

AN HONOUR KILLING IN AINTAB: THE ISSUE OF KILLING FORNICATORS IN THE OTTOMAN EMPIRE

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An honour killing that took place in Ottoman Aintab at the end of the 16th century is examined in this paper. As it seems the qadi (*kadi*) of Aintab did not punish the murderer at all. What underpins the qadi's decision is the opinion held by shari'a jurists indicating that anyone who commits adultery could be killed and the killer, by doing so, will not be punished for the crime. The issue of killing fornicators has been generally addressed through the fatwas of the Shaykh al-Islam. How the qadis reached a verdict regarding this type of cases has been largely ignored. Thus, the issue has not been made clear completely and there have been certain misinterpretations on this subject. We aim to ascertain how the qadi gave a verdict by looking closely at a particular murder case, which is not frequently encountered in Ottoman qadi records. For that purpose, the opinions of Islamic jurists related to the issue, the fatwas of Ottoman Shaykh al-Islams and Ottoman criminal code have been examined together with the verdict of the qadi of Aintab. It is also studied which juridical opinions the parties referred to in their statements and how those references affected the verdict of the qadi.

Key words: Ottoman criminal law, Islamic law, Aintab (Ayntab), murder, homicide, fornicator, adultery, qadi (*kadi*), court records.

Introduction

Court records, which are one of the most important sources of the social and economic history of the Ottoman Empire, are among the primary sources to cite with regard to the issues of crime and punishment in the Ottoman Empire. Even though the court records in question are not as detailed as the inquisition records used by Ginzburg (1992) in Italy, the cases registered in the records still present significant data to the researchers (Ze'evi 1998, pp. 35–56). Court records contain significant information with regard to many kinds of crimes and their due punishments (Ginio 1998, p. 186). Among those crimes there is homicide. However, the number of studies that directly

examine homicide cases is limited.¹ The most important reason for this limitation should be the relative scarcity of homicide cases in the court records compared to other crimes.²

This paper examines an unusual incident, different from the ordinary homicide cases. The incident took place in the village of Seylan³, which is in the subprovince of Aintab⁴ located in the south of Anatolia, in May 1572. Matuk bin Ali killed his wife Tebrike bint-i Ali upon catching her with Şaban bin Mihni at his own house in a compromising situation. Following the homicide, the incident became the subject of four more hearings in which the people of Seylan village, mother of Tebrike and Şaban bin Mihni participated. These hearings do not contain any recorded information indicating that Matuk was punished for the crime. However, at the end of the judicial process Şaban, the lover of his wife, had to confess that he committed adultery.

In this homicide incident that took place in Aintab in the 16th century, it is intriguing that the court did not punish the killer at all even though he confessed to the crime. Apparently, the qadi adjudicated in accordance with the opinion held by the majority of Islamic jurists, indicating that the ones who commit adultery could be killed and the one responsible for the crime will not be punished (Udeh 1990, p. 136).

However, these types of incidents that can be described as the killing of fornicators are not encountered in the records very frequently. In Avcı's study on Ottoman criminal law for which he compiled cases from the court records belonging to different periods and cities, it can be seen that the number of such cases are very few (Avcı 2004, p. 66).⁵ In her work where she attends to the issues of crime and punishment in Istanbul between the years 1700 and 1800, Zarinebaf (2010) does not mention the existence of such a case. Peirce (2003, p. 365) also states in her study on Aintab that she did not come across such a case in the court records of 1540–1541. However, she speculates that the issue had been in force since it was included in the fatwas of Shaykh al-Islams and Ottoman codes of law (*kanunnâme*). Another study that takes up the same issue on the basis of the fatwas of Shaykh al-Islams is by Imber. According to

¹ Peters's study on 19th-century Egypt is significant for illustrating both the theoretical knowledge and its application to real homicide cases in Islamic law (Peters 1990, pp. 98–116). For a study addressing the issue of homicide by using the *Ahkâm* registers in the Ottoman Archive of Prime Ministry, see Faroqhi (no date, pp. 68–79).

² Peirce (2003, pp. 336–341) identified five homicide cases for 1540–1541 that were registered in the court records of Aintab. Peirce also mentions that there could be other homicide cases that were not registered in the court records since they were resolved via a mediator (p. 342).

³ Village of Seylan was in Telbaşer, one of the three districts of Aintab subprovince (*sancak*). The village had a population of about 130 households in the 1574 cadastral survey rendering it one of the largest villages of not only Telbaşer, but also the subprovince of Aintab. See Özdeğer (1988, p. 180).

⁴ The subprovince of Aintab had a population of 9133 households in the 1574 cadastral survey, making the provincial capital one of the largest cities both in the region and in the Empire (see Özdeğer 1988, pp. 116–117).

⁵ Avcı scanned the related cases in the published court records and included the relevant ones in his study which does not have a statistical claim. However, even though Avcı's study included published records, I would like to draw attention to how scarce those cases are in reality.

Imber (1996, p. 193), Ebussuud's fatwas regarding the issue of fornication is among "the opinions based on post-classical manuals of shari'a law".

