

## 4. Hadith Al-Qadha, An Age Of Jungle Justice I

The *khalifah* of Muslims is also their sovereign judge:

يا داوود إنا جعلناك خليفة في الأرض فاحكم بين الناس بالحق

O Dawud! We have appointed you a *khalifah* over the earth. Therefore, **judge between mankind** with the truth. 1

Since 'Umar was recognized by most Muslims of his time as their *khalifah*, it follows naturally that he was also their sovereign judge. The question is: was 'Umar a *competent* judge? To find the answer, we must look at some iconic cases decided by 'Umar b. al-Khaṭṭāb.

Imam Ibn Khuzaymah (d. 311 H) records about an interesting case:

ثنا يونس بن عبد الأعلى و محمد بن عبد الله بن الحكم قالوا ثنا ابن وهب أخبرني جرير بن حازم عن سليمان بن مهران عن أبي ظبيان عن ابن عباس قال: مر علي بن أبي طالب بمجنونة بني فلان قد زنت أمر عمر برجمها فردها علي و قال لعمر: يا أمير المؤمنين أترجم هذه؟ قال: نعم قال: أما تذكر أن رسول الله صلى الله عليه و سلم قال: رفع القلم عن ثلاثة عن المجنون المغلوب على عقله و عن النائم حتى يستيقظ و عن الصبي حتى يحتلم قال: صدقت فخلى عنها

Yunus b. 'Abd al-A'la and Muhammad b. 'Abd Allah b. al-Hakam – Ibn Wahb – Jarir b. Hazim – Sulayman b. Mihran – Abu Zibyan – Ibn 'Abbas:

'Ali b. Abi Talib passed by a **lunatic woman** from so-and-so tribe, and she had committed adultery.

**'Umar ordered that she be stoned to death.** So, 'Ali returned her and said to 'Umar, "O Amir al-Muminin! Do you want to stone this (woman)?" He ('Umar) replied, "Yes". He ('Ali) said, "Do you remember that the Messenger of Allah, peace be upon him, said: 'The pen has been lifted about three people: the mentally ill, the person sleeping until he wakes up, and the child until he becomes an adolescent.'" He ('Umar) responded, "You have said the truth". So, 'Umar freed her (i.e. the lunatic woman).<sup>2</sup>

'Allamah al-Albani (d. 1420 H) comments:

### حديث صحيح رجاله ثقات

It is a *sahih hadith*. Its narrators are *thiqah* (trustworthy).<sup>3</sup>

Elsewhere, Imam Ibn Khuzaymah also records:

أنا أبو طاهر نا أبو بكر نا يونس بن عبد الأعلى و محمد بن عبد الله بن عبد الحكم قالوا أخبرنا ابن وهب أخبرني جرير بن حازم عن سليمان بن مهران عن أبي ظبيان عن ابن عباس قال: مر علي بن أبي طالب بمجنونة بني فلان قد زنت أمر عمر برجمها فرجعها علي وقال لعمر: يا أمير المؤمنين ترجم هذه؟ قال: نعم قال: أو تذكر أن رسول الله صلى الله عليه وسلم قال: رفع القلم عن ثلاث عن المجنون المغلوب على عقله وعن النائم حتى يستيقظ وعن الصبي حتى يحتلم قال: صدقت فخلي عنها

Abu Tahir – Abu Bakr Yunus b. 'Abd al-'A'la and Muhammad b. 'Abd Allah b. al-Hakam – Ibn Wahb – Jarir b. Hazim – Sulayman b. Mihran – Abu Zibyan – Ibn 'Abbas:

'Ali b. Abi Talib passed by a **lunatic woman** from so-and-so tribe, and she had committed adultery. **'Umar ordered that she be stoned to death.** So, 'Ali returned her and said to 'Umar, "O Amir al-Muminin! Do you want to stone this (woman)?" He ('Umar) replied, "Yes". He ('Ali) said, "Do you remember that the Messenger of Allah, peace be upon him, said: 'The pen has been lifted about three people: the mentally ill, the person sleeping until he wakes up, and the child until he becomes an adolescent.'" He ('Umar) responded, "You have said the truth". So, he freed her (i.e. the lunatic woman).<sup>4</sup>

'Allamah al-Albani rules:

## إسناده صحيح

Its chain is *sahih*<sup>5</sup>

The exact narration above is documented by Imam Ibn Hibban (d. 354 H) in his *Sahih* through the route of his teacher, Imam Ibn Khuzaymah, with the same chain.<sup>6</sup> ‘Allamah al–Albani again says:

## صحيح

*Sahih*<sup>7</sup>

Shaykh al–Arnau<sup>8</sup> also comments:

## رجاله ثقات رجال مسلم

Its narrators are *thiqah* (trustworthy), narrators of (*Sahih*) Muslim.<sup>8</sup>

Imam al–Hakim (d. 403 H), a student of Ibn Hibban, records the *hadith* as well:

حدثنا أبو بكر بن إسحاق الفقيه وعبد الله بن محمد بن موسى قالا : أنبأ أحمد بن عيسى المصري أنبأ ابن وهب أخبرني جرير بن حازم عن سليمان بن مهران عن أبي ظبيان عن ابن عباس قال مر علي بن أبي طالب بمجنونة بني فلان وقد زنت وأمر عمر بن الخطاب برجمها فردها علي وقال لعمر : يا أمير المؤمنين أترجم هذه ؟ قال : نعم قال : أو ما تذكر أن رسول الله صلى الله عليه وسلم قال : رفع القلم عن ثلاث : عن المجنون المغلوب على عقله وعن النائم حتى يستيقظ وعن الصبي حتى يحتلم قال صدقت فخلي عنها

Abu Bakr b. Ishaq al–Faqih and ‘Abd Allah b. Muhammad b. Musa – Ahmad b. Isa al–Misri – Ibn Wahb – Jarir b. Hazim – Sulayman b. Mihran – Abu Zibyan – Ibn ‘Abbas:

‘Ali b. Abi Talib passed by a **lunatic woman** from so–and–so tribe, and she had committed adultery.

‘Umar b. al–Kha<sup>9</sup>ab ordered that she be stoned to death. So, ‘Ali returned her and said to ‘Umar, “O Amir al–Muminin! Do you want to stone this (woman)?” He (‘Umar) replied, “Yes”. He (‘Ali) said, “Do

you remember that the Messenger of Allah, peace be upon him, said: ‘The pen has been lifted about three people: the mentally ill, the person sleeping until he wakes up, and the child until he becomes an adolescent.’ He (‘Umar) responded, “You have said the truth”. So, he freed her (i.e. the lunatic woman).<sup>9</sup>

Al-Hakim says:

## هذا حديث صحيح على شرط الشيخين

This *hadith* is *sahih* upon the standard of the two Shaykhs<sup>10</sup>

Imam al-Dhahabi (d. 748 H) concurs:

## على شرطهما

(*Sahih*) upon the standard of both of them<sup>11</sup>

Imam Abu Dawud (d. 275 H) documents a fuller version of the *hadith* that gives some disturbing details:

حدثنا عثمان بن أبي شيبة ثنا جرير عن الأعمش عن أبي ظبيان عن ابن عباس قال: أتى عمر بمجنونة قد زنت فاستشار فيها أناساً فأمر بها عمر أن ترحم فمر بها علي بن أبي طالب رضوان الله عليه فقال ما شأن هذه؟ قالوا مجنونة بني فلان زنت فأمر بها عمر أن ترحم قال فقال ارجعوا بها ثم أتاه فقال يا أمير المؤمنين أما علمت أن القلم قد رفع عن ثلاثة عن المجنون حتى يبرأ وعن النائم حتى يستيقظ وعن الصبي حتى يعقل؟ قال بلى قال فما بال هذه ترحم؟ قال لا شيء قال فأرسلها قال فأرسلها قال فجعل يكبر

‘Uthman b. Abi Shaybah – Jarir – al-A’mash – Abu Zibyan – Ibn ‘Abbas:

A lunatic woman, who had committed adultery, was brought to ‘Umar. **So, he consulted with some people about her, and therefore ordered that she be stoned to death.** But, ‘Ali b. Abi Talib, *ridwanullah ‘alaihi*, passed by her and said, “What is the issue with this (woman)?” They replied, “She is a lunatic woman from so-and-so tribe. She committed adultery and ‘Umar ordered that she be stoned to death.” So, he (‘Ali) said, “Return with her (to ‘Umar).” Then he (‘Ali) came to him (‘Umar), and said, “O

