

עדי טומאה איתמר – Witnesses of defilement, were mentioned

OVERVIEW

challenged the opinion of ר' חנינא and argued how can we permit the שבויים to marry כהנים, for there are עדים, who know what happened. The גמרא concluded that these עדים presumably could attest to the fact that the daughters of שמואל were נטמאו by their captors. ר' חנינא maintained his ruling that nevertheless the woman are permitted to remarry on account of their שאסר הפה regardless of the purported טומאה that are overseas.

והא איכא עדים במדינת הים דפריך לעיל פירוש -

The explanation of the challenge, 'but there are עדים overseas', which רב is - ר' חנינא of previously asked שמן בר אבא

והא יצא קול דאיכא התם עדי טומאה כדפירשתי¹ -

But there is a rumor that there are טומאה there in מדה"י as תוספות explained previously; that the concern of רב שמן בר אבא was based on the קול that there are עדים who know what happened.²

תוספות asks:

הקשה רבינו תם בפרק קמא דקידושין (דף יב,א) גבי ההוא גברא דקדיש באבנא דכוחלא -
The ר"ת asked; the גמרא related in the first פרק of קידושין, concerning a particular person who was מקדש a woman with a dark marble stone
ויתב רב חסדא וקא משער אי אית בה שוה פרוטה אי לא -

And רב חסדא was sitting and evaluating this stone whether it was worth a פרוטה (whereby the woman would be מקודשת) or not (and the woman would not be מקודשת). The גמרא there continues that it was mentioned to רב חסדא that there are witnesses (who are now elsewhere) who know that on that particular day when he gave the קדושין, it was worth a פרוטה.

ומסיק לאו היינו דרבי חנינא דאמר עדים בצד אסתן ותאסר -

And the גמרא there concludes; is this not the same as the case of רבי חנינא (of our גמרא) who said, 'just because there may be witnesses in the north,

¹ See previous תוספות ד"ה והא.

² Originally the גמרא thought that there [was a קול that there] are עדי שבויה במדה"י. The conclusion is that there [is a קול that there] are עדי טומאה במדה"י. The contribution of תוספות is that the concern that there may be עדי טומאה is only if it is based on the קול (even though there are the שבאים [as opposed to the case of the משנה], nevertheless the חשש of טומאה in only if there is a קול [see תוספות הרא"ש]).

therefore the **should be prohibited** (from marrying כהנים)!! Therefore רב ruled that she is not considered to be מקודשת.

וקאמר אביי ורבא לא סבירא להו הא דרב חסדא אם הקילו בשבויה נקל באשת איש - And the רב חסדא **did not agree with אביי ורבא** (who compared the case of קדושין to the case of שבויה [and therefore רב חסדא is not concerned about the possibility that there may be witnesses who will testify that it was a פרוטה and she is an איש]; but rather אביי ורבא maintain that we cannot compare the two cases; for **if** the חכמים **were lenient concerning a שבויה** (and permit her to marry a כהן [who is only לשבויה]), **should we** also be lenient concerning an **אשת איש** (where there is a א"א! If indeed the אבנא דכוחלא was a פרוטה, then this woman is an א"א and is forbidden to marry anyone, under the threat of a מיתה! This concludes the citation from the גמרא in קדושין.

Tosfos concludes his question:

והשתא למאי דמסיק דעדי טומאה איתמר מה לי עדי שבויה מה לי עדי אשת איש - But now according to the conclusion of our גמרא **that we are discussing** (אסורה לכהן מדאורייתא), **what difference is there whether it is עדים** regarding a **שבויה** (that she was נטמאת) **or עדי** **אשת איש**;³ in both cases it is an אסור דאורייתא. Why therefore did אביי ורבא argue and maintain that an א"א should be different from a שבויה?!

Tosfos cites רש"י's explanation (and rejects it).

ורש"י פירש שם⁴ אם הקילו בשבויה דאיסור לאו - And **רש"י explained there** that אביי ורבא maintain, **if they were lenient by a שבויה** where it is merely an **איסור לאו** (but there is no מיתה) if a כהן marries a שבויה, should we be lenient by the **איסור א"א** where there is a מיתה if she marries someone else while she is still an א"א. The distinction between שבויה and קדושין (according to רש"י), is that שבויה is merely an **איסור לאו** and קדושין is a מיתה.