The fact that the explanations concerning the killing of fornicators were generally based on fatwa corpuses and Ottoman codes of law must have been due to the fact that those types of cases were really rare in the court records. However, this does not inevitably mean that these incidents did not happen frequently. Zarinebaf-Shahr (1998, pp. 318–319) dwells upon the point that women murdered by unknown assailants may have actually been the victims of crimes of passion at the hands of their own families.

In this paper, my intention is not to delve into the intricacies of shari'a law on issues such as homicide or killing of fornicators. I will examine the aforementioned case that was registered in the court records of Aintab in a comparative manner by citing the opinions of Islamic jurists and Shaykh al-Islams alike. In doing so, my aim is to ascertain how the court of law resolved such a case. I will also address the role of community for the judicial process. The fact that the case was registered in five different documents is what enables me to provide these comments. While the majority of homicide cases were registered in the court records as a single document, the fact that this particular case was registered in five different documents provides a great advantage.

The relative plentitude of documents with regard to this case also makes it possible to examine what each party declared in the court of law. I will examine who says what and why through a comparative lens, reading them together with the judicial texts. I hereby claim that people, who appeared in the court, gave their testimonies that were registered in the case records in line with their own agendas. However, it is a known fact that court clerks used to reformulate those testimonies by following certain patterns. According to Peirce, a comparison with the other cases reveals that the testimonies given by the parties on homicide cases were recorded in close accordance with the original testimonies themselves (Peirce, 2003, pp. 341, 447–448, footnote 80). We can say that this is also valid for the killing of Tebrike.

Before examining Tebrike's case in depth, I will first concentrate in general terms on how Ottoman criminal law and Islamic law approach the issue of killing fornicators.

The Killing of Fornicators: The Situation in Islamic Law

In Islamic law, crimes are divided into two general categories, namely *hadd* offenses and offences regarding retaliation (*kisas*). *Hadd* offences include unlawful sexual intercourse (*zina*), false accusation of unlawful sexual intercourse (*kazf*), wine drinking (*shrub al-khamr*), theft (*sarika*) and banditry (*kat al-tarik*). These offenses are known to constitute violations of the claims of God (*hakk Allah*). Claims (or rights) of God refer to Islamic public rights. Hence, the prosecution of these offences is the duty of the state authority. Retaliatory offences include homicide, bodily injury (wounding) and violation of property rights. Since these offences constitute violation of private

rights (*hakk-ı ademi*), prosecution of these offences depends entirely on the will of the victim or the victim's relatives.⁶

Different schools of Islam have focused on the issue of homicide, one of the retaliation (*kisas*) crimes, by providing different classifications for it. The most detailed classification belongs to Hanafi jurists. They subdivided the crime of homicide into five different types, namely 'intentional' ('*amd*'), 'quasi-intentional' (*shibh al-'amd*), 'accidental' (*khata*), 'equivalent to accidental' (*jari majra l-khata*), and 'indirect' (*katl bi-sabab*) (Anderson 1951, p. 818).⁷ However, the killing of fornicators is not included in this classification.

The Koran and the Sunna do not contain any statement indicating that people committing adultery can be killed. On the contrary, they oppose the murder of a female adulterer by her husband. In the face of such a situation, the Koran orders the implementation of a practice called *lian* that requires the wife and husband take a mutual oath to tell the truth and then get a divorce.⁸ Imber claims that the Islamic jurists' opinion with regard to the murder of people committing adultery could have originated in the customary law of Arab society.⁹ In the first few centuries of Islam, the customary law of Arab society did really find its way into the Islamic law with certain changes (Schacht 1982, p. 15).

Islamic jurists, who are of the opinion that private punishment of fornicators is permitted, approached the issue from a different angle. This approach entails that the life and property of Muslims, Dhimmis (non-Muslims living in an Islamic state) and Muste'mens be protected under the Islamic law.¹⁰ The loss of these rights emerges as a result of committing certain *hadd* offences that require death penalty and seen as violations of claims of God. Among these offenses there are banditry, apostasy (*irtidad*) and fornication. In these circumstances, the blood of that person becomes permissible; s/he is killable so to speak. Killing such a person does not necessitate punishment for the murderer (Udeh 1991, pp. 3, 23, 27; Schacht 1982, p. 184).

The reason why the murderer is not punished at all for this crime in Islamic law is closely related to the fact that the stipulated punishment for a married fornicator is death by stoning (*recm*). The penalty of stoning to death is fatal and the underlying

⁶ The terms of *hadd* and retaliation (*kisas*) actually refer to punishments. However, these terms are used interchangeably in Islamic law to describe both the crimes and the punishments. For further information with regard to the details and controversial aspects of the issue, which have been addressed only in general terms here, see Schacht (1982, pp. 175–178) and Aydın (2007, pp. 168–171).

⁷ Other Islamic schools generally gave two or three categories. For a detailed overview of these classifications see Udeh (1991, pp. 13–15).

