However, if she remarried – אבל ניסת ואחר כך באו עדים הרי זו לא תצא and the witnesses came afterward, she need not leave.

Overview

The case at hand: Two עדים testify that the husband died, and two other עדים testify that he is alive. All agree that initially she may not remarry. If she remarried (her עד),[1] the חכמים maintain that she may remain married to him. רבי מנחם ברבי יוסי maintains that she is required to leave him (since it is תרי ותרי). However, if she married (her עד) before the second group of עדים testified, רמב"י agrees that she need not leave him. רבא infers from רמב"י that we are concerned for זילותא דבי דינא.[2]

וטעמא משום זילותא דבי דינא –

And the reason why ר' מנחם ברבי יוסי claims that she need not leave,[3] is **because it is demeaning for the בי"ד** to change a ruling.

תוספות has a difficulty:

וקשה לרבינו שמשון בן אברהם דעל כרחך[4] לאו טעמא משום זילותא דבי דינא הוא –

And the רשב"א has a difficulty with this interpretation that the reason רבי מנחם ברבי יוסי says לא תצא is on account of זילותא דבי דינא **for perforce you must** say **that the reason** for לא תצא **is not because of זילותא דבי דינא -**

דאם כן אפילו לא נשאת אלא התירוה לינשא תנשא[5] –

for if it is indeed **so**; that the reason of לא תצא is because of זילותא דבי דינא, then the ruling should be **that even if she did not remarry** yet **but rather** בי"ד **permitted her to remarry** on the basis of the (first group of) עדים **she should** be permitted **to remarry**, even after the second group of עדים came and testified. If בי"ד will change its original ruling on account of the second group of עדים, it will be a זילותא דבי דינא. It is the opinion of

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[1] See previous תוספות ד"ה ואם.

[2] The view of the חכמים does not indicate whether or not we are חושש לזילותא דבי דינא. The חכמים maintain that לא תצא in either case, whether בי"ד gave her permission to remarry or not. They are of the opinion that בי"ד does not have the power to separate them on account of a ספק to בי"ד, since the parties themselves have no ספק (see previous תוספות ד"ה ואם). There is no זילותא here at all; they can always remain married (see following footnote # 3).

[3] רמב"י is of the opinion that תצא (if she remarried when it was תרי ותרי). This indicates that he is of the opinion that בי"ד will separate them on account of the ספק to בי"ד. Why should it be different if she remarried before the תרי ותרי; now it is a situation of תרי ותרי and the same ספק exists?! רבא infers from this that it is only because of זילותא דבי דינא (for previously בי"ד permitted her to remarry); therefore בי"ד does not take any action. However if באו עדים ואח"כ נישאת (we say תצא, for) there is no זילותא; since בי"ד never permitted her to remarry.

[4] See footnote # 12.

[5] See previous תוספות ד"ה ואם that we are discussing a case where she is marrying one of the עדים who is certain (as she is) that her husband died.

תוספות that there is a זילותא דבי דינא, not only when the original פסק of בי"ד was acted upon (i.e. the woman remarried), but even if no action was taken. The mere fact that בי"ד changes its ruling is considered a זילותא דבי דינא –

כדמשמע בכל הסוגיא דאיכא זילותא אפילו לא נעשה מעשה[6] –

As is indicated in the entire discussion here in the גמרא **that there is a זילותא** דבי דינא **even if no action was taken**, based on the פסק בי"ד. The fact that רמב"י says לא תצא only if נשאת but not if it was only התירוה לינשא proves that the reason of ואם נשאת לא תצא is not on account of זילותא דבי דינא. There must be a different explanation.[7] How then, can רבא prove from רמב"י that we are concerned for זילותא?

