

Recantation of Confession of adultery Crime

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Abstract

Praise be to Allah, The Lord of the universe, prayers and peace be upon the Imam of the messengers, our master Muhammad, his family and his companions.

The difference between the rulings of the higher courts on the effect of the repeated statement on the crime of adultery is the subject of «Recantation from the confession of the crime of adultery, is to know the effect of recantation from the confession of the crime of adultery, to know the way that Sudanese courts work when Recantation from the confession of the crime of adultery takes place, in order to answer the following questions: What is recantation? What are its effects? The researcher followed the inductive, analytical and comparative method according to the nature of the research, and the research came out with the following results: The origin in AL Hudoodis that they should be turned away with suspicions, , the punishment of the convicted adulterer stoning in favor of the offender if the crime is proved only by him, he has the opportunity to deny his confession even during the implementation, as recommended by the researcher: The Sudanese legislator should explicitly stipulate that recantation from the confession is suspicious at any stage of the criminal proceedings, canceling the penalty of hanging to death for the convicted adulterer and referring to the previous rule (punishable by stoning), because it is appropriate.

Introduction

Praise be to Allah, the Lord of the World, prayer and peace be on our master, Muhammad AL Sadiq, AL Ameen, and on his family and his companions.

The confession of the people of the law and jurisprudence is the master of evidence, when there is a confession and there is a lack of other evidence, the confession may prevail the situation if the truth is true the problem lies in referencing the extent of the impact of this recourse on the criminal case, especially AL Hudood crimes, this research is entitled (Recantation from the confession of the crime of adultery and jurisprudence).

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Reasons for choosing the topic:

- 1- Different rulings of the Supreme Courts in the impact of confession.
- 2- Providing the court libraries with a research that may be used by those who implement the Hudood.

The importance of the subject:

- 1- Confession is the master of evidence.
- 2- Recantation of Confession has the effect of dropping the penalty if it is alone and there is no rather evidence.

Objectives:

The aim of the topic is to:

- 1- Know the acknowledgment and the conditions of the headquarters.
- 2- Know the effect of recantation of the confession in the crime of adultery.
- 3- Know the way that Sudanese courts rule when there is a recantation of the crime of adultery.

Research problem:

Lies in the knowledge of the confession and the conditions of the principles established by the Sudanese courts, they are the following questions:

- 1- What is confession? What are the conditions of the person who confesses?
- 2- What is the effect of recantation of the crime of adultery?
- 3- What are the principles established by the Sudanese courts regarding recantation of the crime of adultery?

Research Methodology:

The researcher followed the inductive, analytical and comparative method because of the nature of the research, where conducting the legal texts, cases and Islamic jurisprudence then analyzing and comparing such cases.

Structure of the Research:

For the purpose of the study, the research was divided into an introduction and three topics (the first topic: **the confession**, the second topic: **in the crime of adultery** and the third topic: **in the effect of recantation of the crime of adultery**).

The first requirement: the Confession

The first requirement: the concept of Confession

I. Definition of Confession in Language:

It is the confirmation, Allah (swt) says: (On earth will be your dwelling-place and your means of livelihood - for a time.))¹ in Arabic language we say AqarraQararan or Qurooran².

Second: Definition of Confession in Jurisprudence:

It is to tell someone about the right of others to prove it. It is also to tell a person about the truth in the past on himself³. It is a word⁴, a writing⁵, and a clear sign⁶.

From these definitions, we say that the acknowledgment: (to tell the truth of the right of others to himself in the past is not the establishment of the right from the beginning, and be a word and writing and a reference is understandable, and called recognition recognition).

Third: Definition of the Declaration:

Article (15) of the Sudanese Evidence Act of 1994, paragraph⁷, recognizes that a person confesses to a fact that proves the responsibility of a defendant⁸.

A person informs about a crime that would produce legal effects against him with his intention. It is also the confession of a person in clear terms in facts attributed to him in whole or in part⁹. It is also when a person informs explicitly with certainty¹⁰.

The Supreme Court recognized in the precedent of the Government of the Sudan against Tobi Ali Ahmed (G / MK / 116/ 1972) that the statements made by the accused in a crime of fact expressly indicate that he committed the crime¹¹.

In summary, the acknowledgment can be defined: (a person's recognition, in clear terms, of a fact that would produce legal effects against him with his intention, and that this fact is considered to be fixed in the truth of the facts attributed to him or her).

1- Surat al Baqara verse No 36.

2- Lisan AL Arab, Ibn Mandhoor.1993,111/ 11.

3- Fath AL Qadeer , Ibn AL Hammam.

4- AL Fiqh AL Manhaji al Madhhab AL Imam AL shafia 202/ 8.

5- Hashiyatla' anat AL Talibeen Abu Bakr AL Dimyati [14/ 4].

6- Sharh Zad AL Mustagni, Mohammed AL Shingiti.

7- Sudanese Evidence Law 1994.

8- Turuq AL Ithbatfii AL Ganoon, Algeria 1991,p 152.

9- Hajiyat AL itirafkadaleelIdana. Gadri AL shahawi,2005, p 2.

10- SharhGanoon AL Ithbat, Othman Abu Zeid, 1994.