⁸ For detailed information on *lian* see Ebu Zehra (1994, pp. 109–116).

⁹ "The real source of post-classical Hanafi doctrine that allows the private punishment of fornicators seems to be the customary law of the Islamic world, the jurists having assimilated the popular 'code of honour' by the yardstick of the behavior of its younger women, and permits members of the family, usually men, to kill those who transgress the norms of modest female behavior" (Imber 2009, pp. 252–253).

¹⁰ It is not only the lives and properties of Muslims that are afforded protection; Dhimmis and Muste'mens that live in Islamic states are afforded protection equal to Muslims as well. See Udeh (1991, pp. 3, 23).

reason for the punishment is to deter people from committing this crime. Furthermore, suspension or pardon of the penalty is out of question. Hence, spilling the blood of a married fornicator is permissible. However, the provisions for an unmarried fornicator are different. The law stipulates that the punishment for these people is a hundred lashes (*celde*). Thus, murdering an unmarried fornicator without the presence of a doubt is considered intentional homicide and the murderer is inflicted with retaliation (*kisas*) or blood-money (*diyet*). However, some Islamic jurists hold the opinion that provided there is doubt, the murderer of the unmarried fornicator will not be punished (Udeh 1990, p. 136). Some of these jurists limit the number of people who are permitted to kill an unmarried fornicator in case of doubt to close relatives of a married woman that could be provoked upon witnessing the incident. Among these close relatives, there are the husband, son or brother of the woman who committed the crime of fornication. The blood of people committing adultery is permissible to these people (Udeh 1990, p. 137).

Islamic jurists cite the verdict below that is attributed to Caliph Omar for illustrating that killers of fornicators could not be punished:

“One day a man whose sword was bloodstained came running and sat beside Caliph Omar. A group of people followed him saying ‘This man murdered his own wife and our friend.’ The man replied: ‘I cut my wife’s legs (who was committing adultery) with the sword; I must have killed whoever was there between her legs too!’ Caliph Omar turned to the complainants and asked: ‘Is he telling the truth?’ They confirmed his narrative. Then Caliph Omar said to the killer: ‘You can also leave once they are gone, because you killed those that deserved to die’ (he did not punish him)” (Udeh 1990, p. 137; Avcı 2004, pp. 55–56).

A person who murders a fornicator has to prove the crime for being exempt from any punishment. Proving the act of adultery requires four concurring testimonies; hence some Islamic jurists state that the murderer has to produce four witnesses. However, some other jurists think that two witnesses suffice for the purpose. For the incident that is attributed to Caliph Omar, jurists are of the opinion that the reason why the murderer did not receive any punishment is due to the fact that the friends of the adulterer confirmed the crime. In accordance with this opinion, it can be stated that the murderer is free from any punishment as long as there is a proof or sign indicating that the murdered people were committing adultery (Ebu Zehra 1994, pp. 403–405).

The Killing of Fornicators: The Situation in the Ottoman Law

Fatwas

Shaykh al-Islams held the highest rank in the Ottoman *ilmiye* hierarchy. They gave important fatwas with regard to the killing of fornicators. A person examining those fatwas may think that Shaykh al-Islams were more lenient toward the murderer and

passed judgements so as to spare him from any punishment. However, it does not mean that their fatwas were against the opinions of Islamic jurists.

Ebussuud, the prominent Shaykh al-Islam of the 16th century, remarks in one of his fatwas that a husband is permitted to kill her wife provided that she commits adultery. The husband is spared from any punishment for the crime. However, the murder of the wife and her lover has to take place at the moment of adultery (*hîn-i zinâda*) for the husband to go unpunished.

“Question: Zeyd kills his wife Hind and her lover ‘Amr at the moment of fornication. Do Hind’s and ‘Amr’s heirs have the power to demand retaliation on, or blood-money from Zeyd?

Answer: Never. He may not be examined. It is forbidden” (Düzdağ 1983, p. 158, fatwa no. 777).¹¹

In another fatwa of his, Ebussuud includes the brother and mother of the woman among the family members that are permitted to kill the woman who commits adultery.

“Question: One night ‘Amr and Zeyd’s sister, Hind, commit fornication on Zeyd’s property. Zeyd kills ‘Amr and Zeyd’s mother kills (her daughter) Hind. Do the executive officers have the power to intervene in the affair?

Answer: Never” (Düzdağ 1983, p. 158, fatwa no. 778).¹²

Fatwas that are similar to those of Ebussuud regarding this particular subject were given by the next Shaykh al-Islams. Çatalcalı Ali Efendi’s fatwa on the subject is as follows:

“Question: Zeyd’s wife submits herself to ‘Amr willfully. When Zeyd sees his wife and ‘Amr at the moment of fornication, he kills them both. Is anything required?

Answer: Nothing is required” (Şeyhülislâm Çatalcalı Ali Efendi 2014, p. 449, fatwa no. 6).

Ebussuud has the opinion that the close relatives of a woman are permitted to kill her not only at the moment of fornication but also if she is found in the same property with her lover. This situation does not constitute a crime punishable by retaliation or blood-money.

