

*Criminal Trials of Parents Claiming “Sibling Abuse”
How Do Midwives Address Such Cases?*

Yumiko Yamazaki, Kawasaki City College of Nursing, Japan

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Abstract

This study aimed to investigate criminal cases in which parents have claimed injury to an abused child was inflicted by a sibling. A search was conducted on a legal database using the search terms “child abuse” and “criminal trial.” We identified two cases in which parents claimed injury to the abused child was inflicted by a sibling. These two cases were examined. In Case 1, the court denied the parent’s claims that the sibling injured the abused child. In Case 2, the possibility of sibling abuse was considered but denied because there was no causal relationship with the child’s injury. The need for psychological support of siblings of abused children became evident during our research. Midwives closely associated with abusive families must work quickly to ascertain the precise nature of the abuse.

Keywords: Child, Sibling, Abuse

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Introduction

When child abuse occurs within the family, official figures should allow for the possibility that the child's siblings are also being abused. This may include physical, sexual, emotional, and psychological abuse, including the psychological damage resulting from encountering abuse of a sibling (Ministry of Health, Labor, and Welfare, 2007). When there are differences in parental attitudes toward children, these differences can be at the heart of abuse (Japan Federation of Bar Associations Committee on the Rights of the Child, 2021). Scientifically, it has become clear that corporal punishment adversely affects the growth and development of children. In Japan, corporal punishment was legally prohibited under the Child Abuse Prevention Law in 2019. Following the introduction of this law, the number of arrests for child abuse in Japan reached a record high of 2,133 in 2020 (National Police Agency, 2021).

The purpose of a criminal trial in a child abuse case is to determine in an open court whether an abusive act(s) occurred and to impose criminal penalties on the defendant commensurate with the crime. In some cases, there is no evidence of causality, and the charges may be false. Additionally, there have been reports of injuries to a child caused by a sibling, for which the accused parent is not responsible (Friedrich, et al., 2013). Nevertheless, accused parents do not always admit to abusive behavior. This can include cases in which parents claim the child was abused by a sibling.

From the perspective of the family midwife, we must consider the problems inherent in such cases and what a midwife can contribute.

Analysis of police statements and court records can provide details of these cases as presented by perpetrators and related parties. This allows us to understand the circumstances involved and to consider factors such as social background (Medical Affairs Department, 2021). This study aimed to investigate the effects on siblings of criminal cases in which parents claimed injury to an abused child was inflicted by the sibling. It will also consider how midwives might assist and support the children in such cases.

Methods

Data for this study were obtained through a literature review. A search was conducted on a legal database (TKC Law Library, 2020) using the search terms "child abuse" and "criminal trial" between March 16 and December 28, 2020. The trial dates for the search were designated as January 1, 2008, to the present. The reason for the selected start date was the introduction of a revision to the Child Abuse Prevention Law in 2008 in Japan. After this revision, the number of child abuse counseling cases increased to more than 40,000.

In Japan, trials are open to the public (Article 82 of the Constitution), and case records are disclosed (Article 91 of the Code of Civil Procedures), so there is no ethical provision for case citation. However, measures were taken to ensure that individuals were not identifiable in this study. The retrieved cases summarized the background of the cases, provided chronologically ordered status maps, and detailed the facts found by the court.

Results

Fifty-one cases were retrieved. The sentences ranged from 1 to 30 years, and eight cases reached a verdict of not guilty. Of the 43 convicted cases, only 11 defendants apologized for

abusing their children. There were 32 cases in which the defendant denied abuse. Among them were claims that death could not be anticipated, that child abuse by their partner could not be prevented, and that sentencing was too heavy. There were two cases in which parents claimed injury to the abused child to be caused by a sibling. These two cases were examined in this study.

Case 1: Supreme Court, Judgment of 24 July 2014.

Summary

Defendants: Father (Supreme Court decision: 10 years in prison), Mother (Supreme Court decision: 8 years in prison).

Victim: Third daughter (20 months old at the time of the offense). Hereinafter referred to as "A."

Siblings: Eldest daughter (4 years old), second daughter (2 years old), and fourth daughter (6 months old).

Parents' Assertion: The death of A was caused by the eldest daughter and the second daughter. It was not parental abuse.

Court Conclusion: At their home, the father beat A's face and head with a flat hand. Consequently, A died of acute subdural hematoma.

