Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The absent father - a case of co-perpetratorship in honour killing

Question(s) at stake:

Whether the father of the victim, who did not actively commit the criminal act himself, can be punished as a co-perpetrator of murder under specific aggravating circumstances.

Outcome of the ruling:

The father of the victim, who did not actively commit the criminal act himself, can be punished as a co-perpetrator of murder under specific aggravating circumstances.

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Gender related violence
- Homicide
- Honour crimes
- Violence against women

Tag(s):

- Base motives
- Co-perpetratorship

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Country:

Germany

Official citation:

Regional Court Kleve, Judgment of 29 December 2009, 170 Kls -101 Js 105/09 10/09 (LG Kleve, Urteil vom 29.Dezember 2009, 170 Kls -101 Js 105/09-10/09)

Link to the decision:

https://openjur.de/u/2178499.html

ECLI:

ECLI:DE:LGKLE:2009:1229.170KLS101JS105.09.00

Date:

29 December 2009

Jurisdiction / Court / Chamber:

Regional Court Kleve, 7th grand criminal division

Remedy / Procedural stage:

First Instance

Previous stages:

None

Subsequent stages:

- Federal Court of Justice, 15 June 2010, 3StR 157/10

Branches / Areas of law:

Criminal Law

Facts:

20-year-old Gülsüm was the daughter of a family who lived in Germany but originally came from Mardin, Turkey. As she grew up, she increasingly came into

conflict with her parents, who remained rooted in the traditional patriarchal way of life of their home region, while she cultivated a Western lifestyle. After her parents married her off in Turkey, she returned to Germany without her husband and soon had a boyfriend with whom she was expecting a child. However, she aborted it. She told this to a cousin, whom her parents would have liked her to marry after the divorce from her first husband. At a time that could not be determined, her father Yusuf and eldest brother Davut decided to kill her because, in their eyes, she had massively violated the family's honour. On the evening of the crime, Gülsüm and one of her sisters were in their shared flat. The father first lured the sister out of the flat by telephone under a pretext. Then her brother came and told Gülsüm that a friend of his had probably found her stolen bicycle and that she should come and look at it. They both got into the car, picked up the friend, and drove to a lonely field path. Once there, the brother first choked her with a rope that his friend had brought with him, then beat the now unconscious Gülsüm with branches and smashed her face. Two days later, someone found the dead body while taking a walk. Suspicion quickly fell on the father and the brother. They were remanded in custody, as was the brother's friend, and charged with murder under specific aggravating circumstances.

Ruling:

The court convicted Gülsüm's father Yusuf and her brother Davut of complicity in murder under specific aggravating circumstances and the brother's friend of aiding murder under specific aggravating circumstances (section 211 German Penal Code). In its reasoning, the court first described the cultural background of the family and the family life, which was characterized by conflicts between Gülsüm and her parents and violence on the part of the father. Then it described the course of events on the day of the crime as it appeared to the court, what happened after the crime, the discovery of the crime, the investigation, and the witness statements. This was followed by the assessment of the evidence. While the finding that the brother had directly committed the crime and that his friend had assisted him in doing so could be justified relatively briefly according to the results of the investigation, the position of the father in the crime required more

detailed discussion.

The father himself was not present at the crime scene. Nevertheless, there were a number of circumstances that led the court to consider him a perpetrator as well (according to section 25 German Penal Code) and not merely an accessory (according to section 27 German Penal Code).

First, there was important circumstantial evidence for this from the course of the day. For example, he had lured Gülsüm's sister out of the flat shared by the siblings before the brother picked Gülsüm up to drive her to the crime scene. On the same day, he had also made numerous phone calls to his son.

Furthermore, the court had consulted an expert who described in detail the value system and the structure of families in the region of Mardin, Turkey. The honour of the family depends on the behaviour of the women; even rumours can mean a loss of honour. Therefore, they are strictly controlled, and there is an absolute duty of obedience to the father as head of the family. A woman's misconduct can lead to her murder under specific aggravating circumstances, and the eldest brother, as the father's representative, is called upon to commit this crime. From the father's behaviour in the years before the crime, the court concluded that he still adhered to this value system.