11- Majalat AL Ahkam AL Qadaiya.1972 p206.

The second requirement

Argument Confession

First: Argument of Confession in Islamic jurisprudence:

When the confession fulfills its requirements, it is an argument in the manner in which it is recognized¹. Confession is the master of evidence; there is no rational person who meets the conditions of confession to accept his confession and attests harm to himself, this can be true only if he is sincere, the God took confession of his prophets and creation.

The Almighty says: «When thy Lord drew forth from the Children of Adam - from their loins - their descendants, and made them testify concerning themselves, [saying]: «Am I not your Lord [who cherishes and sustains you]?»- They said: «Yea! We do testify!» [This], lest ye should say on the Day of Judgment: «Of this we were never mindful»²: this indicates that to confess is a great process and authority³. It is the appearance of truthfulness and lying, and the appearance of the presumption of honesty in it was an argument⁴. Confession is an evidence against the person who confesses and it is the strongest evidence because the rational person never confesses unless he is telling the truth against himself⁵.

So when the confession is issued who is entitled to the conditions that were set for him and without the suspicion is a clear argument.

Second: Argument of Confession in law:

Article (21), paragraph (3) states: «The Confession in criminal matters shall not be conclusive evidence if it is not judicial or has a suspicion.»⁶. This indicates that the judicial confession and if it is free from suspicion of coercion and so on it is considered as a conclusive argument.

Confession is a complete argument in proving the right and it doesn't need any support and it is the master of the evidence. This is certainly a matter of credibility when the person (who confesses) is given the full authority of himself and his money⁷.

The recognition in criminal cases is unequivocal evidence in the face of the premises, unless it is non-judicial, judicial or suspect. The judicial decision is the one before the judge in the Judicial Council. Non-judicial

1- Durar AL Hukkam Sharh Majalat AL Ahkam.

2- Surat AL Araf verse 172.

3- Sharh Zad AL Mustagni, Mohammed AL Shingiti. 416/ 4.

4- AL Mawsua AL Fiqhia AL Quweitiya.

5- Mawsuat al Fiqh AL Islami, 48/ 1.

6- Sudanese Evidence Law 1994, Article 21 /3.

7- Hal AL M uttaham fii Majlis AL Qada', Salih AL Liheidan, 1985 ,p 95.

recognition is any confession made by the accused to any person in his or her ordinary or official capacity outside the court. The Government of the Sudan ¹. Mohamed Fadlallah and another (GS / DC 108/ 1988) stated that the non-judicial recognition is any acknowledgment that has not occurred in the Judiciary Council which provides for the matter of recognition.

Third requirement

Conditions of the confessor

The researcher is satisfied with this requirement of the conditions of the confessor because of the nature of the research. As for the other conditions of confession, it is related to civil matters that the researcher did not address to prevent prolongation.

First: The conditions of the confessor in the Islamic jurisprudence²:

The Islamic jurisprudence mentioned some conditions for the confessor, they are:

- 1- The confessor should be wise, it is not correct to accept the confession of the mad person because he loses the eligibility of the obligation, he and others like him do not have the ability to understand the speech and the ability to perform.
- 2- The confessor should be free in his opinion, If a person is subjected to great harm, it will be difficult for him to bear it, whether he is forced to be hit, or to take his money, or to be threatened by any way.
- 3- The confessor shouldn't be prevented from behaving freely.
- 4- The confessor must be an adult, ie, the signs of natural puberty have appeared on the person of the age of 15 .
- 5- The Hanafiya added freedom³.

Second: The conditions of the confessor in the law:

Article (19) of paragraph 1 of the Sudanese Evidence Act of 1994 stipulates that the confessor must be wise, an adult, and subject to the age of responsibility provided by law.

The definition of an adult is defined in Article 3 of the Sudanese Criminal Code of 1991 (an «adult» means the person who has been proven to have attained puberty and has shown natural certain signs and has completed the age of fifteen, and all those who are at the age of eighteen are considered adults even if they do not show signs of puberty).

1- Majalat AL Ahkam AL Qadaiya, 1989, p 167.

2- Hashiyat AL Disoqiala AL Sharh AL Kabeer.

3- al Bahr AL Raig Sharh Kanz AL Dagaig.

There was no difference in the conditions of the confessor between the Islamic jurisprudence and the law, the scholars only add the condition of freedom, and this requirement is not found in the Sudanese law because of the absence of slavery in Sudan and we conclude that the conditions of the confessor are: being an adult and behave freely without any coercion.

The second topic

The crime of adultery

The first requirement

The concept of AL Had (Islamic law)

First: Definition of AL Had in Language: the barrier between two things so as not to mix one in another¹.

Second: Technical Definition of AL Had in jurisprudence: The assessed sanctions are called Hudood because they prevent the person from falling into the crime, and the Hudood are also called (Maharim) because they forbid the person from committing a crime².

This is the view of the majority of Muslim scholars (fuqaha), and accordingly they set the chapters of punishment in their books³.

(AL Had) is what has been proved by absolute evidence and has an estimated punishment, except for retribution.

