

Rather it is obvious that they warned him אלא פשיטא דאתרו ביה -

Overview

discussing פסוק from the משלם ואינו לוקה is חובל derived that a רב שישא בריה דרב אידי The פסוק must be discussing a situation where the person was warned (not to hit the woman), otherwise why is there a חיוב מיתה (if she died); nevertheless, we see that if she did not die (ואם לא יהיה אסון), he must pay (ענוש יענש), this proves that a חובל is לוקה ואינו משלם, even if there was a התראה. Our תוספות explains how there can be a חיוב ממון here.

asks: תוספות

ואם תאמר היכי משלם ממון אפילו כי אין אסון -

And if you will say; how does he pay money even if there was no death -

הא כיון דמתכוין להרוג² הוי ליה רודף³ ומתחייב בנפשו⁴ וקים ליה בדבריה מיניה⁵ -

For since he intended to kill her, he is a רודף and is liable with his life, so the rule of קים ליה בדבריה מיניה applies to him and he is exempt from any payment –

answers: תוספות

ויש לומר בשיכולין להצילו באחד מאבריו⁶ והכי אמרינן בן סורר (סנהדרין דף עד,א):

And one can say; this is a case where it is possible to save her from being killed, by disabling one of his limbs, and so we also say in בן סורר.

Summary

The פסוק of הרה, is where we can protect the woman by disabling one of the

¹ כב וכי ינצו אנשים ונגפו אשה הרה ונצאו ילדיה ולא יהיה אסון ענוש יענש כפאשר ישיט עליו בעל האשה reads; שמות (משפטים) כא,כב-כג. This means that if the woman (who was pushed) died (ואם אסון יהיה), the rule is that the one responsible is put to death (ונתת נפש תחת נפש). However, if she does not die (ולא יהיה אסון), then ענוש יענש, there is a monetary payment due.

² The case here is where the עדים warned him not to kill the woman (see 'Overview'), indicating that his intention was to kill (otherwise why are they warning him).

³ A רודף is a person who is pursuing another person with the intention of killing him. The rule is that one may kill the רודף in order to protect the נרדף (the one being chased).

⁴ The רודף is liable to be killed; he gave up his rights and is considered a person who is condemned to death.

⁵ The rule is that if a person committed a capital crime (where there is a possible death penalty), he is not liable for any monetary punishment that occurred during this time (even if in fact he is not put to death). This רודף is liable for the death penalty (when he intended to kill the woman), he is מתחייב בנפשו (see footnote #3 & 4), therefore if in fact he did damage to the woman (by wounding her or the fetus) he is not liable for monetary payment. See 'Thinking it over'.

⁶ The rule that a רודף may be killed, is when that is the only way to save the נרדף, however if we can protect the נרדף by wounding the רודף, we are not permitted to kill him. The פסוקים are in such a case, therefore he is not מתחייב בנפשו, so there is no rule of קלב"מ, and he would have to pay.

limbs of the aggressor.

Thinking it over

Seemingly we can establish the פסוק in a case where he was warned not to kill the woman (and if he disregarded this warning and killed her, he is חייב מיתה, that is the case of ואם אסון יהיה ונתת נפש תחת נפש), however, he heeded their warning and decided not to kill her, but just to hurt her, in which case he must pay (as the פסוק states ולא יענש). What is תוספות question?!