Finally, the court found that according to this value system, a son would never commit such an act without the father's consent, and moreover that the brother's personality would have been too weak to commit such an act on his own and that he had a very good relationship with his father, to whom he was obedient.

From all this, the court concluded that the father intended to act as perpetrator and did not see himself merely as an abettor or aider and that, due to his participation in the run-up, he was indeed to be regarded as perpetrator and therefore had to be punished as such.

When examining the existence of an element of murder under specific aggravating circumstances, the chamber followed the established case law that a base motive exists if the perpetrator puts himself above the legal order with a view to save his so-called honour and denies another person the right to live (see

in detail CUREDI33DE003).

Main quotations on cultural or religious diversity:

- "The social structure of the Mardin region is still very patriarchal and very religious. According to the archaic patriarchal values that are still widespread there, the legal unit of a family household is constructed through the concept of honour. Both internally and externally, the life of the family is organized around the existence and preservation of honour, which is prominently represented internally and externally by the head of the household. The family structure is characterized by a patriarchal hierarchical rank order. Obedience to the father and respect for the father's authority play a central role." (para. 42)
- "The female family members are the embodiment of honour in the narrower sense. The sexual integrity of the wife and daughters, i.e. their chastity before marriage and fidelity within it, is proof of women's honour and thus of the family's honour." (para. 43)
- "The entire legal unit of the family, represented by the head of the household as the head of the family, is responsible for the preservation of this women's honour. Every male family member, and primarily the head of the family, is a protector and defender of the honour of the nuclear family -- and thus also that of the clan and tribe -- in patriarchal societies. As soon as a violation of honour has become public in the community, patriarchally minded persons are obliged to act. Otherwise, they can be designated as dishonourable by the community and ostracized. In the case of honour violations that have not become public, they can be kept as a secret in the family so that public sanctions or punishments do not occur." (para. 44).
- "Unimpressed by the ideas of the legal community in Germany, which he was also familiar with, he regarded the women of his family, i.e. in particular his daughters, as the embodiment of honour, expected them to be chaste, and considered himself entitled to take appropriate measures in case of

violations of the rules." (para. 46)

- "According to Yusuf's conception, his daughter led a dishonourable lifestyle and -- as became clear -- could not be induced to change her way of life. The decision to kill her also followed from the fact that Gülsüm's tradition-breaking and dishonouring behaviour -- in particular her premarital sexual intercourse -- had become obvious due to the pregnancy and had also become known beyond the immediate family circle, thus also affecting the honour and reputation of the entire family, in particular his person as head of the family". (para. 99)
- "According to the Division's findings and the convincing explanations of the expert Prof. Kizilhan, it is precisely the (eldest) sons of the family who have the task of demonstrating the strength of the family to preserve, defend, and restore the so-called family honour. For this reason -- and Gülsüm also knew this -- it is usually the eldest sons who are designated to carry out violent crimes in the name of so-called honour." (para. 397)
- "The expert Prof. Dr. Kizilhan [...] reported on the basis of his own (ethnopsychological) research and travels in the area of origin of the S. family, Mardin, and on the archaic patriarchal structures prevailing there. In particular, he explained that the idea of women's honour and the responsibility of the head of the family and other male family members to preserve this honour still holds sway there, as does the central role of obedience and respect towards the father." (para. 404)
- "According to the expert, the members of the S. family, especially Yusuf S., are socialized by these structures and ideas. In line with the expert, the Division assumes that these ideas of honour, including how to react to violations of honour, are valid in the S. family." (para. 405)
- "In view of the prevailing ideas of family honour and sexual integrity of the daughters and sisters as described by Yusuf and Davut S. and the established joint planning and execution of the crime, the Division has no doubt that Gülsüm S. was killed because she had blatantly violated the

family honour in the eyes of the defendants and because her lifestyle, her sexual contacts, and her pregnancy (which made such contacts visible) had violated the family honour in the eyes of the defendants and had become known to third parties." (para. 434)

