

אמר ליה אביי לא דאפכינהו ואזמינהו ממאי מדסיפא כולי -

Abaye said to him, no; that they reversed it and disqualified them, from where do we know this, from the latter, etc.

Overview¹

אביי disagrees with רבא and maintains that we cannot prove from (the רישא of) the עדים that ברייתא is only discussing two sets of עדים, the first who testified that the master first blinded his עבד כנעני (thus setting him free) and knocked out his tooth afterwards (making him liable to pay for [just] a tooth). The second set of עדים were the המזימים, who also testified, but in the reverse that he first knocked out the tooth and then blinded him. אביי concluded (proving his point) that just as the סיפא of this ברייתא is in a case of הזמה and reversal, therefore the רישא is also discussing a case of הזמה and reversal.

נראה לרבינו יצחק דכל סוגיא זו² כפי מאי דסלקא דעתין השתא דדיוקא דרבא הוי מרישא -
It appears to the ר"י that the entire discussion here is only according to what we assumed now that the inference of רבא that היא תחילת הזמה was from the beginning of the ברייתא -

אבל לפי האמת מסקנא דדיוקא דרבא מסיפא ולא אמר אביי זה מעולם³ -
However, truthfully the conclusion of the גמרא is that the inference of רבא is from the latter part of the ברייתא, and אביי never said this -

אלא בני הישיבה היו מתרצים כן אליביה דאביי לפי מה שהיו סוברים דדיוקא דרבא מרישא⁴ -
Rather it was the people of the academy that answered this according to אביי (who maintains לאו תחילת הזמה היא), according to what they assumed that the inference of רבא was from the רישא -

אבל לפי המסקנא דאמר⁵ אביי דרישא בשלש כתות כדאוקמא רבא בלא מיפך והזמה -

¹ It is advisable to learn the entire סוגיא until the end of ע"ד, before studying this תוספות. One may find it helpful to review the סוגיא by perusing the 'Appendix' at the end of this תוספות

² In this part of the גמרא it seems that the proof of רבא is from the רישא (since it must be discussing three sets of עדים). However, אביי argues and maintains that since the סיפא is with only two sets of עדים, so the רישא can also be discussing two sets of עדים, and therefore no proof. This assumption that רבא's proof is from the רישא is not according to the מסקנא. Additionally, this which אביי assumes that the רישא is by two sets of עדים, also seems to be contradicted by the מסקנא, where אביי states, שלש כיתות שהרי קתני הרב אומר כן, בשלמא רישא לא סגי דלא שלש כיתות

³ אביי never said that the רישא is by two sets of עדים and איפוך ואזים (and he never assumed that רבא's ראיה is from the רישא).

⁴ Therefore, they needed to interpret the רישא not like רבא (with three עדים כתי), but rather with two עדים כתי.

⁵ The הגהות הב"ח amends this to קאמר (instead of דאמר).

However, according to the conclusion of the גמרא, even אב"י agrees that the רישא is in a case of three עדים כתי, as רבא established it, without resorting to מיפך והזמה ובסיפא בשנים במיפך ובהזמה -

And the סיפא is by two עדים כתי and with מיפך והזמה -

comments:

ולאו דוקא נקט אב"י אפכינהו תחילה דאם כן איתכחשו להו⁶ -

And when אב"י stated אפכינהו first and then אומינהו, it was not precise, for if indeed the reversal (i.e. contradiction) was first, so since they were already contradicted, how can there be a הזמה according to אב"י, since הכחשה לאו תחילת הזמה היא -

אלא מעיקרא אומינהו והדר אפכינהו -

Rather initially they were מזים them, and afterwards they reversed the testimony- אי נמי מעיקרא אפכינהו ואומינהו תוך כדי דיבור⁷ -

Or you may also say, they reversal was first and they were מזים them תוכ"ד of the reversal -

ונראה לרבינו יצחק דאב"י מוקי לה בג' כתות כדמוכח לקמן⁸ -

And it is the view of the ר"י that אב"י (even in the ה"א) establishes the רישא with three sets of עדים, as is evident later in the גמרא -

