רבא אמר מכאן ולהבא הוא נפסל –

Rovo said, he becomes disqualified from now on

Overview

רבא maintains that an עד זומם becomes disqualified from being able to testify in the future, from the point of the הזמה and onwards, however any testimony that he gave before the הזמה, even though it was after the false testimony that he gave, it is valid, since there was no הזמה as of yet. תוספות reconciles this view with a seemingly contradictory גמרא.

תוספות asks:

תימה [דבריש] חזקת הבתים (בבא בתרא דף לא,א ושם) אמר -

It is astounding for in [the beginning of] חזקת הבתים פרק, the גמרא **states** a case **-**

זה אומר של אבותי[1] וזה אומר של אבותי האי אייתי סהדי דאבהתיה היא ואכלה שני חזקה[2] –

This one (ראובן) **says,** this property **belonged to my parents [and I possessed it for** the three **years of חזקה]', and the other** (שמעון) **says,** 'this property **belonged to my parents [and I possessed it for** the three **years of חזקה]'; one** (ראובן) **brought witnesses that it belonged to his parents and that he possessed it** the three **years of חזקה -**

והאי אייתי סהדי דאכלה שני חזקה[3] -

And the other one (שמעון) **brought witnesses that he possessed it for** (the same) three **years of חזקה,** but did not bring witnesses regarding his parents' ownership **-**

אמר רב נחמן אוקי אכילתא בהדי אכילתא ואוקי ארעא בחזקת אבהתיה[4] -

ר"נ ruled let us set the possession against the possession, so their testimony regarding possession is cancelled out, **and we will establish the land** for the one **whose parents had possession** of it (the one who also brought סהדי דאבהתיה היא); ראובן **-**

אמר ליה רבא והא עדות מוכחשת היא[5] -

רבא said to ר"נ, '**but it is a testimony which was contradicted'?!** This concludes the citation of that גמרא **-**

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[1] The הגהות הב"ח amends this to read, האי **ואכלתיה שני חזקה** וזה אומר של אבותי. **ואכלתיה שני חזקה** אבותי.

[2] The same עדים testified to both; it belonged to his parents and he made a חזקה.

[3] The two sets of witnesses contradicted each other regarding the same three years (see רשב"ם there והאי ד"ה).

[4] We cannot accept the testimony regarding as to who made a חזקה, since we have conflicting testimony, so we will ignore the testimony regarding the חזקה, but we will accept the testimony that it belonged to s'ראובן parents, since no עדים are contradicting this testimony.

[5] s'ראובן witnesses were contradicted by s'שמעון witnesses (regarding חזקה), once they are contradicted, we cannot believe them (especially in the same case).

והשתא אמאי הוי מוכחשת הא רבא אית ליה הכא מכאן ולהבא הוא נפסל[6] -

But now why are they considered **contradicted, for רבא maintains here that** witnesses who are contradicted **become disqualified from now on** (once they were contradicted, but not from when they testified)

ואית לן למימר לדידיה דאיתכחוש איתכחוש ואאבהתא דלא איתכחוש לא איתכחוש[7] -

So we can say also **according to** רבא (as ר"נ argued there); **regarding the חזקה, which they were contradicted, they are contradicted; but regarding the parents, where they were not contradicted, they are not contradicted,** and should be believed -

מידי דהוי אשנים מעידים אותו שגנב וטבח והוזמו אטביחה -

For it is similar to a case where two people testified that this person **stole and slaughtered an ox; and they were then הוזם regarding the טביחה,** but not regarding the גניבה; in such a case -

דלרבא דאמר מכאן ולהבא הוא נפסל אף על גב דתוך כדי דיבור[8] כדיבור דמי -

According to רבא who maintains מכאן ולהבא הוא נפסל, so **even though** we maintain **that תכ"ד is כדיבור דמי,** but -

כיון דמההיא שעתא דקא מתזמי הוא דפסלי -

Since they become פסול only **from that time when the were הוזם** and then it was לאחר כדי דיבור of their testimony, so we say

אטביחה דקמיתזום איתזום אגניבה דלא איתזום לא איתזום כדמוכח לקמן[9] -

Regarding the טביחה for which they were הוזם they are הוזם, but regarding the גניבה which they were not הוזם, they are not הוזם, as is evident later –

תוספות qualifies his question:

ולהאי טעמא[10] דמפרש משום חידוש ניחא אבל טעמא דהוי משום פסידא דלקוחות קשה -

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[6] רבא said this ruling that מכאן ולהבא הוא נפסל concerning הזמה, but we can assume that it (certainly) applies to הכחשה as well. See later in this תוספות.

[7] Even if we assume that s'שמעון witnesses testified first and said שמעון made a חזקה, and then s'ראובן witnesses said that a) it belonged to s'ראובן parents, and b} ראובן made a חזקה, so when they first testified that it belonged to s'ראובן parents there was no הכחשה yet, so they should be believed; it is only after they said ראובן made a חזקה that they are contradicted, so from that point on (but not before) they are עדות מוכחשת, however concerning their testimony regarding the parents which was said before any contradiction, they should be believed, according to רבא.

[8] תוך כדי דיבור means within the time it takes to say (ומורי) רבי עליך שלום. If the second statement was said within תכ"ד of the first statement, it is considered one statement. Therefore, if we would say עד זומם למפרע הוא נפסל, so therefore since the עדות גניבה and the עדות טביחה was said תכ"ד of each other, so if they are הוזם on one their whole עדות is נפסל. However, רבא maintains מכאן ולהבא הוא נפסל, so the עדות גניבה was not נפסל.

[9] עג,א.

