

CASE TRANSLATION: JAPAN

Case citation:

Tokyo District Court Heisei 25 (Go Wa) No. 48, Heisei 25 (Kei Wa) No. 817, Heisei 25 (Kei Wa) No. 1020, Heisei 25 (Kei Wa) No. 1313 (four cases joined)

Name and level of the court:

Tokyo District Court

Date of decision:

Heisei 27 February 4

Members of the court:

Chief Judge Katsunori Ono, and Judges Sakon Tokari and Nana Yoshida

Public prosecutors:

Takaaki Yamaguchi and Mizuki Ito

Lawyers for the defendant:

Hiroshi Sato (chief), Akira Kitani, Makoto Takeda, Ayumi Daimon, Shiori Murakami, Sayaka Moritsuka, Tetsuro Koike and Hideki Noma (special counsel)

Japan; executable code; causing disruption; causing innocent third parties to act as a conduit to post threats; criminal acts; misleading the investigating authorities; innocent parties falsely accused, arrested and convicted; creation of false evidence

The case pending against the accused regarding fraud and obstructing business, the law against the hijacking of aircraft, the forcible obstruction of business, threats and wrongful instructions made to electromagnetic records to a computer (Penal Code Art.168-2 (2)), with presence of public prosecutor Takaaki Yamaguchi, Mizuki Ito, defense counsel Hiroshi Sato (chief), Akira Kitani, Makoto Takeda, Ayumi Daimon, Shiori Murakami, Sayaka Moritsuka, Tetsuro Koike, and Hideki Noma (special counsel) at trial, this court sentences as follows.

Judgment: the accused will serve 8 years in penal servitude.

350 days in detention pending trial should be counted into the punishment.

Reasoning (facts constituting the crime) [all corpus delicti existed in Heisei 24, and the notation of year will be omitted except for the first appearance].

In addition – each trial is during Heisei 25 – () of each fact tail – the inner Arabic figures and circled number are the number of the days and months of the length

of a case, and facts constituting the offense charged given in an indictment.

About the accused:

1. (First offence)

The accused planned the obstruction of the business of S1 public primary school in the city of C1. He stored a simple program on an internet server (omitted), which automatically sent a statement threatening to attack the children of the primary school, and to the suggestion contribution form of ‘suggestions from citizen’ in the homepage managed by the city of C1. Around 3:17 PM on June 29 Heisei 24, in J1 Inc., the accused posted a shortened URL that automatically connected to the above-mentioned simple program on the signboard established on internet bulletin board B1.

At the same time, in Tokyo (following abbreviation), the accused caused a third person, who did not know his intention, to browse the above-mentioned shortened URL placed by the PC connected to the internet in Tokyo, and by clicking it, it caused the above-mentioned simple program to send the above-mentioned threat statement to the above-mentioned bulletin board form through the third person’s computer.

At the same day at around 4:00 PM, the primary school schoolmaster M1 was informed by Police Department P1 at C1 city (following abbreviation) in Kanagawa Prefecture about the statement, and closed

the temporary temporarily on June 30 and July 2, which caused the normal business of the primary school to be disrupted.

This action caused the primary school to lose business.

2. (Second offence)

Before the above incidents occurred, using the illegal software called 'iesys.exe', which makes a PC connect to the internet bulletin board 'B2' automatically without the PC user's knowledge, the accused sent and stored the program that can generate the above-mentioned 'iesys.exe' etc. to the computer server managed by S2 of the U.S., hiding as four kinds of software, including an item of time measuring software, intending to make a third person who did not know about the intention of the accused to cause unknown third parties to post messages on the internet bulletin board.

Moreover, (as description of the 'request of proxy posting' field in table No. 2, an exhibit), from around 1:21 PM on July 27 to around 2:29 PM on September 10, the accused posted the URL that showed the storage place of the above-mentioned file to the bulletin board 'P2 post office and 405th copy (proxy response)' and four other bulletin boards, which were mainly used for the substitution of postings to bulletin board 'B1'.

