

## THE PRICE OF A P'AI-LOU

BY

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The 16th of April 1821 was a bad day for Chao Kuai-tzu 趙拐子, an employee of a leathershop somewhere in Chihli. When he went home from his work that day he had treated himself to a few drinks too many and become hopelessly intoxicated. In that state he passed the home of his friend Chao Ching 趙敬 and saw his friend's wife, Mrs. Chao *née* Liu 劉 standing in the gate way talking with her daughter-in-law Mrs. Tung 董. Chao Kuai-tzu then remembered his friend's granddaughter, daughter of one of his deceased sons from a former wife. He had often played with the girl when she had been young, but now she had married and was living in a different place. He had been fond of her and in his befuddled state his thoughts became mixed up, so that he boldly advanced upon the two women in the gateway and told Mrs. Chao that he wanted to sleep with her granddaughter. Mrs. Chao, quite sensibly, gave him a piece of her mind and Chao Kuai-tzu, suddenly sobered, realized how he had misbehaved. He kowtowed before the ladies and asked forgiveness. Mrs. Chao then let him go.

Unfortunately the matter did not stay at that. When Chao Ching came home that evening, tired from a business trip, his wife told him the episode and wanted him to go to Chao Kuai-tzu and remonstrate with him. Her husband postponed the visit till the next morning, but when he came to Chao Kuai-tzu's house, the man, who had become uneasy about yesterday's adventure, had thought it wiser to disappear for some time. Whatever hopes Mrs. Chao might have nourished about the punishment which Chao Kuai-tzu should have suffered at her husband's hands were thus abruptly frustrated and her reaction was extreme. She considered that her reputation had been damaged without repair because she had let the culprit off so easily and threatened to commit suicide. Her husband and daughter-in-law kept her under close observation for the next few days, but once their vigilance relaxed, the woman hanged herself. Chao Kuai-tzu was hunted down and stood trial for having caused Mrs. Chao's suicide. As usual in such cases, he was transferred to the prefecture

and thence to the provincial judicial commissioner and the governor-general. The final sentence was strangulation with remission. It was only because the Board of Punishments in Peking, who had to control the sentence, disagreed with the provincial authorities, that in the end, after four years of wrangling between the provincial and the central administration, Chao Kuai-tzu received a much milder punishment <sup>1)</sup>.

This case has not been selected because the facts are exceptional, but because it has been very extensively reported in the collection *Hsing-an hui-lan*, covering some 8 pages. The various points of view are clearly stated and give a good impression of the attitudes of the partners in the discussion as regards the responsibility of this kind of offender. Before we go into the details of the case, we should have a general idea about the legislation on sex crimes and of the consequences when sex crimes were followed by the suicide of the victim herself or of those who had been indirectly affected.

The legislation on sexual crimes distinguishes between:

Rape (*ch'iang-chien* 强姦).

Fornication with the woman's consent (*ho-chien* 和姦),

Indecent behaviour short of fornication. The term is *t'iao-chien* 調姦 which includes indecent handling of the woman and indecent speech in her presence or within earshot.

Rape is of course a serious crime in any legal system. Its punishment in the T'ang code was banishment, in the *Yuan-tien-chang* it was punished by death when the woman was married and by 107 strokes of the heavy bamboo when she was not. It was punished by death in the Ming and the Ch'ing codes (strangulation with remission), the attempt at rape in the latter two codes entailed permanent banishment at 3000 *li* and the corresponding number of strokes with the heavy bamboo (100) <sup>2)</sup>.

Since rape was often difficult to prove, and it was frequently the subject of false accusation, witnesses or torn clothes were required to substantiate the complaint. The woman was, of course, not prosecuted. When initially violence had been used, but later

<sup>1)</sup> *Hsing-an hui-lan*, Taiwan reprint 1968, pp. 2264-2273.

<sup>2)</sup> *T'ang-lü shu-i*, (Peking 1890), Ch. 26 p. 15a sq., *Sung Hsing-t'ung* Taiwan reprint 1964, p. 894. *Ming-lü chi-chieh fu-li* (Taiwan reprint 1969, henceforth referred to as Ming Code) p. 1833. *Yuan tien-chang* (Ed. 1931, Academia Sinica) Ch. 42, *Hsing-pu* Ch. 4, p. 36 a. *Ta Ch'ing lü-li hui-chi pien-lan* (Ed. 1885, henceforth Ch'ing Code) Ch. 33, p. 1a.

on the woman had voluntarily submitted to the act, the case was considered one of fornication with the woman's consent.

Illicit intercourse with the woman's consent was a comparatively serious offence in T'ang and Sung times punished by 1½ years of penal servitude when the woman was unmarried and by two years when she was married. The man and the woman were considered equally guilty. Under the Mongol dynasty the punishment was changed to 77 strokes of the heavy bamboo when the woman was unmarried, 87 when she was married and 97 when she had been lured away from home. The Ming and Ch'ing codes punished the offence by 80 strokes of the heavy bamboo, 90 when she was married and 100 when she had been lured away from home (*tiao-chien* 刁姦). Intercourse with a girl below twelve years was considered rape. Illicit intercourse with the woman's consent was also considered a joint offence in the penal systems of Ming and Ch'ing, man and woman received the same punishment. If the man was not to be found and the woman became pregnant she alone was punished. For the offence to be prosecuted it was necessary that the couple were apprehended on the spot <sup>3)</sup>.

Indecent behaviour, *t'iao-chien* 調姦, was a rather vague concept. It comprised everything that could lead up to fornication, risky conversation, flirtation, obscene jokes, and *t'iao-hsi* 調戲—fumbling and fondling. By itself these acts or utterances were not punishable or they could only be brought under "reprehensible acts". *T'iao-hsi* could sometimes be constructed as something like indecent assault, the introduction to rape <sup>4)</sup>.

