

## Firstly, for he admitted

## חדא דקא מודה -

### OVERVIEW

The גמרא is discussing a case of an ארוסה who was pregnant. רב יוסף ruled that there is no concern; firstly because the ארוסה was מודה and furthermore because she is believed to claim לכשר נבעלתי.

It is not clear whether the issue is the child; if he is כשר or a ממזר (ספק), or if the issue is the ארוסה וארוסה; if they are permitted to rejoin with each other, since she is a ספק אשת איש שזינתה.

It is also not clear what is the meaning of 'ועוד' 'and furthermore'. Does it mean even if he is not מודה, or does it mean even if his מודה is ineffective. תוספות will be discussing these issues.

### מצינן לפרש דאיירי לענין לאוסרה על הארוסה<sup>1</sup> -

**It is possible for us to explain that we discussing whether the ארוסה is forbidden to marry the ארוסה.** The issue here is since the ארוסה had a child; therefore it is possible that someone other than the ארוסה fathered the child. If that were the case then the ארוסה would be אסורה to the ארוסה. She is a married woman who committed adultery and is therefore forbidden to return to her husband (as well as to the adulterer). רב יוסף however ruled that there is no concern and she may return to her ארוסה husband.

### והכי פירושו חדא דקא מודה הלכך אינה נאסרת עליו ועוד הא רב יהודה כולי -

**And this is the explanation of the ruling; firstly,** she is permitted to return to the ארוסה **for he admits** that he had relations with her and he is the father of the child (and no other), **therefore she is not forbidden to** the ארוסה; we believe him and assume that she had no relations with anyone else, **and furthermore רב יהודה stated, etc.** that she is independently believed.

– תוספות will now explain what is meant by 'ועוד', 'and furthermore'<sup>2</sup>

### לא קאמר ועוד אפילו לא מודה -

**The meaning of 'ועוד' is not** to be understood, that **even if** the ארוסה **was not** מודה, she is still permitted to him. This is not so –

### דאם אינו מודה פשיטא דנאסרת עליו -

**For if** the ארוסה **is not** מודה that he had relations with her, and she is with child, then

<sup>1</sup> The reason this interpretation is chosen (despite some difficulties) may become apparent at the conclusion of this Tosfos. See footnote # 14.

<sup>2</sup> The term 'ועוד', 'furthermore' (generally) means that even if this is not so, nevertheless the ruling is valid.

**it is obvious that she is prohibited to him.** He is not מודה that he fathered the child; obviously someone else did. This makes her (certainly from the perspective of the ארוס) an adulteress, an אשת איש שזינתה, who is אסורה לבעלה, since דאיסורא

**אלא כלומר<sup>3</sup> אפילו ליכא טעמא דמודה -**

**But rather** we are to understand the 'ועוד'<sup>4</sup> **as if it was stated, even if the reason of מודה is not** effective; it is not sufficient cause to permit her to rejoin the ארוס –

continues to explain why 'מודה' may not be sufficient cause to believe him –

**כגון לאבוי דסוף פרק אלמנה מדאפקרה נפשה לגבי ארוס מפקרה נפשה נמי לגבי עלמא -**  
**for instance according to אבוי** mentioned in the end of אלמנה<sup>5</sup>, who maintains (according to רב) that even if we know that the ארוס וארוסה had relations the child is still a ממזר, **for since she was wanton with the ארוס, she was also wanton with anyone** else and the child is a ממזר. Similarly מודה itself would not be a sufficient cause to permit her to the ארוס<sup>6</sup> –

**אפילו הכי אינה נאסרת עליו משום דנאמנת כרבן גמליאל כן פירש לנו רבינו יצחק -**  
**Nevertheless she is not forbidden to the ארוס because she is believed** that she had relations exclusively with the ארוס; **as ר"ג** maintains that a woman is believed to claim נבעלתי. This is how we could have interpreted the גמרא, and **this is how the ר"י actually explained this גמרא to us.**

In Summation; the ר"י פ' is that 'ועוד' means even if we agree with אבוי (אליבא דרב) that the admission of the ארוס (that he had relations with the ארוסה) is insufficient (for 'וכו' (מדאפקרה וכו'), nevertheless, since she also maintains that she had relations only with the ארוס she will be believed since the הלכה is like ר"ג. It would then turn out that if the woman maintains she was not מזונה, she is believed even according to אבוי (אליבא דרב). (See footnote # 7.)

takes issue with the above interpretation:

**ואי אפשר להעמידה דלפי דבריו אם כן הא דאמר אבוי מדאפקרה נפשה -**  
**And it is impossible to sustain this interpretation, for according to the ר"י**

<sup>3</sup> The term כלומר supplants the simple meaning (that even if he was not מודה, etc.) with a more complicated meaning (that even if מודה is not effective, etc.). See footnote # 10.

