

משום ביעתותא דעדים קא מודה – He admits due to his fear of the witnesses

Overview

There is a dispute regarding באו עדים ואח"כ באו עדים, where רב maintains he is פטור, and ר' אלעזר ברבי שמעון maintains he is חייב. The גמרא cites a ברייתא where ר' maintains in a case where the defendant saw witnesses approaching and he admitted to stealing, that the עדים can still testify and obligate him to pay the קנס. The גמרא states that even רב can agree with ראב"ש, for that case is different, since the only reason he admitted to the crime is because of his fear that the עדים will obligate him to pay the קנס. It would seem that in a case where he admitted on his own (there were no עדים approaching), the rule would be that (even) according to ראב"ש he is פטור from קנס, even if עדים happen to come later. תוספות qualifies this assumption.

anticipates a difficulty: תוספות

והא דאמר בפרק שבועת העדות (שבועות דף לג,ב) דלרבי אלעזר ברבי שמעון -

And regarding this which the גמרא states in פרק שבועת העדות that according to ראב"ש -

לא משכחת לה דמודה מפי עצמו דפטור אלא היכא דליכא עדים כללי -

We cannot find a case of one to be exempt from קנס, based on his admission, unless there are no witnesses at all who came later to testify.

responds: תוספות

היינו אליבא² דשמואל:

That is according to שמואל who maintains that in all cases חייב עדים חייב באו עדים ואח"כ באו עדים.

Summary

רב maintains, according to שמואל that חייב עדים חייב באו עדים ואח"כ באו עדים, in all cases.

Thinking it over

What would be if he is מודה בקנס because he saw the עדים coming, however for some reason the עדים did not testify, does he have to pay the קנס?

¹ However, here the גמרא says that according to ראב"ש, only if his admission was out of fear for the עדים is he חייב קנס, but if he admitted solely on his own, he will be פטור, even if עדים came later. Why therefore does the גמרא there say that according to ראב"ש, a מודה בקנס will never be פטור unless no עדים come at all?!

² This distinction whether the עדים were ממששין ובאין or not, is only according to רב (in order to reconcile רב with ראב"ש), however according to שמואל the view of ראב"ש is that in all cases באו עדים ואח"כ באו עדים.