[10] The position that מכאן ולהבא הוא נפסל ע"ז requires some explanation, for it is evident now that he lied when he testified (not now), so he should be disqualified from the moment he testified (as אביי maintains). One explanation is that since the rule of ע"ז is a חידוש that we believe one set of עדים over another, we say אין לך בו אלא משעת חידוש ואילך, the פסול is only after the הזמה.

And according to the reason why עד זומם מכאן ולהבא הוא נפסל is **because ע"ז is a novelty, it is understood;[11] however, according to the reason of** concern **for the loss to the buyers,[12] the difficulty** remains –

תוספות responds and rejects an anticipated solution:

דאין נראה דנקט לקוחות דוקא[13] מדלא קאמר[14] איכא בינייהו כל עדות שאין לענין לקוחות -

For it does not appear that he mentions 'buyers' specifically; since the גמרא **did not say, there is a difference** between the two reasons of רבא, **by any testimony which does not involve buyers.** The question therefore remains (according to the reason of פסידא דלקוחות), why should we not believe their testimony regarding the parents since they were מוכחש only regarding חזקה, but not אבהתא.

תוספות answers:

ויש לומר דלמאי דמחלק התם[15] בין אותו עדות לעדות אחרת ניחא -

And one can say, according to how the גמרא **there differentiates between the same testimony and another testimony, it will be understood -**

דכיון דהוחזקו משקרים על אותה קרקע תו לא מהימני עלה[16] -

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[11] הכחשה is no חידוש; we believe neither (we suspect both sets of עדים of being liars), therefore we can say that they become פסול למפרע, and since it was said תכ"ד the entire testimony is discarded..

[12] רבא argues if we were to say למפרע נפסל then all the שטרי מכר that these עדים זוממין signed after their testimony and before they were הוזם will be פסול (for they are liars), so those who relied on them as עדים to sign the שטר מכירה, will have no proof that they bought the field, and they may lose it, if the מוכר claims he never sold it to them.

[13] Seemingly we can say that when we gave the reason (why ע"ז מכאן ולהבא נפסל) on account of פסידא דלקוחות, it meant (not the way it was explained in footnote # 12, but rather) that only in a case where their testimony affects לקוחות, do we say that מכאן ולהבא הוא נפסל, however in a case where it does not affect the לקוחות, like in our case where זה אומר של אבותי, in such a case even רבא agrees that למפרע הוא נפסל. This will explain why they are not believed even for the עדות דאבהתא, since they are פסול למפרע, and at the time of the testimony the עדות of אבהתא was תכ"ד of the עדות חזקה which was contradicted, therefore the entire עדות is בטל. However, תוספות rejects this solution.

[14] The גמרא on the top of ע,א asks, what is the difference between the two reasons of רבא (whether חידוש or פסידא דלקוחות). If we were to assume תוספות suggestion in the 'דאין נראה' (see footnote # 13) the גמרא should have said the difference is in a case where לקוחות are not involved (according to the reason of חידוש the rule would remain מכאן ולהבא, however according to the reason of פסידא דלקוחות, the rule would be למפרע, since there is no פסידא). The fact that the גמרא does not mention this difference proves that the reason of פסידא דלקוחות applies in all cases (on account of) לא פלוג), and we always maintain מכאן ולהבא הוא נפסל.

[15] The גמרא there (ב"ב לא,ב) cites a dispute between רב הונא and רב חסדא as to the status of עדים מוכחשים. ר"ה maintains that each set of these עדים may testify (elsewhere), while ר"ח maintains they cannot testify at all. Initially the גמרא wanted to say that רבא (who claimed והא עדות מוכחשת היא) agrees with ר"ח, while ר"נ, who maintains that they are believed אאבהתא follows ר"ה. The גמרא concluded that רבא generally can agree with ר"ה that they may testify elsewhere, however in this case where they are testifying about one issue, so once they were contradicted in part of their testimony, we cannot accept the rest of their testimony, even on what they were not contradicted.

[16] Both testimonies (regarding אבהתא and חזקה) were intended to place the קרקע in his possession, once we see that they are (possible) liars regarding the ownership of this קרקע, we can no longer believe anything they say regarding the ownership of this קרקע. See 'Thinking it over'.

That since they were established as (possible) **liars regarding this property, they can no longer be believed** regarding **this** property -

אבל הכא אף על פי שהוחזקו משקרים על הטביחה -

However here, even though they were established as lying regarding the טביחה, since they were הוזם, nevertheless -

לא הוחזקו משקרים על הגניבה דלא חשיב ליה[17] כאותה עדות:

They are not assumed to be liars on the robbery, for the robbery and the טביחה **are not considered as the same testimony.**

Summary

Even if we maintain מכאן ולהבא הוא נפסל, nevertheless, if it is one testimony, all parts of the testimony are connected and a פסול in one will invalidate the other.

Thinking it over

תוספות writes[18] that since they were הוחזקו משקרים (?!) on this קרקע, they are no longer believed to testify on it. Is this the reason why they are not believed to say אבהתא, because הוחזקו משקרים, or is it because that since they were הוכחש on the אבהתא, we say עדות שבטלה מקצתה (on the חזקה) it is בטלה כולה (on the אבהתא) for it is one testimony regarding this קרקע?[19]

[17] The testimony on גניבה has no connection to the testimony of טביחה; they are two separate acts, with different consequences, therefore the הזמה on the טביחה has no effect on the testimony regarding the גניבה.

[18] See footnote # 16.

[19] See עד"ז בנחלת משה בד"ה בא"ד. BTW it appears that a line or two is missing in the first paragraph there (between the line which begins with על, and the next line which begins with הוי [at least in my edition]).