

אבל בבית דין של ישראל כיון¹ דגמר דיניה לקטלא מיקטל קטלי ליה –

However, by a Jewish court, once the verdict was issued to kill, they will certainly kill him

OVERVIEW

The דאמרי of יוסף רב maintains that by a ישראל של בי"ד if the death penalty verdict was issued, he will surely be killed. תוספות clarifies a possible difficulty.

תוספות responds to an anticipated question:

אף על גב דאמר בסנהדרין (דף מב,ב) שהיה אחד רוכב על סוס וסודרין בידו² -

Even though the משנה in סנהדרין states, that there was one person riding on a horse (following the one sentenced to death) and another person was standing by the בי"ד and was holding cloths in his hand -

מצאו לו זכות היה הלה מניף בסודרין –

If the בי"ד found a merit for the accused which would nullify the death penalty, this person would wave the cloths and the one on the horse would run after the accused and return him back to בי"ד. In any event it is evident that even if he is יוצא ליהרג, he may be spared, so why does the גמרא assume that he will certainly be killed.

תוספות replies:

מכל מקום לא שכיח:

Notwithstanding the above, **it is uncommon** for him to be recalled; therefore we assume that he was killed.³

SUMMARY

It is uncommon for the accused to be recalled; therefore we assume that he was killed.

THINKING IT OVER

What is the difference between the question of אביי and תוספות question?

¹ In our גמרות the text reads, כיון דנפק ליה דינא לקטלא (instead of לקטלא דיניה לקטלא).

² See רש"י there who writes, ד"ה והסוס ומציל ומתרחק, אדם רוכב על סוס ונמשך על צד בית הסקילה שיהא קרוב לרדוף אחר הנסקלין ומציל ומתרחק. נחלת משה רש"י. See The translation here follows רש"י. מזה שהסודרין בידו מלא עיניו ובלבד שיוכל לראותו אם יניף בסודרין.

³ The requirement to assume that he was killed is only in special circumstances (to allow his wife to marry), otherwise it is irrelevant (whether he was killed or not); so we assume that this particular case (where we allow the wife to remarry) is from the vast majority of cases where he was killed, rather than assuming that this case is of the slim minority.