Third: Definition of (AL Had) in the Law: The Sudanese Criminal Code of 1991 did not mention the definition of AL Had, but merely mentioned the Hudood in the Article of interpretations, Article (3) by saying «al Hudood crimes» It means drinking alcohol, apostasy, adultery and theft.

The second requirement

The concept of adultery

- 1- Definition of adultery in Language: Zana, AL Zina, it can both be exte- / Definition of adultery in the terminology of jurisprudence: It is to have sexual intercourse with an adult, consent (non-hate) woman..(not small) immediately or in the past kisses without marriage⁴.
- 2- These definitions are conventional, some have introduced sodomy⁵ and most likely that homosexuality is a crime of condescension,⁶.

1- MujaḥMaḡayeeṣe AL Luḡha Ibn Huṣṣein Ibn AL Raḡi. p 263.

2- Al Baḡr AL Raig SharḡKanz AL Daḡaig.

3- AL Niḡḡam AL Jiḡaifii AL Islmwa AL Oḡooba, Kḡeir Allah Talḡaj1982 p145.

4- mujaḡMaḡayeeṣe AL Luḡha, AbiHuṣṣein AL Raḡi1990 34 /2.

5- Hashiyat Raḡ AL Muḡḡḡtar , IbnAabdeen.

6- AL Thaḡmar AL Daḡifiitaḡreeb al maani.

- 3- Definition of adultery in the legal term¹ Defined in the Sudanese Criminal Code² for the year 1991: (The perpetrator of the crime of adultery: every man and a woman have sexual intercourse without a legal marriage³).

Third: Elements of the crime of adultery:

First: In Islamic jurisprudence:

The elements of the crime of adultery are:

- 1- The sexual intercourse is forbidden, since It is regarded as adultery happens without legal marriage, and it is prescribed for that to do any such sexual intercourse . It is considered adultery and punishment unless there is a legal prohibition against punishment.
- 2- That this is in front part of a living person, therefore homosexuality is not considered as adultery , the Shaafa'is⁴ and Hanafi⁵ said that, whereas Maaliki⁶ and Hanbali⁷ said that homosexuality is a crime like adultery.
- 3- The presence of criminal intent; and the occurrence of adultery is well known by the person who commits such a crime.

Second: In the law:

The elements of the crime of adultery in the law are mentioned in the text of Article 145 (a) any man who copulates a woman is considered committed an adultery crime.(b) any woman gives a chance to a man-not her husband- to copulate her without legal relation. (c) Copulation occurs when the glans of the penis gets completely into a woman's vulva.

As well as the law did not consider homosexuality as a crime of adultery as well as kissing⁸ is not a kind of adultery. and this is the opinion of Hanafis and Shaafa'is⁹. The occurrence of the act of hypocrisy, which is expressed by the fuqaha the absence of the shafa, and the result of this is not to enter as touching and kissing is not considered adultery. With intent and non-coercion.

The elements of the offense of adultery in jurisprudence and law are not between them are descriptions of the act of adultery with intent and satisfaction.

1- Hashiyat al shargawi al a tuhfah al tullab.

2- Mansoor bin younis Kashaf al gina 1983 l 277.

3- AL Qanoon al jinai.

4- Kitab AL Hawi AL Kabeer, AL Mawrdi, Abu AL Hassan AL Mawrdi, dar AL Fikr Beirut 223/ 13.

5- Badai AL Sanaifi Tarteeb AL Sharai, abubakr AL Kasani.

6- Ershad AL Salik Ea Ashraf AL Masalik.

7- AL Mughnifi Fiqh AL Imam Ahmed, dar al fikr Beirut 147/ 10.

8- Sharh AL Qanoon AL Jinai AL Sudani 1991 p 271.

9- AL Qanoon AL Jinai AL Sudani 2007 p 43.

Fourth: Punishment of adultery:

First: Punishment of adultery in Islamic jurisprudence:

The punishment of an adulterer in Islamic law is different if he is married or not:

- 1- The adulterer who is not married is punished with a hundred lashes Allah says () AL Noor verse No 2¹. AL Imam Ahmad said that both the man² and the woman should be sent away and stay away from their families, and this is the view of al-Shaafa'i³. The Hanafis did not agree with this opinion and they make it an authority for the Imam, if he believes that it is useful⁴, but the Maalikis said that sending away just concerns the man⁵ not the woman..
- 2- An adulterer – a man or a woman, is punishable by stoning, and that is intended to kill the person who has been shown adultery by throwing stones towards him until he is killed⁶. Stoning is a type of punishment which is a right exists in the Holy Quran when copulation takes place and there is a confess or any kind of evidence such as pregnancy⁷. Obada Ibn AL Samit narrated that the prophet Momammed, peace be upon him, said that a virgin should be hit one hundred lashes And be sent away from home for a year, and the widow or the divorcee should be hit one hundred lashes and be stoned⁸. The Islamic Scholars (fuqaha) stated certain conditions for the matrimony (marriage) some of them are (freedom, being an adult, and puberty), and the Hanafis and Shaafa`is add the condition of being a Muslim⁹.

Second: Punishment of adultery in the law:

Article (146) (1) Whoever commits the crime of adultery shall be punished as follows: (a) Stoning to death if he is married .This amendment has been amended by hanging to death, and this amendment is in violation of the legal text because stoning is found in the oral and practical narratives.