Regarding the description of the 'proxy posting' field in the table, between around 2:5 PM on July 27 to around 2:43 PM on September 10, the accused uploaded a proxy posting that included the URL link to the location of stored software to the bulletin board B1 and other two bulletin boards that read: 'lightly, 'Do you know such a soft?' Part. 149', and for those who did not know his intent and who browsed the posting, it enabled the downloading of the above-mentioned file from the computer server.

From the description of the 'download' field in the table, from around 9:41 AM on July 28 to 2:55 PM on September 10, the accused caused, at five places besides Osaka (following abbreviation) the PCs used by five persons, including C2 who did not know the

intent of accused, to connect to the storage place and download the file. Through this, the accused caused those PCs to download the executable file 'iesys.exe', and set those PCs to perform the unlawful instruction of the electronic magnetic record when they use their PCs against their intention.

3. (Third offence)

Around 9:45 PM on July 29, the accused, at his house in Tokyo, using the PC connected to the internet, send the order that caused A's PC to transmit the e-mail to the homepage of the consultant page 'civic voice'; at the same time, in Osaka, he caused the PC connected to the internet perform the program 'iesys.exe' affixed to the e-mail to transmit the e-mail; around 9:10 PM on July 30, he caused officer O3 in charge of a public hearing to browse the e-mail; O3 notified the matter of the e-mail to a policeman of the P3 police station in Osaka; in responding to the notification, from around 11:00 AM to 5:00 PM on August 5, 72 policemen of another police station and 15 policemen of P3 police station engage in precautionary measures, including the guarding of roads near the city; and in the meantime, the accused, by means of fraudulent interference, disturbed the ordinary and normal business of policemen.

4. (Forth offence)

The accused planned to disturb the normal operation of aircraft under navigation; from around 1:15 PM to 1:19 PM on August 1, at the J1 Inc., using a PC connected to the internet, the accused stored the order into the A's PC to send the e-mail to the homepage 'opinion and question about the service' managed by J4 Inc.; the accused caused the program 'iesys.exe' stored in the PC connected to the internet at the 6th studio of 'A4' Inc. in Tokyo to refer the e-mail and send the e-mail; around 1:30 PM on the same day, caused an employee of J4 Inc. in Tokyo who was in charge of responding to complaints, to browse the e-mail; around the afternoon 2:45 of the same day, caused the company's operation control center division manager 'B4' to notify the matter of the e-mail to the captain of the aeroplane T006 (departed from 'C4' airport and arriving at 'D4' airport)

navigating near [Aleutian Islands westernmost end]; made the captain who received the message feel the fear of the serious harm to the navigation of the aircraft and the security of the passenger's (265 persons); and, at around 3:30 PM of the same day, made the captain return the aircraft return to 'C4' airport for the purpose of security. As mentioned above, the accused made the aircraft change direction by using electric power.

5. (Fifth offence)

The accused planned to disturb the 'F5' event which ah Ltd. was preparing in 'G5' exhibition hall from August 10 to 12; from around 10:37 AM to 10:42 AM on August 9, using the computer connected to the internet of the J1 Inc., stored the A's PC order to send the messages to the internet bulletin board '(question and beginner welcome) Are you first participation at the 'F5' event? 126' in the internet bulletin board 'B1' and four other bulletin boards; made the order refer to 'iesys.exe' stored in the PC connected to the internet of 'I5', Inc. in Aichi Prefecture at the time; this carried the anonymous letter to the computer; around 11:15 AM, caused the bulletin board to be browsed in the sponsor office on the first floor of the 'G5' exhibition hall building in Tokyo and made 'J5' of the sales department of the 'H5' Ltd. in charge of the event recognize the posting; from around 0:20 PM on August 9 to around 8:00 PM on August 12, caused an employee of the company to enhance precautions for security by modifying the guard service in 'G5' exhibition hall and its neighbourhood; the accused disturbed the normal security service and other tasks of the event. By the above, the accused obstructed the business of the corporation by electric power.