“Question: Zeyd sees his sister Hind in a house with ‘Amr, who is outside the permitted degrees of relationship. He kills Hind and wounds ‘Amr, who dies the following day. Zeyd acknowledges that he killed Hind and ‘Amr, and goes to another place. Now his paternal uncles are guarantors for Zeyd, but ‘Amr’s brother Bekr brings a claim and, in contravention of shari’a, forcibly and wrongfully takes 200 gold ducats from

¹¹ This fatwa has been translated into English by Imber (1996, p. 193).

¹² Translated by Imber (1996, pp. 193–194).

the aforementioned person. When Zeyd returns, does the shari'a enable him to recover the entire sum from the person whom they paid it?

Answer: Yes" (Düzdağ 1983, p. 158, fatwa no. 779).¹³

The abovementioned fatwa concentrates mainly on the issue of whether the brother of the murdered man is entitled to receive blood-money from the uncles of the killer. Thus, it is not very clear what being in a house together with one's lover means. Were they observed while eating or talking? Were they seen while fooling around or lying down together? Without paying attention to that aspect of the fatwa, Imber makes the following comment: "he extends the ruling, and approves the same drastic measure if the couple are guilty merely of association. In this he is accepting the customary, rather than the textual definition of *zinâ*" (Imber 1996, p. 193). However, another fatwa of Ebussuud in his book called *Ma'rûzât* illustrates the invalidity of Imber's comment:

"If Zeyd kills the man that lies down in the same bed with his wife, nothing is required" (Şeyhülislâm Ebussuûd Efendi 2013, p. 186).

According to this fatwa, the wife and her lover should be observed lying down on the same bed for the killer to go unpunished. It is understood that Ebussuud gave this fatwa in accordance with the Islamic jurists' opinion that the close relatives of a woman are permitted to kill her and her lover provided that they are suspected of committing adultery. Besides, the act of lying down on the same bed must have been seen as a proof and indicator of ongoing adultery.

Çatalcalı Ali Efendi, a 17th-century Shaykh al-Islam, clarifies the conditions under which the man, who kills his wife and her lover for catching them together, goes unpunished with his following fatwa.

"If Zeyd sees his wife and stranger Amr having a conversation somewhere, with no hint of adultery, and he deliberately wounds and kills Amr and Hind with a sharp object, what is required for Zeyd?

Answer: Retaliation" (Şeyhülislâm Çatalcalı Ali Efendi 2014, p. 450, fatwa no. 8).

The underlying reason for Çatalcalı Ali Efendi's fatwa as regards the punishment of retaliation is lack of evidence on adultery. In other words, a man that kills his wife on the grounds that she was talking with a stranger somewhere is guilty of the crime and hence retaliation will be his punishment.

In the light of the fatwas above, one may be inclined to think that a person who kills his wife or a female relative on the ground of adultery will go unpunished, not even be prosecuted.¹⁴ However, these types of cases, even though low in number

¹³ Translated by Imber (1996, p. 193).

¹⁴ "The *fatwas* of Ebu Su'ud Efendi (d. 1574), the leading Şeyhulislam during the sixteenth century, prescribed the penalty of death without specifying who should carry out the punishment for fornication and adultery [*zinâ*']. Moreover, If a man murdered his wife after discovering her in the act of adultery, her relatives could not demand *kisas* [retaliation] or blood money from him. The

compared to other violence-related cases, were prosecuted in the Ottoman courts. There were cases in which the murderer went unpunished; however, there were also cases in which the murderer was convicted of the crime and sentenced to retaliation. In that case why do the fatwas of Shaykh al-Islams include statements claiming that fornicators are allowed to be killed and these types of cases cannot be brought to court? The answer for this question should be sought in the stylistic features of the fatwas. Fatwas are responses to questions that are directed at Shaykh al-Islam pertaining to legal or religious issues. However, before Shaykh al-Islam responds to the questions, various personnel working in the office of a mufti (*fetvahane*) reformulate questions in accordance with certain rules. The question (*mesele*) part of a fatwa is cleared of all the details that refer to the current cases and is formulated in an abstract manner. The question is generally answered with one word such as ‘yes’ or ‘no’. This becomes possible with a question that focuses on a well-defined legal matter (Heyd 1969, pp. 41, 49, 54). These features of the fatwas apparently led to the underrepresentation of certain details in the question. For example, in the abovementioned first fatwa of Ebussuud, it is not clear whether Zeyd, who killed his wife (Hind) and her lover (‘Amr) upon catching them in the act of adultery, produced a witness other than himself or had any evidence. Nevertheless, he killed Hind and ‘Amr in the act of adultery; therefore, there must have been an indicator of it (such as lying down on the same bed). In brief, the reason why the fatwas of Shaykh al-Islam seem to be lacking in certain legal conditions could be attributed to the fact that the question part of the fatwas was written regardless of all the necessary details or the details were deemed unnecessary. Besides, Shaykh al-Islams did not provide any justification for their verdicts; this may have contributed to the emergence of this problem (Heyd 1969, p. 42).