Amir al-Muminin! Do you know that the pen has been lifted in the case of a lunatic until he is cured, and of someone sleeping until he wakes up, and in the case of a child until he becomes mentally mature?" He ('Umar) replied, "Yes, I do". **He ('Ali) asked, "So, why do you want to stone this (woman)?" He ('Umar) replied, "There is NOTHING!"** He ('Ali) said, "Free her". So, he ('Umar) freed her, saying *Allahu Akbar!*<sup>12</sup>

'Allamah al-Albani says:

### صحيح

*Sahih*<sup>13</sup>

Reading all the narrations together, one gets the full picture of what happened:

1. A lunatic woman was charged with adultery, which she apparently committed in her still extant state of insanity.
2. The *Shari'ah* provides that crimes committed in a state of insanity are not justiciable.
3. 'Umar was well aware of this rule, and was fully convinced that the lunatic woman truly committed the adultery in a state of insanity. He nonetheless consulted with his team of judicial advisers (which excluded 'Ali) on the matter, and eventually made up his mind to execute her.
4. While convicting the lunatic woman and passing the death sentence against her, 'Umar fully remembered the above-mentioned rule of the *Shari'ah*.
5. Nonetheless, 'Umar ordered the execution of the lunatic woman for "nothing", in his own words.
6. Amir al-Muminin 'Ali saw a clear miscarriage of justice in the judgment of 'Umar, and stood against the order of the commander-in-chief, at great personal risks. He prevented 'Umar's executioners from carrying out their illegal orders.
7. 'Ali asked 'Umar if the latter knew the *Shari'ah* ruling concerning lunatic people. 'Umar replied: "Yes, I do". Surprised, he further asked the latter why he wanted to execute the lunatic woman in that case. 'Umar made no secret of his intention. There was simply "nothing"! There was no reason. He only wished to kill the woman, and that was it!
8. 'Ali reminded him of the *hadith* of the Prophet on the matter. Perhaps, 'Umar had forgotten the source of the *Shari'i* ruling. Luckily, 'Umar admitted to the truth of the *hadith*.
9. At this point, 'Ali advised him to free the innocent lunatic woman. Fortunately for her, 'Umar accepted

‘Ali’s advice and allowed her to go free.

Without ‘Ali’s timely intervention, ‘Umar would have deliberately executed the innocent woman for “nothing”!

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1. Qur’an 38:26
  2. Abu Bakr Muhammad b. Ishaq b. Khuzaymah al-Salami al-Naysaburi, *ʿAḥīḥ* (Beirut: al-Maktab al-Islami; 1390 H) [annotators: Muhammad Nasir al-Din al-Albani and Dr. Muhammad Mustafa al-Aʿzami], vol. 4, p. 348, # 3048
  3. Ibid
  4. Ibid, vol. 2, p. 102, # 1003
  5. Ibid
  6. Abu Hatim Muhammad b. Hibban b. Ahmad b. Hibban b. Mu’adh b. Ma’bad al-Tamimi al-Darimi al-Busti, *ʿAḥīḥ Ibn Hibban bi Tartīb Ibn Balban* (Beirut: Muassasat al-Risalah; 2nd edition, 1414 H) [annotators: Muhammad Nasir al-Din al-Albani and Shuʿayb al-Arnaut], vol. 1, p. 356, # 143
  7. Ibid
  8. Ibid
  9. Abu ‘Abd Allah Muhammad b. ‘Abd Allah al-Hakim al-Naysaburi, *al-Mustadrak ‘ala al-ʿAḥīḥayn* (Beirut: Dar al-Kutub al-‘Ilmiyyah; 1st edition, 1411 H) [annotator: Mustafa ‘Abd al-Qadir ‘Ata], vol. 1, p. 389, # 949
  10. Ibid
  11. Ibid
  12. Abu Dawud Sulayman b. al-Ash’ath al-Sijistani al-Azdi, *Sunan* (Dar al-Fikr) [annotator: Muhammad Nasir al-Din al-Albani], vol. 2, p. 545, # 4399
  13. Ibid

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