[תרווייהו באשת איש קמסהדי – Both of them testify that she is married]

Overview

The גמרא states that if one עד testifies that a woman was divorced and another contradicted him that she was not divorced, the rule is she may not remarry, and if she remarries, she must leave her second husband. The גמרא gives the reason for this ruling that since both עדים agree that she was an אשת איש, therefore one עד alone cannot[1] counter the presumption that she was (and therefore is still) married. תוספות has a difficulty in understanding this גמרא whether it is a case where her marital status was known (without these עדים) or whether it was not known (without these עדים).

תוספות asks:

תימה דמה לנו לאותו עד שאומר לא נתגרשה –

It is astounding! Why do we need **that עד who claims** the woman **was not divorced?!**

בלא איהו נמי תצא דאין דבר שבערוה פחות משנים -

She will be required **to leave** the second husband **even without** the witness who claimed לא נתגרשה. **For no issue concerning illicit relationships** can be established with **less than two witnesses.** This woman was ostensibly known to be married. An עד claims that she was divorced. That עד is insufficient to remove her marital status, since אין דבר שבערוה פחות משנים. Therefore, even if she remarried based on the testimony of this עד אחד (who was not contradicted), she will be required to leave her new husband. She is considered an אשת איש. We do not need this other עד to claim לא נתגרשה in order to require her to be תצא!

תוספות anticipates a possible answer:

דהא ליכא למימר שלא היינו יודעים שהיא אשת איש כי אם על פיהם -

For we cannot answer that indeed **we would have not known that she was married, if not for their testimony.** The proposed answer is that we assume that the case at hand is where the marital status of this woman was unknown. Therefore she is not בחזקת אשת איש, only through the testimony of these two עדים (who both agree that she was a married woman [prior to the alleged divorce]). If not for the עד who said לא נתגרשה she would be permitted to remarry based on the ע"א who claims אשת איש היתה ונתגרשה. This is a regular הפה שאסר הוא הפה שהתיר. However, now that there is an עד who contradicts the עד המתיר, she cannot remarry.

תוספות rejects this answer:

דאם כן להימניה להאי דאמר מגורשת במיגו דאי בעי שתק -

For if this were indeed **so;** that without these עדים the marital status of the woman

---

[1] An ע"א is believed (מדרבנן) to testify that the husband died on account of עיגונא אקילו בה רבנן. However an ע"א is not believed to claim that a woman was divorced (without producing the גט).

is unknown, then **let us believe the** עד **who claims she is divorced with a מיגו, for he could have remained silent** and not testify that this woman was (married and) divorced. We do not know the status of this woman. If the one עד who claims לא נתגרשה would testify, the woman would be able to marry, for one עד cannot place upon her an א"א איסור since אין דבר שבערוה פחות משנים. The only reason she cannot remarry is because the עד המתיר is also testifying that she was an א"א. However he has a מיגו; for if he wanted her to remarry, all he had to do was to not testify at all, and the woman would be permitted to remarry. Therefore we must say that the woman's status was known and therefore the עד המתיר has no מיגו. The question remains why it is necessary to mention the עד האוסר at all; even without his testimony the woman is אסור to remarry since אין דבר שבערוה פחות משנים!

תוספות answers:

ויש לומר דאין זה מיגו דשמא רוצה להעיד כדי לפוסלה מן הכהונה -
And one can say, that indeed we are discussing a case where the woman's status is unknown (otherwise there is no need for the עד האוסר), and as for the question why is not the עד המתיר believed with a מיגו דאי בעי שתיק; the answer is **that it is not a** valid **מיגו, for perhaps** this עד **wants to testify** that (she was married and afterwards) she was divorced, **in order to disqualify her from** marrying into the **כהונה.** Therefore there is no מיגו דאי בעי שתיק, for if he would have been שתיק she would be מותר לכהונה (even according to the עד האוסר, if her husband eventually died). The עד המתיר however may want to be פוסל her לכהונה therefore he states נתגרשה, and he is not believed since there is another עד who states באשת איש קמסהדי and לא נתגרשה תרווייהו.

תוספות ישנים]:
This is a **תוספות ישנים**

SUMMARY

If it is known that a woman was married and an ע"א testifies that she was subsequently divorced (even if no one contradicts him), he is not believed. If the marital status of the woman was unknown and two עדים (testify that she was married, but) contradict each other whether she was divorced or not, she is deemed to be married, and the עד המתיר has no מיגו דאי בעי שתיק, since his intention may be to be פוסל her מן הכהונה.

THINKING IT OVER

תוספות asked that if her status is unknown then the עד המתיר should be נאמן with a מגו דאי בעי שתיק. The answer was that there is no מיגו, for he wants to be פוסל her מן הכהונה. What is the woman claiming? If she is claiming I was divorced, then she is אסורה לכהונה, anyways; why should not the עד המתיר have the מגו דאי בעי שתיק? If she claims לא נתקדשתי then even if both עדים would state נתגרשה she would be

אסורה.[2] For since she said לא נתקדשתי it is obvious that according to her she was never divorced, and since two עדים are testifying that she was an א"א, she is tacitly admitting that she was never divorced![3]

---

[2] There is a similar case in ממון. If a לוה claims לא לויתי and two עדים testify that לוה ופרע, the לוה is חייב to pay. For הודאת בע"ד and כל האומר לא לויתי כאומר לא פרעתי is stronger than the עדים who say פרע. Here too, her testimony of נתגרשה and is stronger than the העדאת עדים that כאומרת לא נתגרשתי is לא נתקדשתי.

[3] See ח"ב אות שלה and משכנות הרועים אות תשיח.