# 45522 - She claims that her husband raped her daughter and left; is she divorced automatically?

**the question**

A muslim woman married a muslim man when her youngest daughter was a few months old. he played the role of father.it has been discovered, after he returned to his country of birth for a visit.that he infact sexually molested the little girl and possibly rape.he denies it..but the medical reports confirm this.after weeks of therapy, the child confirmed that it was him that "played" with her..she still thinks it was a cool thing that happened.he has since not returned also sd the authorities are looking for him....QUESTION DOES THIS NULLIFY THE MARRIAGE AUTOMATICALLY? QUESTION: IF NOT -HOW CAN THE MOTHER NULLIFY THIS MARRIAGE.

**Detailed answer**

Praise be to Allah.

Firstly:

Undoubtedly what the husband did to this small child – if it is proven – is a serous crime, for which he deserves to be stoned to death. Perhaps such incidents indicate how far such scum are from the laws of Allaah. Hence the Muslim should be careful with regard to marriage, and he should be caution and be careful about letting female relatives of the wife be alone with people who are weak in faith, even if they are small.

Secondly:

It is well known that it is not permissible for a man to married at the same time to two sisters, and it is nor permissible for him to marry his wife’s mother – after doing the marriage contract with her – or her daughter – after consummating the marriage with the mother. So if the husband commits zina with the wife’s sister, mother or daughter, does his wife become haraam for him and must he divorce her? And if he was not married to her, is it permissible for him to marry her? These are

issues concerning which the scholars differed, and there are three opinions:

1.

The view of the majority is that his wife does not become haraam for him. This is the view of Ibn ‘Abbaas (may Allaah be pleased with him), ‘Urwah, Sa’eed ibn al-Musayyab and al-Zuhri, and it is the view of the majority of scholars. Some of them narrated that Ibn ‘Abbaas said that his wife becomes haraam for him, but this is da’eef (weak); the correct view is that which we have mentioned above.

Their evidence is that marriage in sharee’ah applies only to the woman with whom the marriage contract is done, not just to intercourse. Moreover, there is no dowry, ‘iddah or inheritance in the case of zina. Ibn ‘Abd al-Barr said: The scholars of different regions who issue fatwas are unanimously agreed that it is not haraam for the zaani to marry the woman with whom he committed zina, so it is more permissible for him to marry her mother or daughter.

2.

Ibraaheem al-Nakha’i, al-Sha’bi, Abu Haneefah and his companions, Ahmad and Ishaaq said, and it was also narrated from Maalik, that if he commits zina with a woman, her mother and daughter become haraam for him.

3.

The view of the Hanafis – which is also the view of al-Shaafa’i – is that touching with desire for a permissible reason comes under the same ruling as intercourse, because it is intimacy. But if it is done for a haraam reason, it has no effect, like zina. They said: His wife become haraam for him if he merely touches her mother or looks at her private part.

Ibraaheem al-Nakha’i said: They used to say: If a man looks at a woman and at that which is not permissible for him, or touches her with desire, then they both become haraam to him.

Al-Musannaf (3/303).

The most correct view is the view of the majority, that his doing haraam actions with his wife's mother, daughter or sister does not make his wife haraam for him, whether he is married or after the marriage has ended. Hence it is known that if a husband molests his wife's daughter and even it is proven that he raped her, this reprehensible act does not mean that his wife becomes haraam for him.

Al-Bukhaari (may Allaah have mercy on him) narrated (5/1963) that Ibn 'Abbaas (may Allaah be pleased with him) said: If a man commits zina with his wife's sister, his wife does not become haraam for him.

Al-Bayhaqi narrated – in a report classed as saheeh by al-Haafiz Ibn Hajar (7/168) – that Ibn 'Abbaas said concerning a man who committed zina with his wife's mother: He has transgressed two sacred limits, but the wife does not become haraam for him.

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) said:

Question: If a man commits zina with a woman, do his ascendants and descendents become haraam for her, and do her ascendants and descendents become haraam for him?

Answer: They do not become haraam, because that is not included in the verse (interpretation of the meaning): "Forbidden to you (for marriage) are: … your wives' mothers, your stepdaughters under your guardianship, born of your wives to whom you have gone in — but there is no sin on you if you have not gone in them (to marry their daughters), — the wives of your sons" [al-Nisa' 4:23]. The zaaniyah (woman who commits zina) is not included in this, so if a person commits zina with a woman, we do not say that this woman is one of his wives, and we do not say that this woman with whom he committed zina is one of "your wives' mothers" and thus it remains permissible (to marry her), because she is included in the verse (interpretation of the meaning): "All others are lawful…" [al-Nisa' 4:24].

Al-Sharh al-Mumti' (5/179).

Thirdly:

You can ask for the marriage to be annulled by the sharee'ah judge (qaadi) for two legitimate reasons, the first of which is his evildoing and immorality by committing this revolting crime – if it is proven; the second is his being away from the home. Both of these reasons make it permissible for you to seek an annulment of the marriage from the sharee'ah judge and to demand your rights in full. This is called al-talaaq li'l-darar (divorce on the grounds of harm). Imam Maalik and Imam Ahmad (may Allaah have mercy on them) said concerning it: The harm which justifies seeking a separation of the couple includes everything that harms the wife or involves mistreatment of her, physically, mentally or psychologically. That varies from one woman to another, and according to circumstances and customs. Examples of harm for which a wife may ask for divorce include hitting her for no legitimate reason, forcing her to do something haraam or not to do something obligatory, and evil deeds, immorality and misconduct on his part.

And Allaah knows best.