

PARRICIDES IN JAPAN

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I. *The Problem*

The reason why the writer has taken up "Parricides in Japan" as the subject of an article intended for foreign readers is dual, namely that he has been studying this subject from a criminological interest for some time and that recently two American psychologists interested in this subject sent him enquiries about it. Further, the provision of the Penal Code of Japan concerning parricide appears to him as worthy of being submitted to foreign scholars as a topic of discussion, especially in view of the fact that the provision has lately been made a subject of controversy of deep interest as a theoretical problem in criminal law and a judicial problem of the Supreme Court in its relation to the new Constitution of Japan.

Enquiries from foreign scholars regarding parricide evidently originated from the interest taken by psychoanalysts in this sort of crime. As is well known, the idea of *Oedipus complex* was enunciated by Sigmund Freud, the first exponent of psychoanalysis and it has been since regarded as one of the fundamental principles of psychoanalysis. Starting from his theory that man has a natural tendency to be attracted to the parent of the sex opposite to his own while rebellious to the one of his own sex, a similar principle at work in parricides that the offender and the victim are of the same sex. Such sex relation between the offender and the victim involved in parricide would be interesting to foreign psychoanalysts, psychologists, and psychiatrists. It will now dwell upon the actual condition of parricides in Japan focussing our attention on this problem.

Before proceeding further, however, it will be well to give heed to the provision concerning parricide in the Penal Code of Japan. Article 200 of the same Code provides: "A person who has killed his own or his spouse's lineal ascendants shall be punished with death or penal servitude for life." Compared with Article 199 of the same Code which deals with homicide in general, to the effect that "A person who has killed another shall be punished with death or penal servitude for life or for not less than three years," it is plain, from the provision itself, that the penalty

given in the former article is remarkably heavier than that in the latter. Actual sentences, however, delivered in court go even a step further in the alleviation of punishment of an offender in ordinary homicide; he is very rarely, if at all, subjected to death sentence or penal servitude for life, in some cases the punishment being as light as three years' penal servitude, the execution of which is, moreover, often suspended.

In the Penal Code of Japan, relating to homicide, no other provision exists than the two articles just referred to, excepting those anent homicide committed by a robber or a ravisher. Consequently, the offence of killing others, irrespective of whether it be murder or manslaughter, is subject to comparatively light punishment so long as the victim is not the lineal ascendant of the offender. Heavy penalty is meted out only in cases where the victim happens to be a lineal ascendant of the offender.

The lineal ascendant, who is the object of parricide in the Penal Code of Japan, is, as is stated in the Code, the offender's or his spouse's lineal ascendant. Even the parent-child relationship resulting from adoption is treated in exactly the same manner as the one originating from natural kinship. It is to be remembered here that as the conception of the lineal ascendant as was accepted in the Penal Code has changed through the influence of the new Civil Code of Japan adopted after World War II. The old conception had a much wider coverage. Indeed, formerly not only the offender's own parents, but also his foster- and step-parents were construed to be his lineal ascendants. Under such circumstances, the facts to be mentioned in the present article naturally relate to those instances which fall under the lineal relationship as understood in the pre-amendment days.

That parricide is subjected to a remarkably heavier punishment than ordinary homicide is undoubtedly due to the fact that the Japanese society is ruled by the old Chinese ethical philosophy. In the days when Japan was little affected by Western civilization, parricide was regarded as of a much more vicious character. As the "Taiho-Code", the oldest systematic penal code of Japan, promulgated in 702 A. D., was based on an old Chinese Code, parricide was treated therein as one of the eight crimes of the most wicked nature, and in the Tokugawa Shogunate days (1603—1867), when the influence of Chinese classical philosophy was very much stronger, that crime was, together with the killing of one's master and that of a husband, liable to the capital punishment. Despite the fact that opportunities were afforded Japan for reconsideration after 1868 as she came to be strongly influenced by Western civilization, the traditional idea of deference to one's lineal ascendants has come down to this day as part of the good morals and manners, with the consequence that the crime of parricide is regarded as much more emphatically against morals than ordinary homicide, and the heavier penalty for this crime has been preserved even in the amended Penal Code of 1947.

The great revolution in the popular thought witnessed by Japan after World War II. has led to the expulsion of the remnants of the feudal system one of its main objectives, and the principle of the equality of people in the eyes of the law was established by the new Constitution, which declares in Article 14, paragraph 1:

"All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."