The Law

The Ottoman criminal code from the period of Suleyman the Magnificent contains an article pertaining to this issue. This article bears certain resemblances to the fatwas of Ebussuud.

“If a person finds his wife somewhere committing fornication with another person (finds another person committing fornication with his wife or daughter or lying with either of them) and kills both of them together (or one of them) – provided he immediately calls people into his house and takes them to witness, the claims of the heirs of those killed shall not be heard in court (no charge shall be made against the killer)” (Heyd 1973, p. 59, 13th article).¹⁵

investigation of the truth of adultery, according to this *fetva*, is also forbidden” (Zarinebaf-Shahr 1998, p. 307).

¹⁵ For the English version of the 13th article, see Heyd (1973, p. 98). Here I included the original explanations in footnotes in brackets.

The article mentions that no charge will be made against the close relatives of the murdered woman (husband and father), who did the killing. The article also considers an act such as lying down on the same bed as a justification as to why the murderer will not be charged. However, the murderer has to call the people of the neighbourhood to his house and take them to witness. In this respect, it can be said that the article is in congruity with Islamic law.

In the code of law of the last ruler of Dulkadir Principality, Alaüddevle Bey (Yinanç 1989, pp. 80–99), who governed Aintab and the surrounding region prior to the Ottoman Empire, there is a related article that reads as follows.

“Provided that a person finds his wife intimate with a stranger, in close embrace, and kills them both, he is not guilty of the crime. Nothing is required of him just because he sinned with regard to customs” (Akgündüz 1994, p. 157, 13th article).

The Alaüddevle Bey code of law exempts the murderer from any punishment in the case of dalliance (*mülâ‘abe*) and embrace (*mübaşeret*). It does not mention any circumstance that could be seen as an indicator of adultery (such as lying down together). In that respect, it can be claimed that this code of law depends more on customary law.

The Case: Murder and Investigation

Five hearing records pertaining to the murder of Tebrike were registered in Aintab court records.¹⁶ Matuk attended at least four of these hearings and gave his testimony. We learn most of the details regarding the murder from his statements. Although Matuk extended his statement several times when the occasion arose, he stuck to the main narrative till the last hearing. The additional information that Matuk provided is actually of great significance for us and will help us better understand some key aspects of the case.

In the first record (1) dated 7 May 1572 (23 Zilhicce 979), Matuk went to the Aintab court of law and confessed that he had killed his wife Tebrike upon catching her with Şaban bin Mihni. He also demanded from the court that the scene of the crime be investigated.

“Matuk bin Ali from the village of Seylan came to the court and said that ‘On the 22nd day of Zilhicce 979, I came to my house in the small hours and found my wife Tebrike bint-i Ali and Şaban Mihni, of the same village, in my house; then I stabbed my wife in the belly with a knife and killed her. I demand the scene of the crime be investigated’...” (ACR, Vol. 166, p. 20/4).

At least some of the incidents that were registered in this record did happen on the 6th of May, the day when the murder was committed. Matuk must have reported

¹⁶ While talking about the hearings, I used numbers in brackets to show their order in the court records.

the murder to the court within the same day it happened. The fact that the crime took place in the small hours makes it very likely. Besides, deputy of qadi (*naib*), Mevlana Muhyiddin, and his entourage came to the village on the 7th of May for investigation, which strengthens the likelihood.

Mevlana Muhyiddin came to the crime scene with Kavak *Çavuş*, one of the men of Aintab's governor (*sancakbeyi*), and trustworthy Muslims from the people of the village.¹⁷ During the investigation, Tebrike was found lying flat on her back in Matuk's house. She was wearing a blue shirt and underpants (*don*). She was emboweled and her intestines were outside.

This record, which was transferred from Mevlana Muhyiddin's draft to Aintab court records, is not a mere investigation of a crime scene. According to Islamic law, a person who kills his wife or a female relative on the ground of adultery has to prove that the act of adultery has taken place. There should, at least, be an indicator or evidence pertaining to adultery. In the Ottoman criminal code, it was expressed like this: "provided he immediately calls people into his house and takes them to witness." One of the underlying reasons as to why Matuk went to court in Aintab, confessed to the crime right after it was committed and demanded an investigation of the crime scene is the abovementioned dictum. Furthermore, some of the Muslims that attended the investigation with the *naib* Mevlana Muhyiddin could be considered as part of the village people that Matuk called to the crime scene.

The people from the neighborhood or the village used to attend the cases in Ottoman courts of law quite frequently. At times they appeared in the court to testify in a case, at other times they went to the court to protect their communal rights. In Tebrike's murder case, two hearing records were registered in the court records in which the people of the village were involved to protect their communal rights. The first of such hearings is the second hearing (2) of the case. In this hearing, Matuk narrated the chain of events that led to the murder and then stated that only he was liable for the crime and no one else was involved.

