

sidering whether an offender merits special consideration, that is, reduction of sentences; the old and the young might be exempted from punishment altogether for certain offenses. See Jones, *Great Qing Code*, 52–54.

CASE 12

The Hong Brothers: A Quarrel over Manure (Hunan, 1738)

This case involves fraternal violence that resulted in a man's tragic death at the hands of his brother. Perhaps the most remarkable element in the report is the colorful language preserved in the oral depositions collected by the district magistrate. In the Confucian tradition of close reading, the magistrate and his superiors in the judicial process chose their words carefully in representing the depositions and summarizing the facts of the case. Each layer of the combined report makes it clear that the elder brother was the instigator of the dispute and the first to resort to violence. The younger brother is represented as the victim of circumstances, one of which was a much older brother who regularly bullied his younger sibling. Perhaps this is why they had lived some distance apart for many years.

MEMORIAL concerning the beating death of a father [sic].¹

The detailed memorandum submitted by Judicial Commissioner Yan Ruilong of the Hunan Judicial Commission detached to the prefectural city of Changsha states that he had examined a certain individual named Hong Yaozhang, thirty *sui* in age, a native of Ningxiang District in Changsha Prefecture of Hunan. The complaint deposes that Yaozhang and Hong Kunwei, who died from an injury he [Yaozhang] inflicted, were brothers from the same womb. They had lived separately for a long time, but normally there was no dislike or ill will between them.

To wit: [Hong] Yaozhang had accumulated a pile of manure; [Hong] Kunwei had instructed him to leave a few shoulder-pole loads for him. Subsequently, when Yaozhang fertilized his fields, it was insufficient, and he used it all up, leaving none behind. On Qianlong 3.2.7 [March 26, 1738], they encountered each other on a main road. Angry that he had been allotted no manure, Kunwei began to upbraid him [his brother] and was the first to strike using his flat shoulder pole for carrying firewood. Yaozhang ran to get away, but Kunwei pursued him closely, hitting him. Then it happened that they came to a deep ditch, and Yaozhang had no avenue by which to escape. Turning, he snatched away the flat shoulder pole in the hope that he [his

brother] would not hit him again. Kunwei further struck him with his fists. Yaozhang then wrongfully used the shoulder pole he had snatched to defend himself, injuring Kunwei on the right side of the head. He [Kunwei] fell to the ground, incurring further scrape wounds on the right side of his ribs in back and on his right buttock in two places. After an interval of four days, he expired. Du Xun, magistrate of Ningxiang, forwarded all confessions, depositions, evidence, and records.

His detailed brief reports: On Qianlong 3.2.12 [March 31, 1738], common subject [*min*] Hong Guangtao and his mother, Ms. Fu, deposed: "My father Hong Kunwei and my uncle Hong Yaozhang, brothers from the same womb, bumped into each other on the road on the seventh of this month and quarreled over some manure. It happened that Uncle injured my father on the side of the head with a flat shoulder pole, and he fell down on the ground. By good fortune, Hong Shize and Hong Wentao heard his calls for help and went forward to carry him to Hong Wentao's house. But the doctor could not heal him, and on the night of the eleventh, his breath ceased. Weeping, we plead that you examine him and report this to the authorities."

This humble office thereupon proceeded at once, riding alone with few followers, taking along a clerk and the coroner, to the place where the corpse lay. In accordance with the law, I conducted an examination. According to the testimony of the widow Fu, the deceased Hong Kunwei was forty-eight *sui* in age. According to the oral report of the coroner Du Meisheng, by his measurement, the body of the deceased was 4 *chi* and 5 *cun* long, and his queue was 1 *chi* long. Examination of the anterior of the body: One lethal wound on the right side of the skull, slanting, 2.8 *cun* long, 3 *fen* wide, and 2 *fen* deep, with broken skin, bleeding, and injury to the bone; this was an injury caused by a blow from the edge of the flat shoulder pole. Posterior of the body: one nonlethal wound to the right lower ribs, round, 3.2 *cun* across, with removal of epidermis. One nonlethal wound to the right buttock, round, 3.5 *cun* across, with removal of epidermis. Both of these are abrasions from falling down. Beyond these, no injuries. This humble magistrate personally made an examination and found no discrepancy. The carrying pole used in the fell act was recovered and compared [with the wound]; it corresponded.

