

בא עליה ונתארסה מהו -

He had relations with her and she became betrothed, what is the ruling

Overview

ר' יוסי הגלילי, בערה שנתארסה ונתגרשה, where ר' יוסי הגלילי maintains that there is no קנס (if someone was מאנס her after the גירושין), and ר' עקיבא maintains that she receives the קנס money (not her father). However ר"ע in a ברייתא maintains that her father receives the קנס. Here in our גמרא there was a query what is the ruling in a case where בא עליה (when she was a פנויה) and afterwards (before the קנס was collected), she was נתארסה, what is the ruling regarding the קנס. Our תוספות explains according to which opinion was this query posed.

לרבי עקיבא דמתניתין קא מיבעיא ליה דאמר נתארסה ונתגרשה קנסה לעצמה -

This query is according to ר"ע of our משנה, who maintains that in a case of נתארסה ונתגרשה the קנס belongs to her (but not to her father); the query is -

דמי אמרין כיון שיצאה מרשות האב לענין קנס¹ יהא קנסה לעצמה -

Do we then say that since she left the domain of her father regarding קנס, therefore the קנס should belong to her -

או דלמא כיון דלענין שאר מילי² לא נפקא מרשות האב יהא קנסה לאביה -

Or perhaps since regarding other matters, she does not leave the father's רשות, the קנס should belong to her father -

אבל לרבי עקיבא דברייתא³ פשיטא דקנסה לאביה -

However according to ר"ע in the ברייתא, it is obvious that קנסה לאביה in this case, since (even) by נתארסה ונתגרשה he rules לאביה -

ולרבי יוסי הגלילי נהי דאמר אין לה קנס⁴ נמי לא מיבעיא ליה⁵ -

And there is no query also according to ריה"ג, for granted that ריה"ג maintains that there is no קנס by נתארסה ונתגרשה, nevertheless there is no query -

¹ The act of אירוסין (generally) removes the נערה from her father's domain regarding קנס; this is the ruling of ר"ע that if נתארסה ונתגרשה and afterwards someone was מאנס her, קנסה לעצמה (not לאביה). The reason is because the אירוסין removes her from her father's רשות, therefore in the query also, her אירוסין (after the אונס) should remove the קנס payment from the father and it should belong to her.

² This is referring to her קידושין and מעשה ידיה which, as a נערה, belong to her father.

³ See 'Overview'. There is more reason that קנסה לאביה if she was נאנסה while she was never an ארוסה, than when she was נאנסה after נתגרשה ונתארסה.

⁴ Seemingly there could be an איבעיא according to ריה"ג, for we can argue that only by נתארסה ונתגרשה (where the אונס took place after [נתגרשה] נתארסה), there is no קנס (according to ריה"ג), since she was already an ארוסה before the time of the אונס, however in our case where the אונס took place before she was ever an ארוסה, perhaps there is קנס, and perhaps not.

⁵ There would be קנס to her father, for she was לא אורשה at the time of the אונס. See footnote # 7.

דהא דאין לה קנס לאו משום מיפק מרשותא דאב היא⁶ -

For the reason that there is no קנס by נתגרשה ונתארסה, is not because the אירוסין removed her from her father's רשות -

אלא גזירת הכתוב הוא⁷ דאין לה קנס ולא נפקא באירוסין כלל מרשות אביה -

Rather the reason there is no קנס by נתגרשה ונתארסה is because it is a גזירת הכתוב that there is no קנס, and she does not leave at all her father's רשות by אירוסין -

דאב זכאי בקדושיה ובמעשה ידיה אף על גב דנתארסה -

For the father has the rights in her קידושין and her handiwork even though she was betrothed.

תוספות responds to an anticipated difficulty:

והא דקא בעי לה סתם ולא קאמר לרבי עקיבא בהדיא מהו משום זהלכה כרבי עקיבא⁸ מחבירו:

And the reason רבא posed this query unspecified, and did not state specifically that this query is only according to ר"ע of the משנה, is because the הלכה is like ר"ע against his colleague.

Summary

The query of רבא is (only) according to ר"ע of our משנה.

Thinking it over

however⁹, ר"ע explained why רבא did not say that his query is according to ר"ע, why did he not say that it is according to ר"ע of the משנה, but not according to ר"ע of the ברייתא?¹⁰

⁶ If that would have been his reasoning, then there could be a valid query; is this reasoning only if she was an ארוסה before the אונס, or even if she became an ארוסה after the אונס; similar to the query according to ר"ע

⁷ See לח, that ריה derives his ruling (that אין לה קנס) from the פסוק (in כב, ט) (שמות [משפטים] כב, ט) which states (regarding a פיתוי) that אורשה לא, then she receives קנס, but not if אורסה. However if there was no אירוסין before the אונס, there is no reason that the father should not receive the קנס (for the גזירה does not apply).

⁸ ריה is the only one who disagrees with ר"ע, therefore the הלכה is like ר"ע, so רבא assumed that we would understand that his query was according to ר"ע (of the משנה). See 'Thinking it over'.

⁹ See footnote # 8.

¹⁰ See (text by) footnote # 3.