דקאמר ואב"י אמר לך בשלמא רישא לא סגי בלא⁹ ג' כתות דקתני שהרי הרב אומר כן¹⁰ -

For the גמרא states later, 'and אב"י will say to you (in refutation to s'רבא's proof), "granted regarding the רישא it would be insufficient unless there are three sets of עדים, since the ברייתא states, 'for the master says so'"'; this concludes the citation from the גמרא later; תוספות continues to explain -

ואיירי דמציעאי נמי אפכינהו ואומינהו לקמאי¹¹ דהשתא לא איתכחשי מציעאי כלל¹² -

And we are discussing a case where the middle group (first eye and then tooth), also reversed the order of the first group, and were also מזים the first group, so now the middle group was not contradicted at all -

⁶ Once there was a הכחשה, their testimony is invalidated; there is no place for the הזמה by invalid עדים. See 'Thinking it over'.

⁷ Since it was תוכ"ד it is considered as if the הכחשה והזמה were simultaneous.

⁸ עדים המזימים. The three sets of עדים are; 1) first the tooth and then the eye, 2) first the eye and then the tooth, 3) first the eye and then the tooth, 4) first the tooth and then the eye.

⁹ The expression 'דלא' (instead of בלא) [perhaps he meant דלא (instead of בלא)].

¹⁰ The expression 'שהרב אומר כן', indicates that there were two versions; 1) first the tooth, and then the eye, or 2) first the eye and then the tooth. The master prefers the latter version, for that makes him liable only for a tooth. See footnote # 19.

¹¹ The second group (eye first then tooth) was (first) מזים the first group (tooth first then eye), and they also testified that the order is reversed.

¹² Since the first group was הוים (by the middle/second group), their entire testimony is discarded, so no one is contradicting the middle group

ולכא למידק מינה דהכחשה תחילת הזמה היא דמשלמי¹³ -

And so therefore we cannot infer from this ברייתא that the middle group must pay, because the middle group was not הוכחש, since the first group was הוזם.

¹⁴ responds to an anticipated difficulty: תוספות

וכי קתני נמצאו זוממין מציעאי משלמין דמי עין לעבד הוא הדין דמי עין לקמאי¹⁵ -

And when the ברייתא states, if the middle group was found to be ע"ז, they pay the value of the eye to the slave, the rule actually is that they must also pay the דמי עין to the first group as well-

שהרי היו מחייבין אותם דמי עין לרב¹⁶ משום כאשר זמם -

Since the second (middle) group was making the first group liable to pay the דמי עין to the master on account of כאשר זמם; the reason the ברייתא does not mention this payment is -

אלא לפי שלא הוזכרו ראשונים בברייתא לא חש למיתני -

Rather since the first group was not mentioned in the ברייתא, the תנא was not concerned to teach it, but it must be paid.

ומיהו¹⁷ אין אנו צריכין כלל להיפוך בתראי למציעאי -

However, we do not need at all to assume that the last group reversed the middle group; it is sufficient that the third group was merely מזים the second group -

דכיון דהוזמו ממילא קיימא עדות קמאי -

For once the second group was הוזם, the testimony of the first group is automatically sustained –

In summation; the proof of רבא is from the סיפא, therefore when אב"י purportedly said that since the סיפא is by two groups the רישא is also by two groups, it was not אב"י, but rather his students (who

¹³ The הגהות הב"ה amends this to מדמשלמי (instead דמשלמי)

¹⁴ The ברייתא states regarding the רישא that the middle group (who was הוזם by the third group), must pay the value of the eye to the עבד, since the middle group (who said first eye and then tooth) wanted to deprive the עבד from עינו. However since (according to תוס') the middle group was מזים the first group (first tooth and then eye), the first group was then obligated to pay the master the דמי עין, which they wanted to make him pay, so the second group which was הוזם by the third group should be obligated to pay דמי עין to the first group.