In regard to the protection afforded by the new Constitution, the infliction of heavier punishment upon a parricide than upon an ordinary homicide has brought about a controversy whether it involves discriminatory treatment in law, in view of the fact that here the discrimination is in favor of the lineal ascendant on account of his status in the family and that in the case of an ordinary homicide, the offender is liable to a lighter punishment than that imposed upon a parricide. This point was discussed by specialists of constitutional law as well as of criminal law, culminating in a judgment (on October 11, 1945) by the Supreme Court in which it was held that Article 200 of the Penal Code was based on the morals common to mankind and that it was not unconstitutional because it did not fall under the "discrimination because of social status" or run counter to any other consideration in the new Constitution. Since this adjudgment, scholars have been rather reticent in voicing their opinions, but, as the present writer assumes, some of them are sticking to their own conviction, that the said article is unconstitutional.

The present writer has been of opinion that the inflicting of a heavier punishment upon a parricide is not unconstitutional and tried by publishing his opinion three times prior to the court's judgment, to induce the court along the line of his contention. He now takes the opportunity to make public his views and give a general picture of the actual condition of parricides in Japan so that he may be able to enlighten foreign scholars who are taking a criminological interest in this subject.

Needless to say, the question of constitutionality of the said provision of the Penal Code concerning parricide has no direct bearing upon the question of the sex of the offender and the victim. But as both are matters concerning parricide and have recently engaged the attention of the specialists, the two phases of parricide are here taken up.

II. *General Picture of Parricides and the Ratio of Female Participation*

Figures available at present for the study of this problem out of the criminal statistics of our country belong to the 59 years, from 1882 to 1940. The above table was compiled from the data annually supplied by

the Ministry of Justice, and there are some lacuna in the table owing to the oversight of sex of the offenders.

In glancing through the figures to find the general trend of changes in the number of cases from year to year during the period for a little over one half-century shown above, attention will be directed to the following points, namely that a remarkable change is noticeable in the occurrence of the crime between the period before 1908 and that after 1909. A comparison of the annual occurrence of the crime during these

Table 1. Number of Offenders Arrested for Parricide
Per Annum (1882—1940)

Year	Males	Females	Total	Year	Males	Females	Total
1882	7	0	7	1912			29
1883	14	1	15	1913			23
1884	5	0	5	1914			22
1885	6	0	6	1915			35
1886	9	1	10	1916			30
1887	8	0	8	1917			26
1888	12	1	13	1918	19	2	21
1889	5	0	5	1919	27	5	32
1890	5	0	5	1920	29	6	35
1891	5	3	8	1921	26	2	28
1892	6	0	6	1922	18	0	18
1893	8	1	9	1923	22	0	22
1894	14	2	16	1924	24	0	24
1895	9	0	9	1925	16	1	17
1896	15	2	17	1926	24	2	26
1897	13	1	14	1927	29	3	32
1898	14	1	15	1928	8	5	13
1899	12	1	13	1929	12	0	12
1900	9	1	10	1930	15	3	18
1901	6	1	7	1931	27	3	30
1902	10	1	11	1932	31	6	37
1903	15	0	15	1933	34	2	36
1904	11	1	12	1934	37	4	41
1905	7	0	7	1935	38	5	43
1906	12	3	15	1936	26	1	27
1907	2	0	2	1937	22	4	26
1908	10	0	10	1938	25	5	30
1909			20	1939	19	4	23
1910			24	1940	14	4	18
1911			25				

two periods shows that the number of offenders during the latter period is about twice the number of the former period. This may probably be explained by the following two reasons: (i) Since the Penal Code of Japan was amended in 1907 and came into force in October, 1908, the figures for and after 1909, show the number of offenders that come within the purview of the amended Penal Code (which is even now in force); while, under the old Penal Code, victims of parricide were limited to lineal ascendants of the offender, under the amended Code, the concept of lineal ascendants was extended to include those of the offender's spouse; (ii) Changes have been made in the punishment of parricides which was death penalty under the old Penal Code, and death or penal servitude for life is prescribed under the new Code.

It is to be regretted that no distinction of sex can be made in the data covering the period of nine years between 1909 and 1917 because of lack of information in the official material.

