

## מה<sup>1</sup> אם ירצה לומר מזיד הייתי –

### What if he would want to say I was a מזיד

#### OVERVIEW

The גמרא cites a משנה concerning a case where עדים claimed that a person ate חלב and the person denies it. ר"מ maintains that he is required to bring a קרבן, while the חכמים maintain that he is not required to bring a קרבן, because מה. Our תוספות examines this explanation of the חכמים.

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לשינא דאדם נאמן על עצמו יותר מק' עדים –

**According to the opinion** in כריתות מס' that the reason the חכמים exempt him from bringing a קרבן is because (concerning a קרבן) **a person is believed regarding himself more than a hundred witnesses**, then we are required to assume -

האי אם ירצה לומר לדבריו דרבי מאיר קאמרי<sup>2</sup> –

**That this** explanation of מה אם ירצה לומר which the משנה offers is not the true explanation of the חכמים, but rather the חכמים **are offering** this explanation **according to the view of** ר"מ that עדים are stronger than the person. Nevertheless the חכמים maintain that in this case [even according to ר"מ he should not be obligated to bring a קרבן since] he may not be contradicting the עדים, for (by saying לא אכלתי) he really means I was a מזיד and therefore פטור from a קרבן.

(כדתינא) [כדאיתא<sup>3</sup>] בפרק אמרו לו (שם דף יב,א. ושם) –

- פרק אמרו לו As in mentioned in

דלאידך<sup>4</sup> לשינא טעמא דנפשיהו קאמרי –

(For) [And] **according to the other opinion**, the חכמים **are giving their own reason** (and not merely responding to ר"מ).<sup>5</sup>

<sup>1</sup> See previous ד"ה מה לפיו תוספות.

<sup>2</sup> It is possible that תוספות is disturbed by the fact that the גמרא cites the reason of לומר לומר (which according to תוספות means דיבוריה), so he is not contradicting the עדים. The difficulty is that תוספות stated that our סוגיא follows the לשינא of איש ממאה איש (and that is why he is פטור), for פיו is stronger than עדים. However our סוגיא does not follow the view of לומר לומר; how therefore can we explain the מה אם ירצה לומר. The answer is that the חכמים are merely addressing ר"מ. See footnote # 7.

<sup>3</sup> See דוד, that there is a גירסא in כריתות that קאמרי של ר"מ. However that גירסא is not found in our גמרות. We may need to say that כדאיתא בפרק אמרו לו refers [merely] to the two לשונות.

<sup>4</sup> See שמועה מבין שמועה that in the first print the גירסא was 'ולאידך לשינא' (not 'דלאידך'). See also נח"מ.

<sup>5</sup> The differences between the two לשונות will be in two cases; where עדים claim חלב and he claims לא אכלתי or where he claimed חלב and the עדים claimed לא אכלתי. According to the לשינא of אדם נאמן מה ירצה of לשינא, however according to the עדים, however according to the לשינא of איש ממאה איש, in these two cases he will not be believed because there is no לומר לומר.

מה אם ירצה לומר וכו' explains what is meant by תוספות

ואין לפרש<sup>6</sup> ומה אם ירצה לומר כולי –

And we cannot interpret this **ומה אם ירצה לומר**, etc. to mean –

שיהא נאמן לומר לא אכלתי מגו דאי בעי אמר מזיד הייתי<sup>7</sup> –

**That he should be believed** what he is claiming that **'I did not eat it at all'**

for he has a **מגו** that he could have claimed I ate it **במזיד**; this is incorrect –

דהא **מגו במקום עדים הוא**<sup>8</sup> –

**For this is a מגו which contradicts עדים!** **עדים** are stronger than a **מגו** and he would not be believed.

מה אם ירצה לומר וכו' offers his explanation of the תוספות

אלא כלומר אף מה שאמר לא אכלתי –

**Rather** the **חכמים** mean to say that even concerning that which he claims, namely **לא אכלתי** –

**יכול לתרץ דבריו ולומר לא אכלתי שוגג אלא מזיד** –

**He can interpret his words of לא אכלתי and say I meant 'I did not eat the מגו, חלב בשוגג, rather I ate it במזיד',** and is therefore not contradicting the **עדים**, who cannot be sure whether he ate it בשוגג or במזיד.

**ומיירי דכשאמר לא אכלתי לא בדקו אותו איך היה דעתו ולבסוף אומר שמזיד היה** –

**And we are discussing a case that when he initially stated לא אכלתי, he was not cross-examined what he meant (whether לא אכלתי כלל or לא אכלתי), but later he claimed that he ate it במזיד (שוגג) –**

**וסברי רבנן דמה שאמר לא אכלתי כך היה דעתו שלא אכל שוגג אלא מזיד** –

**So the רבנן maintain that when he initially claimed לא אכלתי, his intention was that he did not eat it בשוגג, but rather במזיד and therefore he is not obligated to bring a קרבן –**

**ולרבי מאיר אף על פי שלבסוף אמר מזיד הייתי אין בכך כלום** –

**However according to ר"מ, even though he eventually said I was a מזיד, that is inconsequential –**

**דהכי אמר (בתורת כהנים) אמר רבי מאיר אם בתחלה אמר מזיד הייתי שומעין לו –**

**For this is what is stated in ר"מ; תו"כ said if initially when confronted by**

<sup>6</sup> In the משנה the לשון **מה אם ירצה לומר מזיד הייתי** is (which can be interpreted to mean דיבוריה); however in the discussion later in the גמרא, the לשון **מגו דאי בעי אמר מזיד הייתי פטור כי אמר נמי לא אכלת מהימן** is. This expression seems to be in accordance with the **אין לפרש** which תוספות negates.