The magistrate then ordered that a coffin be prepared, deputed the local warden and the neighbors to look after it, and then carried out the procedures required for authorization to proceed with a formal investigation.

This humble magistrate summoned the criminal and the witnesses to this court and conducted strenuous interrogations individually.

Interrogation of Ms. Fu: "By what kinship terms did your husband Hong Kunwei and Hong Yaozhang refer to each other? Normally, was there any enmity between them? Why did they get into an argument? How was he beaten to death by Hong Yaozhang? Who witnessed the event? Answer these questions one by one."

She testified: "Hong Yaozhang was my husband's brother from the same womb, but my husband lived in Xiyanzhong and my brother-in-law Hong Yaozhang lives in Pengjiawan; they're several *li* apart. Normally, they were on good terms with each other, and there was no enmity between them. On the seventh of the second month of this year, my husband went to Pengjiawan carrying firewood. When noon passed and he didn't come home, I was about to send someone to look for him, when suddenly I heard that my husband had been injured by my brother-in-law and they had carried him to Hong Wentao's house. I went there just as fast as I could. All I could see was that my husband had a wound on his head and his face was covered with blood. My husband told me, 'Hong Yaozhang had collected a lot of manure in his manure pit, and I had asked him to leave a couple of loads for me. But he used it all up. This made me mad, and I took out my shoulder pole to hit him with it, but he grabbed it away from me. Then I hit him with my fists, but Hong Yaozhang hit me back with the shoulder pole and hurt me here on the right temple. It was Hong Wentao and Hong Shize who carried me here.' Because my husband was injured so badly, the doctor's medicine didn't have any effect, and on the night of the eleventh, he died. Now I only beg that this injustice to my husband be made right!"

Question: "Was that manure pit jointly owned by your husband and Hong Yaozhang?"

She testified: "My husband and brother-in-law had lived separately for many years. That manure pit was Hong Yaozhang's."

Testimony from Hong Guangtao: "I'm still young, and I don't know how to talk. My mother has already testified on all the facts about how my father was beaten to death."

Testimony from Hong Wentao: "About noon on the seventh of the second month of this year, I heard a commotion outside, so I went out to take a look. What I saw was Hong Yaozhang out in front running and his older brother Hong Kunwen chasing after him carrying a shoulder pole. When they got to a ditch that Hong Yaozhang couldn't jump over, he turned around and snatched Hong Kunwen's shoulder pole away from him. Then

Hong Kunwen started hitting him with his fists. Hong Yaozhang struck back with the shoulder pole and happened to hit his older brother on the head. I started yelling, 'Don't fight!' but by the time I got there, Hong Kunwei had already fallen down on the ground. Just then, Hong Shize ran up. We are first cousins, older and younger. When I saw that Kunwei had been hurt, all I could do, together with Hong Shize, was to carry him to the nearest place, which was my house, to give him treatment. I didn't expect that the doctor couldn't help, and on the night of the eleventh, he died."

Question: "Why were the two of them fighting?"

He testified: "I asked him about that. Hong Kunwei said that he told Hong Yaozhang to leave him several loads of manure, and when Yaozhang used it all up, Kunwei got mad, and they came to blows about it. The two brothers had lived separately for many years, but ordinarily they were on the best of terms."

The testimony from Hong Shize was the same as that of Hong Wentao.

Interrogation of Hong Yaozhang: "Where are you from? How old are you this year? What relationship was the deceased Hong Kunwei to you? Ordinarily, what grievance was there between the two of you? Why did you start a fight with him? What weapon did you use to injure him so severely on those several sites that he died? Answer these questions truthfully one by one."

He testified: "I'm from this district, and this year I'm thirty *sui*. Hong Kunwei was my older brother from the same womb. We had lived separately for many years; he lived in Xiyanzhong, and I live in Pengjiawan. They're several *li* apart. Ordinarily, we're on good terms, with no grievance at all between us. It was all because Brother asked me for several loads of manure in the beginning of the second month of this year, and at that time, I agreed to supply him with some. But it turned out that I used up all the manure in the manure pit fertilizing my own fields and still didn't have enough, so I didn't give him any at all.

