רבא said to him; 'but it is a discredited testimony'! – אמר ליה רבא והא עדות מוכחשת היא

Overview

Testimony of witnesses can be disqualified in the following two ways:

A. הכחשה – a contradictory testimony. If two groups of עדים contradict each other as to the veracity of an incident; where one group claims that it took place and the other denies that it took place, neither testimony is accepted, and their testimony is disqualified.

The גמרא will shortly cite a dispute between רב הונא and רב חסדא whether these two groups of עדים may testify in the future, or that they are disqualified to testify in future cases as well for they are considered (possible) liars (מספק).

B. הזמה – a refuted testimony. If the second group of עדים testifies that the first group of עדים could not have possibly seen the incident at the purported time and place (regardless of whether the incident took place or not); for at that same time the first group of עדים where in fact together with the second group at a different location. In this case of הזמה, the second group is believed and the first group is refuted, and become disqualified to be עדים in the future as well.

There is a dispute between אביי ורבא as to when this disqualification becomes effective. אביי maintains that that the refuted (זוממין) עדים, become disqualified retroactively from the time of their testimony. Any testimony given by the עדים זוממין from their initial testimony (for which they were subsequently refuted) and onward, is voided. רבא, however maintains that they become פסול only from the time of their refutation by the עדים המזימים, and onward[1]. Any testimony given prior to their הזמה is valid.

The case at hand: ראובן and שמעון were disputing the ownership of a property, each one claiming that he inherited it from his parents. ראובן had עדים that it once belonged to his father and in addition that ראובן made a חזקה in this property. שמעון only had עדים that he made a חזקה (contradicting the עדים of ראובן who claimed that ראובן made the חזקה). רב נחמן ruled that the two contradictory עדות אכילה cancel out, leaving ראובן with ownership on

[1] There are two explanations in the גמרא (ב"ק) why רבא maintains his (questionable) position (for seemingly since these עדים certainly lied at the time of their testimony, they should become נפסל from that time onward). One is that since the entire idea of עד זומם is a (חידוש) novel concept (for why should we believe the second group more than the first group); therefore we limit the חידוש as much as possible (אין לך בו אלא חידושו), and the power of the עדים המזימים to disqualify the עדים זוממין is limited to the moment of הזמה and onward. The second explanation is that if we were to פסל them למפרע, then there would be losses (פסידא ללקוחות) to all those who used these עדים (in between the עדות and הזמה), for their documents of loans and purchases would be voided. See later footnote # 12.

account of his עדי אבהתא. רבא disagreed and argued that these עדים of ראובן were already disqualified and are completely discredited. תוספות will be discussing s'רבא view.

תוספות has a difficulty:

תימה אמאי הואי – It is incomprehensible! Why is the testimony concerning parental ownership (עדות אבהתא) **considered as –**

עדות מוכחשת – a contradicted testimony? We can perhaps salvage the part of the testimony where no contradictory testimony was provided; the עדות אבהתא. תוספות goes on to explain:

והא רבא אית ליה במרובה (בבא קמא דף עב,ב ושם דיבור המתחיל רבא) – For רבא maintains in פרק מרובה -

ובפרק זה בורר (סנהדרין דף כז,א ושם דיבור המתחיל רבא) – and in פרק זה בורר –

דעד זומם מכאן ולהבא הוא נפסל – that a refuted witness becomes disqualified from the time of refutation **and onwards,** but he is not פסול retroactively from the time of his testimony. The testimony that the עד gave prior to the actual הזמה (concerning other issues [not related to the הזמה]) is valid testimony. It would seem logical that this ruling concerning עד זומם, that מכאן ולהבא הוא נפסל, should apply to עדי הכחשה as well[2]. The disqualification of their testimony is not retroactive from the time of their testimony, but rather from the time they were actually contradicted and onwards[3]. תוספות concludes the question:

ואית לן למימר – and we should therefore **assume** that **–**

אאכילתה– concerning their testimony regarding **consumption** (חזקה) –

דאתכחוש- where they were contradicted by the other group of עדים who claimed that the other party made the חזקה**,**

אתכחוש - they are indeed **discredited** and cannot be believed; that testimony is disqualified. However –

אאבהתא – concerning their testimony regarding **parental** ownership –

דלא אתכחוש – where they were not contradicted; the other עדים said nothing concerning parental ownership of the property –

לא אתכחוש – they are not contradicted; and that testimony should not be disqualified. We should accept their testimony that it belonged to his parents.

