

Why did they not forbid her

מפני מה לא אסרוה –

OVERVIEW

The גמרא asks why did they not forbid שבע to דוד. Our תוספות cites פירש"י, rejects it and offers his interpretation.

פירש הקונטרס¹ והלא אותו מעשה בעדים הוה² -

explained the reason the חכמים should have forbidden her to דוד **is since there were witnesses to that episode.**

פירש"י rejects תוספות:

ואין נראה דנהי דידוע לרבים הוה שהביאה לביתו -

And this is not the view of תוספות, **for granted that it was publicly known that brought שבע to his house -**

מכל מקום לא ראו כמכחול בשפופרת³ שבפני בני אדם לא שמש⁴ -

Nevertheless no one saw בשפופרת⁵, **since he was not שמש in the presence of people,** so why should she be אסורה עליו.

מפנ"מ לא אסרוה תוספות offers his interpretation of the question:

ונראה לרבינו יצחק לפרש ואם תאמר דפתח פתוח כשני עדים דמי⁶ אמאי לא אסרוה לדוד⁷ -

And the ר"י prefers to explain it thus; so if you maintain that the claim of פתח (by the husband) is comparable to the testimony of two witnesses (regarding זנות) as the גמרא just stated, so **why did they not prohibit her to דוד -**

דוד היה יודע בודאי שנבעלה ואף על פי שעשה תשובה מכל מקום עיכבה⁸ -

¹ בד"ה מפני.

² People knew that דוד brought שבע to his house (and was secluded with her).

³ מכחול is a dye applicator. It is first inserted into a tube (שפופרת) which contains dye, and then applied to the eyes. This is the common euphemism for the act of ביאה.

⁴ It is forbidden to have תשמיש in the presence of anyone else.

⁵ It seems that תוספות maintains that the עדי זנות are required to see בשפופרת in order that their testimony be accepted. Others maintain (see ז,א) that it is not necessary that the עדים actually see בשפופרת, but it is sufficient if they see them המנאפים (in a compromising situation). In any event the עדים saw neither since he was not שמש בפני בני"א.

⁶ If however we would maintain like the המקשן that since סברת פחות מב' אין דבר שבערה פחות מב' then even if he sees his wife she is not אסורה to him (see previous ד"ה ומי וז,א), there would be no question on דוד, since there were no עדים.

⁷ The סנהדרין should have told דוד that if/since you are aware that you were בעל her while she was an איש, so you know that she is forbidden to you, and you need to separate yourself from her. The word אסרוה is not that literal according to פר"י as it is according to פר"י.

⁸ תוספות is explaining that we cannot say that just as initially דוד did an איסור (with שבע), so later too he continued

For דוד certainly knew that she was נבעלה (by דוד), and we see that even though דוד did תשובה, nevertheless he retained her by him -

ואם היתה אסורה לו לא היה אותו צדיק לוקחה לו לאשה:

And if she was forbidden to him, that צדיק would not have taken her as his wife.

SUMMARY

According to רש"י the בי"ד should have prohibited דוד to be with שבע בת, since there were עדים that they were together. According to תוספות, the בי"ד should have told דוד, since you know that she is אסורה to you, there is a need for you to separate.

THINKING IT OVER

The rule is if one is בועל an איש ברצון she is אסורה both to her husband (the בעל) and to the בועל. The rule is כשם שאסורה לבעל כך אסורה לבעל. If however she was מותרת לבעל and therefore also מותרת לבעל. Here בת שבע may not have been אסורה לבעל (her husband אוריה) since he does not know that she was איש ברצון and even if דוד (or בת שבע) would have told them he need not accept their testimony, especially since אין אדם משים עצמו רשע. In our case therefore if she is not אסורה לבעל she is not אסורה לבעל (to דוד), so what is the גמרא's question according to תוספות?⁹

living with her באיסור. Therefore תוספות says that דוד did תשובה, so how come he continued to live with her if she is אסורה to him

⁹ See סוכ"ד אות עו and רש"י.