When he said; 'I presented false testimony' – באומר עדות שקר העדתי

OVERVIEW

אבא said that we can establish the ruling of רבא (that an עד זומם pays proportionately) in a case where one witness recants and states, 'I testified falsely' (when I stated that someone owes money). In such a case the ruling of בא applies that an עד will have to pay his share for the loss he caused by his false testimony. It is not clear (which אונה בא to pay, and) whether the explanation of בא יש שד של עדים after this admission or not.

ושוב הוזם¹ -

And then he (this עד who recanted) was discredited by the המזה process.

תוספות presents (and rejects) a different interpretation of the גמרא:

לכאורה משמע² דכי⁶ אמר הכי משלם חלקו⁴ דאם כן בקש להפסיד ממון חבירו בעדותו - Seemingly it would appear that if the recanting witness stated this (that he testified falsely) he would pay his share (even without הזמה), for if indeed it is true that he testified falsely, so he attempted, through his false testimony, to cause a loss to his friend's money. This is how it appears (superficially) from s'בבא's statement.

תוספות (however) rejects this interpretation of רבא

- ⁷ולא נראה דהא ליתא מאן דמשלם ממון אלא אם כן 6 הוזם במקום פלוני עמנו הייתם 18ut this does not appear to be correct, for there is no one who maintains that an pays money (for recanting); unless he (and the other עדים by הוזם by עדים שלה לינים על הוזם that 'you were with us in that (other) place so you were not able to see the

¹ See the marginal notes. Others delete these two words ושוב הוזם. Others amend it to הוזם (instead of הוזם). This (הוזם) reflects the conclusion of תוספות as will be explained later in this תוספות. See footnote # 7.

² The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י (see ברש"י ד"ה כל).

³ The הגהות הב"ח amends this to read, דכיון דאמר הכי [וכו'] אם כן בקש (instead of דא"כ (וכו') דא"כ).

⁴ רבא (merely) said that the ruling of רבא applies if the witness recants and states עדות שקר העדתי. There is no mention of הזמה. This means that if the עד stated עדות שקר העדתי (when I testified that שמעון owes שמעון a hundred אווי), this די must pay דוו (his share) as if there was a הזמה שמרוב, Just like by הזמה since we know that this עד wanted to cause a loss, so he needs to pay, similarly here when we know (through his admission) that the עד wanted to cause a loss to הזמה, he must pay (his share) as if there was an actual הזמה.

⁵ The הגהות הב"ה amends this to read, דליכא מאן דאמר 'instead of דליתא מאן דמשלם').

 $^{^{6}}$ The הגהות הב"ח amends this to read, כן שניהם הוזמו במקום (instead of כן הוזם במקום).

 $^{^{7}}$ There is never an obligation for an עד to pay because he admits to lying and tried to make the accused pay, unless there was a proper הזמה.

testimony you claim.

In summation; we cannot say that רבא meant that the עד needs to pay his share because he admitted that he testified falsely and attempted to cause a loss to the accused. The only time עדים need to pay the accused is if they became עדים אוממין when other עדים claimed עמנו הייתם.

חוספות offers his interpretation:

לכד יש לפרש עדות שקר העדתי ושוב הוזמו⁸ שניהו⁹ -

Therefor the explanation of עדות שקר העדתי is that one עד recanted first and afterwards both עדים were הוומו -

דהשתא יש לפרש¹⁰ כדאמר עדות שקר העדתי סותר עדותו¹¹ So now we can explain that when one עדות שקר העדתי, he is invalidating his initial testimony -

ולא שייכא ביה תורת הזמה¹² כי אם בחבירו -

So the rules of הזמה do not apply to him (since he already recanted); the הזמה applies **only by his associate** (the other עד). It is the other עד who must pay his share since he was הוזם, but not the עד who recanted since he invalidated his previous testimony, so there can be no דומה. This was s'בד explanation of עד זומם משלם לפי חלקו; we are referring to the עד who did not recant.

תוספות continues with the s'גמרא challenge to s'דבא' explanation:

ופריך הא כל כמיניה אפילו הוא בעצמו אתי לידי הזמה דכיון שהגיד שוב אינו חוזר ומגיד - 13 But the גמרא asked; 'can this עד be believed' to recant his testimony?! תוספות explains; Even if the עד himself admitted that he lied, nevertheless he can be הרום, for since the rule is that once a witness testifies, he cannot come back and recant his testimony -

והוי כלא סתר את דבריו 14 ואם כן הוו שניהם זוממין ומשלמין ממון: So it is considered as if he did not contradict his previous testimony, and

⁸ This is what תוספות wrote in the beginning of this חוספות. See footnote # 1.

 $^{^{9}}$ הזמה is effective only if both עדים were הוזמו.

 $^{^{10}}$ The הגהות הב"ה amends this to read, לפרש דכשאמר עדות (instead of לפרש כדאמר עדות).

¹¹ See 'Thinking it over' # 2.

¹² We are now assuming that we implement the ועשיתם לו כאשר זמם, only when the original עדים maintain their testimony and were הוום. However, since this one צי recanted his testimony, the rule of מאשר זמם does not apply to him; it only applies to his friend who did not recant. See 'Thinking it over' #1.

¹³ There is a rule (see יה,ב וברש"י שם ד"ה כיון) that once a witness gave his testimony he cannot change or recant his testimony (even if he subsequently admits that he was lying). We only accept his original testimony.

¹⁴ We discount his recanting and his testimony remains as it was originally. Therefore he (together with the other τυ can be הוזם.

therefore both עדים become עדים and both pay the money. This cannot therefore be the case of עד זומם משלם לפי א, since they both pay.

SUMMARY

רבא assumed that if the עד recanted he can no longer be liable for the ועשיתם לו המב assumed that if the איד recanted he can no longer be liable for the רבא ממב המב applies to him as well. The גמרא did not (ever) mean that the עד should pay (without הזמה) because he recanted.

THINKING IT OVER

- 1. בתורה מssumed that since this one עד recanted he is not בתורה הזמה. On the other hand תוספות maintains that both עדים have to be הוזם. If however one of the עדים (the one who recanted) is not בתורת הזמה, why should the other עד (who was מורת הזמה) pay; since there was no תורת הזמה by both בתורת.
- 2. According to רבא': הוא לדתי thinking that by saying עדות שקר אדתי he is סותר עדותו he is יסותר עדותו אדות שקר should apply and the testimony of the second עד is also בטלה, and there can be no בטלה.

¹⁵ See footnote # 12.

¹⁶ See footnote # 9.

 $^{^{17}}$ See פני יהושע and פרשי התלמוד # 71.

¹⁸ See footnote # 11.

¹⁹ See אוצר מפרשי התלמוד # 76-78.