- "It is so obvious to the Division that it assumes that in addition to Gülsüm's behaviour, which was perceived as recalcitrantly dishonourable, the thing to be avoided at all costs had now also happened: namely, knowledge of Gülsüm's behaviour, which in the eyes of the perpetrators was dishonourable, had leaked out and spread beyond the family circle in the narrower sense." (para. 456).
- "A motive for killing is base if, according to a general moral assessment, it is on the lowest level and therefore particularly despicable. Whether this is the case is assessed on the basis of an overall appraisal, which includes the circumstances of the offence, the circumstances of the offender, and his personality." (para. 586)
- "As a rule, a killing is to be regarded as particularly reprehensible and socially ruthless if the perpetrator, for example on the basis of a certain understanding of 'family honour', puts himself above the legal system and another human being, as it were, as the executor of a death sentence passed by him (and his family). As a rule, a base motive can also be assumed in those cases in which only a code of honour determines the action." (para 587).
- "The question of which factor was decisive in this case can be left open, whether it was generally the unapproved behaviour of the daughter or sister; perhaps the fact that Gülsüm, despite the consideration shown at times by her family, ultimately did not subordinate herself to the behavioural ideas of her family, but wanted to decide for herself about her way of life; or whether -- the Division considers this to be the most probable -- a massive violation of the S. family's honour had occurred due to the fact that news of Gülsüm's behaviour had leaked out, that it had become known among relatives and

acquaintances, and perhaps also that this had ultimately led to a relative's refusal to marry her. In any case, according to the principles described, base motives are to be assumed for both defendants. The only guiding principle for the defendants was that Gülsüm had caused considerable damage to the 'family honour' through her lifestyle, which was contrary to traditional values; the killing of a human being for this reason alone is particularly despicable." (para. 589)

- "There are no indications that the defendants were unable to comprehend the German legal system's assessment of their motivation to act as base when they committed the crime. The ability to make an accurate assessment of this can be lacking, for example, in the case of a personality deficiency or in the case of a foreign perpetrator who is so intensely attached to the views prevalent in his or her home country that he or she is therefore unable to assimilate the diverging socio-ethical assessments of his or her motive that are valid in Germany and therefore also unable to comprehend them. The defendants have lived in Germany for many years. Both are familiar with German values through their participation in social life: [...] The highly reprehensible nature of [the father's] order was known to the defendant [his son Davut]. In the event of [Davut's] refusal [to follow the order], he was in no way threatened with consequences that were even remotely as bad as those of the terrible crime. The same applies to Yusuf S., even if he had also felt prompted to commit the crime by the urgings and expectations of his relatives. The fact that he put a possible 'loss of honour' above the life of his daughter is particularly despicable." (para. 593)

Main legal texts quoted in the decision:

- Sections 25, para. 2; 27; 211 German Penal Code
- Section 105 Youth Courts Act

Cases cited in the decision:

None

Commentary

The absent father - a case of co-perpetratorship in honour killing

In the early published honour killing verdicts, the central question was whether the motive of honour killing was to be considered a base motive (see in detail CUREDI33DE003). In the meantime, it has become settled case law that this is the case. The significance of the present judgment lies in the fact that, as far as we know, this is the first time that a German court has sentenced the victim's father as a co-perpetrator although he was not present at the scene of the crime.

Since the court was breaking new ground here, the focus of the reasons for the verdict was on the conviction of the father as a co-perpetrator. The fact that the father actively participated by luring the victim's sister away from the shared flat would probably not have been sufficient in its own right to punish him as an accomplice, but there were other incriminating circumstances as well. Firstly, the court had called in an ethnopsychological expert and, based on his expert opinion, was able to show in great detail how the behaviour of the accused before the crime itself coincided with what the anthropological expert had described as the typical behavioural patterns and values of the people in the region of origin of the accused. This concerned above all the role of the father as head of the family, to whom everyone has to submit, but whose reputation is at stake if one of the women in his family behaves in a way that is considered dishonourable in his community. The position of Yusuf as head of the family also entailed that none of his sons would have killed their sister without his consent. Furthermore, the court looked very carefully at the personality structure of the son who carried out the crime, as well as his relationship with his father. Based on these two factors, it concluded that the son would not have been able to commit the crime alone, but that the father's influence played a decisive role. From all this, they concluded that the father can be considered to have intended the act to be his own, which was necessary for the assumption of co-perpetratorship.