6. (Sixth offence)

From around 5:22 PM to 5:25 PM on August 27, the accused, using the computer connected to the internet at J1 Inc., stored the order in A's PC to send the e-mail to the mail address established by the office O6; caused the order to refer to the program 'iesys.exe' stored in the PC connected to the internet and send the e-mail at the time; caused the employee of the corporation to browse the e-mail at around

5:35 PM, and caused the mother of the actress belonging to the office O6 to know about the e-mail in Tokyo at around 11:00 PM on the same day; through this, the accused notified and threatened the actress's relatives' life and body.

7. (Seventh offence)

The accused planned the obstruction for the event of the kindergarten attached to the 'K7' college; at around 5:38 PM on the same day, using the PC of J1 Inc. connected to the internet, stored the order in A's PC to send the e-mail transmission to addressing the mail address of the kindergarten; caused the program 'iesys.exe' saved in the PC at the time to refer to the order; caused the PC to send the e-mail; at around 6:30 PM, the accused caused the president 'al' to browse the e-mail in the kindergarten in Tokyo attached to 'K7' college; caused the staff of the kindergarten to notify the e-mail to the police office and place a guard around the kindergarten at the time; and from the 28 to the 30, to cease the planning of an event at the kindergarten; caused the disturbance of the business of the staff of the kindergarten; through this, the accused disturbed the business of the kindergarten by electric power.

8. (Eighth offence)

From around 8:18 PM to 8:27 PM on August 29, the accused, using the PC of the J1 Inc. connected to the internet, stored the order in A's PC to post as the main text to the thread 'I want to make the conversion table of handshaking 2' of bulletin board B1 and three other bulletin boards; caused the program 'iesys.exe' saved in the PC connected to the internet in Kanagawa Prefecture to refer the order and post the message to the bulletin boards at the time; at around 10:00 AM on the 30, caused the visitor to browse the message in the office of the 'an' corporation in Tokyo; caused the employees of the company 'O8' to contact the management of the event 'am sale memory large handshake session & picture meeting' at the Tokyo 'G5' exhibition hall on September 2 with the sponsor, recognize the message; caused them to consider enhancing the security of the event; from around 7:00 AM of the day

to 11:00 PM, caused the 'O8' company to increase the personnel of guards in 'G5' exhibition hall; disturbed the normal business of the event management, etc.; through this, the accused disturbed the business of the corporation using electric power.

9. (Ninth offence)

From around 3:25 PM to 4:1 PM on September 10, the accused, using the PC of the J1 Inc. connected to the internet, stored the order in A's PC to post the message to the bulletin board of the bulletin board B1 and another bulletin board; caused the program 'iesys.exe' saved in the PC connected to the internet to refer the order and post the message to the bulletin boards at the time; at around 6:00 PM on the same day, caused the person to browse the message in the office of the 'Q9' corporation in Tokyo; caused the president of the 'Q9' corporation, 'S9', running shops of 'P9' and 'R9' to recognize the message; caused them consider enhancement of the security for the event; from September 15 to 17, caused them to increase the number of guards around these shops; disturbed the normal business of the event management, etc.; through this, the accused disturb the business of the corporation using electric power.

10. (Tenth offence)

From around 3:34 PM to 3:43 PM on September 10, the accused, using the PC of the J1 Inc. connected to the internet, stored the order into A's PC to post the message to the bulletin board 'at Shrine visiting 125 Shrines No.4' of the bulletin board B1; caused the program 'iesys.exe' saved in the PC connected to the internet to refer to the order and post the message to the bulletin boards at the time; at around 9:10 AM on September 11, made the security director 'A10' of 'B10', in the city 'T10' of Mie prefecture to recognize the message; from September 14 to 18, caused them to increase the number of guards and enhance the precaution around the Shrine; disturbed their normal business; through this, the accused disturb the business of the Shrine using electric power.

(List of Evidence)(Omitted)

The number inside the parenthesis shows the number of evidence the public prosecutor submitted in evidence, etc. cards.