If we would maintain, that למפרע הוא נפסל, then their testimony would retroactively be invalid from the moment they stated it. At the time of their testimony they stated אבהתא and אכילתה together; it was one testimony. Therefore, since part of their testimony is obviously disqualified (at the time of their testimony), for it was contradicted; then anything else that they testified at that time (תוך כדי דיבור) is included in this disqualification. [There is a rule; a testimony that is partially nullified becomes completely nullified.]

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[2] In fact one may argue that the פסול of הכחשה is weaker than the פסול of הזמה. If by הזמה the פסול is only מכאן ולהבא, then certainly by הכחשה the disqualification of their עדות should only be מכאן ולהבא.

[3] By הזמה the terms מכאן ולהבא or למפרע הוא נפסל is referring to the פסול of the עד himself. By הכחשה, however (according to רב הונא), these terms refer to the disqualification of the עדות, not to the עדים at all.

If we maintain, however, מכאן ולהבא הוא נפסל, it would mean that after בי"ד heard all aspects of the case and found the עדים to be contradictory, their testimony becomes void from that moment on, only.[4] At the time of their testimony, however, it should be considered a valid testimony[5]. It is just that we cannot subsequently act on (part of) their testimony since it is contradicted by the other [6]עדים and must be disqualified. However this should apply only to the testimony that is subsequently being contradicted. Any other testimony that they previously testified remains valid, since it was not contradicted.[7]

תוספות will now prove that we can separate the two aspects of their testimony; the עדות אבהתא and עדות אכילתה. We can accept one even when we discard the other.

דהכי אמר במרובה (בבא קמא דף עג,א ושם) – For this is what the גמרא **states in** פרק **מרובה** concerning עדים who testified that an individual stole and slaughtered an animal, which would require the thief to pay four/five times the amount that he stole (תשלומי ד' וה') –

דהוזמו על הטביחה – that if these עדים **were refuted (הוזם) concerning the slaughtering**, however –

ועל הגניבה לא הוזמו – they were not הוזם concerning the theft. That testimony was not refuted by the עדים המזימים.

אף על גב דתוך כדי דיבור העידו – even though the עדים המוזמים **testified** consecutively [8]**תוך כדי דיבור,** both -

על הגניבה ועל הטביחה – on the robbery and the slaughtering; both testimonies were offered consecutively without interruption. This would seemingly make it into one testimony. Nevertheless the גמרא there maintains that –

לרבא כיון דמההיא שעתא – according to רבא, since it is from that time–

דקא מיתזמי – that the were הוזם; it is only from then -

הוא דקא מיפסלי – that they become פסול, and not from any time before, therefore –

אטביחה דאיתזום – concerning the slaughtering which they were מוזם –

איתזום – they were indeed מוזם; however –

על הגניבה דלא איתזום – concerning the robbery for which they were not מוזם -

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[4] It would therefore make no difference which group of עדים testified first, or the order of their individual testimony, whether they said אבהתא first or אכילתה first. In all instances they become an עדות מוכחשת only after all the testimony is presented, accepted and ruled upon by בי"ד.

[5] This should be true even according to רב חסדא who maintains that these עדים become פסול for future עדות. It is only after the הכחשה that they become עדים פסולים but not at the time of their הגדת עדות (see תוספות second question further on, and footnote # 14).