(B) Should be hit one hundred lashes if he is not married.

The law stipulated the punishment for alienation of the unmarried adulterer as a penalty for the court. This is what the Hanafis said.

1- Surat AL Noor Verse No. 2.

2- AL Mughnifii Figh AL Imam Ahmad Beirut 1405 , 132/ 10.

3- Kitab AL Hawi AL Kabeer, AL Mawrdi Dar AL Fikr Beirut 188 /13.

4- Badai al sanaifii Tarteeb AL Sharai.

5- Ershad AL Salik Ela Ashraf al masalik.

6- AL Mughnifii Figh AL Imam Ahmad Beirut 1405 , 13210/.

7- Saheeh Muslim, previous reference 116 /5.

8- Saheeh Muslim, previous reference 116/ 5.

9- Badai AL Sanaifii Tarteeb AL Sharai, abubakr AL Kasani.

(3) Matrimony means that a valid marriage takes place at the time of committing the crime of adultery and copulation really occurred¹.

The law restricts the conditions of the matrimony on (valid marriage and copulation)² and disregards the rest of the conditions mentioned by jurists³, which made a large area of jurisprudence, and the requirement of the law regards that the divorcee woman is not married, this is the opinion of the Shiite Imamia and some of the jurisprudence as Rashid Rida⁴.

Islamic jurisprudence and the law are both differentiate between the punishment of adultery, the punishment of the married person is stoning because of the fear of mixing genealogy, and the punishment of the unmarried person is one hundred lashes with the permissibility of sending away.

The fifth requirement

The Canceling of adultery penalty in Islamic Law

The punishment of adultery in the Islamic jurisprudence is cancelled as follows:

- 1- The existence of certain Haraam, when a man copulates a woman and he thinks that she is his wife.
- 2- If he is forced to commit an adultery crime.
- 3- If he is young, drunk or insane.
- 4- If he denies his confession, and it is the only evidence⁵.

Second: The Canceling of adultery penalty in the law:

The penalty for adultery shall be for either of the following reasons:

- (1) If the offender returns from his confession before the execution of the penalty and there is no other evidence.
- (2) If the witnesses deny their testimony⁶.

The reasons of cancelling the Penalty of adultery is also include the defenses of coercion, the age of criminal responsibility and what is involved⁷.

1- Mashroa Qanoon AL Tadilat AL Mutanawia No (2) 2016.

2- Sharh AL Qanoon AL Jinai AL Sudani 1991 p 336.

3- See the Fourth Requirement.

4- Majalat AL Ahkam AL Qadaiya, 2007, p 207.

5- AL Bahr AL Raiq Sharh Kanz AL Dagaig, Ibn Nujeim AL Masri.

6- Sharh AL Qanoon AL Jinai AL Sudani, Article No 147.

7- Articles (918-15-13-) of AL Qanoon AL Jinai AL Sudani.

The third topic

The impact of Recantation of Confession

First: Recantation of Confession of adultery Crime:

If the Had is proved by Confession, there is no dispute among the majority of fuqaha that it is not cancelled unless the person who commits the adultery crime returns from his confession. by reference to the acknowledgment, and the limit is a deterrent to the point of view. Recantation may be clear or there is an indication such as the person escapes away while people start stoning him, so he will not be harmed if he runs away. Except the Had of defamation cannot be cancelled because it is the right of the victim¹. The case of returning from the confession in the penalty of adultery is either before the judgment or the execution of the sentence:

- (A) Returning from the confession before the ruling, which is that the adulterer comes to confess an adultery crime once, and is required to repeat his confession four times until he is sentenced to adultery. If he confesses once and then retracts he shouldn't be sentenced of the punishment of adultery.

The Messenger of Allaah (peace and blessings of Allaah be upon him) said to the people around him, when Maizibn Malik came to him and asked him to be clean from an adultery crime he committed, he said : Is he mad or drunk? Then the prophet asked him :did you committee an adultery crime: he said : «Yes,then the prophet ordered people to stone him²» A woman came from Gamed from al-Azzid and said: O Messenger of Allaah, cleanse me from an adultery crime, she was pregnant, then the prophet asked his companions to stone her after her baby will be born³.

- (B) Recantation from confession after the judgment and during the execution, the Punishment shall be reduced and the penalty shall not be imposed if the confessor retreats after the judgment and during the execution. The recantation shall be made by speaking explicitly, that he denies committed adultery crime⁴.

Al-Maalikiyyah went to what the Hanafis said in refraining from confession of committing an adultery crime, and he will not be able to review it until four times, so that he will be sentenced to punishment.

1- AL Hudoodfii AL Figh AL Jinai AL Islami AL Muqaran, p 309.

2- Saheeh Muslim 119/ 5.

3- Saheeh Muslim 119/ 5.

4- AL EKhtiyar Li Taleel AL Mukhtar.

Commenting on the case of Maiz and AL Ghamidia¹ If the adulterer agrees to commit adultery, then he denies, and he said: I lied, forced to confess, in such a case the penalty cancelled² the number in the confession of adultery must be four times on the same times with the existence of all other conditions of being an adult³. AL mawradisaïd that : (If the confessor of the adultery crime denies his confession, the punishment is to be canceled, and this is the opinion of Abu Hanifa and more scholars)⁴.

