

## הא נמי מאידך תנא דבי חזקיה נפקא -

**We derive this as well from the other תנא דבי חזקיה נפקא**

### Overview

רבא said that we can derive the ruling in the case where one blinded another and with another simultaneous blow killed him, that he is only put to death, but does not have to pay for the eye, from another teaching of תד"ה (and we do not need the עין תחת<sup>1</sup> of פסוק to teach this ruling). The אידך תד"ה is based on the פסוק of עין תחת<sup>1</sup>, which we expound to mean עין ונפש תחת עין. It is not overly clear how this דרשה teaches us the previous ruling by סימא את עינו וכו'.<sup>2</sup> offers his explanation.

לאו מההיא דרשה גופה קאמר דנפקא לן -

The גמרא **did not mean to say that we derive the ruling by סימא את עינו** (that he is only killed but is not required to pay) **from that דרשה** (of עין ונפש תחת עין) **directly** -

דהא ההיא דרשה לא שייכא כלל לסימא את עינו והרגו בדבר אחר -

**For that דרשה has no connection at all to the case where he blinded his eye and killed him with another blow** (that he is not required to pay) -

אלא הכי דייק דכי היכי דדרשינן ולא עין ונפש תחת עין -

**Rather this is what רבא wishes to infer; for just as we expound עין תחת עין to mean but not עין ונפש תחת עין** -

הכי נמי דרשינן נפש תחת נפש<sup>3</sup> ולא עין ונפש תחת נפש -

**So similarly we also expound נפש תחת נפש to mean, but not עין ונפש תחת נפש** (an eye and a life for just a life), we can only take away the killer's life; nothing else –

<sup>4</sup>clarifies: תוספות

וסימא את עינו והרגו בדבר אחר לא חשיב עין ונפש אלא נפש גרידא<sup>5</sup> -

**And the case of סימא את עינו והרגו בד"א is not considered as if the aggressor did**

<sup>1</sup> שמות (משפטים) כא,כד.

<sup>2</sup> See פרש"י who offers an explanation (which תוספות does not even cite). However, it seems that פרש"י is only in the case of סימא את עינו והרגו בה, but not for סימא את עינו והרגו בד"א (as תוספות maintains).

<sup>3</sup> שמות (משפטים) כא,כג.

<sup>4</sup> Seemingly the דרשה of נפש תחת נפש is only if it was just נפש תחת נפש (where he just killed him and did not cause another wound), however here since he both blinded him and killed him, it may be considered a case of עין ונפש תחת עין (עין ונפש תחת נפש), which may not be excluded from נפש תחת נפש.

<sup>5</sup> Therefore if he would have to pay for the eye also it would be considered נפש גרידא!

two crimes **עֵין וְנֶפֶשׁ**, but rather it is considered just **נֶפֶשׁ** alone (without עֵין) -

**דמה שסימא את עינו בשעת הריגה לא חשיב כלום -**

**For the act of סימא את עינו, when he killed him is not considered of any import -**

**דבלאו הכי היה מת<sup>6</sup> אלא<sup>7</sup> שהמיתו בצער מרובה -**

**Since he would have died regardless of the blinding, rather we consider it that he killed him with much pain** (by the blinding) –

תוספות asks:

**ואם תאמר הא מילתא נמי מתנא דבי חזקיה דלעיל נפקא<sup>8</sup> -**

**And if you will say; this ruling of סימא את עינו וכו' we can also derive from the previous תד"ה; we can say -**

**דמה מכה בהמה לא חלקת בין סימא את עינה והרגה בה להורגה בדבר אחר כולי<sup>9</sup> -**

**That just as by striking (killing) an animal the תורה does not differentiate whether he killed her by blinding her eye (only), or whether he killed her (while blinding her) with something else (with two blows), etc.**

תוספות answers:

**ויש לומר דמכה אדם ומכה בהמה משמע ליה בהכאה אחת -**

**And one can say that** the syntax of **מכה אדם ומכה בהמה** (in the singular) **indicates one blow** (only), therefore it is inappropriate to say **לא חלקת וכו'** as תוספות asked, since that would be discussing two blows, not one.