[6] According to רב חסדא this will cause them to be disqualified as עדים in the future as well (on account that they are ספק עדי שקר). However neither they nor their testimony are disqualified retroactively.

[7] If we maintain מכאן ולהבא then at the time of the testimony there was no contradictory testimony, they were עדים כשרים; therefore there is no ruling of עדות שבטלה מקצתה בטלה כולה. See סוכ"ד אות מט וכו'.

[8] תוך כדי דיבור – means the time that it takes to say the words 'שלום עליך רבי'. If the interruption between statements was less than that time, it is considered תוך כדי דיבור; as one statement.

לא איתזום – they are not considered עדים זוממין regarding the robbery[9]. This concludes the quote from the גמרא. We may derive from that גמרא, that it is possible to separate the two aspects of their testimony even though they were offered simultaneously. The עדות of גניבה remains a valid עדות even though it was said together with עדות טביחה, which was subsequently הוזם. The same should hold true here. The עדות of אבהתא should remain valid, even though it was said together with the עדות אכילתה which was subsequently הוכחש. Why then does רבא, who maintains מכאן ולהבא הוא נפסל, argue on רב נחמן and claim that it is an עדות מוכחשת.

תוספות offers a qualified explanation:

[התם[10]] וללישנא דהוי טעמא דרבא – And according to the opinion [there] that the reason that רבא maintains עד זומם מכאן ולהבא הוא נפסל, is –

[הוא[11]] משום דעד זומם חידוש – because the law **of עד זומם is a novelty[12]**

[בו[13]] ואין לך אלא משעת חידושו – and you cannot implement this חידוש, **only from the time** when **this חידוש** takes place and onwards; i.e. from the time of the הזמה. According to this opinion –

ניחא – it is understood. There is no question. תוספות initially assumed that since by הזמה it is מכאן ולהבא הוא נפסל, therefore by הכחשה it is also מכאן ולהבא; therefore we had the question. However we can say that only by הזמה is it מכאן ולהבא הוא נפסל, as the reason indicates since it is a חידוש. However by הכחשה where there is no חידוש – we do not believe any group of עדים more than the other; in fact we believe neither group, then we follow the logical conclusion that the עדות is בטל למפרע; at the time of the testimony. It is at that point when they (may) have lied. If the testimony is בטל למפרע, then it is understood that we cannot believe the עדות אבהתא either, since it is part of a disqualified testimony.

אלא ללישנא דמפרש טעמא דרבא – however according to the opinion that explains the reason רבא maintains עד זומם מכאן ולהבא הוא נפסל is not because חידוש הוא, but rather –

משום פסידא דלקוחות – on account of the purchasers' loss. If we were to disqualify them retroactively, then all those buyers who used these עדים on their שטרי מקח (with no way of knowing that these עדים will subsequently be disqualified retroactively), will suffer irreparable loss. Their שטרות will be voided. Therefore the law instituted that they become פסול only מכאן ולהבא. According to this opinion there is no difference between הכחשה and הזמה, if we protect the consumer in the case of הזמה the same protection is required in the case of הכחשה. Therefore–

הכא נמי נהימנינהו – here too by הכחשה, **we should believe the עדים** since it is מכאן ולהבא הוא נפסל.

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[9] They are not obligated to pay the קנס of כאשר זמם concerning the גניבה only for the טביחה. The גנב has to pay the תשלומי כפל based on their testimony.

[10] See הגהות הב"ח.

[11] See previous הגהות הב"ח.

[12] See footnote # 1.

[13] See הגהות הב"ח אות כ.

