

Like a dye applicator in its tube

כמכחול בשפופרת –

OVERVIEW

explained that ר"ט ור"ע would save a מיתה by asking the עדים if they observed בשפופרת (which they usually do not). תוספות will clarify regarding other מיתות, how (or if) they too can be saved.

asks: תוספות

תימה עובד עבודה זרה ומחלל שבת מאי איכא למימר דהתם לא מצינו למיפטריה -

It is astounding! What can we say regarding one who worships ע"ז, or one who desecrates the שבת, for there the בי"ד cannot exempt him from מיתה through the abovementioned questions?!

והא היכי קאמר לא היה אדם נהרג¹ -

So how could ר"ט ור"ע state that no person would be executed?!

answers: תוספות

ויש לומר דמכל מקום² קאמר שפיר לא היה אדם נהרג³ -

And one can say that nonetheless (even though the בי"ד cannot save an עובד ע"ז or מחלל שבת), they can properly state that no person would be executed -

משום דלא שכיחי כולי האי כי אם ברוצח ועריות⁴ -

Because it is not that common to transgress a capital crime except for a murderer and adultery/incest.

offers an alternate solution: תוספות

ועוד יש לומר⁵ דאיכא למימר ראיתם שמחלל⁶ אינו טריפה -

Additionally one can say (that בי"ד can save [even] a מחלל שבת or עובד ע"ז); that

¹ The הגהות הב"ח amends this to read, נהרג מעולם וי"ל, (instead of וי"ל נהרג).

² תוספות concedes that there is no way to save a מחלל שבת or עובד ע"ז from being executed, however since it is not common (only רוצח ועריות are [more] common), therefore the can say, 'no one will (usually) be executed'. See previous דילמא תוס' ד"ה דילמא [TIE by footnote # 18].

³ The הגהות הב"ח amends this to read, נהרג מעולם משום, (instead of משום נהרג).

⁴ It is generally rare that a person should be מיתה, since we require והתראה עדים, etc. Therefore it is possible by חילול שבת וע"ז where the person is so emotionally involved (he is very angry at the victim or very infatuated with the ערה), that we will not care about the התראה and commit the transgression. However regarding ע"ז in which there (generally) there is no (great) emotional involvement, it is highly unlikely that he will disregard the התראה and commit a capital crime.

⁵ This answer may be necessary for the שיטת ר"ת in the previous דילמא תוס' ד"ה דילמא who takes the words לא היה אדם נהרג, literally. See footnote # 2.

⁶ The הגהות הב"ח amends this to read, שהמחלל, (instead of שמחלל). See 'Thinking it over' # 1.

- **טריפה** was not a **מחלל שבת** **can ask the עדים did you see (know) that the** **דאם הוא טריפה אם כן אם תזימן⁷ לא יהיו חייבין מיתה -**

For if he is a טריפה, therefore if the testifying עדים (that he was מחלל שבת) will be הוזה, they will not be liable for the death penalty -

משום דמצו למימר גברא קטילא בעינן למיקטל והויא ליה עדות שאי אתה יכול להזימה:
For they will be able to say, 'we wanted to kill a dead person',⁸ and since we cannot enact the זמם, ועשיתם לו כאשר זמם, it is an עדות that you cannot be מזים, which is an invalid עדות שא"א יכול להזימה.
עדים שא"א יכול להזימה. Therefore no עדות will ever be killed because perhaps they are להזימה

הדרך עלך כיצד העדים

פרק כיצד העדים, We shall return to you,

SUMMARY

We can either say that **ט"ו** **ר"ט** could not save the **שבת** **ומחלל שבת** (and they meant they can prevent almost all **מיתות**, since these two are not common), or they can save all **מיתות** by suggesting that the transgressor may have been a **טריפה** making them an **עדות שא"א יכול להזימה** which is an invalid **עדות**.

THINKING IT OVER

1. **תוספות** asks regarding **מחלל** and **ע"ז**; however in the (second) answer he only mentions **מחלל** (but not **ע"ז**).¹⁰ Does **תוספות** answer apply to both or only to **שבת**?¹¹

2. According to the second answer in **תוספות**,¹² why did not the **גמרא** previously, regarding **הערוה** **רוצה ובוועל את הערוה**, ask the same question; perhaps the accused was a **טריפה** (instead of saying **במקום סייף** or **בשפופרת**)?¹³

⁷ The **תזימן** **הגהות הב"ח** amends this to read, **הוזה** (instead of **תזימן**).

⁸ Perhaps the **ע"ז** or **מחלל שבת** was a **טריפה**, so the **עדים** plotted to kill a dead man (a **טריפה** is considered dead; one is not liable for **מיתה** for killing a **טריפה**). Therefore we cannot kill the **עדים** (who are presumably not **טריפה**). See 'Thinking it over' # 2.

⁹ The threat of **הזמה** is a way of insuring that the **עדים** are not lying (for they will be afraid to lie, in case they are **הוזה** and will receive the punishment they wished to inflict on the accused). However, if it is an **עדות שא"א יכול להזימה**, that fear is not there and so we cannot be sure they are telling the truth, therefore it is not a valid **עדות**.

¹⁰ See footnote # 6.

¹¹ See **אילך** # 99 **אוצר מפרשי התלמוד**.

¹² See footnote # 8.

¹³ See **אילך** # 111 **אוצר מפרשי התלמוד** and **מהרש"א**.