"... 'Anything that is required pertaining to the murder of Tebrike falls on my shoulders, no one else is involved in the incident but me.' Upon these words of Matuk, the aforementioned people confirmed and accepted Matuk's statement. People of the village whose names were involved in the case were acquitted of the case and the decision was registered upon their requests" (ACR, Vol. 166, p. 21/5).

The other hearing (3) in which the people of the village participated with the aim of protecting their communal rights includes the statement of Tebrike's mother, Cennet bint-i Hüseyin, who stated that the killer of her daughter was Matuk and she had no case against anyone from the people of the village.

¹⁷ Trustworthy Muslims used to attend the questioning and investigation procedures that were to take place outside of the court under the chairmanship of the *naib*. However, in the case of investigations of a criminal nature, men of the *sancakbeyi* would attend the procedures as well. For more detailed information on investigation procedures of Ottoman courts of law, see Jennings (1978, pp. 146–147).

“In the presence of Kasım bin Ahmed, Ali bin Aziz, Mahmud bin Hamza, Mansur bin Selim, and the others the mother of the victim Cennet bint-i Hüseyin stated that ‘The killer of my daughter is her husband Matuk. I have no case or dispute with anyone else other than Matuk’...” (ACR, Vol. 166, p. 21/6).

These types of cases were heard and recorded upon the request of the people of the village. In this way, they protected themselves from any sort of responsibility or demand for compensation that may have arisen out of the murder case at hand.

Islamic law burdened the people of the neighborhood/village with certain responsibilities in case of unidentified murder incidents. The family of the murdered victim, whose assailants were unknown, was entitled to ask for blood-money from the people residing in the same neighborhood where the body of the victim was found (İbrahim el-Halabi no date, pp. 339–340). The reason why the people of the village had to bear this responsibility was due to the fact that they did not prevent the murder and failed in their duty of protection (Imber 2009, p. 241). The state of responsibility that was binding for unidentified murders could be extended so as to include the whole household or the local community provided that they were in a position to prevent the crime. One of Ebussuud’s fatwas illustrates the point that when the people of the village come to the help of a neighbour, who is attacked, they are discharged of their responsibility.

“In a village at night, brigands attack Zeyd’s house and kill two men with weapons of war. The people of the village heard Zeyd’s shouts and screams and brought him aid and assistance. Are the people of the village liable for blood money?

Answer: No. They suffer punishment in the next world if they were able to repel [the attack and failed to do so]” (Imber 2009, pp. 260–261).

The people of Seylan village might have attended the hearings with both Matuk and the mother of Tebrike so as to avoid the accusation of having failed to carry out their responsibility regarding the murder. Matuk ruled out the possibility of unidentified murder by confessing to the crime and stating that only he was accountable for the crime. However, the people of the village did not come to the help of Tebrike even though they were in a position to do so. Hence, they could have been made to pay compensation to Tebrike’s heirs. They were able to avoid paying compensation, since Cennet, the mother of Tebrike, stated that she had no case against the people of the village.

The Case: Irresponsibility of the Killer or a Change of Direction in the Case

While giving an account of the incident at the court, Matuk deliberately inserted some information into his narrative so as to prevent being charged with the crime. He makes references to certain legal documents in these statements. For example, in the second

hearing (2) he remarked that the people of the village had nothing to do with the crime. Before delving into the heart of the matter, he narrated the chain of events that culminated in murder. He used phrases subtly implying that he committed the murder as a result of a momentary burst of anger and jealousy, he was not himself so to speak.

“... I found my wife Tebrike bint-i Ali lying down on the same bed with a stranger called Şaban bin Mihni in my own house. When I assaulted them in spite of myself, Şaban ran away. I stabbed Tebrike in her belly with a knife and killed her by wounding...” (ACR, Vol. 166, p. 21/5).

Matuk, without doubt, was alluding to the opinion in Islamic law that excuses the crime of murder on the ground of provocation, provided that the killer commits the crime upon discovering his wife in the act of adultery (Udeh 1990, p. 137).

Matuk voiced his second argument so as to get away with murder in the first trial (4) in which Şaban appeared in the court. The information he used was with regard to the fact that the people of the village knew about the relationship between Tebrike and Şaban and he also heard about it. When he entered the house and caught her wife and her lover together in the same bed, he was not able to resist the urge and simply assaulted them. What Matuk told in this hearing is supportive of his previous statement. In this statement, he also included new information that was not mentioned before. Apparently when he came home in the small hours having watered the orchards, he found the door open. Upon seeing the door he started to get suspicious and remembered the rumors regarding her wife.

“Matuk bin Ali from the village of Seylan brought to court Şaban bin Mihni, who is of the same village, via Haydar, the chamberlain (*kethüdâ*) sancakbeyi of Aintab Abdi Bey. ‘On the twenty-second day of zilhicce (May), I went to water the orchard. I returned to the house in the small hours and found my door open. I heard about the rumors about Tebrike and Şaban a few times. I felt suspicious all at once. When I went inside and found them lying on the same bed together, I assaulted both of them. Şaban ran away from the window. I killed Tebrike by wounding her with a Wallachian knife in the belly.’ When they asked Şaban about the relationship, he denied it. Then when the people of the village, Ali bin Abdülaziz, Kasım Kethüdâ bin Ahmed, Mansur bin Hacı Selim, Hacı Musa bin Hacı Yusuf were interrogated, they said, ‘we heard about the relationship between Şaban and Tebrike’” (ACR, Vol. 166, p. 22/3).

