

## main

Sentence

During the original judgment, the parts related to accused A, C, and D will be destroyed. Defendant A shall be sentenced to 20 years in prison, C shall be sentenced to 5 to 9 years in prison, and D shall be sentenced to 5 to 7 years in prison.

Defendants A, C, and D shall be sentenced to 350 days out of the number of days pending detention in the court.

Each appeal in this case concerning Defendant B is dismissed.

## reason

The prosecutor's appeal is based on the appeal brief submitted by Makoto Hida, the prosecutor of the Tokyo Higher Prosecutor's Office (in the name of Keisuke Kitajima, the prosecutor of the Tokyo Metropolitan Prosecutor's Office). Nobuyuki Kamiya, Defendant B's defense counsel Chieko Haga, Ito Yoshiro, Onuma Kazuko, Sugano Shoichi, Defendant C's defense counsel Masaaki Araki, Shinichi Dooka, Kiyoto Yoshimura, Tetsuhiko Kuroiwa, Defendant Defendant B's defense counsel, Chieko Haga, Yoshiro Ito, and Kazuko Onuma, have the intention of appealing to each of the defense counsel submitted by Tsutomu Shimizu and Hiroyuki Tanaka, the defense counsel of Defendant D. , The purpose of the appeal of the defense counsel of Defendant C is that the defense counsel Masaaki Araki, Shinichi Dooka, Kiyoto Yoshimura, and Tetsuhiko Kuroiwa have submitted their appeals jointly. In the brief, the answers to this are as stated in each answer submitted by Makoto Hida, the prosecutor of the Tokyo Higher Prosecutor's Office, so I will quote them.

first Prosecutor and each of the defense counsel of one Defendant B and C.

In short, the argument is that the original judgment has a factual misunderstanding, arguing that:

1 Relationship with the first original judgment (1)

(1) In the original judgment, after the accused moved to the park under the original judgment, E (hereinafter, sometimes simply referred to as "victim") was sacked and confined in accused C for obscene purposes. Detecting the intentions of the accused A and others who attempted to do so, he ruled that he consented to provide his room to the place of confinement, and with regard to the accused C, with the accused A and others at the right point, against E. Defendant C has confirmed that the conspiracy of predatory and confinement has been established, but at the right stage, Defendant C has agreed to make E's confinement place his own room, and with other accused. Even though he was not involved in the conspiracy, the original judgment made a mistake in the evaluation of the trial trial statements of accused A and B, and in particular, the decision of the place of confinement of E was between accused A and B. There is a strong suspicion that it was made in an attempt to deny or alleviate what was done in the above, and since it was found as described above by adopting the statement of accused B who is not credible, the original judgment was misunderstood. be.

(2) The original judgment states that all four of the accused, including the accused, took E to the accused C's room, but the accused C was involved in the act of taking E to the accused's room. However, the original judgment adopted the relevant part of the accused B's trial trial statement, which is unreliable, and the statement to the prosecutor F, who is highly suspected to have been confused with the events of another day. , There is a factual misunderstanding in the original judgment because it was found as described above.

2 Original judgment second relationship

The original judgment found Defendant C's unnecessarily murderous intention to E, but the accused had no murderous intention to E. That is,

(1) According to the original judgment, regarding the assault on E on January 4, the assault that was initially carried out was the same as the assault that was added to E until the end of the previous month as a form of bullying, and the assault was initially started. Therefore, while it is not possible to admit the unnecessarily murderous intentions to the accused, the accused have become more motivated to deny the existence of accused C and B to E. The accused, who were found to have committed an unthinkable crime on the day of the event, with a strong sense of aggression and exclusion against E, led to an unnecessarily murderous intent even at the start of the assault. It is said that he was in a state of mind that could be called a potential murderous intention, and this is one of the grounds for recognizing the occurrence of an unnecessarily murderous intention during the assault. The assault on the day did not have such a special feeling of exclusion, but the assault on the day began when Defendant A was defeated by betting mahjong and tried to relieve his muffled feelings by bullying E. So, although Defendant C takes positive action in each situation, it is only drawn into the atmosphere of collective assault under the direction of Defendant A. The above finding of the original judgment is incorrect.

(2) In addition, the original judgment stated that the assault on the day was unthinkable in common sense, and that Defendant C also relentlessly and strongly assaulted E. It is one of the grounds for the unnecessarily murderous intent against the accused, but the assault on the day is also one by one.

It was made as a bullying against E, and it is not qualitatively different from the previous assault, and the assault by the horizontal bar with an iron ball, which the original judgment emphasizes, is also added to E's thigh, like the original judgment. In addition, the relentlessness of the assault alone cannot prove the murderous intention.

(3) In addition, the original judgment is based on the fact that the accused C and others did not consider E's survival and continued to take an indifferent attitude to his death, which is one of the grounds for the unnecessarily found murderous intention. It shows that the accused did not have in mind that E would die, and it is wrong to use the indifference attitude itself as the basis for the finding of murder.

(4) The original judgment stated that the degree of assault on the day had a high degree of probability of causing a risk of death in light of the degree of weakness at that time of E, and witnessed the transition of a series of situations. However, it is presumed that the defendants C and B, who were actively involved from beginning to end, came to the idea that E might die if they continued to assault them. As a basis for recognizing that there is no contradiction and justifying the right certification, "In this case, the weakness and weakness of recognition that the victim may be weakened or may lead to death is conspicuous, but the fact itself at hand. There is no change in perceiving the fact, but there was an unconscious work of the ego to separate the mental meaning of the fact and the meaningful connection between the facts, as shown on the right. Psychological situations occur to varying degrees in adult crimes (omitted) and are not grounds for denying murderous intentions for the accused, who have no abnormalities such as impaired consciousness. However, on the right, while recognizing the weakness of the perception of the accused C and others regarding the degree of weakness and the risk of death of the victim, the evidence is trying to certify the murderous intention. Relying on a peculiar logic that is not based on, Defendant C was unable to form a rational judgment ability regarding the risk of human death in the process of its development, resulting in the death of the victim. The logic of the original judgment does not apply to the accused because he was unaware of the fact that he was in danger.

(5) According to the original judgment, when the victim suddenly falls and hits the stereo in the room and causes convulsions, if the accused continue to assault, E may die. Defendant C considered that E's right fall was a false illness, and said that he had consistently stated in the trial of the trial court. The original judgment also found that the accused said that he had a "malingering illness" when he was on the right, and evaluated this as an irresponsible explanation. The accused considered E's fall to be a false illness and made such a statement, and the original judgment that the accused had an unnecessarily murderous intention against E at the right point was incorrect. ..

As mentioned above, the original judgment has a clear factual misunderstanding that it affects the judgment.

(II) Prosecutor's allegation of unjustified sentencing

**In short, the argument argues that:**

The original judgment was that accused A was sentenced to 17 years in prison, B was sentenced to 5 to 10 years in prison, C was sentenced to 4 to 6 years in prison, and D was sentenced to 3 to 4 years in prison. Although they sentenced each to be punished, the sentencing of the original judgment was extremely light and unjustified. That is,

1 The accused were all boys at the time of each offense, but when considering what kind of punishment should be taken when pursuing criminal liability and punishing the boy, the boy From the perspective of juvenile protection and welfare, the law emphasizes that criminals should be given as many opportunities as possible to return to society, and that the educational and corrective significance of punishment is emphasized. There are special rules for irregular penalties. However, the protection of the boy, including the age, qualities, criminal record, previous history, guilt, motive, means, method, cruelty, feelings of the victim and the bereaved family, etc. There is no reason to uniformly impose a criminal record just because the criminal is a boy, even when the request for maintaining social order should be prioritized over the request for welfare. In cases like this case, it is the reason for realizing social justice to face the seriousness, cruelty, and inhumanity of the case and to face it with strict punishment according to the responsibility of the criminal. On the other hand, it should be said that it is based on this way of thinking that it allows room for the death penalty and life imprisonment.

If the idea of protection priority and punishment for boys goes too far, it will bring a tendency to disregard the law for boys, and there is a great possibility that it will have irreparable harmful effects on the maintenance of social order, which is alarming from the viewpoint of general prevention. It will lead to a situation.

Although this case should emphasize the pursuit of original criminal liability rather than the aspect of sound development of juveniles, the original judgment emphasizes the general principle of juvenile law and maintains social order.

He disregarded his request and sentenced him to a sentence far below the prosecutor's request, making a fundamental mistake in his attitude toward sentencing.

2 Each of the crimes in this case is extremely vicious, but in particular, a series of crimes such as wolf kidnapping / predatory, confinement, rape, murder, and abandonment of a corpse against E are rare and serious and vicious crimes. , Its cruelty and villainy is hard to find in the past.

In the series of crimes on the right against E, Defendants A and C hunted for a woman for the purpose of rape, abducted E who occasionally passed by, and after conspiring with the accused, raped E and raped him. He was raped, confined for a long time for fear of discovering the crime, and finally killed for self-protection because he was troubled with the procedure, and the corpse was stuffed with concrete and abandoned. The crime mode is extremely cruel, relentless, and ruthless, with many eccentric assaults and insults against E, and no fragments of humanity can be seen there. .. The consequences are of course serious, with no fault to be blamed by the victims, and the regret of being murdered by the accused during the spring-autumn season of 17 years old. .. In addition, the victim's parents and their bereaved families are extremely vulnerable, and knowing the prosecutor's sentence and the sentencing of the original judgment, he said, "The trial is being held in a place unrelated to ourselves. He has a deep sense of distrust and despair about the appeal and the entire judicial system. In addition, the impact of this case on society is extremely serious.

Each of the other two rapes committed by accused A and B was also a magical offense as planned in advance by conspiring, and threatening words used by gangsters and fruits. The criminal offense is extremely vicious, such as raping the victims by suppressing the rebellion by sticking a knife or a sword, and causing serious mental and physical pain to the victims. One of them was carried out when E was detained and violent, and E was debilitated. Defendants A and others were playing with E on the one hand and new victims on the other. He raped himself in search of the accused, and here too, the self-centered attitude of the accused, who lacked humanity, is prominent.