Issues

Evidence showed that A died of brain swelling due to subdural hematoma. This was not contested by the parents' counsel. Nevertheless, the defense counsels argued that there was reasonable doubt as to whether A had died because of assault by her parent(s).

Defendant Statement

Father: When A's mother bought bread and returned home, A was in front of the stove in the living room. The distance between A and me was approximately 30 cm. I handed the bread to A, but she held it in her hand and did not try to eat it. Afterward, I watched TV for a while, but when I looked at A, she had not eaten the bread at all. Thus, I moved it closer to A's mouth. I don't remember clearly whether I caught A's hand with the bread in and moved that closer to her mouth or whether I took the bread and held it to A's mouth. In any case, when I brought the bread closer to A's mouth, A opened a little and put the bread into her mouth. Perhaps, I pushed a little bread into A's mouth. I was angry, thinking, "If you will eat it now, you should have eaten it yourself from the beginning."

So, while I sat on the sofa, I shook my right hand and hit A's head, who was sitting on my left. It is remembered that I beat her. I remember being angry at the time, and I think I beat her as usual. I don't know exactly how hard it is, but I always beat her as vigorously as I was when I hit her head. I struck her like this, and I think A fell back to the left and was crying loudly. When I hit A, her mother was also in the living room so I thought she was watching me hitting A. At least, I think she was aware of the sound.

Mother (the mother testified as a witness in the trial): The wound found when A was taken to the hospital was not what he [A's father] had done when he hit her. It was made when our second daughter was bitten by or quarreling with her sister.

Court Judgment

At the time of the incident, A was 20 months old. She had been able to walk since the age of eight months. Thus, it is reasonable to assume that A had acquired the parachute reflex (which is normally acquired by eight months old) and was able to respond self-protectively to falling. Additionally, it is unlikely that A would have been subjected to sufficient external force to cause a hard enough fall due to the actions of other children under five, such as her siblings. Moreover, if the external force, in this case, were due to some kind of accident or act of a sibling, it is not considered feasible that the father or mother, who should have been at home at the time, could have been unaware of it when it occurred. Accordingly, the external force, in this case, is not considered to have been the result of an accident in the home or to have been committed by a child under 5 years old.

The defense counsel argued that A's facial bruising could have been inflicted by the second daughter throwing a toy and hitting A as was stated by the parents at the trial. The defense also attested that when a staff member investigating the case asked her mother about A's bruise, the eldest daughter had told the official that the second daughter was bad.

Nevertheless, it is unlikely that the force generated by the throwing of a toy by the second daughter who was only about one and a half years older than A would be sufficient to bruise both cheeks on A's face. Additionally, the statement by the eldest daughter mentioned above is may have been a reflexive response to having seen her mother repeatedly scolding the second daughter. Since the eldest daughter was 4 years old, it is also conceivable that even sudden questions could be addressed by talking about a stronger father and mother and making the second daughter responsible.

To escape their criminal responsibility, the parents placed blame for the offense on their second daughter, despite being her parents. They demonstrate problematic attitudes that jeopardize the honor and future emotions of the second daughter.

Case 2: Osaka District Court, Judgment of 12 February 2018

Summary

Defendant: Father (Osaka District Court decision: seven years in prison).

Victim: Fourth daughter (4 months old at the time of the offense). Hereinafter referred to as "B."

Siblings: Eldest daughter (9 years old), second daughter (age unknown), and third daughter (2 years old).

Parents' Assertion: The death of B was caused by the third daughter.

Court Conclusion: The father was at home with B. He threw B onto a pile of futon cushions. The father recognized that B might have hit a wooden sliding door approximately 155 cm

from the foot of the futon. Thus, he threw B again, this time so she would hit the sliding door. He then continued to do the same, causing injury and chronic subdural hematoma (first assault). Later, the father sat down with B, who had begun to cry, and hugged her. However, he became irritated because B did not stop crying. He was also frustrated by his inability to return to work for a long period and further assaulted B by shaking her violently with one hand.

Issues

Although the defense counsel acknowledged that the father could have caused the skull fractures and chronic subdural hematoma that B was found to have suffered, they contested part of the first assault because such an injury could have been caused by the father's negligent act or an act by the third daughter.

Defendant Statement

Father: I was bathing B and holding her around the waist with my right arm. I accidentally slipped and B's head collided with a handrail in a bathtub approximately 60 cm away. I attempted to grab B by the hand, but I missed and dropped B onto the floor.

