

דלמא בשוגג ונקה מגלות –

Perhaps it was inadvertently and he is absolved from exile

Overview

(since you asked, how can you prove from 'asked, how can you prove from 'מרי משלם ואינו לוקה that ונקה המכה וגו' assume that he was warned), perhaps it was a שוגג (and he was not warned), and ונקה means that the aggressor is absolved from going to גלות if the victim did not die, but instead he must pay. The implication of this interpretation is that if the victim did die eventually, the perpetrator will go to גלות. This presents a difficulty.

תוספות asks:

תימה לרבינו יצחק היכי שייך גלות אם מת אחר שחבשוהו ב' או שלשה ימים¹ -
The ר"י is astounded! How is גלות applicable if the victim died after the perpetrator was arrested for two or three days?

הא אמרינן במי שאחזו (גיטין עב, ושם) שחט בו שנים² או רוב שנים הרי זה אינו גולה -
For the סימנים or the majority of both סימנים and the victim died, the killer is not exiled, and ר' אשעיא explained the reason -
דחיישינן שמא הרוח בלבלתו -

For we are concerned perhaps the wind confounded him and caused or hastened his death, so here too why should he go to גלות, perhaps he died because הרוח בלבלתו -
וטעמא³ דגבי גלות אשכחן מילי טובא דפטור כגון דרך עלייה⁴ -

And the reason for this exemption is because regarding גלות, we find many things which exempt him from גלות, for instance if he killed him in an upward direction -
דגבי מיתה אין חילוק בין דרך עלייה לדרך ירידה -

Where regarding the death penalty there is no difference whether he killed him in an upward direction or in a downward direction -

¹ יח וכי יריבון אנשים והכה איש את רעהו באבן או באגרוף ולא ימות ונפל למשכב. יט אם read, שמות (משפטים) כא, יח-יט in פסוקים
This is understood to mean (as our גמרא explains) that we arrest the aggressor and wait to see the outcome, and if the victim survives, he is let go and is required to pay (רק (שבתו יתן ורפא ירפא), but if the victim eventually dies, the aggressor goes to גלות, even if he died several days after he was hurt.

² The two סימנים are the trachea and the esophagus (the wind pipe and the food pipe), which is what we cut when we slaughter an animal. Here it was done to another person.

³ Seemingly why is there such a rule; if someone was שוחט a person במזיד and he died some time later from this wound, the murderer would be put to death; תוספות explains why שוגג is different regarding גלות.

⁴ If someone was on a ladder and while falling down, he killed someone בשוגג, it depends; if he was coming down the ladder, he is חייב גלות, however if he was going up the ladder, he is פטור from גלות, because it is עלייה. See דת. עליוה. See מכות ז,ב.

הכי נמי גבי גלות בעינן שימות מיד⁵ כדכתיב⁶ ויפל עליו וימות משמע מיד -

Simialry regarding גלות we may require that the victim dies immediately, as it is written, 'and it fell upon him and he died' meaning that he died immediately -

ואף על גב דגבי מיתה נמי כתיב⁷ מכה איש ומת -

And even though that regarding the death penalty it is also written, 'whoever smites a person and he dies shall be surely put to death'; nevertheless,⁸ by שוגג, he is required to die immediately in order for the killer to go to גלות, however by מזיד there is no such a requirement. The question remains how is it possible that he will go to גלות after a time lapse from his act until the death of the victim.

answers: תוספות

ויש לומר דמשכחת לה בביתא דשישא⁹ דלא חיישינן שמא הרוח בלבלתו¹⁰ כדאמרינן התם -

And one can say; that it is possible for him to be exiled if he attacked him in a marble house where there is no concern that perhaps the wind confounded him, as the גמרא states there in שאחזו -

offers an alternate solution: תוספות

אי נמי דוקא בשחט בו רוב שנים חיישינן שמא הרוח בלבלתו דבקל הרוח מבלבלו -

Or you may also say that we are concerned that perhaps הרוח בלבלתו only in the case of שחט בו רוב שנים, for in that case the רוח can easily confound him, because he has an open wound on his neck -

אבל בשאר חבלות אין הרוח מזיק כל כך -

However, by other wounds the wind will not damage that much -

שיכולין לשמור יפה מבלבול רוח לכרוך על המכה שום דבר -

For we are capable of properly preventing הרוח בלבול by tying something around the wound -

asks another question: תוספות

ואם תאמר היכי מיתוקם קרא בשוגג הא כתיב שבת¹¹ בקרא רק שבתו יתן וגומר -

⁵ See footnote # 10.

⁶ במדבר (מסעי) לה, כג.

⁷ שמות (משפטים) כא, יב.