Second: the effect of recantation in the law and the work of the Sudanese courts:

The positive laws do not accept the principle of refutation of the confess unless it is proven that it was a mistake in the facts⁵, but the Sudanese Evidence Act 1983 and the Sudanese Evidence Act of 1994 is the source of the legislation of the Islamic Shari`a. Article (21), paragraph (3), provides that: (A confession in criminal matters does not constitute conclusive evidence if it is not judicial or has a suspicion)⁶. Article (22), paragraph (2) provides that: (a reference to the recognition of AL Hudood crimes is considered a suspicion that makes the confession clear)⁷.

As for the crimes of the Hudood the recantation of the confession is considered a suspicion to prevent the reduction of those who recant from their confession because the recantation became suspicious⁸.

It is noted that the meaning in articles one makes the acknowledgment in border crimes, which is of course a criminal matter as in Article 21, irrelevant if it is not judicial, that is not before a judge or authorized by the law to take the confession and also if it is suspected, such as coercion in the facts that led him to confess.

When the researcher is acquainted with law precedents, all of them found a unified understanding except for one precedent that contradicted what was stated in Islamic jurisprudence, and the researcher goes on to mention these precedents with some useful briefness.

1- Talkhees AL Habeer, Abu AL Fadl AL Asgalani.

2- Mudawanat al Figh AL Maliki waAdilatuhu., 2002,420 /4.

3- AL AzeezSHarh AL Wajeez, Abu AL Gasim AL Gizwini.

4- AL Eqna`afiiMasail AL Ejma`a.

5- Kitab AL Hawi AL Kabeer.

6- Ahkam al Ithbat, p 164.

7- Ganoon al Ithbat al sudani1994,Article21.

8- SharhGanoon al Ithbat al sudani1993.

First: the precedents that are considered to refer to the confession at any stage of the criminal proceedings.

1 / Government of Sudan // Against / KalthoumKhalifaAjbana, 48/ 1992

The accused confess at the investigation stage and recant from this confession when he stood in front of the court of appeal and he said that his previous confession was under coercion.

The general rule governing the acceptance of confession as a legitimate evidence is to take it as a whole without dividing , because it is not justice to take what is against the confessor and leave what is in his favor. But the Sudanese courts were common to make certain exceptions to this general rule and it is that the court refuses to accept confession when it is contrary against common sense and usual circumstances surrounding the case. The court also rejects those parts of the confession that are contradicted and refuted by other evidence, which do not correspond to the truth and the fact that the confessor is bound to justify his criminal acts as false allegations¹. If the accused committed the crime and admitted this at the stage of the investigation with the police and before the court, but he mentioned that he committed the crime as a result of coercion and proved it to the court with conclusive evidence, the suspicion of coercion in this case the accused should be released without any criminal accountability, and the evidence for that is in the following Quranic verse : Allah says (- *except under compulsion, his heart remaining firm in Faith-*)². (*But if anyone compels them, yet, after such compulsion, is Allah, Oft-Forgiving, Most Merciful [to them]*)³.

The evidence for this is that it was narrated in the Sunnah in the hadeeth of the Prophet (peace and blessings of Allaah be upon him): «Allaah forgave my Ummah from the error and forgetfulness, and what they were forced to do.»⁴ This is also what was stated in the case of the Government of Sudan against AL Hajja Hussein Suleiman⁵ and that the accused could prove that she had committed adultery under coercion, the Supreme Court ruled that , coercion whether resulting in pregnancy or not, is not an absolute or unlimited crime against those who are unwilling to commit the adultery crime, and then the accused is innocent and considered not guilty.

If the accused confesses during the investigation, that he is guilty, and he is subsequently recants from his previous confession because it was

1- Majalat AL Ahkam AL Qadaiya, 1992, p 129.

2- Surat AL Nahal verse 106.

3- Surat AL Nur verse33.

4- Saheeh Muslim IbnHayan, Beirut 1993.

5- Majalat AL Ahkam AL Qadaiya, 1988, p 186.

issued on the basis of coercion and torture and whether the defense can prove it or not before the court in this case the accused is not guilty. The Supreme Court ruled in the case¹ of the Government of the Sudan against Muhammad Abdullah Jah al-Rasul that it is the withdrawn confession that the accused states that he has made his confession and denies that it was voluntary.

The court shall not convict the accused of offense based on the rule of necessity to verify, delay and tighten the evidence of Hudood crimes - if the confession is the only evidence - unless the confession is not withdrawn explicitly or implicitly. In the case² of the Government of the Sudan against AL Awad Murkaz Ma`ali, The court shall confirm that the confession of the accused was voluntary in accordance with Article 24 (2) of the Evidence Act of 1983.

A confession extracted from the accused by force or confession that is suspected of being extracted from the accused is not worthy to be a proof of the Hudood Crime. If the accused confesses during the investigation, that he is guilty, and he is subsequently recants from his previous confession because it was issued on the basis of coercion and torture and whether the defense can prove it or not before the court, in this case, the crime is to be considered as unusual crime and it is not an adultery crime. There is no need for the Court of Appeal or the Supreme Court to return the papers to the trial court.