תוספות asks:

**ואם תאמר סימא את עינו והרגו בדבר אחר תיפוק ליה דפטור מדמי עין אפילו לא הרג -**

**And if you will say, in the case where סימא את עינו והרגו בד"א, we should rule that he is exempt from the eye payment even if in actuality he did not kill him, but he was attempting to kill him -**

**דבשעה שסימא את עינו היה רודף וניתן להצילו בנפשו –**

<sup>6</sup> There is no additional loss; when one is dead he is obviously also blind.

7 *לֹא חָשִׁיב כְּלוּם* (לא חשיב כלום) is explaining (if the blinding is *לֹא חָשִׁיב כְּלוּם*) why do we even need a *פְּסוּק* that he is not required to pay for the eye. The explanation is that this is different from a regular killing, for since he caused him much pain (by stabbing him in the eye), we may have thought that he should compensate for the loss of the eye, therefore the *פְּסוּק* teaches us that since the blinding is *לֹא חָשִׁיב כְּלוּם*, it is considered only *נַפֶּשׁ גְּרִידָא*, but not *עֵינ ונַפֶּשׁ*, therefore for killing a *נַפֶּשׁ*, one may punish only with *נַפֶּשׁ*, but not with *עֵינ ונַפֶּשׁ*.

<sup>8</sup> This is the תד"ח cited previously based on the פסוק (in ויקרא [אמור] כד, כא) of ומכה בהמה ישלמנה ומכה אדם יומת; that just like by מכה בהמה לא חלקת וכי, the same applies to מכה אדם that לא חלקת.

<sup>9</sup> In both cases he just pays for the animal, so too by **מכה אדם** there is no difference whether he killed him by blinding him (only), or whether he killed him **בדבר אחר** (while blinding him); in both cases he receives the death penalty only, but no monetary payment; why do we need the תנ"ח?!

**For at the time when he blinded him he was a pursuer,<sup>10</sup> and it is permitted to save the victim by taking the life of the רודף –**

answers: תוספות

**ויש לומר דמיירי בשיכול להצילו באחד מאיבריו שלא ניתן להצילו בנפשו:**

**And one can say that here we are discussing a case where the victim can be saved by merely disabling one of the limbs (רודף's) (without killing the רודף), in which case one is not permitted to save the victim by killing the רודף, therefore he is not considered to be a מחוייב מיתה. The only reason he is פטור from paying for the עין דמי even if he actually killed is because of the פסוק of נפש בנפש.**

### **Summary**

If he blinded him and killed him with two simultaneous blows, he is exempt from ומכה of פסוק. The עין ונפש תחת נפש but נפש תחת נפש because we expound דמי עין so it is not ניתן להצילו באחד מאיבריו where our case can be by one blow; is by one blow; וגו' is by one blow; our case can be where ניתן להצילו בנפשו.

### **Thinking it over**

<sup>11</sup> קלב"מ on account of רודף as a פטור מדמי עינו asks that he should be תוספות. However at this point in the גמרא we assume that only by בה עינו והרגו בה, does the rule of קלב"מ apply, but not by בד"א עינו והרגו בד"א (unless we derive it from a פסוק). How can then תוספות argue that if he attempted to kill him בד"א that he is a רודף and is פטור because of קלב"מ, when even if he killed him בד"א we are not sure that קלב"מ applies; so what is תוספות question?!

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<sup>10</sup> Since he was attempting to kill him, he is considered a רודף, and the rule is that in order to save the victim, one may kill the רודף. This is considered as if the רודף is מחוייב מיתה, in which case he is exempt from making any monetary payment on account of קלב"מ. The rule of קלב"מ applies even in cases where the מחוייב מיתה was not executed, for whatever reason. Therefore certainly where he actually killed him, he is פטור from payment. See 'Thinking it over'.

<sup>11</sup> See footnote # 10.

<sup>12</sup> See בית יעקב.