

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook Page

Answer to Question:

Blood Money in the Accidental Killing

To: Hamzeh Shihadeh

(Translated)

Question:

As-Salaam Alaikum, I have a question: in the book, *The Punishment System in Islam*, it states that the killing is of four types, the fourth type what takes the course of wrongful killing, and it is known as the murder without the will of the perpetrator. If it is carried out without his will then why does he have to pay blood money, knowing that the Hadith says, my Ummah will not be accounted for mistakes?

Answer:

Wa Alaikum us Salaam Wa Rahmatullah Wa Barakatuhu,

What you are asking about is mentioned in the book, *The Punishment System in Islam*, in the following texts:

“And killing is in four forms: intentional, and semi intentional and accidental (mistaken) and what takes the course of wrongful killing. The intentional form of killing is clear from the verse:

﴿وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَدًّا﴾

“But whoever kills a believer intentionally” [An-Nisa: 93]

The semi-intentional is clear from the narration of Abdullah ibn Amr ibn al-Aas that the Messenger of Allah (saw) said: «ألا إن دية الخطأ شبه العمد ما كان بالسوط مائة من الإبل منها أربعون في بطونها أولادها» “The blood money of the killing by mistake, semi-intentional is what is in place of one hundred camels, including forty in the bellies of her children”

As for killing by mistake (accidental), it is clear from the verse:

﴿وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً﴾

“And never is it for a believer to kill a believer except by mistake” [An-Nisa: 92]

as for what takes the course of wrongful killing, it is a form of the killing by mistake but the definition of killing does not fit it, because its reality differs from the killing by mistake, since the killing by mistake is accompanied by the will of the deed, but the person misses the target that he was aiming for, but what takes the course of wrongful killing is not accompanied by the will to act at all, the action is not by intention at all, its reality is different from the reality of the accidental killing, such as if a sleeping person turns over on someone and kills him, or if a person falls on someone from a height and kills him, or trips over and falls on someone and kills him ... that is why it takes the ruling as the first form of killing by mistake, which its blood money should be a hundred camels, together with Kafara (atonement) which is freeing a slave, if he does not have that then he fasts for two consecutive months.” End.

And now we come to answer your question:

The Hadith narrated by Ibn Hibban from Ibn Abbas that the Messenger of Allah (saw) said: «إِنَّ اللَّهَ» “Allah forgives my Ummah for mistakes, forgetfulness and what is forced upon them (by duress)”, is not an evidence for what you explained because the meaning of the hadith is that Allah Almighty does not punish people for mistakes, or when they commit action out of forgetfulness or under duress. I.e. that Allah (swt) will not punish those people because their actions do not carry any sin. The one who kills another by mistake when aiming a shot at a bird but it hits that person, he is not sinful in Islam, and the same is for the one who kills others in what takes the course of wrongful killing, like falling from a height and killing someone, it is not a sin in Islam, because the action in both cases applies to the hadith, they are not sinful... and it seems that you asked the question because you thought that the payment of blood money is a punishment for an act of murder,

the act is not by the will of the person, but it was outside his sphere of control, and so you asked how is he punished?

And what is correct is that blood money is in case of killing by mistake, and what takes the course of wrongful killing is not a punishment for an act of murder, this is confirmed by the fact that this blood money is due in the money of *Al'Aqila*, who are the kin group of a man: his brothers, uncles and their children, and downwards... Even though they did not commit anything, and it is not obligatory in the money of the killers who killed by mistake, if he was to be punished then the blood money (*Diyyah*) would have been obliged from his money, as in the case of the obligation from the money of the killer by intention.

And from Shariah evidences is that Blood money of killing by mistake is not taken from the money of the murderer but from the money of the *'Aqila*:

Directed by Ibn Majah in his Sunan from Al-Mughira Bin Shu'ba that he said: **«قَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِالذَّيَّةِ عَلَى الْعَاقِلَةِ»** **“The Messenger of Allah (saw) decreed that the blood money is on the ‘Aqila”.**

I will quote to you the opinions of the scholars who have adopted this:

- Abu Yusuf, the companion of Abu Hanifa, says in his book "Al-Athar": *“.. and killing by mistake is when you aim at something but strike another by the weapon, the blood money is therefore in this case is upon the ‘Aqila ...”*

- In As-Sunan Al-Kubra by Bayhaaqi: *“Ash-Shafi’i, may Allah have mercy on him, said: I did not know anyone who disputed that the Messenger of Allah (saw) decreed that blood money is on the ‘Aqila, and this is more in the Hadith of Al-Khasah, we mentioned it from Hadith of Al-Khasah.”* This is also mentioned in “Al-Uum” by Ash-Shafi’i: *“There are two states of the mind, the intentional (killing), in which the blood money is taken from the offender and not his ‘Aqila, whether there is a decrease or increase, and the mind of the (killing) by mistake in which the blood money is on the ‘Aqila of the offender, whether there is a decrease or increase.”*

- Ibn Qudaamah said in al-Mughni: *“Ibn al-Mundhir said: It is agreed by all of whom we learned from the scholars, that killing by mistake, is when someone aims to throw something, but hits another, I do not know of anyone who disagreed. This is the view of Omar bin Abdul Aziz, Qatada, Nakha'i, Az-Zahri, Ibn Shubrumah, Ath-Thawry, Malik, Ash-Shafi’i, and people of opinion. This mistake makes it an obligation on the ‘Aqila to pay the Diyyah and kafara from the money of the killer, and we do not know of any dispute.”*

In conclusion, Diyyah, the blood money, in the accidental killing is not a punishment to the murderer in the sense that he is sinful because of the accidental killing, otherwise it would have been taken from his money and not from the ‘Aqila’s money, who did not commit the killing, the accidental killer is not sinful for killing by mistake or what takes the course of wrongful killing, and the noble Hadith applies to it.

As for why the Shar’i obliged the blood money on killing by mistake and what takes the course of wrongful killing upon the ‘Aqila, it is for a wisdom not specified for us by the Shar’, and Allah is the Most Wise Most Aware.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer’s Facebook page:

<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/450377475159329/?type=3&theater>

The link to the answer from the Ameer’s Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/N32vjiRDJsG?pid=6259012912874174370&oid=100431756357007517653>

The link to the answer from the Ameer’s Twitter page:

<https://twitter.com/ataabualrashtah/status/706552859920310273?lang=ar>