2- Government of Sudan against Maryam Muhammad Sulaiman, / 761405/ e³.

Pregnancy is not conclusive evidence in proving the crime of adultery - Article 773/ of the Evidence Act of 1983, as well as the law of evidence 1994 Article (62) (c) (Pregnancy for non-wife if no suspicion), pregnancy is not a conclusive presumption on adultery, even a presumption reaches the evidence. If the pregnancy is simply the result of sexual intercourse under coercion in this case it is not regarded as an evidence to prove that there was an adultery crime, this is what the scholars of jurisprudence agree with.

Second: the precedents that do not consider the recantation of confession if pregnancy is suspicion that prevent the Had punishment.

Government of Sudan /against Maryam Mohammed Abdulla, 21/ 1405h.

This is a precedent contrary to the jurists' opinion and the work of the Sudanese courts that they do not take coercion as a presumption of the

1- Majalat AL Ahkam AL Qadaiya, 1973, p 263- 288.

2- Majalat AL Ahkam AL Qadaiya, 1983, p 95150-.

3- Majalat AL Ahkam AL Qadaiya, 1405h, AL Majalla AL EElectroniya.

Dr. Kamal Abdullah Ahmed Al-Mahallawi ————— **Recantation of Confession of adultery Crime**
possibility of adultery and that the woman agrees and did not take coercion
as an evidence¹.

In the case of AL Hudoodcrimes, the court of the subject must discuss suspicions one by one in comparison to what has been done in cases of murder. The court discusses the exceptions that mentioned in Article 249 of the Penal Law² on exceptions that change the description of the crime from intentional killing to quasi-murder Intentionally.

The case in this case was based on the seven-month confession and pregnancy, and the court discussed these evidence in accordance with the conditions required by law.

The accused woman admitted at all stages of the case that the accused man who was released for lack of evidence against him had copulated her sexually and she did not recant from her confession even in the application for consolation that she had submitted. Article 19 (1) and Article 20 (2) of the same law state that the judicial definition of criminal matters shall be limited to the recognition of a fact in the Judicial Council during the course of the proceedings relating thereto. Article 22 states that the confession shall be explicit or by signs. Article 23 (1) considered that the confessor should be very wise and an adult. The confession is regarded incorrect if it is false and took place under coercion (article 24) and it is not true if the result of temptation or coercion is to consider the return of the confession in criminal matters as almost making the evidence unambiguous. The majority of fuqaha The limit shall be waived if there is no other evidence to prove it. Article 26 (2) of the Law of Evidence states that refraining from acknowledgment in criminal matters constitutes a suspicion that makes the confession unconstitutional.

Did the accused woman has been forced to commit the crime?

The court was not satisfied with the defendant's alleged compulsion to commit the crime and described it as a statement which has no proof. The court confirmed that what was stated in the statements of the convicted woman in the investigation and during the trial and what she mentioned in the application of petition makes the court to ascertain that there was no coercion signed on the conviction, she stated in the investigation that she had been copulated sexually twice and that she was afraid and allowed him to copulate her and stated in the court that he copulated her while she was sleeping and sometimes she said that she was afraid. The court stated that it is very difficult to copulate a woman by force but it is hard that the accused has

1- Majalat AL Ahkam AL Qadaiya, 1405h, AL Majalla AL ELectroniya.

2- Ganoon AL Oqubat 1983.

enabled the adulterer from In addition to this, the conflicting statements made by the accused in the various stages of the case make the court absolutely certain that the accused woman was not sincere in her case. The court can say that sexual intercourse with the accused woman has been more than once by what is reported daily in the investigation, which was read out in the court and she agreed it. The court then stated that since the crime in this case is fixed in another separate evidence, the pregnancy is considered evidence of adultery if a woman is not married, and since the accused claimed that she was hated, we believe that she must bring an evidence. The accused did not respond to her and did not report the accused's contact, even though the contact was made twice, bearing in mind that bringing a woman without her consent is very difficult and we believe that the adoption of this opinion closes the door to the spread of corruption and vice, taking into account that pregnancy is the maximum damage that can be considered as a separate evidence without linking it to the confession or the evidence of witnesses. In the explanatory note to the Penal Code¹, (it was necessary to specify the evidence of adultery for the severity of the punishment and because the evidence was associated with the crime in the Holy Quran.

In the Act 306 and punished in article 318 (1), it has also been identified that the accused committed the crime of adultery which also corresponds to article 430 (2) of the Penal Code of 1983.

It also provides analysis that the Sudanese Evidence Act of 1994 made reference to the recognition of the crimes of AL Hudood as well as the criminal law and the 1991 Criminal Code made reference to the confession of adultery in line with what is stated in the Islamic jurisprudence and the Sudanese Supreme Courts stated that recantation from confession of adultery crime at any stage is a suspicion that the (Haad) is being canceled and that the refusal to admit the claim of coercion is explained.

