112116 - Is it permissible for the one who has been accused of adultery to pardon the one who accused him and waive the punishment for him?

the question

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Detailed answer

Praise be to Allah.

The one who accuses a chaste person of adultery must be subjected to the hadd punishment for such slander, because Allah, may He be exalted, says (interpretation of the meaning):

{And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes} [An-Nur 24:4].

The hadd punishment for accusing a chaste person of adultery is the right of the one who has been accused, because the purpose of this punishment is to confirm the innocence of the one who was wrongly accused and to show that the accuser is lying. Hence the hadd punishment for accusing a chaste person of adultery cannot be carried out unless the one who has been accused demands that. This is the view of the four imams (Abu Hanifah, Malik, al-Shafa'i and Ahmad).

In fact, if the one who has been accused demands that the hadd punishment be carried out then pardons the accuser, the punishment is waived, just as if there is a demand for legal retaliation (qisas), then the victim [or his heirs] pardon the perpetrator.

Ibn Qudamah (may Allah have mercy on him) said in *al-Mughni* (12/386):

What matters in order for the hadd punishment [for accusing a chaste person of adultery] to be

carried out is that the one who was accused should demand it, because it is his right. Therefore it cannot be done before he demands it, as in the case of all other rights…

If he demands that the hadd punishment be carried out, then pardons the accuser, the punishment is waived. This is the view of ash-Shafa'i. End quote.

It says in *Zad al-Mustaqni'*: That is the right of the one who was accused.

Shaykh Ibn 'Uthaymin (may Allah have mercy on him) said in his commentary:

That – meaning the hadd punishment for accusing a chaste person of adultery is something that is due to the one who was accused, and it is not something that is due to Allah. Abu Hanifah said: It is something that is due to Allah, may He be glorified and exalted.

Based on that, the one who was accused has the right to waive the punishment if he pardons the accuser. So if he pardons him after he accused him of adultery, then the hadd punishment for that is waived, because it is something that is due to him. This is like if he was owed money, then he waived the loan; in that case the loan would be waived. Thus he cannot take what is due to him without demanding it. Therefore so long as the one who was accused remained silent, we do not say anything to the one who accused him, and even if the case reaches the authorities, no hadd punishment can be carried out on him, unless the one who was wrongfully accused comes and demands that… Therefore several things result from the fact that demanding the hadd punishment is the right of the one who was accused, including the following:

1. It is waived if he pardons him.

2. The punishment cannot be carried out without his request… The more correct scholarly view is that that is the right of the one who was accused."(A*sh-Sharh al-Mumti'* 14/284-286).

See also: *al-Majmu'* (22/128); *Hashiyat ad-Dasuqi* (6/331).

And Allah knows best.