

אלא¹ אפשר לקיומי בבן גרושה או בבן חלוצה - Rather it can be fulfilled by a son of a divorcee or a son of a *Chalootzoh*

Overview

The גמרא, in its response to ר' יוחנן, states that (even) by ע"ז (where ר"י agrees that we can still fulfill the punishment of מלקות in a case where they testified that someone is a חלל (a בן גרושה וחלוצה), where the ע"ז receive מלקות. Our תוספות discusses this assumption.

תוספות asks:

ואם תאמר אמאי לקו אעדות דבן גרושה הא הוי עדות שאין אתה יכול להזימה² -

And if you will say; why are they flogged for the testimony of a בן גרושה, since it is a testimony which cannot be impeached –

תוספות answers:

ויש לומר דלא חשיב עדות שאין אתה יכול להזימה אלא במעידין על הטרפה³ -

And one can say; that it is not considered an עדות שאין אתה יכול להזימה, only in a case where עדים are testifying regarding a טריפה; in which case the עדות is not accepted -

דאי אפשר לקיומי בשום דבר לא במיתה ולא במלקות⁴ דגברא קטילא בעו למיקטל⁵ -

Since it is completely impossible to fulfill the ruling of זמם, neither by killing them or flogging them, for the ע"ז intended to kill a dead man -

אבל הכא נתקיימה הזמה במלקות:

However here by חלוצה ובן גרושה the הזמה was fulfilled by giving them מלקות.

Summary

¹ In our גמרא the text reads אלא עדים זוממים אפשר (instead of אפשר אלא).

² The testimony of witnesses cannot be accepted unless it is a testimony which can be impeached (through the הזמה process) and בי"ד can implement the punishment of זמם [This may prevent the עדים from testifying falsely]. However here by the testimony of בן גרושה, since we cannot implement the זמם (we cannot make the ע"ז into חללים), it is not a valid testimony, so why should the ע"ז receive מלקות. Similarly, if there was no הזמה, it should not become a חלל, since it is an עדות שאין אתה יכול להזימה.

³ A טריפה is someone who has a disease or sickness from which he will surely die within the year. If עדים testified about a טריפה that he killed someone; that testimony is not accepted, because it is an עדות שאין אתה יכול להזימה.

⁴ See 'Thinking it over'.

⁵ Since the accused is a טריפה, it is as if they are testifying that a dead man killed someone; therefore, they cannot receive any punishment since we consider it as if they are not testifying to hurt or damage someone. In such a case their testimony is not accepted (the טריפה will not be punished for the alleged murder [even if there is no הזמה]), for since it is an עדות שאין אתה יכול להזימה we do not accept their testimony, since the עדים are not afraid to lie, for they know they will not be punished.

An עדות שא"א יכול להזימה is only if they will receive no punishment at all.

Thinking it over

תוספות writes that if they testified regarding a טריפה, the ע"ז will receive no punishment, neither מיתה nor מלקות.⁶ Why do they not receive מלקות for transgressing the לאו of שקר עד ברעך (just as they receive מלקות for testifying that he is a חלל)?!⁷

⁶ See footnote # 4.

⁷ See footnote # 5.