תוספות anticipates a possible rebuttal to his question and rejects it:

וכי תימא דאין הכי נמי ונשאת דקאמר[8] היינו שהתירוה לינשא –

And if you will say, indeed it is so; that on account of זילותא we allow her to remarry even if התירוה לינשא, for **when it says** in the ברייתא '**and she remarried'**, it does not mean that she actually remarried; but rather **it means that** בי"ד **permitted her to remarry.** תוספות will now explain what would the term 'לא תצא' mean if נשאת means התירוה לינשא –

ושוב לא תצא מהיתרה הראשון –

And she will furthermore 'not be required to depart' from her original permissible status**.** The term 'לא תצא' will mean that once she was given permission to remarry, she never leaves that status that she acquired; the status of a woman permitted to remarry. If we were to interpret נשאת and לא תצא in this manner, the objection of the רשב"א will have been addressed. If she retains her היתר, this certainly proves that we are concerned for זילותא.

The רשב"א rejects this rebuttal: We cannot say that the term נשאת means התירוה לינשא:

דבאו עדים ואחר כך נשאת לא מצי לפרושי התירוה לינשא אלא נשאת ממש –

because when the ברייתא mentions the case of when **the עדים came and then she was נשאת,** in that case **we cannon interpret** the term 'נשאת' to mean that **they permitted her to remarry;** for since it is תרי ותרי then בי"ד will certainly prohibit her from remarrying,[9] **but rather** in the case of באו עדים ואח"כ נשאת, the term 'נשאת' means **she actually remarried** (without permission from בי"ד). Therefore we must assume that the term 'נשאת' in the case of נשאת ואח"כ באו עדים also means נשאת ממש. That only if she

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[6] Later the גמרא will be discussing the issue of זילותא דבי דינא in regards to the כהונה status. There is no indication that any action was taken when either confirming or disclaiming his status as a כהן.

[7] תוספות will shortly state what that explanation is.

[8] רמב"י states <u>לא תצא</u> <u>נשאת</u> ואח"כ באו עדים הרי זו אבל. תוספות will explain that the terms נשאת and לא תצא can be understood even if she did not remarry yet.

[9] This is true even according to the רבנן.

actually remarries does רמב"י maintain that לא תצא. However if it was merely התירוה לינשא, then the ruling would be that she cannot remarry if the other עדים came. This should prove that we are not concerned for זילותא דבי דינא –

ועל כרחך[10] טעמא דמספיקא לא מפקי לה מבעל ולא משום זילותא –

And perforce you must say that the reason for ניסת ואח"כ באו עדים לא תצא **is not on account of זילותא,** but rather **the reason** why it is לא תצא is because **we cannot take her away from her husband** just on the basis of a **doubt;** that maybe she is still married to the original husband. A ספק is not powerful enough to allow us to take such a drastic step.[11] We are not however, concerned with זילותא.[12] If we would be concerned for זילותא, then she would be able to remarry once בי"ד permitted her. The question remains; how did רבא derive from רמב"י that we are חושש for זילותא דבי דינא?

תוספות answers:

ויש לומר לעולם טעמא משום זילותא –

And one can say; really the reason of לא תצא **is because of זילותא.** There was a difficulty however; if the reason is because of זילותא then even if התירוה לינשא she should retain this היתר even after the other עדים came. תוספות will explain that there is a זילולתא only if נשאת ממש but not if התירוה לינשא -

ודוקא כשנשאת ואחר כך באו עדים איכא זילותא דבי דינא–

And only if נשאת ואח"כ באו עדים is there a זילותא דבי דינא, if בי"ד will force her to leave her new husband,–

שכבר נאסרה לכל העולם כיון שנשאת -

For this woman is already presently **forbidden** to have relations **with the whole world, since she remarried.** Her present status is that of a married woman, so -

נמצא מה שחוזרין לאסרה לעד שנשאת לו אין חוזרין אלא בעבורו –

It turns out, that which בי"ד **is rescinding** its permission **and forbidding her to this witness whom she married; we are rescinding** our permission **only in regards to** the עד. This is the only accomplishment that this new prohibition will effect. This is considered a זילותא. First בי"ד says she is permitted to remarry, then בי"ד says you must leave this עד, whom you married. For the rest of the world this rescinding is meaningless; they were not able to marry her while she was married to the עד and they cannot marry her now either, on

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[10] See footnote # 12.