<sup>7</sup> This seems to be בד"ה והוא פירוש. The advantage of this פירוש is that according to this פירוש, even if we follow this לישנא of **מה אם ירצה וכו'**, it will also prove that **עדים** is stronger than **פיו**. That would explain why the גמרא here cites the phrase **מה אם ירצה לומר וכו'**. See footnote # 2

<sup>8</sup> The credibility (of his claim that **לא אכלתי**) based on a **מגו** is not sufficient to override the testimony of the **עדים** (who claim that he ate **חלב**).

<sup>9</sup> דיבורא דחובה (פרשתא דחטאת) פ"ז ד'.

the עדים that he ate חלב, **he said I was a מזיז**, we heed his statement and exempt him from bringing a קרבן -

**אם היה דן עמו<sup>10</sup> כל היום ובאחרונה אמר מזיד הייתי אין שומעין לו –**

**If, however, we were discussing with him this allegation of eating חֶלֶב, the entire day, and eventually he said I was a מְזִיד, we do not heed him.<sup>11</sup>**

asks:

ואם תאמר<sup>12</sup> והיאך נאמן לומר מזיד הייתי הא אין אדם משים עצמו רשע –

**And if you will say; and is he believed to claim, I was a מזיד, for there is a ruling that a person cannot accuse himself of being a רשע?!**

כדאמר בפרק קמא דסנהדרין (דף ט, ב ושם) גבי פלוני רבעני לרצוני<sup>13</sup> —

as the גמרא states in the first פרק of סנהדרין regarding the case where someone claimed ‘he sodomized me and I willingly acquiesced’. How can we accept his admission that he did it במזיד; by saying so he is making himself into a רשע (doing an עבירה במזיד), and the rule is א"א משים עצמו רשע!<sup>14</sup>

תוספות answers:

**ויש לומר דאין נאמן לפסול עצמו –**

**And one can say that the rule of א"א משים עצמו רשע means that he is not believed to disqualify himself as a witness -**

**אבל הכא עושה תשובה ואינו רוצה להביא חולין לעזרה <sup>15</sup>:**

**However here where he is doing תשובה (by admitting that he did it במזיד), and he does not want to bring חולין into the עזרה, in this case he is believed.**

## SUMMARY

מה אם ירצה of סברא the אדם נאמן ע"ע יותר מק' איש of לישנא According to the  
מגו מה אם ירצה לומר The. לדבריו של ר"מ is only לומר is not a regular

<sup>10</sup> See the רש"י who amends this to read דן עמהם (with the בי"ד).

<sup>11</sup> According to this משנה the חכמים between ר"מ and the מתרגם דיבוריה is (merely) whether we are after a considerable amount of time passed from when he said לא אכלתי. See 'Thinking it over' # 1.

<sup>12</sup> See ‘Thinking it over # 2.’

<sup>13</sup> The case there is where ראובן and שמעון testified that לוי was רובע ראובן. However ראובן admits that he acquiesced willingly. This would seemingly make ראובן into a רשע (for he was עובר on משכב זכר) and seemingly פסול לעדות. Nevertheless the rule is that we accept ראובן's testimony that לוי was רובע ראובן; however we do not accept the testimony of ראובן concerning himself that he did it willingly. ראובן is considered a relative to himself (אדם קרוב אצל עצמו) and therefore he cannot testify against himself that he did an עבירה, however he is believed concerning לוי that לוי did an עבירה. [This is known as דיבורא. We split his statement; part is believed (concerning לוי) and part is not believed (concerning himself).]

<sup>14</sup> See 'Thinking it over' # 3.

<sup>15</sup> פסול לעדות means that he is not believed to the extent that he should become קרוב; however here where he is sincere that he does not want to being חולין לעורה, we cannot coerce him to bring a קרבן.

a מתרץ דיבוריה. We cannot apply here the rule of אאמע"ר, since he is interested in doing תשובה in order not to bring לעזרה.

### **THINKING IT OVER**

1. When the rule that we are דיבוריה, does that mean we are required to ask him what he means, and if he says אלא מזיד he is believed, or do the חכמים mean that he is believed (that he ate it במזיד), even if he was not specifically asked?<sup>16</sup>

2. א"א asks how can we believe him that מזיד הייתי when the rule is א"א מה אם. Is this question apply equally whether we interpret רשע<sup>17</sup> משים עצמו רשע. Is this question apply equally whether we interpret רשע to be a regular מיגו (as the לפרש understands) or whether we interpret רשע (as תוספות understands it)?<sup>18</sup>

3. א"א asks how can we believe him that מזיד הייתי when the rule is א"א. Seemingly however our case (of מזיד הייתי) is different from the general cases concerning אאמע"ר. In those instances there is no cause (aside from his admission) to assume that he is a רשע; however in our case the עדים are testifying that he ate חלב, and all he is explaining is that it was במזיד. He should be believed and exempt from a קרבן!<sup>20</sup>

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<sup>16</sup> See [ביאורים והערות אות נא and תוספות כריתות יב,א ד"ה או].

<sup>17</sup> See footnote # 12.

<sup>18</sup> See גאון צבי.

<sup>19</sup> See footnote # 14.

<sup>20</sup> See חידושי הרי"ם.