¹⁵ The second group with their היפוך והזמה (first eye and then tooth) caused damage to both the first group (to make them pay דמי עין to the master), and also to the עבד (for denying him עינו), therefore the second group must make two payments of דמי עינו, one to group one and the other to the עבד.

¹⁶ The first group testified first tooth and then eye, so they attempted to obligate the master to pay דמי עין to the slave, and since the second group was מזים the first, this caused the first to be obligated to pay דמי עין to the master on account of כאשר זמם.

¹⁷ It would seem from this that both the middle group and the last group reversed the statement of עדות prior to theirs. The second reversed the first, and the third reversed the second. תוספות writes that it is not necessarily so.

assumed that s'רבא proof is from the רישא), who said that. However, אב"י maintains all along that the רישא is by three groups and the second group and the third group were מזים the first and second group respectively.

פרש"י cites now תוספות תוספות:

ובקונטרס פירש¹⁸ דאב"י מוקי רישא בב' כתות כמו סיפא -

And רש"י explained that אב"י establishes the רישא with two sets of עדים, just like the סיפא (not like the ר"י) -

¹⁹ responds to an anticipated difficulty:

ויש ליישב הא דקתני שהרי הרב אומר כן דמעיקרא²⁰ ודאי דלא ידעינן דאפכינהו -

And we can resolve (according to רש"י) this which the ברייתא taught, 'שהרי הרב, 'אומר כן', that initially we certainly did not know that the עדים המזימין will reverse the order of the previous עדים -

והוה קשה לן מאי שהרב אומר כן²¹ אבל השתא דאפכינהו שמח הרב בעדותן של אלו²² -

So, we had this difficulty, what does it mean 'שהרב אומר כן', but now when אב"י stated that the עדים המזימין reversed the previous group, the master is happy with the testimony of this original group -

שאין מחייבים אותו כי אם דמי שן לפי שידוע שיבאו עדים שיחייבו אותו דמי עין²³ -

For they are only obligating him to pay the value of a tooth; he is happy with these עדים, since the master knows that other witnesses will come (the עדים המזימין), and will obligate him דמי עין -

In summation; according to רבא who did not conceive that the עדים המזימין reversed the testimony, the רישא requires three sets of עדים in order to justify, 'שהרי הרב אומר כן'; however אב"י who assumes that the עדים המזימין reversed the order, two sets are sufficient and we can understand 'שהרי הרב

¹⁸ See עד,א ד"ה מדסיפא and רש"י עג,ב ד"ה אמר.

¹⁹ The reason we assume that the ברייתא (of the רישא) is discussing three sets of witnesses, instead of the two sets, which the ברייתא states clearly, is because of the difficulty, with the expression of the ברייתא which states, 'שהרי הרב, 'אומר כן'. If as the ברייתא states that the first set of עדים said, 'first eye and then tooth', why is the master satisfied with that, he would rather that they do not testify at all, so he can keep his slave. Therefore, the גמרא explained that the first group (not mentioned in the ברייתא) stated first tooth and then eye. Now we can understand why the master is happy with the second group (first eye and then tooth) since a tooth is much less expensive to pay for than an eye. However, רש"י who maintains that the רישא is discussing only the two groups of the ברייתא (not the additional first group that was added on), how will he explain 'שהרי הרב אומר כן'?! Tosfos deals with this issue.

²⁰ This is referring to when רבא made his inference that there are three groups.

²¹ See footnote # 19.

²² He is happy for he knows the truth that it was first the tooth and then the eye, as the עדים המזימין (the truthful עדים) will testify, but now the master figures these (false) עדים are testifying for my benefit.

²³ The master knows that the first set of עדים are liars, and that the עדים המזימין who actually saw what happened, may eventually come and testify for the detriment of the master.

עדים המזימים (הזום), for they are better than the first group (which were the happy; he is happy with the first group), for they are better than the first group, who will make him pay for an eye.