[11] This will explain the difference between נישאת and התירוה לינשא. If it was merely התירוה לינשא, then we cannot use the סברא of דמספיקא לא מפקי לה מבעל, since she is not married yet. In the case of נשאת ואח"כ באו עדים we will (*be forced to*) say that it is a קנס since they were עובר on פסק בי"ד. See footnote # 14.

[12] The רשב"א is not phrasing his question in the form of; 'how can we prove from רמב"י that we are חושש לזילותא, perhaps the reason of לא תצא is because מספיקא לא מפקי לה מבעל'. Rather the question is phrased that since we certainly cannot use the reason of זילותא, therefore the reason must be because of מספיקא לא מפקי לה מבעל. See footnote # (4 and) 14.

account of the תרי ותרי. The חזרה is only in regard to this עד.

אבל אם באו עדים קודם שנשאת ליכא זילותא –

However, if the עדים came before she remarried; then even though she had a היתר to remarry **it will not be a זילותא** if בי"ד voids that היתר. The reason is -

דעל כרחך צריכין לחזור מהיתרה הראשון כדי לאסרה לכל העולם –

For perforce בי"ד is required to rescind the first blanket **היתר in order to prohibit her** from remarrying **to anyone.** Originally when only one group of עדים came, בי"ד gave her a היתר to remarry whomever she pleases, since no one contradicted the עדים. However now since she did not remarry and a second group of עדים came who contradict the first group, then obviously בי"ד must retract the first היתר She certainly cannot marry now whomever she pleases, for it is תרי ותרי; there is a ספק אשת איש דאורייתא.[13] She (at most) can only remarry the עד –

הלכך ליכא זילותא אם אוסרים אותה נמי לעדיה.[14] ר"י :

Therefore [the **ר"י** maintains] **there is no זילותא if בי"ד will also prohibit here from marrying her witnesses.** A זילותא דבי דינא is only if it seems that בי"ד made a mistake. If new עדים come then everyone understands that the original פסק of בי"ד cannot remain. בי"ד cannot permit a ספיקא דאורייתא. Once בי"ד changes its פסק concerning everyone, there is no זילותא if we include her עדים in this איסור. People will understand it is part of the general איסור. However if she actually married one of the עדים and then the second group of עדים came, then if בי"ד will change its פסק it will affect only the עד whom she married; everyone else is already אסור from before (since she was married to the עד) and will continue to be אסור since it is תרי ותרי. There is no compulsion for בי"ד to prohibit the עד and the woman to remain married, for they both maintain there is not even a ספק איסור. If בי"ד will change their פסק it is a זילותא דבי דינא.

Summary

There is no זילותא if the change of a פסק to an individual is included in a general necessary change to the community at large.

Thinking it over

Perhaps the reason for ואם ניסת לא תצא is because of מספיקא לא מפקי לה מבעלה and the reason it does not apply to ניסת ואח"כ באו עדים is because there, they transgressed the prohibition of בי"ד, therefore we say תצא as a קנס?[15]

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[13] בי"ד certainly cannot permit a ספק דאורייתא on account of a זילותא דבי דינא.

[14] תוספות explained how it is possible that the reason for ניסת ואח"כ באו עדים לא תצא is on account of זילותא. There was no explanation however why we cannot say that the reason is on account of מספיקא לא מפקי לה מבעל; in which case there would still be no prove that חוששין לזילותא (see footnote # 11). It would seem that if given the choice between these two reasons, we would prefer the reason of זילותא over the reason of מספיקא כו'. If the reason is מספיקא כו', then why if ניסת ואח"כ באו עדים do we say תצא לא since מספיקא לא מפקינן כו'! It should be תצא. See 'Thinking it over".

[15] See footnotes # 14 & 11. See נח"מ ד"ה ולכאורה.