The fact that the case turned into an investigation of adultery rather than homicide is another significant aspect of this trial. After having narrated how he committed the murder, Matuk demanded that Şaban be captured and interrogated. When Şaban rejected the claims about himself, the reliability of Matuk’s claims was asked from the people of the village. They told that they heard about the relationship between Tebrike and Şaban. The people of the village, in a sense, became a witness to the illicit sexual relation between Tebrike and Şaban.

In the last record (5) that was registered in Aintab court records pertaining to the murder of Tebrike, Şaban accepted the accusations that were raised against him. Şaban confessed in his statement that he went to Matuk's house with the intention of adultery. However, he also highlighted the fact that it was Tebrike who told him to "come in the small hours".

"Matuk bin Ali from the village of Seylan brought Şaban bin Mihni to the court via Kavak *Çavuş*. 'When I saw Şaban with my wife Tebrike bin-i Ali lying down on the same bed and under the same blanket, I assaulted them and Şaban ran away from the window. I killed Tebrike by wounding her with a Wallachian knife. Şaban should be held accountable.' When Şaban was questioned, he said, 'Tebrike told me to come in the small hours. I went to Matuk's house with the intention of committing adultery. When I was there, Matuk returned from watering the orchard and saw me. I ran away from the window, I was petrified.' Şaban's statement was recorded upon Matuk's request" (ACR, Vol. 166, p. 24/4).

The way Şaban cited Tebrike's words in his statement was deliberate. His aim was to avoid charges. One can run into such statements in the court records quite frequently. Especially in the social gatherings including alcohol, unrelated women and men that were caught together employed a language implying that the situation was not under their control and they were involved in it later (Bulunur 2014, pp. 217–218). They were trying to be exonerated or at least extenuate their punishments; there is no question about that. However, there is no information with regard to Şaban's punishment in the court records. One may still assume that he was charged with the crime of adultery since he confessed to the crime, hence punished in accordance with what the law stipulated for that matter. If Şaban had not run away from the scene, he would have been stabbed to death as well, sharing the same fate as her lover Tebrike. Upon examining the cases in the court records with regard to killing fornicators, one may notice that the victims are generally women. The other party involved in the act of adultery is men; however, they were able to survive the incident somehow, without any injury and even their names were rarely registered in the records.¹⁸

Court, Qadi and Society

How can we assess the role of the court, the qadi, and society in this case? Which principles did the qadi adhere to while giving the verdict? Did he consider the opinion of the society?

Qadis of the Ottoman Empire gave verdicts in accordance with the Hanafi school of law, which was then the prevailing school of Islam throughout the Empire.

¹⁸ For cases on this subject, see Avcı (2004, p. 66).

They used certain handbooks and fatwa collections.¹⁹ In the domain of criminal code, they particularly implemented the laws and code of laws that were enacted with the absolute authority of the Sultan (İnalcık 1997, p. 559). Some of them were just codified forms of customs in terms of their origins (İnalcık 1958, p. 103). This situation was expressed in the code of laws through a reference to the traditional practices (*kânûn-ı kadim*) (İnalcık 1997, p. 561). Sometimes qadis used to give their verdicts in accordance with uncodified customs and social practices. In certain studies conducted on court records in the Ottoman Empire, they were described as the third normative domain that the qadis implemented along with shari'a and laws (Gerber 1988, pp. 193–203; Tamdoğan 2008, p. 56). However, some Islamic jurists, especially from the Hanafies, accepted customs as one of the sources of shari'a (Libson 1997, pp. 131–155).

Qadis used to implement the uncodified part of the customary law in many cases, which included the community in general. For example, any dispute among the members of different guilds (Gerber 1988, p. 202) or the issue of how to set prices for commodities in the market were settled in line with the customary practices (Peirce 2003, p. 120). The party that voiced his/her complaint in the court of law alleged that the new practice was against the common or the customary practices. If that person proves the validity of his/her claim, then s/he will win the case. Under certain circumstances, the customs would even prevail over the Sultan's orders (Gerber 1988, p. 202).

Gerber, Marcus, Peirce, and Ergene have underscored, to varying degrees, the effect of manners and customs on legal procedures in their studies (Gerber 1988, pp. 199–203; Marcus 1989, pp. 104–105; Peirce 2003, pp. 119–120; Ergene 2003, p. 205). Besides, Peirce claims that we can only understand the societal content of the court records by contextualising them in Aintab terrain and also reading them together with the other legal texts of the period.²⁰

However, reading the court records together with the legal texts alone is not always adequate to understand the legal process. The cases should also be examined by considering their *sui generis* characteristics and by paying attention to the perspective of the community involved. Here I claim that the qadi gave the verdict in line with the opinions of the community on the matter and within the legal boundaries abiding by the evidence at hand. It goes without saying that this is not valid for every case. We can say that this is especially valid for cases in which the community is somehow a part of the legal process.