²⁴ suggests a retraction from what he stated previously:

ולפי זה איכא לאוקמי כל סוגיא זו לפי האמת -

And according to this (פרש"י) it is possible to establish the entire discussion (including the part where אביי states that there were only two groups), according to the truthful - מסקנא

דרבא לא הביא הרישא אלא לדקדק הימנה דסיפא איירי בשלש כתות כמו רישא²⁵ -

That the only reason רבא cited the רישא was to infer from it that the סיפא is discussing three sets of עדים, just like the רישא -

ואביי מהדר ליה דוק לאידך גיסא מדסיפא סגי בב' כתות²⁶ ובמיפך והזמה²⁷ -

And אביי responded to רבא, 'infer the opposite, for since by the סיפא, two sets with reversal and הזמה are sufficient to justify the ברייתא -

רישא נמי סגי בב' כיתות ואין לך ראיה מסיפא מכח רישא דאיכא לאוקמי כולה בב' כתות -

Also, in the רישא two sets are sufficient and you have no proof from the סיפא, based on the רישא, for we can establish the entire ברייתא (the רישא and the סיפא) with two sets of witnesses.

anticipates a difficulty:

והא דקאמר לקמן בשלמא רישא לא סגי בלא שלש כתות²⁸ -

And regarding this which אביי stated later, 'granted that in the רישא, it is not sufficient, unless there are three sets of עדים' -

responds:

הכי קאמר²⁹ אי נמי לא תתיישב לך שהרי הרב אומר כן אי לא מוקמת לה בשלש כתות -

²⁴ initially said (see footnote # 3) that according to the מסקנא, אביי never said that the רישא is by two sets of עדים, but rather אביי agrees (in the מסקנא) that the רישא is by three sets of עדים (like רבא). Now תוספות suggests it is not necessarily so.

²⁵ The רישא must be discussing three sets of עדים (according to רבא), for otherwise (if there were only two sets) we would have the difficulty with 'שהרי הרב אומר כן' (see footnote # 19).

²⁶ In the סיפא we have no problem with 'שהרי העבד אומר כן', for the עבד is delighted with their testimony (tooth, then eye), since 1) he goes free, and 2) he is paid for an eye.

²⁷ We need the עדים המזימים to reverse and state eye then tooth, in order to explain why the ע"ז do not pay the value of the entire עבד to the master.

²⁸ This seemingly contradicts this which תוספות just suggested that this which אביי stated initially that the רישא can be by two sets, is even according to the מסקנא; however, we see that אביי in the מסקנא maintains that the רישא must have three sets of עדים!

²⁹ אביי is saying to רבא, I (אביי) can justify 'שהרי הרב אומר כן', even with two sets, and so therefore I say if the רישא is two sets (with ואזים) the סיפא is the same, and you have no proof. However, even if you do not subscribe to my

'שהרב אומר This is what אב"י meant; even if you (רבא) cannot reconcile the words
- עדים with three sets of רישא unless you establish the כן, 'מכל מקום סיפא איירי בב' כתות -

Nevertheless, the סיפא can be discussing two sets of עדים –

asks: תוספות

ואם תאמר אי בב' כתות מוקמת לה לרישא אמאי משלמי דמי עין לעבד -

And if you will say; if you (אב"י) establish the רישא with two sets, why does the
- עבד to the דמי עין pay, הו"מ, which was the first set (eye first and then tooth)

תקשה ליה כדפרכינן לעיל בטר דמפקי ליה לחירות דמי עין בעי לשלומי ליה -

Let us ask on אב"י as the גמרא asked previously, 'after the עדים sent him out free,
- 'דמי עין the should they be required to pay him the

ויכולין לומר לטובתו באנו -

For the ע"ז can argue, we came to testify for his benefit -

כדאמר בפרק היו בודקין (סנהדרין מא,א) דיכולין לומר לאוסרה על בעלה באנו³⁰ -

As the גמרא states in בודקין, פרק היו בודקין, that the עדים can say we only came to prohibit
her on her husband –

answers: תוספות

ויש לומר דלמאי דמוקי לה השתא במיפך והזמה מסקינן³¹ דאיירי כשעמד כבר בדין -

And one can say, that according to אב"י who now establishes the ברייתא in a case
of 'reversal and הזמה', we have concluded (later in the גמרא) that it is discussing
a situation where the עבד previously received his verdict in court that he is free -