The injuries to G by the accused A and B are also dangerous because there is no room for motivation, and if the offense is wrong, it could be life-threatening, and the offense is extremely vicious. The result of the injury was heavy, and the right-hand crime was committed immediately after E's murder, and the deep-seated violence of the accused can be seen here as well.

The theft cases by accused A, B, and C were the ones in which the accused, who had been eating involuntarily, committed theft one after another as soon as they were in need of money. It is a dangerous thing such as burglary in Japan or riding a motorcycle and snatching a passerby's belongings, and the amount of theft is large, and the criminal offense is malicious.

3 The original judgment erroneously evaluates the general circumstances of the offense against E.

(1) The original judgment held that the accused were "not intended to be imprisoned so far from the beginning, but were initiated by unplanned, ad hoc crimes." .. However, it is acknowledged that the accused intended to lynch and gangbang the victims in order to satisfy their own beast desires, and were expected to be imprisoned for a considerable period of time from the beginning, and they were willing to return E home. It should be emphasized that E's freedom was restrained for a long period of time without any problems.

In addition, the mode is that in accused A and C, E was found on the way home by searching for a woman who should be the victim of rape, and the accused communicated with each other and sent E to accused C. It is an extremely clever act of confinement, lynching and adultery, and it cannot be said that it is unplanned or an ad hoc crime.

(2) In the original judgment, after the accused confined E, "By continuing to assault, the psychological resistance to serious and abnormal situations was relaxed and the assault was increased, resulting in E. As the confinement lasted for a long time, he fell into a state of no loophole. "

However, the accused did not have any resistance to abducting, raping, and insulting strangers in the first place, and they were originally dignified as human beings other than themselves. I didn't admit it. The right judgment of the original judgment is a short-sighted and superficial view that does not take into account the conventional behaviors and ideas of the defendants and simply applies the behavioral patterns of boys in general to the defendants' case.

The accused abducted E to C, but it is acknowledged that they intended to retain E for a certain period of time, commit adultery, or abuse him from the abduction stage. The original judgment's finding that it was difficult to return E as a result was wrong, and the evaluation that it fell into a state of no loophole is also rooted.

It is a judgment that lacks ground.

(3) In the original judgment, the accused said, "I was confused about the treatment of the victim, and gradually felt a psychological blockage.

It seems that it occurred and diverged as a radical offensive action at once. In that sense, there is also the aspect that the mentally immature boys could not overcome the situation and ended up with an unfortunate ending. "

However, it is acknowledged that the accused were seeking other targets to attack while they were in custody, in order to freely interact with others and rape them, so let the accused help E. There was no consciousness such as, and the basis for recognizing that the feeling of psychological obstruction was high is weak.

Looking at the situation while E was in captivity, around December 26, 1988, he gave only about 200 CC of milk a day, and by the end of the same month. , E was difficult to stand on his own, took tens of minutes to go to the toilet on the first floor, and became weak enough to crawl, and from the beginning of January 1994, milk was also given. However, due to malnutrition, he became thinner and weaker, but at that time, the accused said, "What do you do with the woman? It is admitted that he talked many times, such as "Yo", "You can put it in a drum and bake it", "If you stuff it in concrete and throw it in the sea, you will not be exposed to the police". The accused, ignoring E's plea for killing at once, made a terrible assault like every day, so to speak, killed him, and it is not to regard this assault as bullying. It's a mistake. The fact that the accused's murderous intentions are inevitable does not mean that the accused are in a favorable situation. Looking at the series of processes in this case, in terms of planning, ingenuity, and cunning, there is nothing inferior to adult crimes. The cause of this case cannot be attributed to the mental immaturity of the accused and the reason for the imprisonment.

(4) The original judgment stated, "A from the gangster officials is behind the fact that the misconduct of the accused and the degree of deviation from society have deepened sharply, and the manner of the crime has become as cruel as an adult. It can be seen that the deterioration of the living environment caused by the efforts of the boys through the media and the effects of the boys' inclination and incorporation into the Yakuza group were also indirectly involved. "

However, although it is probable that the fact that the accused were involved with the gangsters and helped at the stalls was one of the background circumstances for the accused to be misconducted, the accused were misconducted. It must be said that it is the accused's own responsibility that they have come to overlap. If they were willing to overcome their own circumstances and grow, they had many opportunities to rehabilitate, but the defendants made no efforts, and it is permissible to pass on that responsibility to others and the general public. Not done.

4 The sentencing of the accused in the original judgment is extremely light compared to the sentencing of recent similar cases committed by boys.

The original judgment that did not choose life imprisonment for defendants A and B was compared to the judgments of other life imprisonment cases due to the lack of consideration for the seriousness of the criminal charges and general prevention of the defendants. In addition, the sentence of four to six years in prison for defendant C in the original judgment and three to four years in prison for the same D has caused a great deal of failure on the part of the victim. There are some circumstances that should be taken into consideration, such as limited liability, and while the circumstances are completely different from this case, the murder was sentenced to the same degree of imprisonment, and it was lost too lightly compared to the attempted case. do.

5 Looking at the individual circumstances of the accused, all of them are actively involved in the crime, and the criminal propensity is extremely strong, and the circumstances are malicious, but the original judgment makes a mistake in its evaluation.

(1) Defendant A has been a poor performer since he was in elementary school, and even if he is given protection, such as being repeatedly misconducted and being punished for protection, he refuses to do so, becomes a member of a gangster, and rapes him. It can be said that the malignancy is deep-rooted and correction is almost impossible. The accused is the centerpiece of the accused's group, the mastermind of the series of crimes, and always played a leading role in the crimes, so the brutality of the accused seen in each crime. , Lack of humanity, anti-social nature is remarkable.

The original judgment stated that "A has an organic defect in the brain that affects behavioral control ability and personality formation, and if not directly related to the crime, thinner In addition to the inhalation of the drug, the inadequacy of action choices in this case and the excitement and uplifting of the assault have an impact on the process that led to the thorough attack. "

say.) Too much emphasizes the organic disorder of the brain in the early childhood of the defendant, and disregards the defendant's abuse of thinner. According to the H appraisal, "A's peculiar personality and behavior pattern are largely due to brain damage", but thinner abuse has a great influence on the accused's personality formation, and peculiar personality and Behavioral patterns should be the result of self-cultivation over many years, and congenital or near-impervious factors should not be taken too seriously. There are various doubts about the H appraisal on which the original judgment relied on sentencing.

In addition, the original judgment argues that the parents of Defendant A threw their private property and provided 500,000 yen to the victim's bereaved family, which is a sentence in favor of the accused. Considering that it is a serious crime that is extremely cruel and the bereaved family still demands strict punishment of the accused, the case equivalent to life imprisonment should be reduced to life imprisonment by paying the right apology. It cannot be a reason.

(2) Defendant B has been violent against his classmates since he was in the 4th grade of elementary school, and even when he entered high school, he did not go to school at all. On the other hand, he was violent and entered the Tokyo Metropolitan High School part-time system in April 1988, but dropped out in two months and became misconducted. Although the accused has no history of protective measures, the crime is deeply rooted in the accused's remorseless lifestyle and self-centered personality, and it is extremely difficult to correct it.

The accused is in the number two position after accused A in the group of accused, and is a member of the group such as accused C and D at the direction of accused A or at his own discretion. Was one-armed of Defendant A. Each of the crimes in this case was carried out under the initiative of Defendant A, but in a series of crimes against E, when the Defendant contacted him that he had kidnapped E, he said, "I'm kidnapped. "Let's do it," he said, inviting the accused, and is actively engaged in extremely brutal acts regarding insults in captivity. Defendant B makes an excuse as if he had insulted E because he was afraid of Defendant A, but he said that E spilled urine even when Defendant A was not present. , Along with Defendant C, E's face is deformed, causing assault to the extent that the height of the cheek and nose is the same, because of Defendant B's own brutal personality and antisocial nature. It should be said that he was involved in the crime. Moreover, the accused made an unreasonable excuse at the trial that he did not know about the kidnapping, had no intention of rape, or had no intention of murder, and escaped his responsibility. In order to alleviate it, he repeatedly blames Defendant A for everything, and there is no feeling of remorse.

The original judgment stated that "B's immature and biased personality formation process is superposed with heteronomous factors such as a family that is not accepted by parents from an early age, and this refracted psychology goes to A. It was judged that there was room for sympathy for the accused's family environment, growth environment, etc. The follow-up is overestimated. However, although there are many people who are disadvantaged at home in society, even these people are usually fit for society, do not commit crimes, and live well as ordinary members of society. In this case, even though his parents were divorced, he grew up with that affection, and the defendant's delinquency was due to his lazy personality and weak will. Therefore, as in the original judgment, responsibility should not be passed on to heteronomous factors.

In addition, the original judgment stated that the defendant said, "My parents expressed their sincere apologies to the victims in court, and although the amount was small, they continued to make deposits to fund the bereaved families in the future. It has started and offers to continue to support B warmly in the future. " It has been started and the cumulative total is only about 650,000 yen. In addition, judging from the way parents treat the accused freely so far, it is highly unlikely that the custody ability as offered exists.

(3) Defendant C has a lazy personality and is prominently antisocial, and it takes a long time to correct his personality. The accused has been violent against his mother since the upper grades of elementary school, and started misconduct such as blackmail and shoplifting. Lifestyle is ingrained. Although the accused was the youngest of the four accused, he was actively involved in each of the crimes in this case, and even in a series of acts against E, he and the other accused were as violent as possible. It is exhausted, and its lack of humanity is enormous. The original judgment stated that "C is young, plasticity is assumed to be age-appropriate, and personality is highly affected / suggestible, and he / she is instructed / influenced by A / B and acts radically. There are also aspects that have extended to, "but the accused is younger.

