

אלא מעתה הרוג יציל – But now let the slain victim save the murderer

OVERVIEW

According to יוסי ר', who maintains that even if the פסול or קרוב did not warn the (alleged) murderer, nevertheless בטלה עדותו; therefore פפא ר' asked אב"י, according to יוסי ר' the murderer can never be convicted, for the victim will save the murderer from the death penalty. תוספות explains how the הרוג can save the murderer.

פירוש שהוא בעל דין¹ אי נמי מפני שהוא שונא ושונא פסול² לעדות:

The explanation why הרוג יציל is because he is a litigant; or you may also say, because the הרוג is an enemy to the הורג and an enemy is unfit to testify.

[ועיין תוס' יבמות כה. ד"ה הוא וכו'³ באריכות]

SUMMARY

The הרוג is להעיד פסול either because he is a בע"ד, or because he is a שונא.

THINKING IT OVER

What are the relative advantages of both explanations of תוספות?

¹ We can view the הורג and the הרוג as a claimant (the הרוג) and defendant (the הורג) in this case. The הרוג demands that the הורג be killed. Since the הרוג saw the killing he can be considered as a witness; however he is an invalid witness since he is a litigant (a litigant cannot testify [since he is considered as a relative to himself (see רש"י ד"ה (הרוג)). Therefore according to יוסי ר' than any עד פסול who saw the murder, invalidates the entire עדות, the הרוג is an עד פסול and should invalidate the entire עדות; saving the murderer from the death penalty.

² There is a dispute (between the חכמים and ר' יהודה כז, ב) in סנהדרין whether an enemy (one who did not talk to him for three days, עיי"ש) can testify. However in this case where the הרוג is a mortal enemy of the הורג, even the חכמים may agree that such a שונא cannot testify (see חתם סופר בשם תשובת מהרש"ל סי' לג). [See following נרבע ד"ה תוס' ד"ה נרבע.]

³ There תוספות explains that the הרוג cannot testify since he is a טריפה (and a טריפה is עדות פסול לעדות because it is an עדות שאי אתה יכול להזימה).