104855 - Accepting diyah (blood money) instead of qisaas (retaliation) in the case of deliberate killing

the question

Can diyah be accepted in the case of deliberate killing? Can the killer be set free?.

Detailed answer

Praise be to Allah.

Allaah, may He be exalted, says (interpretation of the meaning):

“O you who believe! Al-Qisaas (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives) of the killed against blood money, then adhering to it with fairness and payment of the blood money to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment”

[al-Baqarah 2:178].

The great scholar ‘Abd al-Rahmaan al-Sa’di said in his Tafseer: Allaah reminds His believing slaves that He has enjoined qisaas upon them in the case of murder, i.e., there should be equal recompense in that, and that the killer should be killed in the way in which he killed his victim, so as to establish justice and fairness among people. End quote.

Qisaas by killing the killer can only be in cases of deliberate killing, according to scholarly consensus. Ibn Qudaamah said in al-Mughni (8/214): The scholars are unanimously agreed that qisaas is not required except in the case of deliberate killing, and we do not know of any difference of opinion with regard to qisaas being required for deliberate killing if all conditions are met. This is

indicated by the general meaning of the verses and reports. Allaah says (interpretation of the meaning):

“And whoever is killed wrongfully (Mazlooman intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qisaas, -Law of Equality in punishment - or to forgive, or to take Diyah (blood money)]. But let him not exceed limits in the matter of taking life (i.e. he should not kill except the killer)” [al-Isra’ 17:33]

“Al-Qisaas (the Law of Equality in punishment) is prescribed for you in case of murder”

[al-Baqarah 2:178]

“And there is (a saving of) life for you in Al-Qisaas”

[al-Baqarah 2:179]

What is meant – and Allaah knows best – is that the requirement of qisaas deters the one who wants to kill from doing so, out of compassion towards himself so that he will not be killed, and so that the one whom he wanted to kill will remain alive. And it was said that the killer would generate enmity between himself and the tribe of the one whom he killed, so he wants to kill them for fear of them and they want to kill him and his tribe in revenge. If he is executed as a punishment according to sharee’ah, that will prevent the reason for fighting between the two tribes. And Allaah says (interpretation of the meaning):

“And We ordained therein for them: Life for life, eye for eye”

[al-Maa’idah 5:45].

The Prophet (peace and blessings of Allaah be upon him) said: “If a person’s relative is killed, he has the choice of two options: either (the killer) may be killed or the fidyah (ransom, blood money) may be paid.” Agreed upon. Abu Shurayh al-Khuzaa’i said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: “Whoever is killed or is wounded, has the choice of three things, and if he wants the fourth then restrain him. He may kill (the killer), or forgive him, or take

the diyah (blood money). Narrated by Abu Dawood. According to another version: “Whoever has a relative killed after what I have said, his family has two options: to accept the diyah or kill (the killer).” And he (peace and blessings of Allaah be upon him) said: “There is qisaas for deliberate killing, unless the heir of the slain lets him off.” End quote.

There was no difference of opinion among the scholars that it is valid for the heirs of the victim to forego qisaas and accept the diyah. This is what is indicated by the ahaadeeth quoted above.

In that case, the killer may be set free and he should be obliged to pay the diyah.

And Allaah knows best.