It cannot be denied that the accused was instructed by the accused A and others to commit the crime, but at the same time, the accused voluntarily assaulted and insulted the victim. The aspect is also terrible, such as beating until the victim's face is swollen. In addition, the original judgment holds that the accused "parents have expressed his apology", but it is natural for a parental authority, and the accused has undergone domestic violence. It is difficult to expect the custody of the parents in view of the history of the accused and the former withdrawal from control.

(4) Defendant D has a lazy personality and is prominently antisocial. In the third year of junior high school, he was probated as a criminal boy due to domestic violence, neglect, and runaway. There is also a history of misconduct that was dismissed due to possession of a foldable knife, stone throwing at the junior high school from which he was born, and breaking the window glass. In addition, he has a ferocious propensity, was actively involved in E's murder, and it is recognized that the accused's actions contributed significantly to E's death, and his punishment is heavy. Moreover, at the trial of the trial court, he made an unreasonable excuse and was struggling to protect himself, and there was no feeling of remorse. The original judgment stated that "D has a low degree of involvement in a series of crimes and has a great degree of mental immaturity. The factors are deeply involved, and unexpected radical attacks are deeply rooted in the immature personality. " Weaknesses are mainly caused by oneself and should not be passed on to the family environment or school. In addition, the original judgment cites that the mother has pledged custody in the future, but the accused refuses to meet with her and cannot be expected to supervise her in the future.

As mentioned above, the original judgment made a mistake in the sentencing judgment of the accused and sentenced them to an unreasonably light sentence, and it is inevitable that they will be abandoned.

(Iii) Allegation of unjustified sentencing of defendant B's defense counsel

**In short, the argument argues that:**

1 The Juvenile Law stipulates in Article 1 that the law is intended for the sound development of juveniles, but the right is the idea behind the right to education in Article 26 of the Constitution. That is, each citizen has the unique right to grow and develop as a human being and as a citizen, and to complete and realize his or her personality, especially to learn by themselves. Children who cannot do so are backed by the right to demand that adults in general be educated to meet their learning needs, and this idea is not limited to protective measures, but for boys. Criminal penalties must also be respected to the utmost. Therefore, the law seeks to handle juvenile criminal cases in general with scientific and educational considerations as much as possible, which is substantive and procedural in childhood criminal cases. This is clearly reflected in the various special provisions of the Juvenile Law and the Code of Criminal Procedure. Therefore, in the case of sentencing in a juvenile criminal case, in light of the juvenile's plasticity or educational potential, the disposition should be selected with an emphasis on the juvenile's welfare within the scope of moral responsibility associated with the crime. The disposition should not be decided based on the seriousness of the child and the magnitude of the social impact.

From the point of view on the right, the sentencing of the accused B in the original judgment acknowledged the unnecessarily murderous intention of the accused against E, and made a sentencing judgment with an emphasis on the actions of the accused as a whole. In that respect, it is unjustified.

2 That is, the original judgment states that Defendant B can be found to have been assaulted by the Defendant and that he has inevitably killed him in the process of the assault. Is in doubt. That is,

(1) In order to admit murder, as a normative element of the constituent requirements of murder, there is a risk that one's actions and their consequences, as well as all the causal relationships between them, may result in the death of a person. It is necessary to be aware of this, but the original judgment is a contradiction in presuming that "if we continue to assault E as it is, we may die." It is equivalent to not making a judgment on the point on the right.

(2) Regarding intentional, although the admission theory is a common theory and a case law, the original judgment does not find out whether the defendant B has tolerated the death of the victim, and is exempt from the case law violation. No.

3 In addition, the original judgment determines that Defendant B was in a position next to Defendant A among the accomplices, but on the right, the Defendant was in the trial of the trial court and said, "When C or D, I am the leader, and if A is present, A decides everything and I will not do anything. "In this series of crimes, Defendant B issued the order of Defendant A as number two. It is said that there was a side to communicate to accused C and D, and to actively mediate between them.

Not. The original judgment also holds that Defendant B acted as a coordinator within the group, but it is in the loose group formed by Defendant B, Defendant C, and Defendant D. It is related to the process of group formation that A was added, it is only psychological within the group, it forms a neurotic character structure, there is a developmental disorder with lack of emotion, and the degree of dependence on others Defendant B, who was in an inflexible mental state such as high, cannot intentionally adjust the relationship between the accomplices. The original judgment also holds that Defendant B invited the imitation of other accomplice boys, but it should be said that Defendant A invited three accomplices including B to imitate.

4 The original judgment states that "B took the consultation from A at the beginning of this case", and on the right is "A's telephone call from the hotel or conversation at I Park, and B is a woman. In the right certification, Defendant A was in the same position as Defendant B. As a result, he overlooked the fact that he sought the origin of this case from the accused's remarks, tried to blame the accused for half of his responsibility, and dared to distort the facts and make a statement.

5 In addition, Defendant B has no history of protective measures up to this case, and problems with the accused's personality can be improved by accepting the accused by family members and others around him. Is almost certainly expected, and the accused has deepened his remorse and achieved personal growth after the incident. The original judgment was sentenced to unreasonably underestimate the individual circumstances of the accused, such as the one on the right.

Considering the above circumstances, the sentencing of the original judgment in which Defendant B was sentenced to five to ten years in prison is extremely heavy and unjustified.

After the original judgment, Defendant B deepened his reflection on this case, raised his awareness of norms, deepened his feelings of remorse for the victim and his family, developed affection for others, and understood the accomplice boys. Born, he has developed a willingness to study and self-insight. This can be clearly seen in the contents of many letters addressed to the defendant's defense counsel. The accused's willingness to study is also linked to his willingness to rehabilitate. The defendant's parents and sister continue to visit the defendant and regain their spiritual bond with the defendant. Even after the original judgment, the parents continue to save money from their scarce income in preparation for future damage compensation. In the sentence of the accused, such post-judgment circumstances should be taken into consideration.

(Iv) Allegation of unjustified sentencing of defendant C's defense counsel

**In short, the argument argues that:**

1 Claim of transfer under Article 55 of the Juvenile Law

The criminal penalties for young boys are often harmful due to the treatment of boys in a penal institution that assumes adults, but the misconduct of Defendant C deepened in the months at the time of each crime. This is largely due to the influence of older accomplices, and the original judgment was that the accused was significantly immature and undifferentiated compared to his age, and its plasticity was high. The accused is highly plastic and should be corrected by protective measures, as he has ruled that he is supposed to be age-appropriate.

The accused was sent to a secondary juvenile training school due to misconduct involving the fourth and second rapes and the fifth injury of the original judgment, and the series of crimes in this case was discovered while he was in the hospital. Around that time, the original judgment cited this as one of the reasons why criminal penalties were appropriate for the defendant, but the defendant had been subject to short-term traffic probation and protection until then. There is no history of disposition, and the case was discovered two months after being sent to the Junior Juvenile Training School, so rehabilitation by probation did not fail.

The original judgment makes it a major reason that criminal punishment is appropriate because this case is a violent and serious case, but it is wrong to choose criminal punishment in a rewarding sense only because of the seriousness of the result. be. The original judgment also found that the accused made an important contribution in the beginning, such as the provision of a place of confinement, but said that it was incorrect, as stated in the section of allegations of factual misunderstanding. In addition, the original judgment said that the accused "repeated assaults with B positively and actively without receiving instructions from A" and "in the whole process of confinement, with B. "We jointly repeated terrible assaults on the victims," etc., but the accused also assaulted the victims at the direction of accused B, even when there was no instruction from accused A. However, he has never been assaulted alone. The assault of Defendant C is merely a follow-up made by the instructions of Defendant A or B.

In addition, the original judgment ruled that Defendant C was "significant in his involvement in the murder, and his ruthless and cold-hearted attitude that did not consider the victim's feelings at all stands out." This is one of the reasons.

It is undeniable that the accused sometimes took positive action in the process of the assault, but it was only drawn into the atmosphere of the collective assault led by Defendant A. However, considering that Defendant C took a ruthless and cold-hearted attitude because of his remarkable mental and personal immaturity, he was given protective measures. Is clear that is considerable.

In addition, as the original judgment finds, after the crime, the accused has grown awakened to humanity, deepened his awareness of responsibility for the crime, and his parents also apologized to the victims, supervised and supervised. The circumstances after the crime must also be taken into consideration, such as reflecting on the lack of sight and vowing a lifelong atonement with the accused. In addition, in order to make the accused aware of and cultivate his / her own responsibility such as the seriousness of the act and the result, the detention period can be flexibly operated and individual treatment is possible. Is clearly valid.

In short, the idea that the crime committed by a boy is heavy and the punishment must be heavy in proportion to it is not allowed in light of the purpose of the Juvenile Law, and the accused is well protected. Although the defendant's case should be transferred to the Tokyo Family Court, the original judgment that imposed criminal penalties on the defendant is unjustified.

2 Claim that the sentencing of the original judgment is too heavy and unjust

The original judgment sentenced Defendant D to three to four years in prison, but one year less than the accused, and sentenced Defendant C, who is highly plastic, to four to six years in prison. Considering the various circumstances mentioned above, especially that Defendant C committed the crime in a follow-up manner and the balance of the sentence with Defendant D, the sentencing of the original judgment against Defendant C is It is too heavy and unreasonable.

After the original judgment, the defendant's parents invested private property to raise funds for the atonement, prepared to provide this to the victim's bereaved family, and protected the defendant for rehabilitation. Please consider that you are making efforts to improve the environment.

Second judgment of this court

The records of the trial court will be investigated, and the results of the fact-finding investigation in this trial will be combined and examined in sequence below.

one About the accused's personality and career

1 Defendant A relationship

Defendant A was born on April 30, 1945 in Tokyo as the eldest son of a father who worked for a securities company and a mother who was a piano teacher. My family wasn't happy because of the feud between my parents, but my father was a salesman at a securities company and earned a high income, and my mother also learned the piano and earned a reasonable income.