Literature related to the main issue(s) at stake:

Specific legal publications addressing the case

- Hoppmann, Gerhard. 2011. "Die Kultur der Ehre -- Der 'Ehrenmord' an Gülsüm Semin". *Kriminalistik* 65: 95--112.

General legal literature on the topic that may not directly be connected with the case

- Burmeister, Jonathan. 2011. *Die schuldangemessene Bewertung von Ehrenmorden im deutschen Strafrecht --Differenzierte Schuldmerkmale auf Tatbestandsebene bei sonstigen niedrigen Beweggründen*. Frankfurt etc.: Lang.
- Çakır-Ceylan, Esma. 2011. *Gewalt im Namen der Ehre -- Eine Untersuchung über Gewalttaten in Deutschland und der Türkei unter besonderer Betrachtung der Rechtsentwicklung in der Türkei*. Frankfurt etc.: Lang.
- Elyafi-Schulz, Senan. 2012. *Das Phänomen des "Ehrenmordes" -- Eine rechtliche Untersuchung unter Berücksichtigung der Täter- und Opferperspektive*. Marburg: Tectum.
- Erbil, Bahar. 2008. *Toleranz für Ehrenmörder?* Berlin: Logos.
- Kasselt, Julia. 2016. *Ehre im Spiegel der Justiz -- eine Untersuchung zur Praxis der deutschen Schwurgerichte im Umgang mit dem Phänomen der Ehrenmorde*. Berlin/Freiburg: Duncker&Humblot/Max-Planck-Institut für ausländisches und internationales Strafrecht.
- Kasselt, Julia and Dietrich Oberwittler. 2014. "Die richterliche Bewertung von Ehrenmorden in Deutschland -- Eine empirische Analyse der Sanktionspraxis im Zeitraum 1996 bis 2005". *Monatsschrift für Kriminologie und Strafrechtsreform* 97: 203--223.
- Oberwittler, Dietrich and Julia Kasselt. 2011. *Ehrenmorde in Deutschland 1996--2005*. Köln: Luchterhand.

- Schorn, Martin. 2014. *Mord aus niedrigen Beweggründen bei fremden soziokulturellen Wertvorstellungen*. Baden-Baden: Nomos.
- Steffen, Franziska Antonia. 2015. *Strafrecht in einer multikulturellen Gesellschaft*. Baden-Baden: Nomos.
- Basile, Fabio. 2015. *Multikulturelle Gesellschaft und Strafrecht: Die Behandlung der kulturell motivierten Straftaten*. Vienna etc.: Lit Verlag.
- Varol, Kadir. 2016. *Ehre-Ehrenmord-Blutrache -- eine dogmatische Untersuchung zum deutschen und türkischen Strafrecht*. Hamburg: Dr. Kovač.

General legal literature on the topic from other disciplines

- Bodendieck-Engels, Hildegard. 2013. "*Ehrenmord*" *vor deutschen Gerichten -- eine anthropologische Untersuchung von Strafprozessen*. Hamburg: Dr. Kovač.
- Kızılhan, Jan Ilhan. 2012. "*Ehrenmorde*". *Der unmögliche Versuch einer Erklärung. Hintergründe -- Analysen -- Fallbeispiele*. 2nd ed. Berlin: Regener.

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Suggested citation of this case-law comment:

Tellenbach, Silvia (2024): The absent father - a case of co-perpetratorship in honour killing, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI033DE021, https://doi.org/10.48509/CUREDI033DE021.