תוספות anticipates a possible answer and rejects it. Seemingly one may argue that we maintain מכאן ולהבא הוא נפסל when we entertain a פסידא דלקוחות. However in our case, when both groups of עדים came to בי"ד together; even if we would rule that למפרע הוא נפסל, there will be no פסידא דלקוחות. These עדים did not sign on any documents between their הגדה and הכחשה. Therefore since there is no realistic פסידא דלקוחות, even רבא admits that למפרע הוא נפסל. תוספות rejects this idea:

ואפילו היכא דליכא פסידא דלקוחות – and even in a case **where there is no loss to the consumers;** as in our case, where they did not sign on any שטר between the הגדה and the הכחשה, nevertheless –

לא מיפסל למפרע – they are not disqualified retroactively –

אפילו להההיא לישנא – even according to that opinion; which maintains that the reason עד זומם מכאן ולהבא הוא נפסל is (only) because of פסידא דלקוחות. An עד is always נפסל only מכאן ולהבא, even if there is no specific פסידא דלקוחות in that instance.

תוספות will now prove that (even) according to the לשון that מכאן ולהבא הוא נפסל, is on account of פסידא דלקוחות, nevertheless they will always maintain that מכאן ולהבא הוא נפסל even if there is no פסידא דלקוחות in a specific case.

מדבעי התם – since the גמרא **queries there;** in פרק מרובה –

מאי איכא בין האי לישנא להאי לישנא – what difference **is there between this opinion** (חידוש הוא) **and the other opinion** (פסידא דלקוחות) –

ולא קאמר דאיכא בינייהו – and the גמרא **does not state that there is a difference between them –**

להיכא דליכא פסידא דלקוחות – in a case where there is no פסידא דלקוחות. The גמרא could have answered that in a case where there is no פסידא דלקוחות there is a difference between the two לשונות. If we maintain the reason is because עד זומם is a חידוש then it makes no difference whether or not there is a פסידא ללקוחות, in all cases it is מכאן ולהבא הוא נפסל. However if we maintain that the reason is because פסידא דלקוחות, then only when there is a פסידא do we say מכאן ולהבא הוא גובה, but when there is no פסידא, we should maintain that למפרע הוא נפסל. The גמרא however does not make this distinction. That proves that the גמרא maintains that in all instances whether or not there is a פסידא דלקוחות we maintain that מכאן ולהבא הוא נפסל.

In summation: the question remains; according to the לשון that רבא maintains עד זומם מכאן ולהבא הוא נפסל because of פסידא דלקוחות; the same rule should apply to עדים מוכחשים that the testimony becomes בטל מכאן להבא. Therefore only the contradicted testimony (עדי חזקה) should be disqualified but the uncontested testimony (עדי אבהתא) should remain. Why does רבא claim that it is an עדות מוכחשת?!

תוספות has an additional question:

ועוד קשיא – and there is another difficulty –

דקאמר בסמוך – for the גמרא **will shortly state** that –

אליבא דרב חסדא – according to רב חסדא who maintains that both groups of עדים that were מוכחש cannot testify in the future (for they are [suspected] liars) –

כולא עלמא לא פליגי – no one argues; both רב נחמן and רבא will agree that it is an עדות מוכחשת and we cannot accept (even) the testimony of אבהתא. The simple understanding is that since רב חסדא disqualifies both עדים (as opposed to רב הונא who only disqualifies their testimony in this case where they are עדים מוכחשים); therefore we cannot accept the testimony of עדות אבהתא since they are עדים פסולים.

משמע דרב נחמן – it seems from the גמרא **that ר"נ -**

לא מצי סבר בשום ענין כרב חסדא – can in no way maintain like רב חסדא –

דחשיב להו סהדי שקרי – for he considers them false עדים. It seems from the גמרא that רב נחמן and רב חסדא are mutually exclusive. If we accept the ruling of ר"ח that the עדים are פסול, we cannot accept the ruling of ר"נ, that they are believed concerning the אבהתא. תוספות challenges this assumption:

ומנא ליה – and how does the גמרא **derive this;** that רב נחמן disagrees with ר"ח –