After graduating from a local elementary school, he entered a junior high school in Adachi Ward in April 1983, and after graduating from the same school, he recommended admission to a private high school in Tokyo in April 1986 as a judo scholarship student. .. From the time of elementary school, problematic behavior such as shoplifting and damage to equipment in the school was overwhelming, overwhelming other children as a so-called chief, and my father went to school for consultation due to domestic violence, but in junior high school He devoted himself to judo, won the championship and runner-up in each tournament he participated in, and lived in junior high school without any particular problematic behavior. At the high school I entered because of judo, the practice was strict and I was bullied by my seniors, so I dropped out of the judo club in September of the year I entered the school, and in March 1987, I left the school. I dropped out and got a job at a tile industry near my home. Around that time, he joined a runaway tribe, and in February of the same year he was injured, invaded a building in March of the same year, violated the law on punishment for violent acts (school vandalism), etc. He committed various misconducts such as violations (same as before) and was sentenced to probation in July of the same year.

After that, he quit the runaway tribe, and for about a year, he had good probation results, worked seriously as a tiler, and was evaluated by his employer for his work. Dreaming of marrying the older sister of Defendant D, who started dating while in high school, he saved about 200,000 yen and spent a training camp at a driving school in Nagano Prefecture in May 1988. I got a driver's license, and in July of the same year, I asked my father to buy a new car (350,000 yen). However, from around August of the same year, he became dissatisfied with the low salary of the tile factory and began to neglect his work. In addition, he started working as a Tekiya when he was offered a job that cost 30,000 yen a day. I started to take charge of the store number of "J" and the duty of the gangster group office, and from that time on, I started to repeat the suction of thinners.

2 Defendant B relationship



Defendant B was born on May 11, 1969 in Tokyo, but his parents did not agree well, his parents separated when he was a child, and he grew up with his mother's permission. During this time, he once lived with his father in the fourth year of elementary school in August 1981, but returned to his mother two months later. After attending a local elementary school, he entered a junior high school in Adachi Ward in April 1979, but he was excellent in sports and belonged to the baseball team from the time he was in elementary school. In junior high school, no particular problematic behavior was seen, but in January 1986, he suffered a complicated fracture of his right leg while skiing, and after that he lost the place to play an active part in sports and graduated from junior high school in March 1987. In April of the same year, he entered a private high school in Tokyo, but he was not motivated to study, and he gradually became absent from school, so he was dismissed in January of the same year. After working as an electrician apprentice, he entered a part-time high school in Tokyo in April 1988, but lost his motivation to attend school in about two months, and although he had a school record, he was absent for a long time. From around May of the same year, he continued to live a life of unlicensed food, and in July of the same year he committed a misconduct of unlicensed driving of a motorcycle and was sentenced to short-term traffic probation on October 14 of the same year.

### 3 Defendant C relationship

Defendant C was the second son of a father who was a clerk at the clinic at that time and a mother who was a nurse on December 16, 1972 (the eldest son was F, January 21, 1972). Born in Tokyo as Nissei, he entered a junior high school in Adachi Ward in April 1985 after going through a local elementary school. While attending elementary school, there were misconducts such as blackmail and shoplifting, but after entering junior high school, abuse and violence against his mother became more intense, and he began to oppose his father. After graduating from junior high school in March 1988, he entered a high school in the chemical industry in Tokyo in April of the same year. Withdrew from school. From around the summer of the same year, the room of the defendant and his brother F had become a hangout for bad friends, but his parents were violent and had no choice. In addition, on January 18, 1988, he was put on probation for short-term traffic protection due to the misconduct of unlicensed driving of motorcycles.

### 4 Defendant D relationship

Defendant D was born on December 18, 1969 in Tokyo, but his parents separated in October 1981 and divorced two years later, and his father divorced. He died shortly thereafter, and the accused was raised by his mother with his sister. After graduating from a junior high school in Adachi Ward in March 1987, he entered the metropolitan industrial high school part-time system in April of the same year, but he could not attend the school in a week and dropped out of the school in September of the same year. I've worked in several places, but none of them lasted long. During this period, he was probated for misconduct in October 1986 due to misconduct (learning, domestic violence), and was further punished for violent acts in March 1988 due to the murder case in June 1987. Due to the misconduct of law violations (school vandalism), each has been misconducted.

### (II) Mutual relationship between the accused

The accused are all from the same local junior high school, accused A is older, accused B and D are one grade younger than accused A, and accused C is further accused B. , The relationship is one grade lower than that of D.

Adachi-ku ○○ × Chome × No. × Location The second room on the second floor of the defendant C's father K was assigned to the room of the defendant and his brother F, but their parents tended to be away because they worked together. In addition, the defendant's domestic violence was so intense that his parents had no choice but to hang out with his bad friends from around the summer of 1988, as mentioned above.

Defendant B was in the same grade as F and began to come and go to C frequently from the summer of the same year, and Defendant C became close to Defendant B through F. At that time, Defendant D also came in and out of C through Defendants B and F of the same grade. On the other hand, Defendant A had an intimate relationship with Defendant D's sister, and the accused had a relationship with seniors and juniors in the same junior high school, so they knew each other for some time. Defendant A helped to find the stolen bike of F around October of the same year, so the accused began to go in and out of C, and the accused took this opportunity to do other things. He quickly approached the accused and formed a delinquent group centered on the accused.

Defendant A overwhelmed other peers in the group, always played a leading and positive role, showed superiority, and was feared by misconducted peers. In addition, Defendant B is in the same grade as Defendant D, but is passive, lacks spontaneity, and is inferior in ability. Then, he was in a superior position next to Defendant A.

From January to December 1988, Defendants B, C, and D and others became involved with the gangsters through Defendant A, and the flower shop run by the gangsters "Going in and out of "J", helping out and working on duty at the gangster office

It was.

About the outline of the series of crimes in this case

Each offense in this case is

1 The four accused, in collusion, took a high school girl E (17 years old at that time) on January 26, 1988 for obscene purposes, and from the same day to January 4, 1994. During that time, E was confined (Original Judgment No. 1 (1)), and around January 28, 1988, while being confined on the right, four accused and others colluded with L and G and made E. Forcibly indecent (Original Judgment No. 1 (2)), January 4, 1994, four accused and others colluded and killed E with unnecessarily murderous intention (Original Judgment No. 2), the same month 5 On the same day, accused A, B, and C colluded with F and abandoned E's corpse (Original Judgment No. 3). Defendant.)

2 Defendants B and C collude with L and others, and one light passenger car parked on the street at around 2:00 am on October 23, 1988 (equivalent to a market value of 400,000 yen). (Original Judgment No. 6), Defendants A, B, and C colluded with L and broke the window glass inside the store at about 0:30 am on the 26th of the same month. Entered and stole jumpers and other 144 points (equivalent to a total market value of 2005,755 yen) (Original Judgment No. 6-2),

3 Defendants A and B, along with C, started driving around 7:00 pm on January 8th of the same year in an ordinary passenger car driven by Defendant A, searching for a partner for sexual intercourse, and spinning around 8:00 pm Upon admitting a 19-year-old woman on her way home by car, in conspiracy with C, Defendant A pulled her car closer to obstruct the course of the bicycle and stopped it, and Defendant B was the key to the bicycle. Forcibly put the woman on the back seat of her car, and at around 8:30 pm, Defendant A asked her, "Will you go to a?" She threatened her by saying, "Would you like to go deep in the mountains of Tochigi?" "I have just left the juvenile training school." Defendant A, C, and Defendant B in that order, and raped the woman (Original Judgment No. 4).

4 Defendants A and B are conspiring to pass by bicycle four times from 6:00 pm to 7:05 pm on December 3, the same year, while E is in custody. Snatching and stealing a total of 72,300 yen in cash and 27 items of goods (equivalent to a total market value of about 45,800 yen) (Original Judgment 6-3-1 (1) to (4)) , At around 9:30 pm on the same day, Defendant A snatched about 26,000 yen in cash and 6 items (equivalent to a total market value of 2000 yen) from a woman passing by bicycle. (Original Judgment 6-3-2), Defendants A and C colluded with G twice from 8:35 pm to 9:30 pm on the 5th of the same month. Snatching a total of about 19000 yen in cash and 27 items (equivalent to a total market value of 9100 yen) from a woman passing by bicycle (Original Judgment 6-3-3 (1)) , (2)), At around 2:50 am on the 7th of the same month, Defendants A and B colluded with a woman who was passing by bicycle, and received about 30,000 yen in cash and a total of seven items (market value: about 7 points). Snatching (equivalent to 2000 yen) (original judgment 6-3-4),

5 Defendants A and B, along with C and D, run in an ordinary passenger car driven by Defendant A in search of a partner for sexual intercourse from around midnight on the 27th of the same month, when E is also in custody. At around 2:30 am on the way, when I admitted a 19-year-old woman on her way home, in conspiracy with C and D, she surrounded her and put her in the back seat of the right car, and after driving for a while. In the stopped car, Defendant B holds a sword in his left hand, and Defendant A points a fruit knife near her knee, saying, "If you come this far, you'll know what a man and a woman do." My senior told me to bring a woman, so I have to take her. If you don't like it, do it with us. " Bringing the woman to the motel, forcibly insulting the woman in the order of Defendants A, B, C, D (Original Judgment No. 4-2),

Defendants A and B were with C from around 11:00 pm on January 6, 1994 to around 2:30 am on the following day, the day after the crime of abandoning the corpse of 6E. After colluding, accused A and others were angry that G did not join the group that tried to form with the intention of the gangsters, and they faced and headed with fists and chairs. The case was that he was beaten many times on his part and shoulders, and he was injured by a full-body hit that required about four weeks of medical treatment (Original Judgment No. 5).

#### (Iv) Details of E-related cases

By the way, of each of the crimes in this case, the obscene purpose predatory, confinement, rape, murder, accused A, against the first (1), (2), and second E of the original judgment, which were conspired by the four accused. The crimes of abandoning the corpse against the third E, which was conspired by the B and C, are not only serious cases, but also the crime period is long and the circumstances and modes are complicated.