When the *Ming-lü* were compiled a special section was added to the chapter of Crimes against Human Life, *Jen-ming* 人命, which was called "Causing a Person's Death through Intimidation or Pressure", *Wei-pi jen chih szu* 威逼人致死. The section was headed by a *lü* which consisted of four paragraphs, the first and the fourth of which are concerned with our subject. They read:

Whoever on account of a dispute intimidates or exerts pressure upon another person and causes his death shall be punished by 100 strokes of the heavy bamboo. . . . Whoever applies intimidation or pressure to a person in connection with fornication or theft and causes such person's death shall be beheaded <sup>5)</sup>.

<sup>3)</sup> As note 2.

<sup>4)</sup> *T'iao-hsi* has been translated by Philastre (Le code annamite, Vol. II p. 251) as "*attouchements*" and by Boulais (Manuel du code chinois, p. 578) by "*attouchements impudiques*".

<sup>5)</sup> Ming Code p. 1529 sq.

The commentary of the Ming code and later the official commentary of the Ch'ing code of 1646 explained that a "dispute" meant a controversy about family matters, marriage, land or debts, the so-called "small matters", "beheaded" meant beheaded with remission, "causing a person's death" meant death by suicide, the term fornication—*chien* 姦—meant rape as well as illicit intercourse with the woman's consent, it also covered the attempts at those offences. In all cases the offender had to pay 10 taels to the bereaved family as compensation for burial expenses. In case of rape, when not the woman herself, but her husband had committed suicide because he could not stand the humiliation, the *li* also applied, but, of course, only to the rapist.

The edition of the Ming code which has been used for this study only counted five *li* under this heading. One of them dealt with the heroic widow who wanted to be faithful to her late husband and committed suicide when she was forced to marry <sup>6)</sup>. She was the one to receive a *p'ai-lou* and the patron of the marriage, who was so eager to receive the marriage presents was to be punished by beheading. Nakamura caustically observes that such virtuous women often were a considerable burden for a poor family to support <sup>7)</sup>. The picture of the rapacious relative who married her off only in order to obtain the marriage presents may therefore be inspired by the official appreciation of the woman's constancy rather than by more realistic considerations.

At the end of the Ming dynasty, in 1588, a new *li* was incorporated into the code. This *li* is not found in the edition used for this study because that dates from 1585. The *li* reads as follows:

As regards the offender who stands trial for having caused another person's death in connection with sexual intercourse, it is necessary that at the trial facts of applying pressure and outrageous insulting [have been proved]. Whether the person who committed suicide has been the woman in question or her husband, father or mother, or a near relative, in all those cases the fornicator shall be sentenced to be beheaded [as the suicides are considered] to have taken place in connection with the fornication. When the illicit intercourse had been committed with the connivance of the husband and the husband or the woman have been driven to suicide by remorse, or when the husband has committed suicide under pressure of his wife or concubine, or when the woman for any other reason has caused the husband to commit suicide and the fornicator has not been involved in any of these suicides, he shall in general not stand trial for having caused another person's suicide <sup>8)</sup>.

<sup>6)</sup> Ibid. p. 1534.

<sup>7)</sup> Nakamura Shigeo, *Shindai keihō kenkyū*, p. 227.

<sup>8)</sup> Ch'ing Code Ch. 26 hsia, p. 145b-146a, Hsüeh Yün-sheng, *Tu li ts'un i*. p. 870, no. 299-301.

The *li* shows that during the Ming dynasty already the number of persons for whose suicides the fornicator was held responsible had been considerably enlarged and that probably abuses had occurred in which the man had been accused of rape when there had been simply intercourse with consent or that suicides which had no connection with his offence had been attributed to him.

During the Ch'ing dynasty this section was enlarged to comprise not less than 25 *li*, 18 of which dealt in some way or other with rape, fornication with consent or indecent behaviour followed by the suicide of the woman, her husband, parents or relatives. In matters of rape the provisions are comparatively simple. The *li* of 1585 is also found in the Ch'ing code. Attempted rape followed by the suicide of the woman, her husband, parent or near relative was punished by beheading with remission (1723)<sup>9</sup>). Punishments were provided for rape or attempted rape with killing the woman or wounding her, or for tried killing or wounding her husband, parent or near relative who tries to arrest the man<sup>10</sup>). The case when the woman was not virtuous also was worthy of the law's attention and the punishment de-escalated somewhat<sup>11</sup>). The law dwelt also on the situation when the man who had met with the woman's resistance had forced her husband to kill her (*li* of 1815)<sup>12</sup>).

Illicit intercourse with the woman's consent when followed by her suicide when she had been induced to do so by her partner's pressure entailed a sentence to beheading with remission for the men in accordance with the *lii*; without such pressure, when the woman had committed suicide because she was ashamed when the matter had become known, the fornicator was punished by three years of temporary banishment and 100 strokes of the heavy bamboo (*li* of 1763)<sup>13</sup>). When a parent or the husband of the woman having discovered the guilty pair and having tried in vain to kill the fornicator (which could be done with impunity if it were done at the time and on the spot of the offence<sup>14</sup>) committed suicide for anger and shame, the fornicator was punished by the same punishment but the woman should suffer strangulation without remission for

<sup>9</sup>) *Tu li ts'un i* p. 882 no. 20, Ch'ing Code, Ch. 26 *hsia*, p. 153b-154a.

<sup>10</sup>) Ch'ing Code, Ch. 26 *hsia*, p. 151a-b.

<sup>11</sup>) Ibid. p. 154a.

<sup>12</sup>) Ibid. p. 154a.

<sup>13</sup>) Ibid. p. 154-155a.

<sup>14</sup>) Ch'ing Code Ch. 26 *shang*, p. 29a.