(Omitted in translation)

The accused, convicted of a threat and defamation, was sentenced one year and a half in penal servitude by Tokyo District Court on March 27, Heisei 18, and finished the execution of that punishment on August 6, Heisei 19, and this fact is accepted by a document of criminal record (Otsu 4)(evidence No.).

(Application of Law)

Regarding the first casus, the 5th casus, and the 7th to 10th casus, article 234 and article 233 of the Penal Code should be applied to the act of the accused; concerning the 2nd casus, article 168-2 section 2 and section 1(1) of the Penal Code should be applied; regarding the 3rd casus, article 233 of the Penal Code should be applied; regarding 4th casus, article 4 of the Law of Punishing Hijacking of the Aircraft should be applied; regarding the 6th casus, article 222 section 2 and 1 of the Penal Code should be applied; concerning the 1st to the 3rd casus and from the 5th to the 10th casus, penal servitude should be selected since the accused has a previous conviction; regarding the 1st cause to the 4th cause, according to article 56 section 1 and article 57 of the Penal Code, cumulative punishment should be applied; these dispositions correspond to the concurrence of offences provided by the first sentence of article 45 of the Penal Code; according to the provision of the main sentence of article 47 and article 10 of the Penal Code, the accused will be sentenced to eight years penal-servitude, within the limits of the prison term calculated by the most severe crime in the 4th cause and its additional prison term; according to article 21 of the Penal Code, 350 days of detention pending trial are included in the term of imprisonment; and the accused should not bear the cost of proceedings in accordance with the proviso in clause of section 1 of article 181 of the Criminal Procedure Code.

(Reason of assessment of culpability)

1. In this case, the accused has advanced knowledge and understanding of computers, the internet, etc. The accused created and used a computer program for operating a stranger's PC by remote control. By doing so, the accused was able to transmit an order to an unrelated third person's PC. The accused operated the computer by remote control, without the knowledge of the third person. The accused made the comments that are the subject of the statement of crime, and transmitted them by computer. By undertaking this action, the software was hidden for about two months and a half, and a total of nine acts were attributed to a third person, and the accused escaped arrest. The accused changed the course of aircraft, disturbed businesses, such as an educational institution, a store, a shrine, and various events and threatened the relative of an actress.

2. Today, computer networks, such as the internet, spread widely and have come to have an important function. If a cybercrime using a computer network such as in this case is carried out without finding the accused, society bears a serious fear of using the internet and there is a hesitation to process information by trusting a computer program. As a result, it might disturb the smooth function of information processing by the internet or a computer.

The series of acts caused by the accused must be evaluated in accordance with their highly vicious nature, in respect of the mode, the result, etc. as described below.

(1) The accused aimed at a number of websites which showed signs of fragility; devised a shortened URL for putting a simple program in place that transmitted the criminal statement to a website on the bulletin boards on the internet, falsifying the link to a harmless web page; and made a third person click the URL and send he criminal statement without their knowledge. (1st offence)

The function of this simple program was to send the same criminal statement from a persons PC, and in order to prevent the revelation of the mechanism of criminal activity, the criminal statement was not sent

from any PC that clicked on the web site a second time.

Knowing that there are a number of websites that are easily hacked, the accused thought that it was easy to send the criminal statement from a third person's PC operated by remote control; after continuing the creation of the program, he completed the program 'iesys.exe' that had a function to operate the third person's PC by remote control; he made the installation program by falsifying a harmless and useful program to be uploaded on the bulletin board of the internet; and made an unrelated third person download the program 'iesys.exe.' without their knowledge and infected their PC. (2nd offence)

Using the function of 'iesys.exe', the accused controlled the infected PCs and committed crimes by sending the criminal notice continually without the knowledge of the user of the PCs. (3rd to 10th offences)

Since the program 'iesys.exe' was never displayed on the window at the time of the infection and remote control, the users of the PCs could not recognize its infection and its purpose of remote control.

