

When it is situated between the mountains – ביושבת בין ההרים –

OVERVIEW

The גמרא states that according to חנינא ר' the rule of עגלה ערופה (that it is brought from the closest city [even though there is רובא דעלמא]) is only in a case where the closest city was ביושבת בין ההרים, so it is extremely unlikely that someone from elsewhere was the murderer. We can infer from this that anytime we can assume that the murderer came from elsewhere, the closest city need not bring the ע"ע. This poses a problem which תוספות addresses.

תוספות asks:

ואם תאמר ואמאי איצטריך קרא¹ בסוף פרק מרובה (בבא קמא דף פב,ב) -

And if you will say; why is it that in the end of פרק מרובה we require a פסוק to teach us -

דאין ירושלים מביאה עגלה ערופה² -

That the city of ירושלים does not bring an ע"ע if it was the closest city to a corpse whose murderer is unknown –

תוספות anticipates a simple answer to his question:

ואף על גב דכתיב (תהלים קכה³) ירושלים הרים סביב לה⁴ -

And even though it is written, 'ירושלים is surrounded by mountains', therefore it would be required (if not for the פסוק) to bring an ע"ע, so what is the question?

תוספות responds:

מכל מקום כל ישראל היו באין לרגל וגם בשאר ימות השנה להביא נדרים ונדבות⁵ -

Nevertheless, all of ישראל would come there to be עולה רגל and also in the other days of the year people would come from all over to bring their vows and pledges for קרבנות -

¹ The פסוק regarding ע"ע (in כא, א) reads, (דברים [שופטים]) לך לרשתה, however ירושלים was never divided amongst the שבטים for the purpose of לרשתה.

² Seemingly there is no need for a פסוק; we would know that (based on the גמרא here [see 'Overview']) even without a פסוק. However, תוספות first digresses and explains his question.

³ פסוק ב'.

⁴ Our גמרא states that ביושבת בין ההרים is the case where that city must bring the ע"ע. This seems to be referring to ירושלים (as well).

⁵ Many people came to ירושלים (who were not inhabitants of ירושלים). In fact, the outsiders were more than the local citizenry. There is a רובא דעלמא against the קרוב of ירושלים. According to ר"ח who follows the רוב, we can assume that the murderer was not from ירושלים, but from the many visitors; why therefore should ירושלים be required to bring an ע"ע, so that we need a special פסוק to exempt it?! See 'Thinking it over'.

וגם אומות העולם היו באין שם בסחורה שקרויה רוכלת עמים⁶ -

And also, the nations of the world would come there for trade, for it was called, 'a purveyor for the nations'. The question is why do we need a פסוק to exempt ירושלים from bringing an ע"ע, when it should be exempt because there is a רובא דעלמא?!

answers: תוספות

ויש לומר שהיו מקומות⁷ שלא היו רגילים לבא רק בני ירושלים⁸ -

And one can say that there were places in ירושלים where it was unusual for others to come, only the people of ירושלים would be there –

offers an alternate solution: תוספות

אי נמי בימי חזקיה⁹ שכל ישראל היו שם ולא היו באין לסחורה:

Or one may also say that the exemption of the פסוק was necessary during the days of חזקיה המלך where all the Jews were in ירושלים and the nations were not coming for trade.

SUMMARY

There were places or times in ירושלים when it was isolated, therefore if not for a פסוק they would need to bring an ע"ע.

THINKING IT OVER

Is the rule that the closest city brings the ע"ע because we assume that one of its citizens is the murderer, or because we assume that the murderer was in that city (not necessarily a citizen, but even a visitor)?

⁶ This phrase רוכלת עמים is mentioned in צור regarding יחזקאל כז,ב, See רש"ש.

⁷ See ירושלים in the name of הר"ר ישעיה ב"ר ישעיה ב"ר פב,ב, in the name of שיטה מקובצת ב"ק פב,ב.

⁸ If the corpse would have been found near (or in) that area, if not for the פסוק, the בי"ד of that area would need to bring an ע"ע, because that area would be considered בין ההרים; an isolated area.

⁹ This perhaps may have been during the siege of סנהרב. See קובץ שיעורים ב"ק פב,ב. See סנהרב.