When the relative ratio of male to female offenders involved is worked out from the total for the fifty years, a period during which the sex of offenders is known, as shown in the above table, the male ratio is 8.9 to 1 female. The ratio is lower than the average male ratio of all other crimes provided for in the Penal Code. In other words, more females are involved in parricides than in all other crimes prescribed in the Penal Code.

Table 2 shows a comparison of parricides with ten other representative crimes.

These figures indicate the number of persons found guilty by the

Table 2. Ratio of Males to Females in Crimes of Various Kinds (1936)

Crimes	Males	Females	Total	Number of Males as against 1 Female
Arson	600	133	733	4.5
Forgery of documents	3,522	371	3,893	9.5
Gambling	78,714	7,384	86,098	10.7
Homicide	687	118	805	5.8
Bodily injury	31,422	625	32,047	50.3
Abortion	222	657	879	0.3
Theft	96,314	7,044	103,358	13.7
Robbery	878	3	881	292.7
Fraud	50,275	2,308	52,583	21.8
Embezzlement	17,368	644	18,012	27.0
All crimes under the Penal Code, inclusive of all the above.	367,467	29,618	397,085	12.4

public procurator during 1935, namely persons against whom public action was instituted and those who were granted suspension. That year was specially chosen as one in which the criminality was little likely affected by the war. The reason why the findings of the public procurator, instead of the court's sentence of "guilty," were taken here in statistics is that in Japan even in case the public procurator finds a suspect guilty, he may use his discretion to dispose of the case practically without prosecuting the offender, by virtue of Article 248 of the Code of Criminal Procedure (the Article was 279 in the old Code which was in force in 1935, but the contents were the same as in the new Code) which reads:

"If after considering the character, age and situation of the offender, the gravity of the offence, the circumstances under which the offence was committed, and the conditions subsequent to the commission of the offence, prosecution is deemed unnecessary, public action may be dispensed with."

Consequently the prosecution of more than 70 % of criminal cases coming under the Penal Code are dispensed with by the public procurator and these cases do not become the objects of the court's judgment. Thus the number of sentences of guilty would rather fail to give a true picture of crimes. It will therefore be seen that the sum total of persons found guilty by the public procurator gives a picture most approximate to the actual condition of criminality. As a matter of course, it must be admitted that some of the persons who are found guilty by the public procurator, may, when submitted to public trial, be found not guilty, but such cases are negligible when large numbers are taken into consideration.

As is obvious from the above, while the male ratio is 12.4 against the female ratio 1 in the total of crimes provided for in the Penal Code, the ratio of female participation in crime varies in accordance with the kind of crimes. For instance, in such a crime as abortion which, from the nature of the crime, is usually committed with the participation of a pregnant woman, the ratio of male offenders is only 0.4 against 1 female. This is the crime in which the relative frequency of female participation is largest among the various offences cited above. In all other crimes male participation is always larger than female participation. Still, arson, for instance, which is generally known as a feminine offence, represents a larger female participation than other crimes. In the forgery of documents and gambling, the predominance of men's participation is below the average of the total number of offenders relating to the crimes provided for in the Penal Code. In inflicting bodily injury, on the contrary, male participation is 50 times as much as that of women. In robbery, male participation is 292 times as much as female participation. This shows that bodily injury and robbery are crimes characteristically masculine. In contrast to these, to the perfect surprise of the man in the street, in homicide the ratio of males against females is no more than 5.8,

the predominance of males being less as against in the total number of offenders relating to the total crimes provided for in the Penal Code. Here we are given a glimpse of the nicety of difference in the nature of crime between wounding and homicide. In spite of the fact that parricide is a sort of homicide, in the former the rate of female participation is lower than that in the latter. Although it is difficult at present to give a satisfactory explanation of the difference between the ratios relating to parricides and homicides, it is an undeniable fact at any rate that, contrary to commonsense assumption, women are very liable to participate in parricides as well as in ordinary homicides. This fact shows that, when driven to extremity, from which no other means of escape is available than homicide, even females proverbially tender will resort to desperate conduct. A famous Japanese proverb is just to the point which says: "A rat at bay bites a cat." Truly in such a psychological situation such occurrences are possible.