The Referred position:

It is likely that the recantation from confession of adultery crime at any stage of the criminal case is suspected of causing the reduction even if the woman is pregnant:

- 1- If the (Haad) is established there is no room for amnesty, but it is compromised.
- 2- Pregnancy is a strong presumption for the unmarried or if she is absent from her husband for a long time, but it disappears under the pretext of coercion.

1- Al Mudhakira AL Tafseeria li Ganoon AL Oqubat 1983. P 10.

- 3- The woman is often raped if she does not talk to her family for fear of scandal, especially if she is divorced or a widow .
- 4- In respect to adultery crime, the role of the judge is negative, whenever he finds an evidence to make him/her free he makes use of the chance.

Conclusion

At the conclusion of this research, the researcher stated the most important conclusions and recommendations as follows:

First: The Results:

- 1- The origin of the Hudood Crime is to be.
- 2- Refer to the declaration at any stage of the criminal proceedings, the suspicion of the extent of the limitation.
- 3- Explanations of refraining from acknowledging the claim of coercion.
- 4- Punishment of the convicted adulterer Stoning in favor of the offender if the crime is fixed by his approval only allows him the opportunity to return from his approval even during the implementation.

Second: Recommendations:

- 1- The Sudanese legislator must explicitly stipulate that refuting the confession in the crime of adultery is suspected of causing a reduction at any stage of the criminal proceedings.
- 2- Abolishing the penalty of hanging to death for the harlot and the reference to the previous text execution stoning, because it fits with the birthplace of the penalty of adultery.

Resources and References

The Holy Quran

- 1- Alfawakih Aldawaniuela Risalat Ibn abiZayd Alqirwani, Ahmad bin Ghanim bin salimAlnfrawi.
- 2- Dar Alhukkam Sharah Majalatal ahkami,Almuhami Fahamiu Alhusini, Alnnashir : Dar al kutub Aleilmia Lubnan / Bayrut.
- 3- Mawsueat AlfaqihAl islamia, : Wizarat Al awqaf Almisrit.
- 4- Ithbat Jarayimat alhudud fi alshryetw alqanuni, Biduriat Abdalmuneim Hasunat - 2002 Khartum .
- 5- Ahkam AlEthbat, Dr.RidaAlmuzghiniu1985m.
- 6- Irshad alssalik Ela Ashraf Almasalik, AbdAlruhmin bin Mohammad bin EskarshihabaldiynAlbaghdadialmalki.

- 7- Asnaa almtalib fi isharh Rawd Altalib ,shykhal`iislam / zkryaal`ansari , daralktbalelmyt - bayrut - 1422 h - 2000 .
- 8- Alaikhtiar litaelilAlmukhtar(ktabAlhudud), Abdallah bin Mahmud AlmusiliAlhinfi,DarAlmuerifat, Bayrut, Ibnani.
- 9- Al`iiqnae fi hali Alfaz abiShajae, Shams aldiynMuhamad bin Ahmad AlsharbaynaAlkhatib.
- 10- Al`iiqnae fi MasayilAl`iijmaei, Abu alhasan Alfas, Dar alqalm, Dimashq, Seria, 1424h - 2003m.
- 11- Albahr Alrrayiq SharahkanzAldaqaqiq, ZaynAldiyn bin Ibrahim bin Njym , AlmaerufAlmisri, [AlmaktabaAlshshamila].
- 12- AL Tajwa AL Ekleel li MukhtasarKHaleel. Khalil, Abu Abdullah Mohammed bin Yusuf Al-Abdarifamous.
- 13- Saheeh Muslim, Abu al-Husayn Muslim bin al-Hajjaj bin Muslim al-Qusheiri al-Nisaburi, Dar al-Jil Beirut + New Horizons House Beirut.
- 14- AL Hudoodfii AL Islamic Comparative Criminal Jurisprudence, Khalid Al-Rashed Al-Jumaili, 1, Dar Al-Hadezia Press, Cairo, Egypt, 2002.
- 15- Al-Samer al-DanifiiTagreeb AL Maani, Abu Zayd al-Qairawani, Dar al-Fikr, Damascus, Syria.
- 16- El Sharh ALMumtaialaZadAlmstakna, Mohammed bin Saleh bin Mohammed Al - OthaimeenDar Ibn al - Jawzi, edition: First, year of print: 1422 - 1428.
- 17- Aziz al-Wajeez, Abu al-Qasim Abd al-Karimibn Muhammad al-Qazwini, investigation, Scientific Book House, Beirut, Lebanon.
- 18- Methodical jurisprudence on the doctrine of Imam Shafi`i, Dr. Mustafa Al-Khan, Dr. Mustafa Al-Baja and Ali al-Shurbaji.
- 19- Sudanese Criminal Law of 1991.
- 20- Criminal Law , Mohamed Elfatih Ismail, Sudan Open University, 2007.
- 21- AL MughhnifiiFigh AL Imam Ahmad bin Hanbal al-Shaibani, Abdullah bin Ahmad bin Qudamah al-Maqdisi Abu Muhammad, Dar al-Fikr - Beirut, first edition, 1405.
- 22- Islamic Criminal Encyclopedia Comparative to the Regulations in the Kingdom of Saudi Arabia, Saud bin AbdulAli Al-Baroudi Al-Otaibi, Member of the Investigation and Prosecution Department, Riyadh Region, Second Edition.
- 23- Encyclopedia of Fiqh of Kuwait, issued by: Ministry of Awqaf and Islamic Affairs - Kuwait, edition: (14041427- AH).

