

27622 - The 'iddah of a divorced woman who is pregnant

the question

A man had an argument with his wife and told her, "You are divorced." She swore at him so he kicked her in the stomach and pushed her down the stairs. She was five months pregnant and she lost the baby. Then he regretted it and went to her family's house to take her back. Her father asked me for advice and I asked him to wait until I consulted one of the 'ulama' (scholars) because maybe her 'iddah ended when she miscarried. What is the ruling on that?

Detailed answer

Praise be to Allah.

The scholars are agreed that the 'iddah of a divorced woman who is pregnant ends when the pregnancy ends, because Allaah says (interpretation of the meaning):

"And for those who are pregnant (whether they are divorced or their husbands are dead), their 'Iddah (prescribed period) is until they lay down their burden"

[al-Talaaq 65:4]

They are also agreed that if a woman miscarries a foetus in which human features are apparent, her 'iddah ends at that point. (al-Mughni 11/229). The human features start to appear after eighty days, and are usually very clear by ninety days.

Based on this, if a woman miscarries in the fifth month of pregnancy, her 'iddah ends at that point, according to all the scholars, and her husband has no right to take her back after her 'iddah has ended.

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But he may make a new marriage contract with her if he wants to, but that has to be with her approval and in the presence of her wali (guardian) and two witnesses, and with a dowry (mahr).

There are two things which this man who caused this miscarriage has to do.

1 - He has to expiate for killing by mistake, which is by freeing a believing slave; if he cannot do that then he must fast for two consecutive months, because Allaah says (interpretation of the meaning):

“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...

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]

2 - He must also pay the diyah (blood money) for the foetus, which is one-tenth of the diyah for the mother. The diyah for a Muslim woman is fifty camels, which is equivalent in modern terms to 60, 000 Saudi Riyals. So the father must pay 6,000 riyals or its equivalent in another currency to the heirs of the foetus, and it should be shared out among them as if the foetus had died and left that behind, but the father does not inherit anything, because the killer does not inherit from the one whom he killed. Ibn Qudaamah said: “If the person who caused the miscarriage was the father of the foetus or one of the other heirs, then he must give a slave and we have stated above that the equivalent is to pay 6,000 Saudi riyals or an equal amount in another currency and he does not inherit anything of that, and he should free a slave. This is the view of al-Zuhri, al-Shaafa’i and others.” (al-Mughni, 12/81).

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And Allaah knows best. May Allaah send blessings and peace upon our Prophet Muhammad.