While examining the court records regarding the murder of Tebrike, we have seen that the disputants did not choose their words randomly. These statements in

¹⁹ The most frequently used manual of the 16th century was İbrahim al-Halabi's *Multaqa al-Abhur*. See Has (1988, pp. 393, 399).

²⁰ "I argue first that we can begin to understand their social content only when we root the records in the terrain of Aintab as described in the previous chapters. I also suggest that their legal content is likely to remain obscure unless we read them together with other legal texts of the period" (Peirce 2003, p. 87).

question made references to shari'a rules, law articles and fatwas that directly affected the legal process or the qadi's verdict on the matter. The defendants and plaintiffs gave statements that were effective in steering the direction of the legal process. Hence, some researchers take this as evidence that those people were well informed on legal issues (Peirce 2003, pp. 340–341). Both parties might have acquired their legal knowledge in court procedures from legally informed people of the community such as *imams*, *muezzins*, and *faqih*s. Even court officials themselves such as *qadi*, *naib* or *muhzir* may have guided them. Our knowledge on this matter is limited.

Matuk, Cennet, and the people from the village that appeared in the court, no matter where they acquired their knowledge on court procedures, definitely affected the outcome of the case directly through their statements. The qadi declared Matuk's innocence with respect to those statements. In a way, the qadi acted in line with the opinion of the community on this matter by declaring Matuk innocent. The qadi's verdict was, by all means, within the law. He just gave the verdict within the stipulated legal boundaries taking the consensus of the community into consideration. Moreover, both parties provided testimonies that were helpful in establishing Matuk's innocence. If things had been different, the qadi would have decided against the suspect.

An honour killing registered in Crimea court records in 1652 is telling in terms of illustrating how the qadi gives a verdict in the case of a lack of evidence.

“Fati, the mother of Fâhire bint-i Halil who was from the Kazakh of Gözleve and found killed by wounding, her brother İbrahim and her sister Safiye proceeded against Fâhire's husband Mahmud bin Mehmed on the ground that ‘he killed Fâhire deliberately’ and they then demanded ‘retaliation’. Mahmut responded as follows: ‘someone was committing adultery with my wife that night; I stabbed a knife to her and killed her.’ Since Fâhire had not been accused of adultery before and there was also no evidence to prove that there was a stranger at the house, Mahmud's statement was distrusted. Mahmud confessed that he murdered his wife deliberately; hence Mahmud was sentenced to retaliation upon the demand of Fâhire's heirs” (Yaşa 2014, p. 120; CCR, Vol. 4, folio 28a).

In this case, even though Mahmud stated in the court that he murdered his wife on the ground of adultery, he was not able to produce any witness or evidence. According to Islamic law, if a man kills his wife for adultery, he has to prove it by producing witnesses or evidence. At least, there should be an indication of adultery. Ottoman criminal code, on the other hand, asks the man to take witnesses to the crime scene right away. Mahmud did not carry out any of these. There was only his statement saying that he murdered his wife upon seeing her in the act of adultery. This statement was not binding for the court of law, because Fâhire had not been accused of such an offense before (adultery and having a stranger at her house). Although court records hold no such information, it is understood that the people of the village were asked to reflect on Fâhire's behaviour. Consequently, Mahmud was charged with the murder in the first degree. Fâhire's heirs' demand for retaliation was accepted. The role of the community in this case was significant as it was in Tebrike's case. The

fact that the people from the community gave a statement to declare that Mahmud's depiction of Fâhire was wrong provided assistance to the qadi in establishing Mahmud's guilt and fulfilling the legal requirements.

Conclusion

The number of cases pertaining to the killers of fornicators that are registered in the Ottoman court records is limited. Thus, researchers have mostly addressed the issue through the legal literature of a particular period in the Ottoman Empire such as fatwa compilations and law articles. However, some of the comments on Ottoman Shaykh al-Islams' fatwas were fairly short of providing a decent overview of the issue at hand since they ignored the sui generis characteristics of those fatwas.

This article examines a particular case about a man who killed his wife on the ground of adultery. This type of case is rarely encountered in the Ottoman court records. The documents of the case illustrate that the qadi gave the verdict in accordance with the opinion that is held by the majority of Islamic jurists. They stated that it was permitted to kill the fornicators; but in that case the murderer had to produce witnesses or evidence on the matter. The qadi made his decision in line with this opinion and ensured the validity of his verdict through the statements of witnesses and involved parties.

It has become evident that examining legal texts such as case records or fatwas separately is not adequate to provide a comprehensive portrait of the issue. Case records and legal texts should be read together in a way to inform each other. Otherwise, the cases in question will be misinterpreted or not be understood completely.

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