Mother (the mother testified as a witness in the trial): Our third daughter was pulling B from behind with both hands and B fell to the floor from a height of 30–40 cm and hit her head.

Eldest Daughter Testimony

The eldest daughter testified that her father hit B's head with his fist almost every day, shook her head violently, threw B up above his head and let her fall without catching her, and stepped on B's abdomen when she was asleep.

Court Judgment

It is unlikely that a subdural hematoma occurred because of a fall of 30–40 cm, even considering the possibility that there was a toy at the point where B's head fell. The distance dropped (by the father during bathing) is substantially lower than the height of 90 cm or more that physicians have stated would be necessary to cause this injury. Also, based on the defendant's account of what happened, the force to B's head would have been weaker than that caused by falling vertically from a height of 60 cm.

The counsel asserts that the testimony of the eldest daughter is inconsistent with the wounds confirmed at B's judicial autopsy. It is clear that the eldest daughter's testimony is exaggerated, and this point is not denied by the prosecutor. In light of her age at the time of the incident, the eldest daughter's testimony may have altered in her memory due to the passage of time or may have been altered by the questions of investigators. Although not all of the eldest daughter's testimony is considered exaggerated or mistaken memories and it may contain some truth, there is no means of distinguishing which parts are true. Thus, the testimony of the eldest daughter cannot be used as evidence of the defendant's assault on B.

In terms of sentencing, the most important thing was that a fatal assault was committed on a 4-month-old, defenseless infant. The infant was assaulted so violently that subdural hematomas were formed, and the assault was repeated leading to the death of the child. The

defendant, despite their duty to protect the infant, killed her on the selfish grounds that he was annoyed by the child or himself. This deserves strong criticism.

Conclusion

As shown in the results, many parents deny abuse (32 cases). This suggests that parents may not always recognize what constitutes child abuse. As mentioned earlier, the Child Abuse Prevention Law stipulates that parents shall not use corporal punishment to discipline children. Nevertheless, it has proved difficult to inform parents what does and does not constitute abuse (Baba, 2015; Hososaka, et al., 2017; Nishizaka, 2017).

In Case 1, the court denied the claim of the parents that a sibling injured the abused child. In Case 2, the possibility of the sister's violent action against the victim was recognized, but it was not deemed a possible cause of death as there was no causal relationship between the actions of the sibling and the fatal injuries of the victim.

What impact do such parental accusations have on the siblings of abused children? As stated in the court decision in Case 1, these parents place responsibility for abuse on the siblings, likely causing considerable psychological harm. These trials are open to the public and the case records are freely available to view. The suspected perpetrators of abuse are too young to deny or refute the accusations. In light of this and the future that confronts these accused children, it is clear that they are likely to require considerable long-term emotional support.

Beyond that, however, it is unclear how to take care of these siblings on an ongoing basis. The child is likely to maintain relationships with blood relatives. Moreover, these children are not just the siblings of abused children but are very likely victims of abuse themselves (Campbell, et al., 2009). Reportedly, ill-treated children do not regard their families positively (Halperin, 1983). If correctional education is provided in response to criminal proceedings against parents for child abuse, and it is possible to prevent the recurrence of abuse in the future, it may still be possible to restore parent-child relations (Japan Federation of Bar Associations Committee on the Rights of the Child, 2021). Nevertheless, as in cases such as those described here, when both parents testified that the abuse was inflicted by a sibling, there may be situations in which supportive intervention is refused.

It seems highly likely that children who testify that one sibling is responsible for injury to another are, themselves, victims of abuse. In Case 1, the eldest daughter testified to the second daughter's involvement in the victim's injury. In Case 2, the eldest daughter testified against her father. Nonetheless, neither testimony was deemed valid because of inadequate supporting evidence. Since this study analyzes information revealed in the courts, the background to this testimony by other siblings is unknown. However, the circumstances leading to these decisions by the siblings should not be overlooked. The relationships between siblings are also likely to be affected in such cases.

Through examination of these unusual criminal cases of child abuse, it has become clear that outside intervention is needed to help not only the child who is victimized but also their siblings. The need for psychological support of all of the siblings in a family where domestic abuse has occurred is evident. Midwives may find themselves in a unique position since they often become closely associated with a family through their provision of assistance during pregnancy, childbirth, and parenting. As such, it is vital that they are fully cognizant of signs of abuse and can assess, as well as act quickly upon, cases of child abuse.

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Contact email: Yumiko Yamazaki