# 82026 - If a doctor does an abortion, does he have to pay diyah (blood money) and offer expiation?

## the question

We live in a foreign country. A neighbour of ours became pregnant whilst nearly in the fifth month. Doctors told her that the foetus is deformed and that if he lives he will be disabled. They performed an abortion and buried the foetus in a forest as a grave here is very expensive. What is the ruling on this?.

## Detailed answer

Firstly:

It is not permissible to abort the foetus once four months have passed, even if it is deformed. See the answer to question no. 12118.

Secondly:

If a pregnant woman aborts her foetus by taking medicine and the like after four months of pregnancy, then the diyah must be paid according to scholarly consensus, and the kafaarah (expiation) must be offered according to some of the scholars.

The diyah (blood money) in this case is a slave, male or female. If that is not possible, then the diyah is five camels, because the diyah for a foetus is one tenth of the diyah for his mother, and it well known that the diyah for a free Muslim woman is fifty camels, so the diyah for the foetus is five camels.

This diyah is required from everyone who had anything to do with the abortion of the foetus, so the doctor and the woman must both pay it if she took the medicine to help induce the abortion. The diyah should be paid to the heirs of the foetus, but his killer should not take any of it.

The evidence for that is the report narrated by al-Bukhaari (6910) and Muslim (1681) from Abu Hurayrah (may Allaah be pleased with him) who said: Two women from Hudhayl fought and

one of them threw a rock at the other and killed her and the child in her womb. They referred the matter to the Prophet SAWS (peace and blessings of Allaah be upon him) and he ruled that the diyah for her foetus was a slave, male or female.

With regard to expiation, the Shaafa'is and Hanbalis are of the view that it is obligatory, and the Hanafis and Maalikis are of the view that it is mustahabb. The expiation for killing is to free a slave; if that is not possible then one must fast for two consecutive months.

Ibn Qudaamah (may Allaah have mercy on him) said: If the pregnant woman takes medicine then aborts the foetus, then she must give a slave, and she does not inherit anything of this diyah, and she should manumit a slave. There is no difference of opinion concerning this among the scholars whom we know, apart from the view of those who say that it is not obligatory to manumit a slave. That is because she aborted the foetus by her own actions, so she must offer compensation by giving a slave, just as if someone else had transgressed against her. And she does not inherit any share of the slave, because the killer does not inherit from the slain. The slave should be for the rest of his heirs, and she also has to free a slave. End quote from al-Mughni (8/327).

He also said: If a number of people took part in beating the woman and she miscarried the foetus, then the diyah or slave must be given by them all, each contributing a share, and each of them must offer expiation, the same as if a group of people participate in killing one man. If she miscarries several foetuses then they must all contribute to the diyah, and each one must offer expiation for each foetus. If three people strike the woman's stomach, and she miscarries three foetuses, then they must offer nine expiations in all, each one offering three. End quote from al-Mughni (8/326).

And he said: The value of the slave is half of one-tenth of the diyah, which is five camels. That was narrated from 'Umar and Zayd (may Allaah be pleased with them). This was also the view of Maalik, al-Shaafa'i and ashaab al-ra'y. End quote.

Thirdly:

If the mother called for the abortion and the doctor did it, then they are undoubtedly partners in this crime, but the scholars differed as to which of them should pay the blood money and offer the expiation.

The correct view is that it is the one who actually did it, because he is the killer in the true sense. This is the view of Imam Ahmad (may Allaah have mercy on him).

See: Mataalib Ooli'l-Nuha (6/50).

Some of the scholars, such as the Shaafa'is, are of the view that the mother is responsible (so she should pay the diyah and offer expiation). See: Asna'l-Mataalib (4/39).

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) favoured the first view and regarded it as more likely to be correct.

Fourthly:

There is nothing wrong with burying the foetus in the forest if you cannot buy a grave for him. This has been discussed in the answer to question no. 98408 .