<sup>4</sup> See footnote # 13.

<sup>5</sup> תוספות ד"ה ההוא וד"ה חדא (הא') see previous two; יבמות סט, ב.

<sup>6</sup> אבוי utilizes the סברא of מדאפקרה to explain רב שיטתו, why the וולד is a ממזר. Therefore here too (even though the ארוס and ודאי זינתה are already married to each other, nevertheless) the מדאפקרה סברא implies that she was אסורה לארוס (and הולד ממזר) and therefore שמואל even if we assume that the וולד is a שתוקי (before the בדיקה) it is not because we assume positively מדאפקרה, but rather it is a ספק, which can make the child into a שתוקי; however it will not be able to prevent the ארוס וארוסה from rejoining. The 'ועוד', therefore is for אבוי according to רב only. See: 'Thinking it over'.

**words it would therefore follow that when (אליבא דרב) אב"י stated that since she was wanton** with the ארוס, she was wanton with others as well –

**היינו בשלא בדקו את אמו וזה אינו -**

**that is limited** to a case **where the mother was not investigated**; for if the mother was asked and she replied I had relations only with the ארוס she is believed,<sup>7</sup> **and this is not so**; (אליבא דרב) אב"י cannot maintain that if the ארוסה claims that the child is from the ארוס, that she is believed –

**דהא אפלוגתא דרב ושמואל קאי דמוקמי בקדושין מאי שתוקי בדוקי -**

**For רב ושמואל** (in מסכת יבמות) **is referring to the dispute between** רב, **which is established in** מסכת קדושין **that what** שמואל **meant when he said that the child is a שתוקי**, is that he is a **בדוקי**; meaning that we question the mother and accept her claim that the child is from the ארוס. This implies that רב (who argues with שמואל) maintains that the child (even a בדוקי) is a ממזר.<sup>8</sup>

פירש ר"י: qualifies his difficulty with the תוספות

**ולמאי דגרסינן בקדושין ארוסה שעיברה לא קשה מידי -**

**However, according to our reading of the text in** מסכת קדושין, which is, ‘**an ארוסה who became pregnant**’ (indicating that we are not certain that the ארוס had relations); and not **הבא על ארוסתו** (which indicates that we know that the ארוסה had relations), **there is no difficulty at all**. According to this גירסא the only time אב"י maintains (according to רב) that the child is a ממזר even if בדקו את אמו is when we are not aware that the ארוסה and ארוס had relations. However in our סוגיא where the ארוס is מודה, everyone will agree that her claim combined with his מודה is sufficient to believe them. However according to the other text, that רב ושמואל are disputing (even) in a case of **הבא על ארוסתו**, then the 'ועוד' is difficult to understand.

תוספות offers an alternate explanation:

**על כן צריך לפרש דהכא לא איירי לאוסרה עליו אלא להכשיר את הולד -**

**Therefore it is necessary to explain that we are not discussing here whether to prohibit the ארוסה from the ארוס, but rather to validate the child**; that he is not a

<sup>7</sup> The point of the 'ועוד' according to the פירוש ר"י is that even according to אב"י that the מודה is ineffective nevertheless her testimony is effective; this is tantamount to saying that according to אב"י she is believed.

<sup>8</sup> The point of the 'ועוד' according to the פירוש ר"י is that even according to אב"י who maintains that מודה is insufficient (since מדאפקרה נפשה לגבי ארוס וכי), nevertheless if she corroborates his מודה they are believed. אב"י does not accept the 'מודה' (only) according to רב (who maintains that the child is a ממזר). According to רב, however, the child is a ממזר even if the ארוסה corroborates the testimony of the ארוס. This is the מחלוקת between רב ושמואל when we assume that the (שמואל) is a בדוקי, and nevertheless רב argues and maintains that he is a ממזר. There seems to be no point in the 'ועוד'. See: 'Thinking it over'.

<sup>9</sup> See previous יגב ד"ה ההוא תוספות.