The accused used the network, which had the function to keep a connection route secret in order to hide the trace of a crime; encrypted the mechanism of the remote control; sent the criminal statement by remote control; sent the order to 'iesys.exe' to delete itself by remote control to prevent the discovery that the PC was operated by remote control.

As set out above, the accused committed the series of crimes making full use of his advanced knowledge and techniques about computers and the internet; made the unrelated third person appear to be the criminal person; on the other hand, he made careful preparations, hid the trace of the crime, and it was executed by skillful means so that he might not be arrested. This case is considered a vicious crime in terms of a cybercrime.

We also take into consideration the assessment in this case that the accused repeated nine vicious

crimes within the short period of two months and a half.

(2) The accused had the confidence with an advanced knowledge and understanding of techniques about computers and the internet, etc; thought that he would like to try his skill; because of the experience of the unsuspended sentence he served in the past, he had a malice towards national power; he thought that he would like to outwit a criminal investigation agency by directing them to arrest and prosecute an innocent third person who had the PC operated by remote control; for these reasons, the accused committed this series of crimes.

There are no extenuating circumstances, because the accused disregard the influence on the unrelated third person's life and committed the crime from selfish motives.

As described in the following part 3, by the series of offences, the accused cause serious results including having made an aircraft change its course; furthermore, by his actions, he caused the innocent person who had their PC operated by remote control, and a total of four persons arrested. One person was prosecuted, another was sent to the domestic relations court, and received probation.

The arrests were misconceived by the prosecution. In this case, as the result of crimes committed by the accused, the innocent person was suspected as a criminal person, arrested, and prosecuted. There is a direct cause-effect relationship between them. First of all, the accused performed a series of public offences that led to the wrong person being arrested and made the criminal investigation agency prosecute an innocent person. The misconception, arrest and prosecution was caused by the motivation of the accused.

It is not a breach of the principle of culpability to consider that as a result of the crime of the accused, four persons were wrongly arrested and prosecuted. Rather, if it compares with the actual facts of this case, we have considered the facts to some extent in assessing the case.

The counsel of the accused argued that the accused should not take responsibility for the misconceptions of the criminal investigation agency for failing to perform its investigation properly.

However, the argument of the counsel of the accused is to criticize the criminal investigation because of the failed technique, and knowledge that was acquired in the trial process. In this case, the criminal actions of the accused made it appear to the criminal investigation agency that another person committed the crime, causing the agency to arrest and accuse the third person as criminal. It follows that the actions of the criminal investigation agency did not influence the decision of the accused to commit the crime. When evaluating the criminal liability of the accused, the actions of the criminal investigation agency should not be an element to lighten the extent of blame of the accused.

The argument of the counsel of the accused is wrong, according to the testimony of the witness who was arrested and prosecuted incorrectly.

(3) The counsel of the accused argued that the developmental disease (autism spectrum) of the accused influenced the process and the motivation of the acts causing the crime.

However, as a result of scrutinizing the evidence, there is no proper sufficient basis to admit that the accused had a developmental disease at that time, at least, that the mental retardation of the accused influenced the series of crimes, and there were no circumstances that reduced his responsibility or blame.

Contrary to the argument of counsel, the motive and mode of the crime is similar to the previous criminal record of the accused, that the accused previously sent criminal notices to bulletin boards on the internet. It is not inconsistent to consider the motive and mode of these criminal acts as the revelation of the natural personality of the accused. Therefore, the argument of counsel is not acceptable.

As discussed above, considering the circumstances of the whole of the crime, this case is a vicious

cybercrime, including the process, the motive, the mode, the result and the number of crimes. The special circumstances that reduce the responsibility of the accused are not accepted.

3 Next, we examine the circumstances surrounding the crime of each casus individually.

(1) Firstly, we discuss the 4th offence as having the heaviest statutory penalty. The accused sent the criminal statement that if the religious reader 'cf' and all believers would not be released, he would detonate a bomb in the aircraft navigating to 'cg' airport and sprinkle hydrogen sulphide in the underground railway. The statement made the members of staff of the corporation to which it was addressed recall the 9/11 terrorist-attacks and the sarin nerve-gas attack on the Tokyo subway. The statement had an effect as strong and concrete, because the crew and passengers of the aircraft felt a real risk against their life, liberty and property. The mode of the crime was vicious.

