

106448 - He ordered the zaani to marry the zaaniyah and abort the foetus; what should he do?

the question

My father advised his nephew to abort the foetus he bore with a woman as result of adultery. She was about two months pregnant then. They aborted the foetus then he divorced her.

The question: is my father sinful of advising to kill that foetus while he knew it is abhorrent to do so, but he feared it causes shame to the whole family?

I reminded my father of this incident and he admitted his mistake and is regretful for it. He does not know what to do or how to expiate for this sin. Is he considered the killer of the foetus as he forced his nephew to make his wife abort the foetus?

Please bear in mind that my father is a diabetic old man and suffering from hypertension and stroke. He cannot fast if the expiation is fasting.

Detailed answer

Firstly:

If the pregnant woman aborts the foetus by taking medicine and the like, after four months of pregnancy, then the diyah must be paid according to scholarly consensus, and expiation must be offered according to some of them.

The diyah in this case is a male or female slave; if that is not possible then the equivalent value in camels must be given, namely five, because the diyah of the foetus is one tenth of the diyah of his mother, and

it is well known that the diyah of a free Muslim woman is fifty camels, so the diyah of the foetus is five camels.

This diyah must be paid by everyone who was directly involved in aborting the foetus; that includes the doctor and the woman if she took medicine to help with the abortion; the diyah must be paid to the heirs of the foetus, except that the killer does not take any of it.

The evidence for that is the report narrated by al-Bukhaari (6910) and Muslim (1681) from Abu Hurayrah (may Allaah be pleased with him), who said: Two women from Hudhayl fought and one of them threw a rock at the other and killed her and the child in her womb. They referred the matter to the Messenger of Allaah (peace and blessings of Allaah be upon him) and he ruled that the diyah for her foetus was a slave, male or female, and he ruled that the diyah for the woman be paid by her (the killer's) 'aaqilah [the relatives who must pay the 'aql or diyah (blood money), i.e., the male relatives on the father's side].

With regard to the kafaarah or expiation, the Shaafa'is and Hanbalis are of the view that it must be offered.

The expiation for killing is to free a slave, and if that is not possible, to fast for two consecutive months.

If the abortion took place before four months of pregnancy, then it is haraam, as has previously been explained in the answer to question no. [42321](#), but no expiation or diyah is required, because the soul had not been breathed into it.

Secondly:

If this incident involved one who issued instructions and one who actually did the deed, such as a man who ordered the doctor to carry out

the abortion, or who ordered the woman to take medicine, then the liability (diyah and expiation) is borne by the one who actually did it, not the one who ordered him. See Mataalib Ooli al-Nuha (6/50).

Thus it is clear that your father does not have to do anything but repent, because suggesting and ordering someone to have an abortion is obviously an evil deed, so he has to repent to Allaah, regret what he did and do a lot of righteous deeds such as giving charity and so on, in the hope that Allaah will accept his repentance. Allaah says (interpretation of the meaning):

“And verily, I am indeed forgiving to him who repents, believes (in My Oneness, and associates none in worship with Me) and does righteous good deeds, and then remains constant in doing them (till his death)”

[Ta-Ha 20:82]

And Allaah knows best.