III. *Relation of the Offender to the Victim*

No further particulars than those above mentioned being ascertainable from the official statistics compiled by the Ministry of Justice, the writer has tried to collect concrete cases illustrative of this crime in recent time, and succeeded in obtaining reports on 36 cases from various districts throughout the country. The data were acquired from reports made in response to enquiries from the writer to the 49 district public procurator's offices throughout the country in July, 1947, when he held the position of public procurator at the Tokyo High Public Procurator's Office. The data were gathered on parricide cases sentenced after the termination of World War II (August 15, 1945). The 36 cases collected here do not of course cover all the parricides perpetrated during the period, but they undoubtedly represent the all-round condition of parricides without distortion, since they were collected at random, without special selection. Of those 36 living cases some close examination will be made in the following. One of the 36 cases including a case of complicity, the total of offenders comes up to 37.

1. Condition of Offenders.

The 37 offenders are divided into 31 males and 6 females. Although this shows a slightly larger female participation than the one shown in Table 1 given above, it does not call for special attention, due to the meagerness of the aggregate number of available cases.

The age of offenders is given, from the nature of data, in accordance with the Japanese custom in which, different from the Western way of

describing as one year the completion of one year after one's birth, a person is reported as one year old from the day of one's birth, another year being added on the coming of a new calendar year. According to this method of describing age, one's age is reported, roughly speaking, as older by one or two years than in case described by the Western method. Considered in this way, 7 males and 3 females were of the age of 20 years or younger, 14 males and 2 females ranging from 21 to 30 years, 6 males and 1 female from 31 to 40 years, 3 males and no female from 41 to 50 years, and 1 male and no female from 51 to 60 years.

By occupation, many of the offenders involved in this crime were engaged in agriculture, especially persons of such lower social position as day-laborers. A primary school teacher was the solitary case of a person engaged in intellectual occupation. But as he was adjudged not guilty, his mental derangement having been acknowledged, in fact not a single person could be found in normal mental condition and engaged in intellectual occupation. This evidences the fact that this kind of crime is generally perpetrated by person of low mentality.

On looking into the education of offenders, only one male was a university graduate, a male and a female "semmon-gakko" (roughly corresponding to a college) graduates were found, but they were acknowledged as "weak-minded." It is true that there were two male middle-school graduates, but they were either mentally deranged or weak-minded.

It may therefore be concluded that only very few normal persons with decent education were found among parricides.

Since persons who have had the advantage of a high education are generally critical toward the surviving custom of feudalism, they do not blindly adhere to the morals of the Confucian creed including filial piety. It is only natural that they should not be amenable to slavish submission to their lineal ascendants, and take a critical attitude toward improper conducts of the latter. At the same time higher education opens up a wider area of free mental activity, and minimizes to that extent the possibility of being driven to a sad plight. Even in oppressed circumstances, in which a person with inadequate education would resort to parricide to extricate himself from his predicament when in his imprudent judgment no other means were available, a person with a high education will often find some peaceful means of escape. Higher education helps him to emancipate himself from the slavish submission on the one hand, and on the other to get rid of the danger of committing parricide.

Inferior condition of mentality is also considered to have a similar effect as occupation and education. Out of the small number of 37 offenders, two were acknowledged to be mentally deranged, and twelve were acknowledged as weak-minded. When these two classes are combined, the mental defectives come upon to fourteen, or 38% of the total. This

shows a remarkable high percentage of person with mental defects as compared not only with the general population but also with offender in general. Besides, in judicial praxis cases where such acknowledgment is accorded are limited to instances so conspicuous as to arrest the attention of judges who are not psychiatrists. It must thus be presumed that among the 37 cases cited above there probably will be a greater number of mentally unsound offenders than those judicially acknowledged. Another consideration must not be neglected which is that, in addition to the 37 offenders above mentioned, there will probably be offenders who have not been made the subject of public trial because of mental defects. For, should a man's mental condition be so apparently defective, as to justify the presumption of judicial decision as mental derangement, he will forthwith be disposed of as a mental defective, without undergoing court's trial as an accused, or even being put to search as a case of offence. Thus, it will be perfectly safe to presume, as a matter of fact, the existence of a substantial number of the crime committed by mental defectives in addition to the 38 % above referred to.

When the three characteristics found in occupation, education and mental condition are conjointly taken into consideration, combined with the fact that parricides are generally committed by young persons, the general condition of the parricide is the narrowness of range of free mental activities. The offender is apt to be driven to a fix, and being devoid of the ability to think out some other means of escape, takes to parricide as the last resort.

