52809 - In the event of manslaughter, the diyah is required from the killer’s family and expiation is required from the killer

the question

If a Muslim kills another Muslim by mistake, such as if he kills him unintentionally in a car accident, what does he have to do?.

Detailed answer

Praise be to Allah.

What must be done in the event of accidental killing is two things: diyah (blood money) and kafaarah (expiation).

Allaah says (interpretation of the meaning):

“It is not for a believer to kill a believer except (that it be) by mistake; and whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e. Diya) be given to the deceased’s family unless they remit it”

[al-Nisa’ 4:92]

In the event of manslaughter, the diyah must be paid by the ‘aaqilah of the killer, i.e., by his male relatives on his father’s side, the father, paternal grandfathers, full brothers, half-brothers on the father’s side and their sons, and paternal uncles and their sons. This is the view of Abu Haneefah, Maalik and Ahmad.

Shaykh Ibn ‘Uthaymeen said in al-Sharh al-Mumti’ (11/77): The ‘aaqilah includes all male relatives on the father’s side, whether they are heirs or not. The husband, half-brother on the mother’s side and mother’s father are not part of the ‘aaqilah. End quote.

The judge should divide the shares of diyah to be paid among the male relatives according to the closeness of the relationship and how rich they are. The closer relatives should shoulder more of a burden than more distant relatives, and those who are richer should shoulder more of the burden, and those who are poor do not have to pay anything.

See al-Sharh al-Mumti', 11/80

Ibn Qudaamah said in al-Mughni, 12/21

We do not know of any differing opinion among the scholars; they are agreed that the diyah in the case of accidental killing must be paid by the 'aaqilah. Ibn al-Mundhir said: There is consensus on this matter among all those scholars from whom we learned. There are proven reports from the Messenger of Allaah (peace and blessings of Allaah be upon him) which state that he ruled that the diyah must be paid by the 'aaqilah, and the scholars are unanimously agreed upon this point.

What this means is that because accidental harm may happen frequently and the diyah for killing a human being is great, making it obligatory for the offender and taking it from his wealth may be unfair to him. So wisdom dictates that it should be imposed on the 'aaqilah so as to help the offender, and reduce his burden, if there is an excuse for what he did, but he alone has to offer the kafaarah (expiation). End quote.

It says in Fataawa al-Lajnah al-Daa'imah (21/238):

The ruling that the diyah must be paid by the family ('aaqilah) applies only in cases of accidental killing or quasi-intentional killing. In cases of deliberate killing the diyah is not borne by the family, rather it is to be paid only by the killer. If the members of the 'aaqilah agree to share the burden with him or to help him to pay the diyah, there is nothing wrong with that. End quote.

With regard to the kafaarah (expiation), it must be paid by the killer. The expiation is to free a believing slave; if that is not possible, then he must fast for two consecutive months. This is mentioned in the verse in which Allaah says (interpretation of the meaning):

"It is not for a believer to kill a believer except (that it be) by mistake; and whosoever kills a

believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e. Diya) be given to the deceased's family unless they remit it. If the deceased belonged to a people at war with you and he was a believer, the freeing of a believing slave (is prescribed); and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money — Diya) must be paid to his family, and a believing slave must be freed. And whoso finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allaah. And Allaah is Ever All-Knowing, All-Wise"

[al-Nisa' 4:92].