As a result, the aircraft, which was navigating around the Aleutian Islands westernmost end point, was obliged to change course and to return to the 'C4' airport, and the economical loss exceeded 9 million yen because it was necessary to modify the flight schedule, prepare an alternative machine, and such like.

Moreover, the passengers of the aircraft, until they landed at the airport they returned to, were inside of an aeroplane without a refuge, and had to bear the unendurable fear that a bomb may explode and they were obliged to undertake their journey by a modified flight schedule.

The crew, including the captain, under the pressure of fear, had to avoid the confusion inside the aeroplane. The mental anguish of the crew and passengers was significant.

The crime that was perpetrated affected the operation of the aeroplane, where the normal operation of the aircraft was disturbed by using electric power or a deceptive plan, and the restriction, disturbance and nuisance of the liberty that the crew

and the passengers were remarkable. It not only disturbed the business of the navigating officer and the airline, but it inflicted significant special damage on the crew members and passengers about the operation of the aeroplane.

Therefore, it is an accusation of the special rule of the obstruction of a normal business (article 233, 234 of the Penal Code), and there is a heavy statutory penalty imposed as a result.

The accused sent the criminal statement and caused the jetliner of the international airline travelling from 'C4 to 'D4' with a total of 265 crew and passengers to return from the westernmost end in the Aleutian Islands to the departure airport. This was a typical procedure and result that follows such a criminal act. The reason for the heavier penalty is because of the extent of the business disruption that was caused, which made it necessary for the aeroplane to return to the departure airport. There is no reason to think the crime in this case is incomparable. We cannot agree with the argument of the public prosecutor that this case was such that it attracted the heaviest statutory penalty of this criminal genre.

(2) Next, in discussing the 1st offence, and the 7th offence, for both of them, the accused sent the criminal statement that indicated a child would be slaughtered. This amounted to an attitude of indifference, and was malicious.

As a result, the persons concerned had to bear an extensive disturbance. The primary school stopped the schedule for the observation of the class on that day. The members of the school staff discussed measures and were in charge of taking precautions. The school was caused a great deal of distress by the statement.

The kindergarten stopped an event taking place inside the garden, and carried out security enhancement with the outlay of about 900,000 yen.

(3) Furthermore, to consider the 3rd offence, the 5th offence, the 8th offence, the 9th offence, and the 10th offence, all these offences were by the vicious modes by which the criminal statement was sent

consisting of contents that were indifferent to injury or murder, and made people feel fear.

In particular, the criminal statement cause people to recall memories, in the 9th offence of the 'indifferent murder case' that occurred near the shop, in the 10th offence of the terrorism of the radical political member, and amplified the fear felt by people.

As a result, the persons concerned were obliged to intensify security; in the 8th offence, about 800,000 yen was paid and the guard was reinforced; in the 9th offence, about 1,300,000 yen was paid for an additional security guard; about 4 million yen in damages occurred by the suspension of business.

Moreover, in the 3rd offence, about 90 policemen were obliged to attend for a precautionary measure.

(4) In the 6th offence, the accused sent the criminal statement which contained content that the famous child actress would be raped and would be cruelly murdered. A relative of the actress who read the notice was shocked and felt fear and uneasy. The mental anguish cannot be made light of. The persons around the actress had to strengthen the guard around the actress.

To understand the circumstances of the crime of every casus, the criminal statement was excessive and miserable. The accused sought to increase his credibility by recalling the past case of murder and terrorism in the criminal statement. The method was vicious. As a result, the course of the aircraft was changed and great mental and economical losses were sustained to the persons concerned. The result is serious.

4 We now discuss below issues other than the circumstances surrounding the crime.

(1) First, the circumstances of the accused after the crime are not good.