⁸ (seemingly) does not explain the reason for this distinction. See "Thinking it over".

⁹ There is no wind blowing inside a marble house, so there is no concern for הרוח בלבלתו, therefore he will go to גלות even after a time lapse. The פסוק is discussing such a case.

¹⁰ It would seem from this answer (and the following one) that תוספות is retracting from what he stated previously (see footnote # 5) that by שוגג the victim needs to die immediately if the killer should be exiled, rather תוספות maintains that as long as there is no concern for הרוח בלבלתו, there is a חיוב גלות even if the victim died after a time lapse.

¹¹ שבת is the reimbursement for the inability of the victim to work; the perpetrator pays for the victim's

And if you will say; how can we establish the פסוק of ונקמה המכה by שוגג, since שבת is written in that verse, as it states, 'he must only give שבת, etc. and pay for his healing' -

ובשוגג לא מיחייב כדאמרינן בסוף פרק כיצד הרגל (בבא קמא נו,ב ושם) -

But when someone wounds בשוגג he is not liable for שבת, as רבא stated in the end of פרק כיצד הרגל -

דמרבה מפצע תחת פצע¹² לחייב על השוגג כמזיד נזק אבל לא ד' דברים¹³ -

Where we derive from מפצע תחת פצע to hold liable a שוגג just like a מזיד regarding damages, but not regarding the other four payments. How can we say that ונקמה המכה is in a case of שוגג, when he, the מכה, is required to pay שבת (and ריפוי)?!—

answers תוספות

ויש לומר דמשכחת לה בהוסיף לו רצועה אחת -

And one can say; we can find a case where a שוגג pays ד' דברים if a שליח ב"ד; ד' דברים שוגג added an additional lashing to the one who was מחוייב מלקות -

דאמר בהמניח (שם לב,ב) דגולה ואם לא מת חייב בד' דברים¹⁴ ולא דמי לשאר שוגג -

Where the ברייתא states in פרק המניח that he is גולה, if he died, and if he did not die, he is liable for ד' דברים, for he is different from other שוגגים -

או כגון שנכנס לחנותו של נגר (שלא) ברשות -

Or for instance that he entered the store of a carpenter with (out) permission and he was struck by a flying chip of wood -

דמוכח התם לרב פפא דשייך ביה גלות וד' דברים -

Where it is evident there according to ר"פ that he can receive גלות (if the person was killed by the chip), or ד' דברים (if he was wounded) -

או נפל מן הגג ברוח מצויה דחייב בד' דברים כדאמרינן בסוף כיצד הרגל (שם נז,א) -

Or he fell off the roof from an ordinary wind, where he is liable for ד' דברים as it states in the end of פרק כיצד הרגל -

ומסתברא דאם מת דגולה -

And presumably that if the victim was killed that he is exiled -

ועוד דאפשר דהוי שוגג על המיתה ומזיד¹⁵ על החבלה:

unemployment during his rehabilitation period.

¹² שמות (משפטים) כא,כה

¹³ נזק is the diminished value of the wounded person if he were to be sold as a slave on the market. The other four payments are צער pain, healing expenses, שבת unemployment, and בושת shame. One who wounded someone is liable only for the נזק payment, but not for בושת, שבת, צער, ריפוי.

¹⁴ The ברייתא there merely states that גולה אם מת, and assumes that לו מת he is דברים, since he is לא (שוגג קרוב למזיד) נתכוין להכות שליח ב"ד that here the כסא שלמה. דמי לשאר שוגג.

¹⁵ He wanted to hurt him (so therefore he is דברים בד' חייב) but instead of hurting him, he killed him בשוגג, so he goes to גלות.

Or it is possible that he was a שוגג regarding the death, but was a מזיד regarding the wound -

Summary

One is חייב גלות (even) for a belated death if there is no concern for הרוח בלבלתו. There are several possibilities that one is (and) חייב גלות even by a שוגג.

Thinking it over

1. How can we explain why in תוספות question,¹⁶ he assumed that by שוגג, the victim is supposed to die immediately for there to be a חיוב גלות, but by מזיד there is a חיוב מיתה even if he died later?

2. תוספות offers various examples where one is חייב ד' דברים by a שוגג. However, it seems very awkward to establish the פסוק of 'וכי יריבון אנשים וגו' ¹⁷ in almost any of the cases which תוספות suggests. How can we say that כי יריבון אנשים refers to a שליח ¹⁸?!¹⁸ ברוח מצויה falling off a roof, נגר, a בי"ד,

¹⁶ See footnote # 8.

¹⁷ See footnote # 1.

¹⁸ See לחם אבירים.