Therefore, the details of the right series of crimes will be shown below.

1 E was taken for obscene purposes and confined

Defendant A, along with C, rode a motorized bicycle on a motorized bicycle in the evening of February 25, 1988, in an attempt to snatch from a passerby or to commit adultery aiming at a young woman. While wandering around the city, when he admitted E on his way home from a part-time job by bicycle, Defendant A instructed Defendant C to "Kick that woman," and according to this, Defendant A After kicking down the bicycle with E and letting it fall into the side ditch and leaving the place, Defendant A approached E with a blank face and cleverly said, "It's crazy to kick it now. I was threatened with a knife a while ago. I'll send you because it's dangerous. I'm the one I'm aiming for. I'm an executive, so if I listen to what I say, I'll save my life. Let me have sex. " At around 50 minutes, he took E by bicycle to the hotel of the original judgment and committed adultery.

Defendant A called from the right hotel to the house of Defendant C, who had been a hangout for the accused, at around 11:00 pm on the same day, and told Defendant B, "I caught the woman I was aiming for and had sex." However, because the accused said, "Please do not return the woman," I decided to meet with the accused, and the accused who had returned home apart from the accused and accused A. C and Defendant D, who were in the same accused, went to the promised meeting place with him and joined Defendant A and E who was taken by the accused.

Defendant A said to Defendants B and others, "I'm threatening with the story of the yakuza, so let's talk together." , I went to the I Park of the original defendant. At the same place, Defendant A goes with Defendant B to the place where the vending machine is located, which is a little away from where Defendants C, D and E are, in the name of going to buy juice. When I asked the accused, "What should I do with that woman?", The accused said, "Let's get rid of it." I decided.

Furthermore, the accused and E moved from the park to the park below near the home of the accused C. During this time, the accused C received the will of the accused A and B, and made E his own room. Defendant D also understood the intentions of Defendants A and others from the circumstances up to that point, and thus the four accused and others about predatory and confinement of E for obscene purposes. Defendant A tells E a false fact, saying, "You are being targeted by a kid. I will hide it because my friends are wandering in front of your house." The four defendants took E to the 6-mat room on the second floor of the defendant C's home, and from the same day until January 4, 1994, E was confined there.

2 Regarding the crime of rape against E committed while in E's confinement and the actions of the accused in right confinement, etc.

In the above process, after taking E to Defendant C's room, the Defendants decided to take turns monitoring E, but at midnight around the 28th of the same month, the Defendants and other bad friends When L and G were hanging out in Defendant C's room, Defendant A attempted to have his friends gangbang E and communicated with other Defendants and the right L and G. , Drinking a stimulant and pretending to be frantic, attacking E, holding down E's mouth and limbs desperately resisting, and assaulting E by becoming a horseman, suppressing the rebellion, Defendant A strips off E's clothes and orders other Defendants and L, G to be naked, and in response to this, those other than Defendants A and B take off their clothes, and G, L Defendant D forcibly insults E, and at that time, Defendant A takes out a sword, shave E's pubic hair, and inserts a matching shaft into the pubic area to ignite. Then, when he saw E getting hot, he started out with the defendants.

Around early February of the same year, E was angry that he tried to escape and reported to the police, and defendants A, B, and C beat E's face many times with his fists, and the defendant. Defendant A pressed the lighter's fire against E's ankle, causing burns. After this, the accused, sometimes by adding their bad friends, made E naked and made him dance to the disco song, forced him to masturbate, and had a beard on E's face with a magic pen. Draw a picture, insert an iron rod into the pubic area of E and put it in and out many times, insert a bottle into the anus, suck thinner, and force a quick drink of whiskey, shochu, etc. During the harsh cold night, E was put out on the veranda half-naked, drunk a lot of milk, water, etc., and two cigarettes were added at once and sucked, and repeated assaults and insults were repeated.

Defendant A stepped on E's spilled urine from the middle to the end of the same month.

With the excuse, Defendants B and C hit E's face with his fist many times, and when he saw that E's face was swollen and deformed, the accused said, "Big face. I laughed, saying, "I became." Defendant A was not at the scene of the right assault, but the next day, Defendant C said, "I'm so funny, so let's see A," and proudly, Defendant A told E. I showed my face. Defendant A was surprised at the change, but as he was inspired by this, he hit E many times, poured volatile oil on the thighs, E of the hands, etc. and ignited it with a lighter. When the fire was extinguished, the same action was repeated, causing E to be burned. Around this time, E couldn't stand the repeated assaults and sometimes pleaded for "kill him".

Defendants A and others began to have F mainly monitor E from around the middle of the same month, but from that time E was given only a small amount of food, and by the end of the same month, only a few. After being given milk, nutritional disorders and repeated assaults by the accused caused extreme physical and mental weakness, decreased appetite, swollen face, and burns on limbs and limbs became purulent and had a strange odor. It was difficult to go to the toilet downstairs, such as by letting go, and he was lying down in the room of Defendant C, who was in a confinement place all day.

#### About the crime of murder against 3E

On January 4, 1994, Defendant A went to Defendant D after being defeated by the betting mahjong that he had made from the night before to the early morning of the day. I was there. The accused played NES games at the same place, but accused A thought that the anger lost to Mahjong would be relieved by bullying E, and asked, "Would you like to go bullying E after a long time?" First, I sent Defendant C and D to Defendant C first, and after a short delay, I went to Defendant C with Defendant B. The accused gathered in the accused C side in this way, but E had swollen face to the extent that it was deformed by the assault of the accused, and some of the limbs etc. He was burnt, suppurated, malnourished, and lying in a state of extreme weakness.

Defendants A, B, and C gave B sheep wax to E in the room of defendant C from around 8 am, asked what this was, and when the victim answered B sheep wax, why? He blamed B for abandoning him, asked the same question again, and when E answered B Sheep, he wondered why he was going to be a sheep and started bullying E. However, in Defendants A, B, and C, the face was beaten with a hand fist many times and the back was kicked, and in Defendants A and B, the accused. Ignite the candle that A bought for the props for bullying, hang wax on E's face, cover the entire face with wax, and put up a shortened candle that remains on the binocular eyelids. Although he struck, E had little reaction to this and was left alone. Defendant D was in the next room with F at the beginning of the right assault, but at this time, Defendant C, who was instructed by Defendant A, entered the accused's room and joined the other accused. bottom. Defendant A, who is weak and unable to go to the toilet downstairs on his own, deliberately said, "Oh my god, drink that kind of thing," about the urine that E discharged into the beverage pack. Defendants B and C and others implicitly suggested that E drink the right urine, and in response to this, Defendants B and C and others insisted that E drink the urine in the right pack. Was made to drink with a straw. Next, when accused B and C turned and kicked E's face, forcibly pulled him up when E fell, and kicked him further, E did not try to protect himself and suddenly fell. He hit the stereo in the room and caused convulsions.

The accused, at the latest, realized that E could die if he continued to assault him by this time, but he continued to recognize the danger of E dying. In B and C, he beat and kicked E who had fallen, and continued to violently assault E as follows. Therefore, E bleeds from the nose and mouth and collapses. The situation was terrible, with blood pus spilling from the wounds of the burns and blood splattering indoors.

Defendant D thought that his hands would get dirty with blood with his bare hands, so he covered his fist with a plastic bag, fastened it with a gum tape, and smashed E's abdomen, shoulders, etc. with his fist dozens of times. , Defendants A, B, C and others follow this, wrapping their fists in a plastic bag, hitting E's face, abdomen, thighs, etc. with their hands one after another, kicking their legs, etc. In addition, Defendant A brought out the iron legs of the kickboxing practice device, which weighs about 1.74 kilograms including the iron ball, and the iron ball part is the thigh of E in the manner of a golf swing. Defendant B, C, D, etc. also beat the thighs of Komomo E with the right iron ball dozens of times, and Defendant D, etc. From shoulder height, the right iron ball was dropped toward E's abdomen a few times. Defendant A repeatedly poured volatile oil onto E's thighs, etc., and wrote a lighter.

At first, E made a gesture of trying to extinguish the fire by hand, but eventually he showed almost no reaction and remained lying down.

The series of assaults on the right continued uninterrupted for about two hours from about 8:00 am to about 0:00 am on the day. In this way, the accused inflicted serious injury on E as per the original judgment, and from that time until about 10 pm on the same day, E died in the course of the original judgment. And killed.

4 About the crime of abandoning the corpse

On the 5th of the same month, Defendants A, B, and C received a telephone call from F to E when they were at the flower shop "J" run by a gangster official who was in and out of the accused. Then, he went to the room of Defendant C and learned that E had died due to the above-mentioned assault, but he was afraid of discovering the crime and attempted to abandon the corpse after colluding with F at around 6 pm on the same day. Then, wrap E's corpse in a blanket, put it in a large travel bag and wrap it with gum tape, and Defendant A rents a freight car from his former place of work, receives cement, and sands from a nearby building materials store. Steal the block, carry E's corpse and the garbage drum that was picked up nearby by the right car to the accused, knead the concrete there, and put the bag containing E's corpse in the right drum can. After pouring concrete into a drum, fixing it with blocks and bricks, covering the drum with a black vinyl garbage bag and sealing it with a gum tape, Defendants A, B, and C will be on the afternoon of the same day. Around eight o'clock, a freight car loaded with right drums reached a vacant lot next to the construction site in the original judgment Koto Ward, where the right drums were dumped and E's corpse was abandoned.

(V) Defendant C's defense counsel's allegation of misunderstanding of facts and Defendant B's defense counsel's allegation of unjustified sentencing regarding murderous intentions

1 Defendant C's defense counsel's allegation of misunderstanding of facts 1 According to the relevant evidence, as mentioned above, the defendants sacked and confined E for obscene purposes, and Defendant C confined his room. All the accused, including the accused, have colluded in sequence regarding the right offense, and accused C has taken E to the accused's room together with the other accused. , It can be easily admitted that he was involved in the act of pretending to be the accused. Below, I will add a few notes.

