanical and stereotypical fact finding, which leads to factual error. (*translated and summarized by author)

The court also looked at the circumstances surrounding the

defendant and the victim. The court found that Ms. Yamauchi is not at all a violent person and had no stress in looking after the children. When the circumstances surrounding Ms. Yamauchi and the incident was taken into consideration, the court found no motive for Ms. Yamauchi to hurt the child. This court finds it not realistic to think the defendant would shake the baby as such. Considering the defendant's age and body shape, body strength, defendant's personal circumstances and the circumstance of the incident, it is unnatural to think that the defendant would shake the baby as alleged. Considering the above factors, there is significant doubt that the defendant had shaken or applied some kind of violence to the baby as charged. (*translated and summarized by author)

It also pointed out the problems of the fact-finding process of the district court.

The district court had premised that the baby's symptoms must have caused by external force. With this in mind, the district court, by using process of elimination, concluded that the defendant must have been the perpetrator. This kind of fact-finding is generally accepted. However, in this case, this process of elimination is very problematic: facts or opinions which on their face have sufficient grounds might be wrong. The process of elimination, other than in some cases, can lead to conclude that someone is the perpetrator even if there is no evidence or facts pointing him/her as the such. When these two logics are combined and especially in cases where it is disputed whether the defendant is the perpetrator or not, even though the real issue not properly reviewed was whether the incident was a crime or not, the rebuttal from the defendant will not function and the finding of guilt becomes unavoidable. This is a cause for a grave problem in fact-finding in a criminal trial. (*translated and summarized by author)

Masashi Akita, one of the attorneys for Ms. Yamauchi and co-founder/ co-director of SBS Review Project, commented:

"This ruling also covered the manner of deciding cases that concludes abuse

was involved based solely on medical observations. There will be a need for a fundamental review of how investigative organs and child consultation centers deal with such cases.” (Grandma cleared of conviction for shaken baby syndrome death, Asahi Shimbun Newspapers, 26 October, 2019.)