

Rabi Shimon- רבי שמעון בן יהודה אומר¹ אף בושת ופגם אינו משלם על פי עצמו
Ben Yehudoh says, he does not even pay ב"פ by his own admission

Overview

ר"ש maintains (in the name of ר"ש בן יהודה) that by פיתוי, the מפתה does not pay even בו"פ, based on his own admission. There is a משנה, in² which ר"ש maintains that if the alleged מאנס/מפתה at first denied and swore that he was not מאנס/מפתה, and then he admitted to it, the rule is that he is פטור from a קרבן שבועה,³ since one does not pay קנס by his own admission.⁴

אומר רבינו יצחק דאי קאי רבי שמעון בן יהודה אמתניתין דהכא -

The ר"י says that if we assume that רשב"י is referring to our משנה, which states that if one admitted to being מפתה he is only liable for בושת ופגם (but not for קנס), and רשב"י argues and maintains that he is not liable even for קנס; in that case -

הא דמשמע בריש נערה לקמן (דף מב,א⁵) דלרבי שמעון

This which is implied later in the beginning of פרק נערה that according to ר"ש - אי דקא תבע בושת ופגם מחייב ליה קרבן שבועה -

If the father would claim ב"פ from the מאנס/מפתה it would obligate the מאנס/מפתה
for a קרבן שבועה; which would seem to contradict our גמרא;⁶ תוספות responds -

היינו משום דהתם תבעו האב תחלה ואין שייך לומר לאו כל הימנו כולי כדקאמר הכא⁷ -

That is because there (by קרבן שבועה) the father initially demanded payment for

¹ In our גמרות it reads רשב"י אומר משום רבי שמעון.

² מ.ב.א. cite later here on שבועות לו,ב.

³ One brings a קרבן שבועה if he swore and denied that he owes money, and subsequently admitted on his own that he owes the money. He must repay the money plus a חומש and being a קרבן אשם גזילות (also known as קרבן שבועה).

⁴ Therefore since even if he would have admitted initially, he would be פטור from paying (מדה בקנס פטור), therefore this is not the case of כפירות ממון which the תורה is discussing regarding a קרבן שבועה.

⁵ Others prefer מג,א. The *משנה* cited on מג,א mentions a מחלוקת whether a מאנס/מפתה is חייב קרבן שבועה רבנן; the מחייב (מג,א) later גמרא (אג,א) explains that their מחלוקת is in a case where the father made a general claim אנסת ופיתת את בתי; the רבנן maintain that the father was asking for ב"פ (which is ממון), therefore if he denied and swore, he is מחויב קרבן שבועה. However ר"ש maintains that he is claiming the קנס, therefore there is no קרבן שבועה even if he denies it, since מודה בקנס פטור. It is therefore obvious that (even) according to ר"ש if the father was claiming ב"פ, he would certainly be מחויב קרבן שבועה.

⁶ The rule is (see 'Overview' and footnote # 4) that in a case where if the debtor would have admitted initially to owing the money, he would still be פטור, then there is no קרבן שבועה, even if he swore and denied it. ר"ש maintains here that even if he admitted to being מאנס/מפתה, he is still פטור (even) from ברי"פ, so how could there be a קרבן שבועה?!

⁷ The reason ר"ש exempts מ"מ from מאנס/מפתה ב"פ is (not because it is a קנס; which it is not, but rather) because (since the father is not presenting a claim), we do not believe the מ"מ spreading false accusations which are not verified. Therefore in our גמרא ר"ש maintains that he does not pay ב"פ (for we do not believe him), however in the גמרא concerning קרבן שבועה, we are in a case where the father claimed the ב"פ, giving credence that she was violated, in that case, had he admitted he would be liable to pay ב"פ. Therefore he is קרבן שבועה חייב. See 'Thinking it over' # 2.

בו"פ (the מאנס/מפתה did not come forth and admit it, as the case is here), **so it is not applicable** there to use the logic of 'he cannot be believed, etc. to blemish a Jewish daughter', **which** the גמרא **applies here** -

ואין צריך לומר דתרי תנאי אליבא דר' שמעון⁸ -

And therefore it is not necessary to say that there are two different תנאים expounding the **views of ר"ש**; rather we can reconcile these two rulings.

ועוד offers an alternate resolution:

ועוד אומר רבינו שמשון בן אברהם דההיא דלקמן איכא לאוקמי בבת גרים -

And additionally says the רשב"א that the גמרא later (which indicates that he is חייב a קרבן שבועה) **can be established** that the נערה **was the daughter of converts** -

וניחא לה לדידה ולאביה⁹ דליכא למימר דלמא איכא חד במדינת הים דלא ניחא ליה -

And it is a case where she and her father are agreeable to accepting the פגם and the קנס, **for we cannot say** (as we do here¹⁰), 'perhaps there is someone overseas who is not agreeable', for since she is a בת גרים, she has no family elsewhere -

ומיהו¹¹ אי קאי רבי שמעון אמתניתין דשבועות דמייתי לקמן בריש נערה¹² (גם זה שם) -

However if ר"ש (when he exempts him from בו"פ) is referencing the משנה in מסכת - פרק נערה, which is cited later in the beginning of שבועות,

על כרחך תרי תנאי אליבא דרבי שמעון:

Perforce we must say that there are two תנאים expounding the view of ר"ש in a contradictory manner.

Summary

A פטור from בו"פ (according to ר"ש), only if he admitted it first (except for a בת גרים), however if the father demands it, he is liable.

Thinking it over

1. How do we explain what אינו תובע here is where משנה¹³ explains that our תוספות.

⁸ The הגהות הב"ח inserts here the last two lines of תוספות (from ומיהו until דרבי שמעון). See Footnote # 11.

⁹ Therefore the reasoning of פלוני בתו של הימנו שיפגום does not apply, since they are both agreeable.

¹⁰ See shortly that even if she and her father and family are agreeable, nevertheless he is not believed since דליכא חד במדינת הים דלא ניחא ליה. That applies to a בת ישראל who has family, but not to a בת גרים who has no family.

¹¹ According to the הגהות הב"ח these two lines (ומיהו...דרבי שמעון) belong before ועוד אומר רשב"א (see footnote # 8).

¹² See footnote # 2. That משנה states clearly that the father is claiming את בתו, and it is regarding this משנה specifically that ר"ש states here that even regarding בו"פ he is not liable to pay and therefore פטור from a שבועה. That ruling contradicts the ruling from the understanding of the משנה, where ר"ש maintains that if the father was תובע בו"פ he is חייב a שבועה (see footnote # 5). And both cases are discussing a case where the father was תובע. We must say תרי תנאי אליבא דר' שמעון.

¹³ See footnote # 7.

initially assumed that both the daughter and the father are not agreeable to accept the charge (that she was נבעלה) and the payment; in that case what is the issue since they do not want to accept the פגם and the payment?¹⁴

¹⁵האב תובעו explains that the case where he is חייב a שבועה is where האב תובעו. However in our גמרא (in the discussion between רב פפא and אביו) it is evident that the בני is פטור even if it is ניהא ליה to the daughter and the father and (even) the המשפחה, nevertheless he is פטור because דלא ניהא ליה, so what is explanation that האב תובעו?¹⁶

¹⁴ See מהרש"א א.

¹⁵ See footnote # 7.

¹⁶ See תוס' שאנץ.