Defendant C went to the appointment meeting place with Defendant B and D by telephone from Defendant A, and became with Defendant A accompanied by E, but after that, from a friend I went to return the motorized bicycle I was renting and had a drink there, and although I have no clear memory after that, I did not return to the other defendants as it was. When he returned home around 10 o'clock the next morning, he stated that E was in his room.

However, as mentioned above, in the first place, Defendant C was instructed by A to kick E on his way home with his bicycle and was involved in this case from the beginning. Although he broke up with person A, when he was hanging out with other defendants in his room and received a call from defendant A, he knew that he still had E, and the defendant Like B and D, Defendant A went to the meeting place with Defendant A with the expectation that he would assign E to them and make them sexually insulted, and then E. In the process of being taken to Defendant C's room, Defendant C did not try to determine the course of the matter, separated from other Defendants and E, took different actions, and immediately returned to his home. The fact that he did not return was extremely unnatural, and the transition of the series of events that night, the role played by the accused in the process, and the fact that E was taken to his own room in the first place, etc. In addition to the facts of Defendant A, Defendant A, Defendant C, etc., E is Defendant C's Defendant C and the other accused agreed and agreed to take E into his room, which had been a hangout for the accused before he was taken to his room. It is sufficient to admit that Defendant C brought E into his room with other Defendants, and the related statements of Defendant C that do not follow the right cannot be trusted. It cannot be said that there is a misunderstanding of the facts of the argument. There is no reason for the argument.

2 Defendant C's defense counsel's allegation of factual misunderstanding 2 and Defendant B's defense counsel's allegation of unjustified sentencing

According to the relevant evidence, as mentioned above, Defendants C and B colluded with Defendants A and D, and assaulted E with an unnecessarily murderous intention, and killed E. Some can easily admit this. Below, I will add a few notes.

(1) According to the relevant evidence, as mentioned above, E was imprisoned for a long period of time on the floor before January 4, 1994, during which time he was repeatedly assaulted by the accused.

He was injured in many places such as his face and limbs. By the end of the month, it was difficult to go downstairs to the toilet on his own, and it was clear that he was in a state of extreme weakness.

(2) Then, on the day of January 4, 1994, the defendants beat and turned the face, etc. with their fists many times against E, who was in an extremely debilitated state as described above. Kick, hit the face, abdomen, thighs, etc. with a fist covered with a plastic bag, kick the legs, etc., and use the heavy iron ball as described above to force the thighs, etc. While beating many times, pouring volatile oil on the thighs, and assaulting with a lighter, E showed almost no reaction to the perpetrators' acts of harm. It was found that the right assault was at the mercy of the accused, and that the right assault was carried out for about two hours without any adjustment. In light of the fact that he was already in a state of extreme weakness, the mode of relentless and terrible assault, and the reaction of E to this, in the process of the right assault of the defendants, E was objectively life-threatening. It is clear that he has fallen into a critical situation.

(3) By the way, in the process of the assault as shown on the right, the accused came to recognize the danger of E's death, which the accused commonly stated at the investigation stage. According to the accused A's trial statement, Defendant A is constantly going to the sauna with the accused at the end of the right assault and immediately after the end of the right assault. It is also admitted that he was telling people that E might die. Each statement on the right is extremely natural and rational in line with the objective situation described above, and can be fully trusted.

And, considering the circumstances of this case, it is not recognized that the accused had a concrete murderous intention against E from the initial stage of the series of assaults on the right, but in the process of continuing the assault, at the latest, In Defendants B and C, when E turns and kicks E's face, and when E falls, he forcibly raises it and kicks it further, E does not try to protect himself and suddenly falls and hits the stereo in the room. At the stage of causing convulsions, it is sufficient for the defendants to recognize that they have come to recognize the danger of E's death, but the defendants will continue to consider the danger of E's death. It is clear that he dared to continue to violently assault E, and the defendants, including Defendants C and B, communicated with each other and had an unnecessarily murderous intention against E. There is no doubt that he killed E by assaulting the defendant.

(4) The defense counsel of Defendant C is in a state of danger that the victim will die because he could not form a rational judgment ability about the risk of death of a person in the process of development. He claims that he did not recognize the fact itself. However, although it is admitted that the accused is mentally immature, the accused's intelligence is slightly lower than average and there is no particular problem, and there has been no delinquency or problematic behavior so far. Well, the fact-recognition ability of the accused, who has lived a social life as such, is not significantly inferior, and the accused recognizes the danger of E's death while recognizing the above-mentioned objective situations. It cannot be admitted that it could not be done. In addition, the defendant's defense counsel catches a part of the judgment part of the original judgment and makes various arguments, but none of them can be adopted for no reason.

(5) Defendant B's defense counsel says that the original judgment violates the case law, saying that the original judgment does not take the admission theory about intention, but the original judgment "should be a crime. In the second part of "Facts," "the four accused, recognizing that if they continue to assault, or E may die," "dare," as the original case law continued. He ruled that he had committed the assault, and clearly stated that the accused were aware that the victim might die and that he had tolerated it. It is nothing more than a controversy to the original judgment by capturing a part of the judgment part of the original judgment. Examining other arguments regarding the accused's defense counsel's murderous intent, the original judgment's finding is correct, and the argument is not limited to adoption.

As mentioned above, there is no reason for any of the arguments.

(Vi) Regarding the allegations of unjustified sentences by the public prosecutor, the defense counsel of Defendant B (excluding the allegations regarding murderous intentions), and the defense counsel of C.

1 About juvenile delinquency and criminal punishment

(1) At the time of each offense, the accused were 18 years old in Defendant A, 17 years old in B, 15 to 16 years old in C, and 16 to 17 years old in D. , Both were boys, and accused C and D are still few at this stage.

The year.

<Summary> (2) Therefore, prior to examining the validity of the argument, here, the court regarding the criminal punishment for a boy who was actually a boy or a boy at the time of the crime. I will show the view of.

First of all, with regard to juveniles, in order to ensure their sound upbringing, the purpose is to take protective measures for the correction of personality and adjustment of the environment for juvenile delinquents, and to take special measures for criminal cases of juveniles. The Juvenile Law has been established (Article 1 of the same law), and all criminal juveniles are subject to investigations and trials by family courts, and in principle, protective measures are to be taken to improve their indoctrination. In the case of a crime of death, imprisonment or imprisonment, if the criminal disposition is deemed appropriate in light of the criminal nature and circumstances, the family court shall send it to the prosecutor (the same Act 20). Articles, Articles 23), the prosecutor shall file a lawsuit when he / she thinks that there is a suspicion of a crime sufficient to file a lawsuit in the case sent as shown on the right. There is.

As a result, even if it is appropriate to face a boy with criminal penalties, the death penalty, relaxation of indefinite sentence (Article 51 of the same law), and adoption of irregular sentence (Article 52 of the same law) ) However, there are special provisions that are different from adult cases, and even if a complaint is filed in a criminal court after being sent to a prosecutor, the juvenile defendant will be protected. When it is deemed appropriate to attach, various considerations have been made, such as the fact that the case must be transferred to a family court (Article 55 of the same law), and the juvenile criminal case is heard. These points must be carefully and fully considered in the sentence.

The procedural structure for juvenile delinquency is as described above, but this does not mean that it is sufficient for juveniles to always face a uniform and light sentence compared to adults. .. Severe punishment is required from the viewpoint of serious and malicious crimes, legal safety, maintenance of social order, and sound justice feelings of the general public, and the victims have strong punishment feelings. It is not due to mischievous arbitrariness, but if it is possible to fully agree, the punishment is given accordingly, which is the reason for realizing social justice (as mentioned above, the Juvenile Law also commits crimes). While stipulating easing of the death penalty and indefinite sentence for those under the age of 18 when committing a crime, there is no such easing provision for those over the age of 18 when committing a crime.) However, it must be said that it is of great significance to entrust the treatment of criminal boys to the court, which is the judicial body of the country.

Overlooking this and facing the boy with a remarkable punishment freed from the above points of view not only shakes the public's trust in criminal justice, but also disregards the boy's guilt. It does not seem appropriate for the boy's own rehabilitation, such as making the boy feel relaxed about criminal punishment. In addition, even with punishment, it is important to improve the indoctrination and rehabilitation of prisoners as well as preventive and rewarding aspects, and while considering the characteristics of the boy, Sentences that are appropriate for the case and that match the social sentiment are given, and while the execution is proceeding, it is widely rare for the boy to reflect on his guilt and become aware of himself as a member of society, and to make efforts for improvement and rehabilitation. This is also the reason why it is in line with the idea of the annual law.

In the sentencing of juvenile delinquency, in consideration of the above points, the degree and content of the case are balanced while giving appropriate consideration to the characteristics of the juvenile, such as immaturity and plasticity. Special consideration should be given to the sentence taken.

It should be added here that the above points are appropriate for deciding to send prosecutors under Articles 20 and 23 of the Juvenile Law and to transfer them to the family court under Article 55 of the same law. It should be said that the criteria for judgment are also valid. Therefore, juveniles should be subject to criminal penalties only when it is considered unlikely that they will be corrected by protective measures, and that criminal penalties should be avoided and protected as long as protection is possible. I don't agree with the view.

In the following, from this point of view, we will examine the propriety of sentencing against the accused in the original judgment.

2 Regarding the circumstances common to the accused

The outline of the series of crimes and the details of the E-related cases are as determined in 3 and 4 above. All the accused or some of them colluded with each other, sometimes with the addition of other bad friends, or alone, from the end of October 1988 to the beginning of January 1994. It is a series of lines, but here, the feelings that are generally common to the accused in each offense

Consider the condition.

(1) About the situation of E-related crimes

The details of the crimes of obscene purpose predatory, confinement, rape, murder, and abandonment of the corpse against E are as seen in 4 above. The causes of the insults are eccentric anomalies, brutal, and vicious ones, and there are no fragments of humanity, such as thoroughly humiliating E and launching.