ומסתמא כבר נתפרסם הדבר שיצא העבד לחירות -

And presumably the matter was already publicized that the slave has been freed -
והרב בעצמו מודה כדקתני שהרב אומר כך שעמד בדין³² -

interpretation and insist that the רישא must be by three sets, that is not sufficient proof that the סיפא must also be by three sets (especially since the ברייתא mentions only two sets).

³⁰ The גמרא there said that if עדים testified that a married woman was מזונה, and they were הו"מ, we cannot put them to death, because they can claim that they had no intention (in their testimony) to put her to death, but rather only to prohibit her to continue to be with her husband. Similarly, here the עדים can argue, our intent was not to deny the עבד his דמי עינו (when we said, first eye and then tooth), our sole intention was to free the עבד. These עדים are testifying falsely (they were הו"מ), so they can claim we only wanted to free the slave (and harm the master), but in our lie we were not particular; tooth first, or eye first; we did not plot to hurt the עבד, but rather to assist him.

³¹ See ע"ז, that the עבד was already freed in court by other witnesses (for either the tooth or the eye). This ברייתא is discussing a new case, in which the עבד is claiming against his master; the עבד wants דמי עינו and the master agrees only to שינו.

³² This means that the רב agrees to the previous עדים ([not mentioned in the ברייתא] who freed him by saying first eye and then tooth), and to the current עדים (mentioned in the ברייתא), who are supporting the previous testimony and saying that in the העמדה בדין they freed him with eye first and then tooth.

And even the master himself agrees that the slave is free, as the ברייתא states, 'for the master says so' that there was a ruling by the court that the master owes for a tooth only -

וכל עיקר שבאין לדין עכשיו לפי שהעבד תובע דמי עינו ומזמין את הרב לדין -

And the entire main issue for which they are coming to be judged now, is because the slave demands דמי עינו, and is calling his previous master to court -

ורבו מודה לו דמי שינו לכך כי אתו סהדי לא אתו אלא לגרע כחו של עבד³³ -

And the master agrees to pay the slave דמי שינו, so when the first set of עדים come to testify first eye and then tooth, they are only coming to diminish the claim of the עבד; the sole purpose of their testimony is -

שאם יבאו עדים על דמי עינו לא יהיה ממש בדבריהם³⁴ ויודעים הם שיבאו עדים -

That in case new עדים will come to support his claim (of the עבד) regarding דמי עינו, their words will not have any substance, and they knew that עדים will come -

תוספות explains why initially did we not assume this:

אבל מעיקרא לא הוה ידעין דמיירי כשעמד בדין -

However initially we did not know that he already received judgement to be free, so in that case -

אפילו הרב מודה כמה פעמים צריך העבד לעדים דמודה בקנס פטור³⁵ -

Even if the master will admit many times that he knocked out his tooth and blinded him, the עבד still requires the עדים to be free, since one who admits to a fine is exempt from paying the fine, so the עבד can be freed only through the testimony of the עדים -

משום הכי פריך שפיר בתר דמפקי ליה לחירות כולי -

Therefore, the גמרא there (in the ה"א) correctly asks, 'after the עדים set him free, etc. you expect them to pay דמי עינו'

תוספות asks:

ואם תאמר למה דחק אביי לאוקמי לסיפא במיפך והזמה -

And if you will say; why did אביי persist to establish the סיפא in a case where the second group reversed and were מזים, but -

³³ They cannot claim that their intention was to free the עבד, for he was already freed and the dispute is merely how much does the master owe him.

³⁴ This first group of עדים (mentioned in the ברייתא) are false עדים, as we see that they were הוזם. Their entire claim is that the master only owes דמי שינו, to which the master admits. The only reason they are testifying is because they assume that real עדים will come and testify that the master owes דמי עינו, therefore they say דמי שינו, so it will be תרי, and the עבד will only receive דמי שינו. These עדים did not suspect that they would be הוזם.