דילמא סבר רב נחמן – perhaps ר"נ maintains that –

מכאן ולהבא הוא נפסל – he becomes disqualified (according to רב חסדא) only **from now and onwards**; however למפרע they are כשר. Therefore we can believe their previous testimony of עדות אכילה which was not contested.[14]

תוספות offers an answer on the second question:

ומיהו הא איכא למימר – however we can say this, to explain why the גמרא asserts that ר"נ and ר"ח disagree; we cannot reconcile them by assuming that ר"נ maintains מכאן ולהבא הוא נפסל –

משום דלא קיימא לן כרבא בהא – because we do not follow the ruling of **רבא in this** case of מכאן ולהבא הוא נפסל. Rather we follow the opinion of אביי that[15] למפרע הוא נפסל. It is assumed that ר"נ also maintains למפרע הוא נפסל.

The first question, however, remains. We are discussing the opinion of רבא, and it is רבא who maintains מכאן ולהבא הוא נפסל, why therefore does he argue that it is an עדות מוכחשת?!

תוספות answers:

ונראה דסוגיא דהכא – and it appears that we are forced to say **that this סוגיא** follows the view –

כההיא לישנא דחידוש – of that opinion that the reason רבא maintains מכאן ולהבא הוא נפסל is because עד זומם **is a חידוש.** It is therefore understood, as תוספות mentioned previously, that this applies only to עדים זוממים, which are a חידוש. However by עדי הכחשה where there is no חידוש; in the fact that we follow neither group, then the ruling

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[14] This second question (even though it seems similar to the original question) adds an additional dimension. According to the first question תוספות argued that if מכאן ולהבא הוא נפסל then we should believe the עדות אבהתא (at least) according to רב הונא who maintains 'זו באה בפני עצמה ומעידה וכו. There is no פסול in the עדים; it is just that we cannot follow the testimony of either group since they are מכחישים זא"ז. However concerning עדות אבהתא in which there was no הכחשה we can follow their testimony. תוספות is now adding that even if they become עדים פסולים on account of the הכחשה, nevertheless if we maintain מכאן ולהבא הוא נפסל, that פסול is effective in future cases, not in their past testimony. Therefore the עדות אבהתא, which was not מוכחש and was offered before they became עדים פסולים, should be accepted (see footnote # 5).

[15] This is represented by the letter 'ע' (עד זומם למפרע הוא נפסל) in the ruling that הלכתא כאביי ב'יע"ל קג"ם'.

will be that the testimony is disqualified למפרע, and since the two testimonies of אכילה ואבהתא were said simultaneously (תוך כדי דיבור), they are both disqualified. This is what רבא meant when he said והא עדות מוכחשת היא since it is מוכחשת למפרע.

A question still remains; how will the לשון of פסידא דלקוחות explain our גמרא where רבא argues והא עדות מוכחשת היא? תוספות continues:

אבל ללישנא דפסידא דלקוחות – however that opinion, that the reason רבא maintains מכאן ולהבא הוא נפסל is on account of **פסידא דלקוחות –**

סבר דלא אמר ליה רבא לרב נחמן מעולם הכי – will maintain that רבא never said such a thing to ר"נ that it is an עדות מוכחשת. Since רבא maintains that we always say (both by הזמה and הכחשה) that the פסול is מכאן ולהבא, therefore the עדות אבהתא which was not מוכחש will be accepted, as ר"נ ruled.

תוספות will now offer a different solution to his question. תוספות originally assumed that we can divide the testimony of the עדים into two parts; עדות אבהתא and עדות אכילה. We will maintain that even though עדות אכילה was contradicted, but since עדות אבהתא was not contradicted, it should be accepted. תוספות supported this view from the גמרא in מרובה concerning עדים who were מוזם on their testimony of טביחה but not on the testimony of גניבה. The גמרא there maintains that if we assume that עד זומם מכאן ולהבא הוא נפסל, then אגניבה דלא איתזם לא איתזם but אטביחה דאיתזם איתזם, and we accept their testimony concerning גניבה. תוספות until now considered the two case identical. The ריב"א will distinguish between the case of גניבה וטביחה and the case of אבהתא ואכילה.