Furthermore, the crime on the day of E's murder was already weakened by the repeated assaults of the accused, with the face already swollen and deformed, the burns were swelled in many places, and almost no food was given. For E, who was only lying down all day, with Defendant A at the center, as if the Defendants were competing with each other for their brutal and atrociousness, for about two hours. He continued to make a relentless and intense assault and killed E with an unnecessarily murderous intention, and I cannot help feeling terrified at the horrific crime situation. Then, when E dies, in order to avoid the crime being discovered, the corpse is dumped in an open space by an unusual method of packing it in concrete (however, Defendant D is involved in the crime of abandoning the right corpse. ), The series of crimes of the accused cannot be seen as a piece of consideration for E's human dignity.

The accused were detained in Defendant C's room for 40 days from the time E was kidnapped for obscene purposes until he was killed. Even if it was not the case, in light of the criminal mode itself of taking E to the accused C, who had been a hangout for the accused, and confining him, and the transition of the situation after that, in the first place, At the stage, it is not admitted that the defendants had the idea of releasing E early. In addition, the reason why the confinement was prolonged was that by releasing E, there was a fear that the crime would be discovered, and that E's wounds became heavier and weakened, which made it difficult to deal with it. If so, it should be a selfish situation for the accused. Moreover, even after the accused lost their interest in E as a woman, they were not merely restraining E's freedom, but their faces were swollen due to the assault and abuse of the accused. Considering the ugly and strange E as a sparse existence, such as burns, he talks about E's death and its corpse disposal in daily conversation, and is more relentless, cruel, cruel assault, and insult. And finally killed E, and it seems unlikely that there is anything to sympathize with the accused in the process.

In addition, the fact that Defendant A approached the gangsters and other accused also became involved with the gangsters through Defendant A worsened the living environment of the accused. Although it is recognized that the misconduct has been further deepened, the accused's own responsibilities, which were easily approached by the gangsters or inspired by their efforts, cannot be overlooked.

And, the accused were all boys at the time of the crime, and there was something inferior in maturity due to their qualities, growth history, family environment, etc., and the assault and insult against E were caused by these accused. In addition to the collective psychology, there is the aspect that it was stimulated and influenced by each other's actions, and it became particularly fierce, and it also flooded the world with disturbed sexual customs. It is acknowledged that the accused would have been uncritically contaminated by the vulgar and stimulating mass media information that dealt with the scene of murderous life neglect, but for these reasons. , It is hard to admit that it is appropriate to significantly reduce the guilt.

(2) About the victim feelings of E's bereaved family

After January 25, 1988, E's parents made a search request to the police on the 27th of the same month because E did not return home and did not contact him, and continued to pray for E's safety thereafter. However, during this period, Defendants A and others told E three times from the end of November to December 16th of the same year, saying, "Don't ask for a search because you're out of the house." He made a phone call to his home saying, "Withdraw the search request," and tried to prevent E from being searched for, and at that time, Defendant C's mother happened to have E at home. I knew that I called E with a pseudonym, but E's parents made calls to various places relying on the right pseudonym, but it ended up in vain, and eventually there was no clue about E's whereabouts. I had days of heartache. Then, on March 29, 1989, a drum containing E's corpse was finally discovered, and when his father inspected it on the following thirty days, E's corpse had decayed and was already a parent. Even, it had changed so much that it was hard to distinguish it from E immediately. E's mother fell ill due to grief and is still continuing to go to the neurology department today.



The only daughter who had been raised by hand salting was taken away from his hand, and after spending a long time in anxiety and frustration, E was murdered miserably. Is extremely strict and demands severe punishment from the accused, and E's father is strongly distrustful and dissatisfied with the testimony of the trial, saying that the sentence of the original judgment against the accused is too light. I'm screaming about my feelings. E was a third-year high school student who was about to graduate at the time of the damage, and had already decided to get a job and had a dream for the future. On the way, because he was noticed by Defendant A, he was involved in the case, was detained for a long time by the Defendants, suffered numerous unbearable assaults and insults, and finally became a sacrifice of violent and brutal crimes. , The young life rich in spring and autumn was cut off, and in addition to mercy, not only E's own regret but also the feelings of his parents' bereaved family can be overlooked, and the severity of the feelings of harm is Can be fully understood.

(3) Regarding the circumstances of crimes other than E-related crimes

Regarding each offense other than E-related offenses, regarding Defendant A, two cases of rape, one case of injury, and nine cases of theft (including one case of vandalism and eight cases of snatching) were committed before and after each offense against E and during the offense. ), Defendant B, 2 rapes, 1 injury, 7 thefts (Uchi, 1 car theft, 1 store vandalism, 5 snatches), Defendant C, each offense against E Four thefts were committed before and during the crime (including one car theft, one store vandalism, and two snatches. However, the accused was also involved in the crimes of two rapes and one injury as a co-crime. However, since it has already been tried by the family court, it is not the cause of the complaint. Since it has passed, it is not the cause of the complaint.)

These crimes were committed by Defendant A, in addition to a single theft (snatch theft), by each Defendant in collusion with other Defendants and bad associates.

The outline of each crime is as described in the above three, but the crime of each rape against two 19-year-old women at that time was a car driven by Defendant A, driving while searching for the partner of the rape, right After admitting the victims, forcibly put them in the right car, line up threatening complaints, point them with swords and fruit knives, suppress the rebellion and bring them to hotels and motels, and the accused and co-conspirators sequentially It is a self-centered, planned and violent crime that completely ignores the personality of the other party, that is, rape, and the physical and psychological scars given to each victim are deep, and even if only these two rape cases are taken, the crime is Extremely malicious.

The crime of the injury was that the victim was a bad fellow of the accused, but the victim did not join the subordinate organization called M-kai, which accused A tried to form by being aroused by a gangster official. The accused jointly angered the victim for more than three hours, unilaterally and terribly assaulting him, injuring him with a full-body injury that required about four weeks of medical treatment, and the victim. "Please forgive me for 100,000 yen. If I can't do that, I'll enter Arakawa." And the motive and the mode are bad, and the criminal offense is also very bad.

Among the crimes of each theft, the crime of vandalism at night was a burglary at night, and the total damage amount was a large amount of more than 200,000 yen, and the crime of snatching was driving a motorcycle for women passing by at night. It must be said that the criminal offenses of each of these offenses are also malicious, such as being a bold and dangerous robbery who approaches and steals his belongings, and also commits continuous crimes.

(4) About the social impact of this case

This case was committed by bad fellow boys, such as obscene purpose predatory, confinement, rape, murder, corpse abandonment, etc. against high school girls, and victims in the living room of a boy in a densely populated residential area in a big city for a long time In the form of the crime, he was confined, assaulted, and murdered as he wanted to be insulted. As a result, it attracted a great deal of attention and interest from the general public, and the impact it had on the general public was extremely serious, and its impact was enormous. I have to say.

3 Regarding the individual circumstances of the accused and the allegation of the transfer of accused C's defense counsel to the family court

(1) About Defendant A

Defendant A is the eldest of the four accused, and was in a leading position from beginning to end in this series of crimes. In each of the crimes related to E, he was on his way home by bicycle. Upon admitting E, he instructed Defendant C to kick E along with his bicycle and start the crime.

After making E and committing adultery to the hotel, he called C, who was a hangout for the accused, called other accused, and sneaked E into C for obscene purposes. In an attempt to commit adultery to E by other accused and bad friends, he committed adultery against E, and subsequently led and proactively committed terrible assault and insult against E. Many of the methods of adultery and insults were devised by Defendant A, and the crime of killing E was started because he thought that he would bully E in the wrath of being defeated by Mahjong. It started.

As mentioned above, the offense is unusual and brutal, but Defendant A plays a central role in the right offense and directs himself or other accused. Defendant A took the lead in committing the crime of abandoning the corpse. In addition, the accused will take the initiative in carrying out each offense such as rape, injury, theft, etc. committed by accused A before or after the crime related to E or while continuing to confine E. Considering the role played by the accused, the mode of the offense, its danger, the degree of impact on the victim, the total number of offenses, etc., the accused is combined with each E-related offense. A person's criminal offense is extremely vicious. Considering the defendant's past misconduct, the approach to gangsters, and the impact of the defendant on other defendants and bad friends, the defendant's guilt is extremely serious, and among the four defendants, it is none other than outstanding.

According to Witness H's statement of trial by the trial court and the testimony prepared by the defendant, Defendant A has an organic brain disorder (early childhood brain disorder), which is due to the bias of the defendant's personality. Although it can be seen that it has an influence, as already seen in 1 of 1 above, the accused devoted himself to judo in junior high school, achieved excellent results, and had no particular problematic behavior. He spent a year in junior high school, and for about a year working at the tile industry until about three months before the series of crimes began, his earnest work was highly evaluated by his employers. According to other life histories, even if the accused has an organic brain disorder, he can overcome it by his own voluntary efforts and lead a normal social life. It is not reasonable to overestimate the accused's organic brain damage, as he has been sent for many times.

On the other hand, according to the relevant evidence, the accused began to actively inhale thinner from around the summer of 1988 or at the latest around October 1988, and suffered from hallucinations and other addictive symptoms. Later, in January 1989, he visited a hospital in Adachi Ward, was diagnosed with thinner poisoning, was receiving medication, and even after the accused stopped inhaling thinner. It was confirmed that the hallucinations did not disappear, and it can be seen that the symptom of thinner addiction of the accused was quite severe. It cannot be denied that it caused a decline in the standard and affected the series of crimes in this case.

On the other hand, the accused's parents donated 500,000 yen to E's bereaved family for atonement, and a pen pal was established between one of the victims of rape and the victim of injury. The accused deeply reflected on this matter, received strict guidance with the enthusiasm of his defense counsel, and deepened his introspection even after the original judgment through correspondence, visits, readings, copying, etc. There are also circumstances that can be taken into consideration for the accused, such as being able to see it considerably.