2. Condition of Victims.

As regards the victims, attention will be given to his age as well as his relation to the offender. Not much seems to be worthy of special remark in regard to age. But it is a fact worthy of attention that among the victims there are rather a large number of persons over seventy years of age, extremely bigoted and dissolute, with a nasty character inviting strong attack from their children or grandchildren.

Let us now proceed to sum up the personal relation between the offender and the victim. The lineal ascendant victims of the male offender are 13 fathers, 2 grandfathers, 5 mothers, 1 stepmother, 1 grandmother, 1 foster-mother, 3 cases of father and mother, and 3 cases of foster-father and -mother. This makes a total of 36 which is divided into 22 male and 14 female victims. Female offenders had for lineal ascendant victims 2 fathers, 1 foster-father, 1 husband's father, 1 case of father and mother, 1 case of husband's father and mother, making a total of 8 victims divided into 6 males and 2 females.

What calls for special attention in respect to personal relation of the offender to the victim is the fact that, in the case of male offenders, 39 % of the victims (14 victims out of the total of 36) are of the sex opposite

to the offender's while, in the case of female offenders, 75% (6 victims out of the total of 8) of the victims were of the male sex. These figures are merely the result of a summary observation of offenders and victims of opposite sex. If a more minute examination is made as to which parent is the principal object of parricide, in cases where the both parents are victims, and if kindreds are excluded, the ratio of victims of the sex opposite to that of the offender become higher. Generally speaking, the sex relation between the offender and the victim is as stated above. Most young daughters killed their fathers, and the act originated in most cases from their sympathy with their mothers. Among offending sons, as many as 39% killed their mothers, i. e. parents of opposite sex. Some cases are even found in which the offender killed the parent of the opposite sex in league with the parent of the same sex. Although Freud's formulae are not supported just so by present-day psychoanalysts, the above cited facts must be regarded as altogether too contradictory to explain the principle of affectional relation of parents and children only by *Oedipus complex*.

One thing of which we become aware in a general survey of sex relation of the offender and the victim involved in parricide is the fact that the victim is, regardless of the sex of the offender, in most cases a male lineal ascendant. Why are male lineal ascendants liable to become victims in parricides? In so far as the conditions of the family tie in this country are concerned, this may be due to the predominance of paternal power in the Japanese family. This is a characteristic feature of Oriental society and also peculiar to Japanese society in which the position of the male is much higher than in the West. As a result of these preeminent paternal rights, male lineal ascendants often act tyrannically, and tyranny in turn calls forth resistance on the part of lineal descendants. The preponderance of cases in which victims are fathers or grandfathers is, it seems to the present writer, rather attributable to these social conditions than to *Oedipus complex*. The neo-Freudian theory might be good enough to explain this phenomenon, but it will at least be a hard nut for classical psychoanalysis to crack.

Besides the particulars about parricides mentioned above, the writer has collected data concerning typical cases of the crime, but these have to be omitted at present for want of space. There is one point, however, to which the readers' attention may be called in connection with the circumstances stated below. That is, a remarkably large number of offenders are mental defectives, together with the fact that many of the victims are persons of extreme atrocity. To the regret of the writer, the space available to him forbids dwelling on these case-patterns. But so much can be said that a person falls a victim in parricide because he is so abnormally cruel and hardhearted that the very existence of such a parent is a matter of wonder to a man of common sense. On the other hand, should a parent

whose behavior is normal be killed, that is due, in most cases, to some mental defect on the part of the offender.

Imbroglios between near relatives are poignant. Psychologically stated, this is because near relatives expect too much of each other. This can be accounted for by the fact that the difficulty, if not impossibility, of satisfying human want in face of the scarcity of goods during and immediately after the war often culminated in the crime of parricide. The dearth of food which prevailed in those times was actually reflected in offences of this kind, bringing out the disgrace of near-relatives killing each other.