- 24- Criminal system in Islam and punishment, Khair Allah Talafaj - Baghdad - the Madba'at ALHuria. - 1982.
- 25- Bada'i al-Sanayeh, Abu BakribnMas`udibn Ahmad al-Qasania al-Din.
- 26- TaseelQanoon AL Ithbat 1993, the judiciary, the Commission for the establishment of laws.
- 27- Tuhfat al HabeebalaSharh ALKhatib, Suleiman bin Omar bin Mohammed al-Baghirmi.
- 28- Talkhees Al-HabeerfiiTakhreejAhadith al-Rafi`i al-Kabeer, Abu al-Fadl Ahmad ibn Ali ibn Muhammad ibn Ahmad ibnHajar al-Askalani , Dar al-Kut al-Slami, First edition 1419H.1989.
- 29- HashiyatEanat AL Talibeen, Abu Bakr bin Mohammed Shata al-Dimiati.
- 30- Hashiyat ALDasouki, Mohammed bin Ahmed Dasouki.
- 31- Al-Sharqawi`sAbu YahyaZakaria Al-Ansari, Dar Al-Maarifah, Beirut, Lebanon.
- 32- Hashiyat Rad AL Mukhtar, IbnAbidin, 2, Dar al-Maarafa, Beirut Lebanon, 1966.
- 33- The case of the accused in the Judicial Council,Saleh Al-Luhaidan, pp. 11985-1405-, Al-Tobji Press, Cairo.
- 34- HajiyatALEittrafKaDaleelEdana, Qadri Abdel Fattah Al - Shahawi, 1 - 2005.
- 35- Explanation of the Sudanese Criminal Code of 1991, Special section, Dr. Yassin Omar Yusuf, first edition 2001.
- 36- Explanation of the Sudanese criminal law for the year 1991, Abdullah FadellIssa.
- 37- Explanation Zad Almstakna, Mohammed bin Mohammed Mukhtar Shankiti.
- 38- Explanation of the Law of Evidence, Osman Haidar Abu Zeid 1, 2007, the Open University of Sudan.
- 39- Explanation of the Sudanese Evidence Act of 1994, d. Haj Adam Hassan Eltaher, second edition 2003
- 40- Explanation of the Sudanese Evidence Law, Professor Haj Adam Al-Taher.
- 41- Explanation of the ultimate will, Mansour bin Younis bin Idris al-Bahouti.
- 42- Saheeh Ibn Habban i, Muhammad ibnHibban Abu Hatim al-Basti, ShuaibArnaout, Publisher: Muasasat AL Risala, Beirut, second edition, 1414- 1993.

- 43- Saheeh al-Bukhaari, Muhammad ibn Ismail al-Bukhari.
- 44- Methods of Evidence in the Law, MarjiDalila - Algeria 1991 m.
- 45- Faht al-Bari SharhSahih al-Bukhari, Ahmad ibn Ali ibnHajar Abu al-Fadl al-Askalani al-Shafei, Publisher: Dar al-Maarefah - Beirut, 1379, investigation: Ahmad ibn Ali ibnHajar Abu al-Fadl al-Askalani al-Shafei.
- 46- Fatah al-Qadeer, Kamal al-Din Muhammad ibnAbd al-Wahid al-Siwasi known as Ibn al-Hammam (died: 861 e), (comprehensive library is not approved for publication).
- 47- Sudanese Evidence Act of 1994
- 48- Sudanese Evidence Act of 1994.
- 49- Book of the Great Al-Hawardi Al-Maourdi, AlamaaAbul-Hassan Al-Maourdi, Publishing House: Dar Al-Fikr Beirut.
- 50- Scouts of the mask on the mask of persuasion, Mansur Ben Younis, World of Books, Beirut, Lebanon, 1983.
- 51- To the teeth of the Arabs, IbnManzour, The Foundation of Arab History, Revival of the Arab Heritage III Beirut, Lebanon, 1413 -1993
- 52- Journal of Judicial Judgments 1405 e e-magazine.
- 53- Journal of Judicial Judgments 1972.
- 54- Journal of Judicial Judgments 1983
- 55- Journal of Judicial Judgments 1989.
- 56- Journal of Judicial Judgments 1992 Electronic Journal.
- 57- Journal of Sudanese Judicial Judgments for the year 2007.
- 58- Journal of Judicial Judgments in 1985.
- 59- Journal of Judicial Judgments in 1988.
- 60- The Code of Fiqh and its Proofs, Al-Sadiq A. Al-Qaryani, 1, Al-Rayyan Printing and Publishing, Beirut, Lebanon, 1423 -2002.
- 61- Dictionary of Language Standards, AbiHussain Ahmed bin Al-Razi,, 1, Scientific Library House, Beirut, Lebanon, 1420 e 1990.
- 62- Mughni AL MuhtajelaMarifatAlfadh AL Minhaj.
- 63- Mawahib AL JaleelfiiSharhMukhtasar Khalil.