

קינוי וסתירה אין עדים לא –

Warning and secluding yes; but not witnesses?!

OVERVIEW

The גמרא responded to the מקשן, who asked that since ר"א rules that a woman can only be נאסר on her husband with קינוי וסתירה, so how is she אסורה עליו by the claim of פתח פתוח מצאתי. The גמרא answered, can ר"א mean only קינוי וסתירה and not if there were עדים who saw the זנות?! Obviously not! תוספות explains how this answers the question of why he is believed by פתח פתוח מצאתי.¹

תוספות explains:

הכי נמי דלא אתא למעוטי על פי עצמו דכעדים דמי² כיון דקים³ ליה:

We must also assume that when ר"א said that קינוי וסתירה are required, just as he obviously did not exclude עדים,⁴ **so too he did not exclude** if the testimony (of זנות) **is given by him** (the husband), for this testimony (by him) **is like** testimony of witnesses, since he is sure that it was פתח פתוח.

SUMMARY

ר"א did not exclude (עדים and) the husband's testimony since it is קים ליה.

THINKING IT OVER

1. Seemingly תוספות answer⁵ that על פי עצמו is actually stated in the גמרא, that ופתח פתוח כשני עדים דמי, what is תוספות adding?⁶

2. Is the husband believed to claim פתח פתוח because of קים ליה,⁷ or because in the דבר שבערוה we maintain that דאיסורא חתיכה אנפשיה applies even by a מוסקנא?

¹ It is obvious that עדים are believed, but why should he be believed.

² See 'Thinking it over' # 1.

³ See 'Thinking it over' # 2.

⁴ This proves that the statement קינוי וסתירה אלא ע"י קינוי וסתירה, אין האשה נאסרת, is not unequivocal, but there are exceptions to this rule such as עדים, and similarly if he claims פתח פתוח מצאתי. Therefore we do not have a contradiction in the rulings of ר"א.

⁵ See footnote # 2.

⁶ See מהרש"א.

⁷ See footnote # 3.