After the series of crimes, the accused anonymously sent a 'claim-of-responsibility mail' and 'suicide previous-notice mail' to the press. Also, a 'New-Year's-greetings mail' and 'extra-inning game mail' were sent in the form of a quiz. In answering the quiz, the file was obtained that saved the last message. The

accused continually agitated the press and the criminal investigation agency.

The 'claim-of-responsibility mail' with the description of the people that were arrested was sent after three persons that were restrained and had been released, and it was not sent in order to save those who had been arrested incorrectly.

The crime of the accused was vicious, since the purpose of sending these e-mails and messages was to satisfy his self-display, to show his superiority to the criminal investigation agency and to enjoy causing a public disturbance.

After the prosecution, the accused pretended that the true culprit existed independently of him, and about two months and half after bail, he buried the smart phone into the dry riverside, setting it to send the e-mail automatically during the trial to give the appearance of an alibi from the smart phone. By acting himself, the forged mail from the true culprit was sent to the press from the smart phone. These activities were in addition to other public offenses under bail, in respect of positive manoeuvres that were vicious and aimed at criminal destruction. This is evidences of the stubborn attitude and the personality of the accused to try and escape from the responsibility of the crime.

(2) In Heisei 17, the accused sometimes tried to obtain unauthorized access to a stranger's wireless LAN and posted the previous notice of the murder of a schoolgirl and the top manager of a record company to the bulletin board of the internet; as shown in the recidivism of his criminal record. In March Heisei 18, the accused was sentenced and served a term of imprisonment for the threat and the slander. Around June, Heisei 20, the accused was arrested for a misdemeanour for posting the message that the man with a weapon acted violently at 'C11' to the bulletin board of the internet. From the termination of the execution of pre-punishment, within five years of the recidivism time period, the accused committed the crime of the 1st offence. After that, the series of other crimes were committed.

The accused served a term of imprisonment for the same kind of crime as this case and had an opportunity for reflection; however, from his experience in a prison, he began to hate prison officers and the governmental power; he escalated the criminal means and mode; he repeated the same kind of crime using advanced knowledge and techniques. Therefore, the criminal trend of the accused is clearly aggravated.

(3) On the other hand, after revelation of the act in a play by himself under bail, the accused admitted that he was the true culprit and confessed to the circumstances and the matter of the crime in detail.

However, considering to the process of confession, the accused continually justified himself by making false statements to escape from being sentencing as guilty and confessed after the revealing of the act in a play about himself for understanding the of failure of his plan. We could not recognize in his confession that he truly regretted his actions.

Moreover, considering the statement of the accused in the tribunal, we cannot have confidence that the accused has discovered himself or has reflected earnestly, and cannot say it is sufficient.

Therefore, we can consider that the accused accepts the crime and that he has the posture reflecting help to assess the case. However, it is limited.

(4) Moreover, at the time of a trial, the mother of the accused promised to think about her relationship with the accused and supervision for future rehabilitation.

At present, the effectiveness of the supervision by the mother is not clear. It does not greatly influence our assessment of this case. However, considering the surroundings of the accused, the participation and cooperation of the mother is indispensable and the most important factor towards the rehabilitation of the accused.

5 Considering the circumstances of the entire crime and the individual circumstances of the series of crimes, as discussed from part 1 to 3, this case is malicious in respect of the process, the motive, the mode and the result. Since such nine crimes were

repeated, we consider the sentence should provide a suitable heavy punishment.

As discussed above, although the arrest and a prosecution of the wrong person can be considered when assessing the case, it is a limiting factor. The public prosecutor claims that the 4th offence is considered as the weightiest crime. However, we cannot necessarily consent to this argument. Considering the general circumstances of the crime as discussed in part 4, the accused should be blamed severely and adequately in respect of the main sentence.

Therefore, we have decided as the main sentence.

(Penalty-demand-for-the-defendant of penal-servitude for ten years)

Criminal court part 4 (chief judge, Katsunori Ono, judge Sakon Tokari, judge Nana Yoshida)

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