

## לאבי הנערה ולא לאבי מתה -

### To the father of the maiden, but not to the father of the corpse

#### Overview

אבי taught that if one was מאנס a נערה, and the נערה died, he is not obligated to pay the קנס to her father, since the תורה writes<sup>1</sup> לאבי הנערה, but not מתה. Our גמרא reconciles our גמרא with a seemingly contradictory תוספות.

asks: תוספות

ואם תאמר דבפרק נערה לקמן (דף מה, ב) גבי סרחה<sup>2</sup> ולבסוף בגרה תידון בסקילה -

And if you will say; later in נערה, פרק נערה, regarding a נערה who sinned, and she eventually became בוגרת, she is punished with stoning, for -

דרשינן הנערה<sup>3</sup> שהיתה כבר -

We expound the פסוק of הנערה to mean the נערה which she was previously, similarly here too let us expound this לאבי הנערה to the נערה שהיתה כבר?!

answers: תוספות

ויש לומר דהתם מענינא דקרא והכא מענינא דקרא -

And one can say, that there we interpret הנערה from the context of the verse, and here we also interpret הנערה from the context of the verse -

והתם ודאי אתיא לחייבה דאי לפוטרה לשתוק קרא מיניה -

For there the word הנערה is certainly coming to obligate a נערה ולבסוף בגרה to receive סקילה, for if the תורה wants to exempt her from סקילה, the verse should have been silent and not mention הנערה at all (merely והוציאוה) -

ואנא ידענא דלא הוא בסקילה דלאו נערה היא<sup>4</sup> -

<sup>1</sup> דברים (תצא) כב, כט.

<sup>2</sup> This is regarding the פרשה of שם רע where the husband (with witnesses) accuses his wife that she was מזנה (when she was נערה). In this case the זנות took place when she was a נערה (between 12 and 12 ½), however when she was convicted she was already a בוגרת (older than 12 ½). If she was מזנה when she is a בוגרת, she would receive חנק, not סקילה.

<sup>3</sup> The תורה could have just written והוציאוה (see פסוק (in כב, כא) דברים) writes (דברים [תצא] כב, כא) וגו' וסקלוה וגו'. The תורה teaches us that as long as she was a נערה at the time of זנות, she receives סקילה, even though she is now a בוגרת. The same should apply here (for it could have said לאביה, since it says לאבי הנערה this implies) that he should pay the קנס to the father of this woman who was a נערה in the past (when he was מאנס her), even though that now she is not a נערה (she is a מתה).

<sup>4</sup> The entire פרשה of מוצא שם רע keeps on mentioning the term נערה. Therefore it was not necessary to mention again נערה, if it would have said והוציאוה we would know we are referring only to a נערה (and not to a בוגרת). Therefore since the תורה added the word נערה, it wants to include something; we expound it to include נערה. [Alternately the לימוד is from the extra 'ה'א, it could have been written נערה but it is written הנערה. Then we surely would assume that by נערה ונתבגרה there is no סקילה since she is not a נערה.]

And we would have known that she does not receive סקילה, for she is not a נערה - והכא לחיובא דקנס לא אצטריך דמסברא מיחייב אשעת ביאה ואי אפשר לפוטרו בולא כלום - However here (by מאנס) we do not require a פסוק to teach us that if she died, he is still obligated to pay the קנס, for logically his obligation to pay is for the time of ביאה; that is when the אונס took place, and it is understood that we cannot exempt him without any punishment, so without the פסוק of הנערה we would assume that he is to pay, even if she died, why therefore does the תורה write הנערה -

הלכך אתא לפוטרו:

Therefore we must conclude that הנערה comes to exempt him from paying; he pays only לאבי הנערה, but not מתה לאבי.

### Summary

A extra word should be interpreted to either include or exclude in a manner which is the opposite of the context of the verse.

### Thinking it over

Which of the two לימודים is the greater חידוש; the rule that זינתה בנערותה ולבסוף בגרה חידוש; the rule that she receives סקילה, or that he does not pay מתה?<sup>5</sup>

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<sup>5</sup> Can we say that it depends whether the לימוד is from the word הנערה, or the ה"א of הנערה?