## **(2) About Defendant B**

As mentioned above, it is recognized that Defendant B was in a position next to Defendant A in terms of power relations within the misconduct group of Defendants. The defense counsel of the accused argues the judgment part of the original judgment to that effect, but according to the relevant evidence, as mentioned above, in the process of forming the delinquent group of the accused, the accused A Before he joined the right group, Defendant B was found to have an advantage over Defendants C and D and was central to the group, and Defendant A was the right delinquent group. Defendant B was in the same position as before in relation to Defendant C and D, even after joining Defendant B. It is sufficient to see this from the role, etc., and Defendant B himself stated in the trial of the trial that he would be the leader in the absence of Defendant A, following Defendant A in the group. He admits that he was in a position, and the other defendants have made statements that suggest this, and it is not admitted that the judgment of the original judgment is incorrect.

In addition, the defense counsel of Defendant B also said that Defendant B had never consulted with Defendant A at the beginning of a series of crimes against E, and that Defendant B would find the original judgment. However, according to the relevant evidence, as was determined in 4-1 above, Defendant B proposed to Defendant A to proactively predatory the victim.

Defendant B's statement of trial, which is sufficient to admit this and does not meet the above certification, cannot be adopted.

It is clear that Defendant A acted in a leading and central position from beginning to end in the series of crimes in this case, but Defendant B also acted in each of the crimes against E. Even in the absence, as previously recognized, along with Defendant C and others, he has been aggressively and relentlessly assaulting E, and Defendant B has followed Defendant A for assault and insult. Many of them are not unavoidably following the instructions of Defendant A, but they are attacking themselves in a positive manner, and it is not possible to see the verses that have been adjusted.

In addition to the role played by Defendant B in E-related offenses, the content of the offense, and the malicious seriousness of the offense, as mentioned above, Defendant B is also malicious with Defendant A and others in offenses other than the right. In addition to participating in each of the two crimes of rape and injury, he also plays an important role in the execution of the crime next to the accused, and also the fact that he has repeatedly committed theft crimes such as the above-mentioned accused. Considering this, Defendant B's guilt is the second most serious after Defendant A.

On the other hand, a settlement has been established between one of the victims of rape and the victim of the injury, and Defendant B's parents continued to accumulate compensation for E's bereaved family even after the original judgment. At present, the amount has reached more than 1610,000 yen (the bereaved family has refused to receive it at this stage), and the accused deeply regrets this case, and even after the original judgment, the defense counsel Under enthusiastic guidance, he continued studying, reading, copying, etc., deepening his introspection, and seeing considerable signs of growth.

### (3) Defendant C (including judgment on the allegation of transfer to the family court)

Defendant C's defense counsel destroys the original judgment and transfers it to the family court for protection. We make various claims that it is appropriate to dispose of it.

Therefore, when examined, as already detailed, even during each offense involving accused C, a series of obscene purpose predatory crimes, confinement, rape, murder, and abandonment of corpses against E were out of the ordinary. It is a vicious and serious crime, its social impact is enormous, and the victim's bereaved family's feelings of damage are extremely strong, and even at this stage, it has not been healed at all. And, in the series of crimes on the right, Defendant A took the initiative in carrying out this by instructing other accused, as in the previous judgment, but Defendant C also simply performed this. Instead of being instructed by Defendant A to reluctantly follow this, he was actively involved in the crime, as was Defendant B, and even in situations where Defendant A was absent, he was able to deal with the victim. Defendant C's guilt must be said to be serious, as he is bluntly assaulting him. Moreover, as we saw earlier, the accused began misconduct such as blackmail and shoplifting from the time of elementary school, and since then the misconduct has not subsided, and he has repeatedly suffered domestic rape, neglect, etc. The living room of the person became a hangout for misconduct groups, and became a place for crimes such as confinement, rape, and murder of the victims, and the situation was completely beyond the supervision of their parents.

Considering these circumstances, based on the above-mentioned situation regarding juvenile delinquency and criminal punishment, the accused is the youngest of the accused, and he was 15 years old at the time of the crime. Considering that he was old, the accused was not found to be adequately protected, and the argument is unreasonable.

The individual circumstances of Defendant C are as described in the judgment on the right argument, but after the original judgment, the accused's parents sold their home and paid 100,000 yen from it. The defendant has reflected on this case and has been enthusiastic about the defense counsel even after the original judgment. There are also circumstances that can be taken into consideration for the accused, such as deepening introspection through heartfelt guidance, sending days of self-reflection through studying, reading, tanka, etc., and showing considerable signs of growth.

### (4) About Defendant D

Defendant D was less guilty of a series of crimes against E (excluding the crime of abandoning the corpse) than the other accused, and was rather follow-up. Although it is admitted, in general, he is involved in each crime on the right from beginning to end, often takes on the role of a watchman in captivity, and when he commits rape against E, he is involved in the execution of E rape, and in addition, he commits the crime of killing E. In some cases, as previously certified, it is assumed that the bare hands will be stained with blood, and the abdomen, waist, etc. of E will be beaten many times with a fist covered with a plastic bag, or imitating other defendants. The iron ball hits E's thighs and the like many times, and the right iron ball is dropped from shoulder height toward E's abdomen, resulting in terrible assault.

In addition, as mentioned above, the accused was probated due to a threatening case such as domestic violence.

It is recognized that he had a history of misconduct, such as being misconducted twice due to misconduct in violation of the law concerning punishment for fears and violence, and his lifestyle was extremely poor.

On the other hand, the accused was 16 to 17 years old at the time of the case, the youngest after accused C, lacking in sociality and immaturity, and due to the efforts of his defense counsel, the case is now present. There are also circumstances that can be taken into consideration for the accused, such as the situation in which he is remorseful and self-advising.

#### 4 Sentence against the accused

(1) First, as I judged in 3 (3) earlier about the argument of the defense counsel of Defendant C, it is not appropriate to put the Defendant on protective measures, and Defendant D However, considering the circumstances that have been decided so far, it cannot be considered that it is appropriate to take protective measures like Defendant C.

(2) Therefore, next, we will consider whether or not the sentencing is appropriate for the accused in the original judgment. The extraordinary viciousness and seriousness of the series of crimes against E described in detail above, the role played by each accused, the mode of the perpetrator, the seriousness of the result, the feelings of damage to the bereaved family, and the magnitude of the social impact. As for all the situations shown in the records, accused A and C, in addition to the one on the right, the viciousness of the criminal offenses involved in each of them, and other various circumstances are considered comprehensively. Considering all the circumstances that can be taken into consideration for the accused, accused A will be imprisoned for 17 years, C will be imprisoned for 4 to 6 years, and D will be imprisoned for 3 years or more. The sentence of the original judgment, which was sentenced to four years or less, is extremely light and unjustified.

However, with regard to Defendant B, as mentioned earlier, the accused's criminal offense is also extremely vicious, and his guilt is serious, but there is a clear difference in the criminal offense between Defendant B and Defendant A. Considering the above-mentioned circumstances that can be taken into consideration for Defendant B, it is not appropriate to select and execute life imprisonment for Defendant B. Hara, who chose a fixed-term imprisonment for the accused and was sentenced to a high sentence of five to ten years in prison for both long-term and short-term juveniles under Article 52 of the Juvenile Law. The sentencing of the sentence is unavoidable, and it cannot be said that it is too light and unjust, and it cannot be said that it is too heavy. Defendant B is now an adult, but the original sentence The trial, whose purpose is to examine the validity of the judgment, must judge the validity based on the time when the original judgment was handed down, and if the original judgment is not abandoned, it is clearly contrary to justice. There is no situation after the original judgment. ). Therefore, the prosecutor's argument about accused A, C, and D is all grounded, but the prosecutor's argument about accused B and the argument of each of the defense counsel of accused B and C are There is no reason for either.

Therefore, in accordance with Article 397, Paragraph 1 and Article 381 of the Code of Criminal Procedure, the parts related to Defendants A, C, and D were abolished during the original judgment, and the proviso of Article 400 of the same law was applied. The judgment shall be made, and according to Article 396 of the same law, each appeal in this case concerning Defendant B shall be dismissed during the original judgment.

(Vii) Self-judgment regarding accused A, C, and D With respect to accused A, C, and D, the law to which the original judgment applied to the facts that should be the offense found by the original judgment (however, 50 original judgments) The part on the back 6th and 7th lines that says "Articles 60 and 204 of the same law, Article 3, paragraph 1, item 1 of the Act on Temporary Measures for Fines, etc." is "Article 60 of the same law, Act 3 of 1991." The criminal law Article 204 before the revision by No. 1 and the Act on Temporary Measures for Fines, etc., Article 3, Paragraph 1, Item 1 (according to Articles 6 and 10 of the Penal Code) are applied. The part on the fourth line that says "Defendant D's Judgment 1st to 3rd" is recognized as an error in "Defendant D's Judgment 1st and 2nd"), and is a criminal offense similar to the original judgment. Defendants C and D are juveniles within the scope of the sentence for processing, selection of penalties, and weighting of merger offenses. It is decided to be sentenced to imprisonment (although it cannot be said that it is appropriate to imprison Defendant A with an indefinite imprisonment, considering the other circumstances that can be taken into consideration for the accused, at this stage, I still have to hesitate to impose an indefinite imprisonment on the accused, and for the accused, he should choose a fixed-term imprisonment and imprison him for 20 years, which is the upper limit of the sentence. Defendant A, C, and D, applying Article 21 of the Criminal Code, each of the 350 days of undecided detention in the court of first instance was included in the sentence, and Defendant A, The litigation costs in the trial court of the same C and the litigation costs in the trial court and the trial of the accused D shall not be borne by the accused by applying the proviso of Article 181 (1) of the Criminal Code.

Therefore, the judgment is made according to the main text.

(Judge Judge Ryuji Yanase Judge Hideyo Miyajima Judge Yasuaki Nakano)

