

Handout #4

Comments Made by the Autumn Assizes Board Officials on the Case of Woman Xie

Source: *Xing'an huilang* [Conspectus of Legal Cases], *ibid.* Vol. 53, 2a-4b.

The Governor of Shaanxi memorialized to recommend punishing Woman Xie with death by lingering according to the statute that states a wife or concubine who beats the parents of her husband should be punished by decapitation, or, if she kills her husband's parents, should be punished by lingering. Another precedent indicates that when a daughter-in-law injures her father-in-law in resisting his attempt to rape her, if the investigation shows she was indeed being physically harassed and the situation was urgent, and she immediately and vehemently resisted the rape, she shall be punished according to the statute of beating her husband's parents. When the Ministry of Punishment reviews the case, it is supposed to cite this precedent to request a pardon for her. [It should then...] memorialize for His Majesty's final decision.

[In this case, she] cut off [her father-in-law's] penis. She intended only to preserve her chastity and had no time to consider the matter of life and death. This action was in fact inspired by her sense of honor, which in turn burst out as the energy of chastity. If Woman Xie had not vehemently resisted the rape attempt and had accepted the forced intercourse with [her father-in-law], she not only would have lost her chastity but also would have committed incest. This not only tainted her chastity but also made her father-in-law commit a crime that was punishable by decapitation. Now, she is lucky that she was not raped, but because of her fervent resistance, she killed her in-law and was subject to the death penalty because of her violation of an obligation owed to one within the mourning relationships. This is a case in which one's moral integrity and one's obligations to relatives in the higher ranks cannot be fulfilled simultaneously under any conditions. If she was raped or if she resisted, she had to sacrifice one of two things [her chastity or her obligations]. This is the most unfortunate event possible in a person's life. Some might say that if she could reach the knife, she could have committed suicide by cutting her own throat. These words were used to reproach sages, and they would not come to the mind of an illiterate village woman who was under such extreme circumstances. Furthermore, the statute indicates that a woman shall not be prosecuted when she resists rape and immediately kills an offender who has no mourning relationship with her. Now, because the deceased is her father-in-law, the recommended sentence is much more severe. Originally, this was a case concerning basic human relations; it cannot be put away and be disregarded by the law. However, upon the time that [Lin Guoheng] exposed his body and demanded intercourse, the principle of heavenly nature and human conscience had completely vanished [within him]. This is because the father-in-law violated basic human relations, not because the daughter-in-law recklessly violated an obligation she owed to someone within the higher mourning relationships.... This female convict would certainly receive the pardon of His Majesty and [her name] would not be checked off, but putting her in prison for a long time did not seem to follow the principle of extending the benevolence of His Majesty.... According to your servant's humble opinion, Your Majesty should issue an imperial edict to order the Ministry of Punishment to carefully establish a precedent [in the penal code that

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states] when a daughter-in-law resists a rape attempt by her father-in-law and kills him, if there is no doubt that the situation was urgent and dangerous and that she had to act immediately and firmly to resist, the daughter-in-law should still be recommended to be punished according to the original statute [immediate decapitation]. When the Ministry of Punishment reviews the case, it should refer to the precedent of Women Xie and change the recommended punishment to decapitation after the autumn assizes. Then, the case should be memorialized for [His Majesty’s] final decision. If she receives the merciful edict to change her punishment to decapitation after autumn assizes, then the convicted female criminal should be put in the category of “true” once. After that [in the following year’s autumn assizes review], the case can be put in the category of “deferred.” After the second autumn assizes, she should be allowed to receive a commuted sentence and to redeem [i.e. pay a fine in lieu of] her designated punishments. She should be divorced and be sent to her natal home.

[After deliberation, the Emperor ordered that afterwards similar cases should follow the precedent of committing crimes against relatives of mourning relationships—two reviews in the category of “true” in the autumn assizes and three reviews in the “deferred” category. Only after the third review in the “deferred” category (a total of five reviews in five years) would her sentence be commuted based on the edict. (1830 precedent)].

Summary of Punishments

In accordance with the letter of the law, during the Autumn Assizes officials recommended that Woman Xie be decapitated. Due to the extenuating circumstances of the case, the emperor did not choose to approve that recommendation and her case was deferred until the following year’s assizes. After a second review her punishment was commuted to flogging with heavy bamboo, and her family was given the option of paying a fine in lieu of the flogging. Once this fine was paid, Woman Xie was released from custody. She was neither decapitated nor flogged. Her total punishment amounted to two years in prison.