– כשר לישראל but a ממזר

**והשתא הוי ועוד כפשוטו<sup>10</sup> ועוד דאפילו לא יודה -**

**And now the 'ועוד' assumes the obvious interpretation;** firstly that the ארוס was מודה, **and 'furthermore',** meaning, **that even if he was not מודה;** immediately interjects to explain what is meant by the statement 'he was not מודה' –

**ולאו דקאמר דלא מיניה דבהא לא מכשיר רבן גמליאל כיון דהוי ברי וברי<sup>11</sup> -**

**And 'לא מודה' certainly does not mean that he claims the child is not from him,** since he had no relations with the ארוסה. It cannot mean that; **for in such** a case (where the ארוס contradicts the ארוסה) **ר"ג does not maintain** that the child is כשר, **since** it is a case of a ברי (of the ארוס who claims he did not father the child) which contradicts a ברי (of the ארוסה who claims that the ארוס fathered the child); in a case of ברי וברי then even ר"ג agrees that we do not believe her –

**כדאמר בריש פרק ב'<sup>12</sup> -**

**as the גמרא states in the beginning of the second פרק,** therefore אינו מודה cannot mean that he is denying the relationship –

**אלא כגון שמת או דליתיה קמן דלישייליה -**

**But rather מודה אינו means for instance if the ארוס died or that he is not present before us that he can be asked.** That is what רב יוסף states 'ועוד' that even if the ארוס does not corroborate that he fathered the child, nevertheless the child is כשר according to ר"ג, since she claims that the ארוס is the father (and there is no ברי to contradict her).<sup>13</sup>

anticipates a difficulty:

**והא דחשיב ליה בסמוך דיעבד -**

**And the reason the גמרא shortly considers this** to be case of דיעבד (that it already happened). Seemingly this is a case of לכתחילה; we are deciding whether this child may marry a ישראלית, it is not a case of בדיעבד, where he already married and we want to know if they can remain married (as it is according to the פירוש ר"י<sup>14</sup>).

responds:

<sup>10</sup> See footnote # 3.

<sup>11</sup> פשוטא דנאסרת עליו does not say here as he did previously עליו דאסור, therefore since he is not מודה, she is certainly אסורה עליו. However here we are discussing the אסור, where there is no סברא of אסור, nevertheless the אסור will not be כשר, since she is not נאמנת in a case of ברי וברי.

<sup>12</sup> לקמן טז, א.

<sup>13</sup> We obviously cannot have this interpretation of 'ועוד' according to the פירוש ר"י, where we are discussing if she is מותרת לארוס. The ארוס is obviously present. We can ask him whether they had relations or not. That is why the ר"י was forced to interpret the 'ועוד' in the manner he did (that it means according to אביי).

<sup>14</sup> See footnote # 1.

**לפי שלא היה יכול הולד להינשא לבת ישראל –**

**For the child may not be permitted to ever marry a Jewess** (if he is a ממזר -

**ואפילו לממזרת אסור דמדאורייתא כשר הוא -**

**And he is even forbidden to marry a ממזרת, for התורה he is a כשר** (we are not certain whether he is a ממזר or not –

**דהאי הוי כדיעבד<sup>15</sup> הלכה כרבן גמליאל<sup>16</sup>:**

**Therefore in such** a case (where the child may not be able to ever marry anyone), it is **considered as a בדיעבד**, where **the ruling is according to ר"ג** that she is נאמנת.

## **SUMMARY**

According to the ר"י the issue at hand is whether the ארוס וארוסה are permitted to rejoin. The 'ועוד' means even if we maintain that his מודה is ineffective. תוספות maintains that the issue is whether the child is כשר לישראל and the ועוד means even if the ארוס is not present to corroborate what the ארוסה claimed.

## **THINKING IT OVER**

questions the ר"י. If the ועוד refers to אב"י, then the fact the she is testifying is meaningless, for according to אב"י the ולד is a ממזר (according to רב) even if the mother testified.

The 'ועוד' however is according to שמואל (not according to רב)<sup>17</sup> and indeed according to שמואל the child is כשר (even according to אב"י) if the mother testifies, and if not he is a שתוקי.<sup>18</sup>

<sup>15</sup> In the תוה"ר it reads; דהא בדיעבד הלכה כר"ג.

<sup>16</sup> As mentioned previously, the last three תוספות beginning with ההוא ארוס are bracketed and are an addendum to the original תוספות.

<sup>17</sup> ועוד הא אמר ר"י אמר שמואל וכו' stated רב יוסף.

<sup>18</sup> See בית יעקב וסוכ"ד אות לט. Alternately see footnote # 6.