
פרשת מסעי

פרק לה פסוק יב

וְהָיוּ לְכֶם הָעֵרִים לְמִקְלַט מִגָּאֵל וְלֹא יָמוּת הָרֹצֵחַ עַד-עֲמֻדוֹ לִפְנֵי הָעֵדָה לְמִשְׁפָּט:

חז"ל

מנין לסנהדרין שראו אחד שהרג את הנפש, שאין ממיתין אותו עד שיעמוד בבית דין אחר? תלמוד לומר עד עמדו לפני העדה למשפט, עד שיעמוד בב"ד אחר.

מושג

סנהדרין שראו אחד שהרג את הנפש, שאין ממיתין אותו עד שיעמוד בבית דין אחר.

Translation:

If the Sanhedrin saw one person kill another, the accused may not be judged for the capital offense until he stands before a different court.

Explanation:

The Pasuk והצילו העדה את הרצח guides the courts to do all they can to find a way to not convict a murderer¹. Therefore, our Pasuk teaches us that a court which actually witnessed the murder, and would therefore not be able to exonerate the murderer, is prohibited from judging the case². Thus, even though a court that heard about the murder (through two witnesses) would most certainly be allowed to judge the case, actually seeing the murder invalidates them, overriding the consideration of שמיעה גדולה מראיה לא תהא שמיעה גדולה מראיה.

Looking in the Pasuk:

The Pasuk concludes by telling us that one who kills another cannot be put to death until he has been judged. This seems to be obvious. Therefore, the Gemoroh understands that there is a deeper meaning to these words: i.e. that a court which witnessed a murder may not judge the murderer³.

Musag Learning Outcomes:

Know: A court that witnesses a murder cannot judge the accused. This falls under the command of והצילו העדה and overrides the logic of מראיה גדולה שמיעה לא תהא שמיעה גדולה מראיה.

Understand: The Torah commands the courts to be exceedingly cautious before convicting a murderer. This consideration invalidates a court which has witnessed the murder due to the fact that they cannot possibly find a reason to acquit him. The fact that we do not rely on the courts alone to mete out justice, for Hashem will not allow the guilty to go unpunished, provides the court system with the luxury of this extreme care.

Think: The Torah need not tell us the obvious. When obvious points are mentioned it obligates us to look deeper to find the true meaning of the text.

1 The fact that Hashem will mete out judgement to those are guilty allows the court be extremely careful with their convictions. The extent of this care led the Mishnah in Makos (ז:) to exclaim that if a court actually carried out a capital punishment even once in 7, and according to another opinion once in 70, years, they were called a 'Vicious Court'.

2 See note #1

3 See note #2

NOTES

1. We must wonder: Why do we need our Pasuk to teach this lesson? It would seem that we could simply learn it from the fact that the Torah instructed והצילו העדה, and by having witnessed the murder they could no longer defend the accused, which should invalidate them as judges!

Perhaps we might answer that from the Pasuk of והצילו העדה alone I would not come to this conclusion. This is due to the fact that there is a competing Musag which teaches שלא תהא שמיעה גדולה מראיה, *Hearing should not be greater than seeing*. If a court heard that A killed B, and they would be able to convict through hearing the testimony, they should definitely be able to convict through their seeing! Therefore, I would not necessarily apply the rule of והצילו העדה in this situation. Our Pasuk comes to clarify that the rule of והצילו העדה, *does* apply when a court sees the murder, overriding the consideration of שלא תהא שמיעה גדולה מראיה, thereby mandating that a different court judge the case.

Conversely, if the Torah only would have written our Pasuk, and not והצילו העדה, I would not understand our Pasuk to be teaching us the lesson of our Musag. Rather, I would explain the Pasuk as does ר' אליעזר (see Teachers Notes #2). Thus, the two Pesukim, והצילו העדה and לפני העדה, work in tandem, והצילו העדה supplying the justification to understand לפני העדה as our Musag does⁴.

2. One could argue that perhaps the Pasuk is teaching us another novel lesson: that if one kills another person unintentionally (or intentionally) the גואל הדם is not permitted to avenge the death until the alleged murderer has been convicted in court. This explanation is actually the opinion of ר' אליעזר found in the Gemoroh which quotes our Musag:

ר' אליעזר אומר: "עד עמדו לפני העדה למשפט" מה תלמוד לומר? לפי שנאמר "ורצח גואל הדם את הרוצח", יכול מיד? ת"ל עד עמדו לפני העדה למשפט.

However, the other Tanaim disagree and are of the opinion that the גואל הדם may kill the alleged murderer immediately. The Rambam codifies this opinion:

רוצח בשגגה שהרגו גואל הדם חוץ לתחום עיר מקלטו פטור שנאמר (דברים י"ט:ו) ולו אין משפט מות. אחד ההורגו בדרך קודם שיכנס לעיר מקלטו או שהרגו בחזירתו עם השנים ששומרין אותו. (הלכות רוצח פרק ה הלכה ט-י)

Rather, the other Tanaim understand that the Pasuk is teaching us the lesson conveyed in our Musag⁵. However, one must ask how could they extrapolate this law from the words in the Pasuk? What made them think that the Pasuk was referring to a situation in which the court might have witnessed the murder?

Perhaps they understood that the words לפני העדה למשפט teach us that the judgement must take place in the courtroom. In essence the judgement took place when they witnessed him commit the murder! By the time he gets to court the issue has already been decided and we can no longer regard him as "standing in front of the court for judgement". Therefore he must go to a different court.

3. Questions for further thought:

- Are you aware of any other situations to which we apply the rule of והצילו העדה?
- If the Torah commands the courts to be extremely hesitant to convict a murderer due to the fact that Hashem will not let a guilty man go unpunished, why bother with courts at all?

4 Once we have established that the reason for our Musag is indeed because of והצילו העדה then the law would only apply to capital offenses, where we are saving the life of the accused, but would not apply to monetary cases.

5 It is not clear why they chose not to use R' Eliezer's explanation. Perhaps they felt that if the Torah was teaching us that the alleged murderer could only be killed by the גואל הדם after he had first been judged and found guilty of unintentional murder, then the order of the Pasuk should be switched. First the Pasuk should have said that the murderer should not be killed until he has had his day in court, and then the Pasuk should have told us that the City of Refuge offers protection for the murderer. The fact that the Torah tells us the law of the City of Refuge before telling us about the court, seems to point to the fact that the lesson to be learned from the end of the Pasuk is different than how R' Eliezer understands it.