"On the seventh of the second month, I saw Brother while I was walking along the road. Brother started cursing me, and I said back to him, 'I didn't have enough manure for my own fields. If you still have to have some, I'll make up a couple of loads for you tomorrow, and let that be that.' But Brother wouldn't put up with any explanation from me, and he took the carrying pole out of his load of firewood to hit me with it. I turned around and walked away. But Brother just got madder, and he came chasing after me. By luck [*yuan*], I came up to a deep ditch that I couldn't jump across. There was no path on either side, and no place for me to escape. All I could do was turn around and grab his shoulder pole. At first, I thought that if I took it away

from him, he wouldn't hit me anymore. How was I to know that Brother would start hitting me with his fists? I panicked, and I hit him back with the first thing at hand, which was the shoulder pole. I never thought that I would hit Brother on the right temple of his head and that he would fall down on the ground. Just then, Hong Shize and Hong Wentao also ran up, and they carried Brother to the nearest place, which was Hong Wentao's house, to give him treatment. As quick as I could, I got the doctor to come, but his medicines had no effect. Four days later, on the night of the eleventh, Brother died. It was all my fault, and I deserve to die. There's no excuse I can make."

Question: "Your brother also had injuries on the ribs in the back on the right side and on his right buttock. How did you hit him there?"

He testified: "Those injuries on the ribs in the back on the right side and on his right buttock are scrapes he got when he fell on the ground. I never hit him there."

Further questioning: "So whose manure pit was it, after all?"

He testified: "It was my own."

These were the words taken in testimony at my court.

The following summary by Magistrate Du Xun merely restates the facts as revealed in testimony, adding nothing new. He concluded:

This humble magistrate having submitted reports of autopsy and evidence, and having respectfully received the order to examine the case, carried out an investigation at this court. The aforementioned criminal having confessed to all the details above without hesitation, Hong Yaozhang corresponds to the law stipulating that a younger brother who strikes his own elder brother, resulting in death, will be decapitated.² Therefore, I recommend that he be sentenced to immediate decapitation. According to statutes, he should be tattooed.³ As for Hong Wentao and Hong Shize, who tried to stop the violence but failed, I cannot make a recommendation as to their punishment. I should submit this to the prefecture for its investigation and determination as to whether or not this is appropriate.

At this point, the report records that the Changsha prefect Qian Rubi and the Hunan provincial judicial commissioner Yan Ruilong both reviewed the case, only to reach precisely the same conclusion: that Hong Yaozhang should be beheaded without delay. The case was then submitted to the Censorate, and from there to the Board of Punishments in the capital. No substantial changes were made in wording in summarizing the case; only at the Board were the nephews Hong Wentao and Hong Shize

released without punishment for failing in their attempt to prevent the tragedy. The case concludes with the note that all investigations and decisions had been reached within the time limits established by law. The final submission is dated Qianlong 3.10.12 (November 23, 1738) and signed by Zhang Qu, in the Censorate. According to its cover, the imperial decision was to remand the case to the Three Judicial Offices for their investigation and decision concerning punishment. It is possible, then, that Hong Yaozhang was given a reduced sentence; certainly this report provides a sympathetic view of the circumstances and the acts that resulted unintentionally in this devastating family tragedy.

NOTES

Source: *Neige tiben Ming'an Douou lei* [Grand Secretariat routine memorials, Homicides during Affrays], Qianlong 106 *bao*, Qianlong 3.10.12 (November 23, 1738).

1. The case begins by erroneously reporting a "patricide" (*fuming*) rather than a "fratricide" (*xiongmíng*) by beating.

2. This is in accordance with Article 318 of the Qing penal code. See Jones, *Great Qing Code*, 303.

3. This is Article 317 of the Qing penal code. See Jones, *Great Qing Code*, 301–2.

CASE 13

Ms. Wang: Incest and Violent Homicide (Jilin, 1738)

TRANSLATED BY MARAM EPSTEIN

In this case, the deposition of the accused, a young adulterous woman, is placed first in the record, unlike most cases, in which a respected family or community member establishes the authoritative version of the events.¹ Perhaps due to the briefness of the clandestine relationship between the father-in-law and daughter-in-law, no outsiders had information worth recording. Many of the questions or pieces of information common to depositions in other homicide cases are absent: there are no comments on the nature of the relationship between the victim and his wife, on when she entered the household, or on the relationship between the victim and his father. In fact, there is no information about the victim at all, such as age or physical size. The wound on Ms. Wang's shoulder is not clearly accounted for, nor was there any attempt to make sense of the brief but garbled testimony given by the victim's mother. Also absent are terms denoting emotional states conventionally used in narrating the motivations for homicide. The nature of the relationship between father-in-law and