Tosfos rejects this explanation:

³ See (in the margin) who states: **ספק ספיקא דהוי ספק ספיקא** (free translation): that if it would be merely עדי שבויה then it would be different than קדושין, for by שבויה it is a ספק, i.e. ספק ספיקא, however by קדושין there is only one ספק if it is a פרוטה or not. See 'Thinking it over' # 3.

⁴ See marginal note, that this פירוש does not appear in our version of רש"י; however Tosfos mentions it there (בד"ה אם) in the name of מפרשים.

וקשה לרבינו תם דבשבויה נמי איכא איסור סקילה -

And the ר"ת has a difficulty with this explanation; for by the case of a שבוייה there can also be an איסור סקילה -

אם נשאת לכהן שישמש בנה על גבי מזבח בשבת -

If she marries a כהן and her son from this כהן (who may be a חלל) served on the מזבח on שבת. If the son is a חלל he cannot do the עבודה. If he does a מלאכה (such as שחיטה, הקטרה, etc.) he is חייב סקילה.⁵ Therefore both by שבוייה and קידושין there is a חיוב מיתה.

Tosfos suggests an alternate solution:

ומיהו אית ספרים דגרסי התם אם הקילו בשבויה דמנוולה נפשה באפי שבוייה כולי -

However there are texts there in קדושין that read, 'if they were lenient by a שבוייה who makes herself revolting in the presence of her captors (to discourage them from having relationships with her), etc. -

פירוש ולא שכיח כולי האי שנטמאה -

Meaning, that it is not that probable that she was profaned -

נקל באשת איש דשכיח דידעי אם אית בה שוה פרוטה -

should we be lenient by an א"א, where it is common that people can know if it is worth a פרוטה.

Tosfos concludes:

ובלאו הכ גירסא איכא למימר דלא שכיח שיהו עדי טומאה -

And even without this reading of the text (that a שבוייה is נפשה), we can still maintain that it is not common that there should be עדי טומאה (for טומאה is done in privacy)⁶ -

אבל עדים שידעו ששוה פרוטה שכיח:

However it is common that there are עדים who know that it is worth a פרוטה. Therefore there is no need to be concerned by שבוייה (for either it is unlikely that she was נבעלה, or it is unlikely that there are שנבעלה), however there is a need to be concerned by קדושין (for there is a sufficient likelihood that there are עדים who will testify that it was worth a פרוטה).

⁵ Only a כשר כהן is permitted to do מלאכות דאורייתא on שבת in the ביהמ"ק as part of the עבודה; not a חלל. See the various מפרשים who comment that (even though) the rule is that a כשרה עבודתו כשרה (however he still may be חילול שבת חייב).

⁶ The difference between the גרסי אית ספרים דגרסי and the other גירסא is that according to the גרסי אית ספרים דגרסי, there is less likelihood that she was שנטמאה; according to the other גירסא there is a less likelihood that there are עדים שנטמאה.

SUMMARY

The concern that there may be עדי טומאה was based on a קול.

There is a difference between a ספק קידושין and ספק שבויה a) by שבויה, there is no חיוב מיתה, as opposed to קדושין, where there is a חיוב מיתה b) by שבויה it is unlikely that she was נטמאה, or c) that by שבויה it is unlikely that there are עדי טומאה.

THINKING IT OVER

1. What is the connection between the קשיא of the ר"ת, and the preceding statement concerning a קול?

2. The מנוולא נפשה where it is שבויה distinguish between דגרסי (and therefore not שכיח שנבעלה) and א"א (where ידיע). Seemingly the contrast is not appropriate; by שבויה there is little chance of טומאה and by א"א there is a greater chance of ידיעה but not a greater chance of פרוטה. In addition why is not one difference (either מנוולא נפשא or שכיח ידיע) sufficient to distinguish between the two; why mention both differences?!

3. Why does the תו"י distinguish between a ספק ספיקא and a ספק,⁷ instead of distinguishing between a ספיקא דאורייתא (קדושין) and a ספיקא דרבנן (שבויה)?

4. Previously⁸ distinguished between a ספק of two contradictory עדים whether she was מקודשת [where we say אחזקת פנויה] and a ספק of קרוב [where we say אחזקת פנויה]. Why do we not make the same distinction between a ספק of קול [where we say אחזקת פנויה] and a ספק of פרוטה [where we say אחזקת פנויה] her? ⁹

⁷ See footnote # 3.

⁸ עמוד ד"ה תרווייהו on this.

⁹ See חידושי מהרי"ט.