³⁵ The rule that an עבד goes out free בשן ועין is a קנס, therefore there needs to be witnesses that it happened; the master's admission is insufficient, since מודה בקנס פטור.

כיון דבעמד בדין מוקמינן לה יאמר שהעבד תובעו דמי עינו והרב מודה לו דמי שינו -
Since we established the ברייתא in a case of עמד בדין, עמד אביי should have said instead that the עבד demands דמי עינו, and the master admits to דמי שינו -

והביא עבד עדים דהפיל את שינו וסימא את עינו ובאו עדים והזימום -
And the עבד bought עדים that first he knocked out his tooth and then he blinded him, and other עדים came and were מזים the first set; why the need that the second עדים reversed the story?!

answers: תוספות

אלא אורחא דמילתא נקט שאין רגילות הרב להודות כלל אלא כשיש עדים בדבר:
Rather the reason for this is, the ברייתא discusses the normal situation, that it is not usual that the master should admit to anything at all, unless there were witnesses in this matter who support his admission.

Summary

רישא maintains that according to the מסקנא there are three sets of עדים in the רישא (and two sets in the סיפא) according to אביי. However, according to פרש"י the רישא is also discussing two sets of עדים, only according to אביי.

Thinking it over

הכחשה writes that when אביי states ואזמינהו ואפכינהו, it is לא דוקא because if the הכחשה was first, there can be no הזמה.³⁶ Does this apply to פרש"י as well,³⁷ or just according to the פירוש of the ר"י?³⁸

Appendix

The רישא of the ברייתא:

Two עדים say he blinded him first, and then knocked out his tooth, which is favorable for the master.³⁹ Two other עדים were מזים them, the rule is they must pay the value of the eye to the slave.

The סיפא of the ברייתא:

Two עדים say he first knocked out his tooth and later he blinded him, which is

³⁶ See footnote # 6.

³⁷ See footnote # 24 & 28.

³⁸ See מהרש"א.

³⁹ Because he needs to pay only for the tooth, not for the eye.

favorable for the slave.⁴⁰ Two מזים were עדים them, they pay the value of the eye to the master.

The רישא proof is from the רבא's; הוה אמינא.

The רישא cannot be understood as written;⁴¹ it must be that there was a first כת (not mentioned in the ברייתא), which testified first tooth then eye, then a second כת, mentioned in the ברייתא, first eye then tooth (which the master favors), and the זוממין were מזים the second (middle) כת, so they pay for the eye to the עבד. This proves הכחשה הזמה, otherwise how can we be מזים the second group after the הכחשה. אביי refutes this proof.

Both the סיפא and the רישא are with two כתי עדים only. The second כת was מזים the first כת, and also testified the reverse of the first כת. Therefore, in the רישא, the second כת (after they were מזים) testified tooth first and then eye, so the ע"ז must pay an eye to the עבד. In the סיפא the מזימים (after they were מזים) testified eye first and then tooth, therefore the ע"ז must pay an eye to the master.

The refutation of the הו"א:

There can be no proof from the רישא, since according to the first group the master owes the slave an eye, and according to the second group the master owes him a tooth, so the second group was not contradicted, for all agree that the master owes him at least the value of a tooth, so there was no הכחשה, and no proof.

The מסקנא:

רבא maintains that since the רישא is by three groups (but no proof) so the סיפא is also by three groups; group one says first tooth and then eye (so the owner owes the slave an eye), second group says first eye then tooth (contradicting the first group, since an eye is more than a tooth) and the third group was מזים the first group, so they pay the master an eye.

אביי rejects this proof; granted the רישא must be discussing three groups (to satisfy the phrase that the master approves this); however the סיפא can be with two groups דאפכינהו ואזמינהו.

⁴⁰ For he receives payment for the eye, rather than just a tooth.

⁴¹ See footnote # 19.