

We require, 'as he plotted'; but it is not – בעינן כאשר זמם וליכא –

OVERVIEW

The גמרא explained the reason why if the עדים זוממין testified that someone is a בן גרושה; they do not become בן גרושה, because we cannot disqualify their children (by making them חללים as well), since the תורה writes לֹא כְאִשְׁרֵם לָא but not לֹא זָרְעוֹ, and since we cannot fulfill the כְּאִשְׁרֵם completely it does not apply at all. תוספות discusses a particular case where seemingly we can disqualify the עדים.

תוספות asks

קשיא¹ היכא שמעידין שהוא מצרי שני² דאינן באין לפסול זרעו³ כי אם לפסלו⁴ אם כן נפסול –
There is a difficulty; in a case where they testify that someone is a מצרי שני, where they do not come to disqualify his children, only to disqualify him, so therefore in this case we should disqualify the עדים זוממין and consider them a מצרי שני⁵

תוספות answers:

ויש לומר דמכל מקום אשתו נפסלת⁶ דפסלה בביאתו⁷ –
And one can say that nevertheless his wife will be disqualified (from כהונה), for he disqualified her by his ביאה with her –
וכתיב ועשיתם לו כאשר זמם לו ולא לאשתו:

¹ We can assume from the משנה that the law of בן גרושה is not limited only to a case of בן גרושה, but rather that by any case of פסול (כהונה) קהל, we do not apply the כְּאִשְׁרֵם to make the עדים זוממין into פסולי קהל, but rather we give them מלקות. The reason is because any פסולי קהל (usually) affect זרעו, which we exclude because of the מיעוט of זרעו. However תוספות is offering an example where the פסול קהל does not affect זרעו, but only the עדים זוממין. See מהרש"א.

² A מצרי שני is a person whose father and/or mother were מצרים who were נתגייר (the parent(s) are מצרי ראשון and their offspring are מצרי שני). A מצרי שני (a מצרי who was נתגייר) may not marry a ישראלית; he can marry a מצרית (a מצרית). A מצרי שני can also not marry a ישראלית. A מצרי שני who marries a מצרית, their child who is מצרי שלישי is לא תתעב מצרי כי גר היתה בארצו. ט. פנים אשר יולדו להם דור שלישי יבא להם; which states; דברים (תצא) כג,ה-ט. מותר בישראל בקהל יונה.

³ The children of the accused (who are מצרי שלישי) are מותר לקהל. See footnote # 2.

⁴ The אסור בישראל (מצרי שני) (the son of a מצרי) and is therefore אסור בישראל.

⁵ We are only disqualifying the עדים זוממין and making them מצרי שני, thus prohibiting them from marrying (or living with) ישראלית; however their children (even if they are considered to be מצרי שלישי) are מותר לקהל. There is no concern here of זרעו.

⁶ The rule is than any woman who had a relationship with a man who is forbidden to her (in any manner), is considered a זונה and therefore forbidden to marry a כהן (afterward). If we consider the עדים זוממין as מצרי שני then the woman he (will marry or) is already married to will become a זונה (for she is forbidden to live with a מצרי שני). We are not only punishing the עדים זוממין, but we are also punishing his wife, which we cannot do as תוספות continues to explain.

⁷ There is the view of יוסי ר' in יבמות סח,א that a אשה only if the זרע from this ביאה is פסול (like by a חלל or a ממזר); however if the זרע is not פסול (like by a מצרי שני) the wife is not נפסלת. However the חכמים there disagree and maintain that every ביאה פסולה is פוסלת the woman. See 'Thinking it over' # 2.

And it is written, ‘and you shall do to him as he plotted’; we expound the word ‘him’ as an exclusion, only to **him but not to his wife.⁸**

SUMMARY

We do not make the מצרי שני a עדים זוממין because it affects their wives.

THINKING IT OVER

1. What would be the ruling if he had no wife?⁹
2. What would be the rule according to ר' יוסי if they testified that someone is a מצרית שני¹⁰ What would be the ruling if they testified that a woman is a מצרית שני (where she is not פוסל the husband)?¹¹
3. תוספות discusses the case where עדים testified that someone is a מצרי שני and they were הוזהר. What exactly was the testimony that both sets of עדים testified (the testimony of מצרי שני and of עמנו הייתם) that it constitutes a הזמה?

⁸ The punishment of כאשר זמם is limited to the עדים זוממין only; not to their children (ולא לזרעו) and not to their wives (ולא לאשתו). Since, as a consequence of making the עדים זוממין into a מצרי שני, we would also be punishing the wife (which we cannot do); therefore we do not implement the כאשר זמם (just as we do not implement it if it affects his children).

⁹ See ריטב"א.

¹⁰ See footnote # 7 and ערוך לנר.

¹¹ See גבורות ארי.