IV. *Pros and Cons regarding the Unconstitutionality*

The real condition of parricides shows, as is clear from the above statement, that the victims are generally to be blamed in many respects. Therefore it may appear cruel that, notwithstanding the extenuating circumstances in favor of offenders, the penalty upon a parricide as provided for by law is death or penal servitude for life which is heavier than the punishment imposed on an ordinary homicide. Examination into the actual punishment brings into light that, though many accidental circumstances intervene, no death penalty was inflicted upon the 37 offenders mentioned above, only eleven convicts having been sentenced to penal servitude for life. Out of the remaining 26 offenders, 24, that is, exclusive of 2 who were found not guilty, or nearly 69% of the guilty 35, were put to a lighter punishment by taking extenuating circumstances into consideration. Strictly speaking, the extenuation must be restricted to exceptional cases. But in this kind of crime it is considered so frequently as though it were the rule. This is only saying that the punishment as provided by law is too heavy when brought face to face with actual fact. After all, the rendering of such light punishment reveals the frequency of public sympathy being shown toward offenders in parricides.

On the other hand, it cannot be denied that there are offenders involved in this crime who are wicked and do not deserve our sympathetic consideration. Here arises the question of the advisability of the abolishment of Article 200 of the Penal Code. If it were impossible to inflict a heavy penalty such as death or penal servitude for life upon an offender of wicked nature, in case the Article were struck out, that would be unreasonable in comparison with penalties for other crimes. But such is not the case. For, inasmuch as Article 199 of the same Code includes death and penal servitude for life, there is a way of imposing a heavy penalty pursuant to that article upon parricide whose criminal circumstances are bad. It can be concluded therefore that, even if the provision of Article

200 whereby a parricide is made liable to specifically heavy punishment were abolished, there is no fear that, if left to the court's discretion, the punishment would become unduly light. For this reason the writer has been insisting upon the advisability of the abolishment of Article 200 on the coming occasion of an amendment of the Penal Code.

However, this is independent from the question whether Article 200 of the Penal Code is unconstitutional or not. If the writer is asked whether the Article is unconstitutional, he would say "No." The theoretical question of constitutionality should not be hastily decided in the negative just because the Article is destined to be abolished in any case. This would be disregarding the distinction between theory and policy, or confusing legislative argumentation with interpretation.

The opinion of regarding the provision of inflicting heavy punishment upon parricide as unconstitutional is based on the view that the provision falls under "discrimination" because of "social status." Against this, some of our constitutionalists (e. g. Prof. Joji Tagami) hold that the relative position of lineal ascendant and lineal descendant does not fall under "social status" referred to in the Constitution. If it does not come under "social status," the question resolves itself then and there, and there is no need of carrying on the discussion any longer. But even among constitutionalists, some scholars (e. g. Prof. Toshiyoshi Miyazawa) consider it as one of "social status," while criminologists, almost without an exception, proceed with their discussion on the basis of interpreting it as "social status" in accordance with the criminological usage of the term "status."

Although this question may be treated in its various aspects, and different grounds may be advanced, the present writer denies the argument of unconstitutionality for one fundamental reason. Equality under law as guaranteed by our Constitution is a warranty that none of the people, as members of the community, shall be subject to discriminatory treatment in the application of law. But a child does not remain a child forever; it grows into a parent in time. And law provides no obstacle to a child becoming a parent. Considered as a member of the community, a person is given by law absolutely equal treatment throughout his life. If a person is held under heavy responsibility during a certain period of life, and under warm-hearted protection during another, that is no discrimination. The same is true of the infliction of light punishment upon juveniles (the Juvenile Law, Articles 51 and 52) as well as in the stay of the execution of punishment accorded to the aged (the Code of Criminal Procedure, Article 482, I, 2).

In passing, a lesson might be taken from French and German legislative antecedents in which, while propounding the principle of equality of treatment in their constitutions, a specially heavy penalty is provided for upon parricides in their penal codes (the provision was revised in the

present German law).

Unless the constitutionality of Article 200 of the Penal Code is granted, the consideration of parental relation in the determination of penalty, after the abolishment of Article 200, would be unconstitutional. Moreover, it will also become infeasible to determine penalty by taking into consideration the personal relation of the offender and the victim. That will be in this disagreement with the fundamental principle of modern penal administration — the individualization of punishment. The provision for imposing a heavy penalty on parricide is not unconstitutional. But, aside from that question, there is no reason why that provision must be preserved, and at the same time it is clear that the abolishment of the provision is better because its preservation might bring about a case in which an unduly heavy penalty has to be imposed on an offender who deserves sympathetic consideration in the determination of penalty.