

And one, who was warning, in the middle

ואחד¹ מתרה באמצע –

OVERVIEW

The משנה, when it states the cases of two עדים seeing from one window and two other עדים seeing it from another window (regarding whether they are combined as one set or divided as two sets), adds that there was another person (in the middle [between the windows]) warning the alleged perpetrator. תוספות discusses the need for mentioning this additional (fifth) person.

תוספות asks:

תימה ואמאי הוצרך לומר ואחד מתרה שאין מן העדים² –

It is astounding! For why was it necessary for the משנה to state and one other person who was not from the four witnesses was warning –

תוספות answers:

ויש מפרשים דנקטיה משום רישא דקתני רואין אלו את אלו –

And others explain that the משנה mentions a separate מתרה, because of the first (following) case where the משנה states, ‘if these witnesses see the other witnesses –

ומסתמא היינו על ידי המתרה³ שאומר לעדים לאלו ואלו ראו את המעשה הרע שזה עשה –

And presumably this is accomplished through the מתרה who says to these and those עדים, ‘see the evil act that this person did’.

תוספות offers an alternate explanation:

ונראה למשי"ח (למורי שיחיה) דנקטיה לאפוקי מדרבי יוסי דאמר בסיפא –

And it is the view of משי"ח (my teacher 'שיחי) that the משנה mentions the מתרה to exclude the opinion of יוסי ר' who states in the end of the משנה –

אינו חייב עד שיהיו פי שנים עדים מתריין בו:

That the accused is **not liable** for punishment **unless the ‘mouth’ of two עדים warn him**, therefore the ת"ק (disagrees and) states that it is sufficient for one person to warn him and even if he is not one of the עדים.

SUMMARY

¹ It is advisable to learn this תוספות in conjunction with תוס' ד"ה הוא.

² The מתרה could just as well be one of the four עדים who saw the act, why mention an additional person who is not (even) an עד. See ‘Thinking it over’ # 1.

³ The ‘simple’ reading of תוספות would indicate that תוספות is offering a ‘practical’ reason why we mention the מתרה; because he is the cause how it came about that the two sets of עדים saw each other. ‘Others’ however maintain that תוספות is saying that the מתרה, by (seeing both sets of עדים or) having both sets of עדים see him, accomplishes that it is considered אלו אלו even though the sets of עדים did not see each other. This is the meaning of ‘ומסתמא’ ומסתמא, that both sets of עדים saw the מתרה, and תוספות continues to prove that both sets of עדים saw the מתרה, since שאומר לעדים וכו'. See in a later תוספות ד"ה הוא, where there is a dispute between the מפרשים and יש מפרשים regarding this issue, whether the מתרה is מצרף or not. See ‘Thinking it over’ # 2.

The משנה mentions the מתרה, either because it is he who brings about the מקצתן, or to negate the view of ר' יוסי who requires two עדים to be מתרה אתו.

THINKING IT OVER

1. asks why mention an independent מתרה.⁴ Perhaps the משנה needs an independent מתרה, for if the מתרה would be one of the עדים, and he would see the other set, or they would see him it would always be considered מקצתן רואין אלו את אלו.⁵ What is תוספות question?⁶

2. Is תוספות assumption that ע"י המתרה וכו' more convincing according to the 'simple' interpretation of תוס' (in footnote # 2) or according to the interpretation of the 'others'?

⁴ See footnote # 2.

⁵ See footnote # 3.

⁶ See הישועות.