ולרבי יצחק בר אשר[16] נראה – and the ריב"א is of the opinion –

דלא דמי הך דהכא – that the case here concerning אכילה ואבהתא **is not similar –**

להיא דמרובה – to that case **in מרובה** פרק, concerning גניבה וטביחה –

דהתם גניבה וטביחה תרי מילי נינהו – for there stealing and slaughtering are two separate **issues.** One can be liable for גניבה even if he is not liable for טביחה –

ולהכי אגניבה דלא איתזום לא איתזום – and therefore concerning their testimony **of גניבה** for which there **was no הזמה, they are not מוזם.** We believe them that he stole. The liability for stealing exists regardless whether he was טובח afterwards or not. The two חיובים do not depend on each other, therefore we can separate them –

כיון דלהבא הוא נפסל – since רבא maintains that an עד זומם is **נפסל להבא.** At the time of their testimony they were עדים כשרים. They testified that someone stole. That testimony on its own makes the גנב liable to pay.

אלא הכא – however here it is different, since the testimony concerning אבהתא is dependant on the עדות of אכילה as תוספות continues to expound.

כי איתכחוש אאכילה – when they were discredited concerning the חזקה; the other עדים claimed that the other party made the חזקה –

איתכחוש נמי אאבהתא –they are also discredited concerning the parental testimony; we cannot accept their testimony that it belonged to his parents, even

[16] עיין שם הגדולים להחיד"א בערכו.

though no one is contradicting them. The reason is because the two testimonies of אבהתא ואכילה are intertwined –

דאבהתא בלא אכילתה לא מהני – for testifying merely that it belonged to his **parents without** testifying concerning **the חזקה, is not sufficient** to grant him the property, even if it indeed belonged once to his parents. If we were to verify that it belonged to the parents of one of the litigants (ראובן) but the other litigant (שמעון) has עדים that he made a חזקה, the ruling would be –

דהוי מוקמינן בידיה - we would have placed it in the possession of the one –

דאית ליה סהדי דאכלה שני חזקה – who has witnesses that he made a חזקה. The reason why שמעון who has עדי חזקה would retain it even though he has no עדים to support his claim that he inherited from his father, is because –

דנאמן לומר היתה של אבותי יום אחד – he is believed to claim that it belonged to my father for one day[17]**,** since he has –

במיגו דאי בעי אמר מיגו a – , for he could have said instead –

מינך זבינתה – I bought it from you (ראובן). The מיגו establishes that his father owned it at some point (after s'ראובן parents). שמעון will retain the property for he has חזקה שיש עמה טענה.

The עדות of אבהתא alone cannot grant the property to ראובן (as just explained). In fact if the עדים testify only that it belonged to s'ראובן parents, the property will be awarded to שמעון. The only strength of these עדים is if the claim of אבהתא is combined with the עדות of אכילה. This עדות must be viewed as one whole עדות, not as two separate עדויות. Therefore since the עדות of אכילה was מוכחש, it is a הכחשה of the entire עדות including the עדות of אבהתא. It is not similar to עדי גניבה ועדי טביחה.

There still remains, however, a certain difficulty with this answer. The גמרא shortly will initially maintain that the dispute between ר"נ and רבא parallels the dispute between רב הונא and רב חסדא respectively. ר"נ who states that we accept the עדות אבהתא agrees with רב הונא that they עדים מוכחשים are still עדים כשרים in the future, while רבא, who states that we cannot accept the עדות אבהתא agrees with רב חסדא that the עדים מוכחשים are עדים פסולים (מספק) in the future. The גמרא, however, retracts this assumption. It is possible that רבא can agree with רב הונא that these עדים are כשר in future cases – עדות אחרת; it is only in the very same case – לאותה עדות, that רבא maintains that they cannot be believed. This גמרא implies that originally we assumed that אותה עדות and עדות אחרת are equal (otherwise there would be no comparison). If they are believed לעדות אחרת (רב הונא) they should also be believed לאותה עדות (רב נחמן); if they are not believed לאותה עדות (רבא) they would not be believed לעדות אחרת (רב חסדא). תוספות poses his question:

ומיהו אכתי - however since **as of yet** before the final מסקנא of the גמרא -

דחשיב לה גמרא – that the גמרא considers our case of אבהתא ואכילתא

כעדות אחרת – like an עדות אחרת; that the two testimonies are not entwined, but rather they are separate testimonies, as in the dispute between ר"ה and ר"ח which deals

[17] Even if שמעון originally claimed של אבותי, he can still restate his claim to mean של אבותי שלקחו מאבותיך, (in order not to contradict עדים s'ראובן who say it belonged to s'ראובן parents). שמעון will be believed on the basis of the מיגו, and would be awarded property since he has a חזקה.

with עדות אחרת; and רבא cannot agree with ר"ה (even though it is an עדות אחרת) but must follow the ruling of ר"ח. Therefore, the answer of the ריב"א -

לא אתי שפיר – will not appropriately resolve the difficulty; for if they are separate testimonies (עדות אחרת), then, since רבא maintains מכאן ולהבא, the עדות of אבהתא is separate from עדות אכילה, and should be accepted. [Or conversely:] The ריב"א distinguishes between the case of גניבה וטביחה which are two independent עדויות, and אכילה ואבהתא which are dependent on each other and considered as one. If this distinction is inherent in understanding רבא, then how could the גמרא assume that עדות אותה עדות and אחרת are the same? We see that רבא distinguishes even באותה עדות whether the two עדויות are entangled or not. Certainly רבא will distinguish between עדות אותה עדות and עדות אחרת.

Summary

רבא maintains עד זומם חידוש הוא נפסל מכאן ולהבא הוא. If this is because עד זומם חידוש הוא, then by הכחשה it will be למפרע נפסל. However if it is because of פסידא דלקוחות then by הכחשה it will also be מכאן ולהבא נפסל. According to this latter view רבא will agree to ר"נ that the עדי אבהתא is valid (just as the עדי גניבה are valid) since it was not contradicted.

The ריב"א distinguishes between עדי גניבה which is not entwined with עדי טביחה as opposed to עדי אבהתא which is dependant on עדי אכילה, and therefore the entire testimony is פסול even if we maintain the view of פסידא דלקוחות.

Thinking it over

1. Every הזמה is automatically a הכחשה. If we assume the reason of עד זומם חידוש הוא, should not the עדים זוממים be פסול לעדות מספק from the time of their testimony?

2. תוספות cannot reconcile the ריב"א with the ס"ד of the גמרא that it is an עדות אחרת. Perhaps we can differentiate between the עדות אחרת concerning the מחלוקת of ר"ה ור"ח and the חד מילי of the ריב"א. The מחלוקת between ר"ה ור"ח is whether or not these עדים are (now) considered to be liars. According to ר"ה that they are not liars, and are believed in other (future) testimony, then the עדות אבהתא cannot be considered מוכחשת since the עדים are כשר[18] and אבהתא is an עדות אחרת than the עדות אכילה[19] (even if they are entwined). We must conclude that רבא agrees with ר"ח, that they are liars. Once we assume that they are פסול לעדות, we cannot separate the testimony of אבהתא from אכילה, since אבהתא requires אכילה, making אבהתא ואכילה into one הגדה, and this הגדה is offered by (עכ"פ מכאן ולהבא) עדים פסולים.[20]

[18] This would be true (in the ס"ד) even if we maintain למפרע הוא נפסל, for there is no פסול.
[19] Even the עדות אכילה is not considered 'false'; we just cannot deal with it since it is contradicted.
[20] See ברכת אברהם.