

כגון שניסת לאחד מעדיה –

**For instance, that she got married to one of her witnesses**

**OVERVIEW**

The גמרא states that in the case of תרי ותרי the reason the woman may remain married is because she married one of the עדים who testified that her husband died (and he is certain of it). The issue at hand in this תוספות is whether we should not be suspicious of a witness who claims that the husband died and then later marries his widow. He may have an ulterior motive for his testimony. He should be prevented from marrying her, in order to preserve the dignity of his testimony.

תוספות asks:

והא דתנן בפרק שני דיבמות (דף כה,א ושם) הרגנוהו לא ישא את אשתו -

**And that which we learnt in a משנה in the second פרק of יבמות**; 'if a witness said, 'he died, I killed him, or **we killed him**', this witness **should not marry his wife**'. It seems from that משנה that an עד who testified (together with other [הרגנוהו] עדים) we killed him, is not permitted to marry the widow (for it casts an aspersion on his testimony<sup>1</sup>), and here the גמרא states that she is permitted to marry the עד!

תוספות explains:

לא ששנים מעידין כן דבשום מקום אין שנים חשודין<sup>2</sup> -

The term הרגנוהו **does not mean** that **two עדים testified** that they killed him, **for in no place are two עדים suspect**. If two עדים testified that they killed him, they would be believed, and one of them would be permitted to marry the widow<sup>3</sup> as our גמרא states (rather the term הרגנוהו means something different, as תוספות will shortly explain).

תוספות will now prove that two עדים are never suspect:

כדמוכח לקמן<sup>4</sup> דאפילו למאן דחייש לגומלין -

**As is evident later that even according to the opinion that maintains we**

<sup>1</sup> There is a concern that he is testifying that the husband died in order to marry his purported widow.

<sup>2</sup> This is referring to a case where (only) one of the עדים may be suspect of ulterior motives. It is obvious that if we can ascribe ulterior motives to both witnesses that they are לעדות, for they are בעדותן.

<sup>3</sup> There is a rule that אין אדם חוטא ולא לו; a person does not sin unless it benefits him. Only one person can marry this widow. We do not suspect that two עדים lied in order that one of them should marry the widow. See 'Thinking it over' # 1 & 2.

<sup>4</sup> כד,א.

**are concerned for reciprocity** (in a case of one witness), nevertheless -  
– **אם שנים מעידין על זה ושנים על זה נאמנין** –

**If two witnesses testify for one and two witnesses testify on the other, they are believed;** even if the first witness testifies on behalf of the second witness, who in turn testifies on behalf of the first witness; as long as there are two witnesses testifying on behalf of those two they are believed.<sup>5</sup>

תוספות offers an additional proof that there is no suspicion of ulterior motives by two witnesses (where we can ascribe the ulterior motive to only one)

– **וכן מוכח נמי בפרק ב' דיבמות (גי' שם ע"ב) דתנן התם** –

**And it is also so evident in the second פרק of מסכת יבמות where we learnt there in a משנה, if a woman, who is a קטנה** -

– **מיאנה<sup>6</sup> או שחלצה בפניו ישאנה מפני שהוא בית דין** –

**'rejected' her husband or (a woman who was a גדולה) performed חליצה in the presence of a דיין, he may marry her, because he was part of a בי"ד** -

– **ודייק בגמרא טעמא דבית דין הא בתרי לא** –

**And the גמרא there infers from the משנה, the reason the דיין may marry her is because he is part of a בי"ד of three דיינים; however if there were only two דיינים present he would not be permitted to marry her (for it would seem suspect).**

The גמרא there asks -

– **מאי שנא מהא דתנן<sup>7</sup>** –

**Why this is different from that which we learnt in a [ברייתא] (משנה) -**

– **עדים החתומים על שדה מקח או על גט אשה לא חשו חכמים לדבר זה** -

**Witnesses who signs on a sale of a field or on a גט אשה, the חכמים were not concerned for this matter** of suspicion of ulterior motives.<sup>8</sup> The question is why is חליצה different that two are not sufficient, and we require three. The גמרא there answers that two are always sufficient to remove concern of suspicion; the reason the משנה states מפני שהוא בי"ד is because the משנה -

– **היא גופה קמשמע לן לאפוקי ממאן דאמר מיאון בשנים** –

**Is teaching us this rule itself that three are required for מיאון; to exclude from the opinion that maintains that מיאון can be performed in the presence**

<sup>5</sup> כשר is ראובן testify that לוי is כשר and לוי is ראובן testify that כשר is לוי, they are believed for שמעון has no benefit from this עדות; no one is testifying on his behalf.

<sup>6</sup> A girl who is a קטנה and has no father may be married off (מדרבנן) by her brothers or mother. However she has the option of rejecting her husband (as long as she is a קטנה). This rejection process is called 'מיאון'.

<sup>7</sup> גיטין סזא. The gloss in יבמות notes that it is a ברייתא.

<sup>8</sup> Perhaps one of the witnesses wants to ultimately buy this field from the purchaser on the שטר, or he wants to marry the divorcee. We reject this concern, and permit an עד to buy the field or to marry the גרושה.

of only **two** דיינים. It is evident from this גמרא as well that there is no concern if there are two עדים. The question remains why it says that by **ישא את אשתו** לא ישא את אשתו.

answers that the meaning of הרגוהו is not that עדים are testifying that we killed him -  
**אלא כלומר שהרגו עם אנשים הרבה:**

**But rather it means that one עד is testifying that he killed him together with many people;** the עד with many others killed her husband. Since there is only one עד who is testifying concerning the death, and no one is supporting him, therefore there is a suspicion of an ulterior motive, and he may not marry the widow.

### SUMMARY

There is no חשד on an אחד, when two עדים are מעיד.

### THINKING IT OVER

1. When two עדים testify that someone died, one of them is permitted to marry the widow.<sup>9</sup> Is this because that even without the testimony of the marrying עד, there is still one עד who is testifying that the husband died (and by עיגונא one עד is sufficient), or do we say that he may remarry because there are two עדים (including the marrying עד) who testify that the husband is dead?<sup>10</sup>

2. How can we even assume that if two עדים testified that the husband is dead, neither of them is permitted to marry the wife;<sup>11</sup> since she is permitted to marry based on the testimony of only one עד, the other עד may marry her because she is no longer an איש, based on the testimony of the other עד?<sup>12</sup>

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<sup>9</sup> See footnote # 3.

<sup>10</sup> See משכנות הרועים אות תרנה.

<sup>11</sup> See footnote # 3.

<sup>12</sup> See רע"א and בית יעקב.