

## מעידין אנו באיש פלוני שחייב גלות –

**We testify regarding this person that he is liable for exile**

### OVERVIEW

The משנה taught that if עדים testified that a certain person is חייב גלות, for he killed someone בשוגג, and the עדים were הוזה, the rule is that (the עדים do not go to גלות, but rather) the עדים receive מלקות. This indicates that if they were not הוזה, the עדים would be believed and the accused would go to גלות.<sup>1</sup> Our תוספות first questions and then explains this premise.

תוספות asks:

ואם תאמר היאך הם יכולים לחייבו גלות בעדותן והא יכול לומר מזיד הייתי?<sup>2</sup>

**And if you will say; how can the עדים obligate the accused to be גולה** (if they were not הוזה), **since the accused can claim, 'I killed intentionally';<sup>3</sup>** in which case there is no גלות תוספות proves that this claim of מזיד הייתי is capable of removing any obligations which stem from being a שוגג (such as גלות [or a קרבן חטאת] -

כדאמר גבי אכלת חלב<sup>4</sup> בפרק קמא דבבא מציעא<sup>5</sup> (דף ג,ב) -

**As the ברייתא states in the first פרק of מ"ב מסכת regarding the case of אכלת חלב.** Similarly here, why should the accused be גולה, since he could claim I was a מזיד (and there is no גלות by a מזיד [only by a שוגג])?

תוספות answers:

ויש לומר דמיירי כשראו בו רגלים לדבר שנשמט הברזל מקתו ואיכא למימר דלא נתכוין<sup>6</sup> -

**And one can say; that we are discussing a case where the witnesses saw corroborating evidence that he killed בשוגג**, for instance they saw that **the iron blade flew off from the handle** (and killed the victim) **so in this case we can**

<sup>1</sup> See previous מעידין ד"ה תוספות [TIE footnote # 3].

<sup>2</sup> When the עדים testify that he killed he can respond, 'but it was במזיד', so there is no גלות. See 'Thinking it over' # 4.

<sup>3</sup> See 'Thinking it over' # 1.

<sup>4</sup> עדים testify that a certain person ate חלב (and the accused claimed 'I did not eat חלב'), the rule (according to ר"מ is that he is חייב חטאת; קרבן חטאת eating בשוגג חלב obligates one for a חטאת, however the חכמים maintain that the rule) is that he is פטור from a חטאת, for the accused could claim, 'I was a מזיד' (and there is no קרבן חטאת for מזיד [only for שוגג]) See footnote # 5.

<sup>5</sup> See תוספות there ומה ד"ה that when the חכמים state that he could claim 'מזיד הייתי' (see previous footnote # 4), this means that we can interpret his claim of לא אכלתי שוגג אלא מזיד (so there is no קרבן חטאת). Similarly here (even if he said לא הרגתי) we can interpret his claim of לא הרגתי מזיד (so there is no חטאת). (גלות).

<sup>6</sup> However, in the case of אכלת חלב, there is no way to distinguish whether it was בשוגג or במזיד, therefore he/we can claim הייתי מזיד.

reasonably **assume that he did not intend** to kill, and is חייב גלות.

asks; תוספות

אבל קשה מהא דתנן פרק אלו הן הגולין (לקמן דף ט,ב) **דשונא אינו גולה**<sup>7</sup> -

**פרק אלו הן** in משנה in **משנה** **However, there is a difficulty from this which we learnt in a** **גולה** is **not** בשוגג the person he hates **הגולין**, **that an enemy** who killed **This** concludes the comments. תוספות. משנה -

**לאו כי האי גוונא דומיא דאוהב גולה**<sup>8</sup> **ואמאי אינו גולה כיון דראו דהוי רגלים לדבר**<sup>9</sup> -

**Is it not so** that a שונא is not גולה **in the same manner that a friend** (not a שונא) who killed בשוגג **is גולה!** We have just concluded that an אוהב is גולה only in a case where there was רגלים לדבר that it was בשוגג<sup>10</sup>. **So** if there is רגלים לדבר that it was בשוגג, **why** is a שונא **not גולה**, **since there is רגלים לדבר** that it was done בשוגג.

answers: תוספות

**ויש לומר דשאני שונא דיש לנו לומר טפי דבשנאה הכהו**<sup>11</sup> -

**And one can say that a שונא is different** from a regular case, **for there is a greater assumption that he killed him in enmity** even though it appears (רגלים לדבר) that it was בשוגג. The assumption of a שונא killing במזיד outweighs the שוגג assumption based on the רגלים לדבר.

offers an alternate answer:<sup>12</sup> תוספות

**ועוד יש לומר דמיירי שפיר דליכא רגלים לדבר והשתא ניחא משונא** -

**And additionally one may say; that indeed by a שונא we are discussing a case where there is no רגלים לדבר** that it was done בשוגג, **so now the ruling by שונא is understood** why he does not go to גלות, since there is no רגלים לדבר that it was בשוגג and he is a שונא, so we presume that the שונא killed him במזיד. However the question remains; we understand that the cases of שונא and אוהב are the same<sup>13</sup> meaning that the case of אוהב is also where there is no רגלים לדבר, so why does an אוהב go to גלות, let us say מזיד הייתי (as תוספות asked originally). תוספות responds -

**ומכל מקום אוהב גולה כגון דשתיק כשאמרו לו העדים** -

<sup>7</sup> Presumably the reason is that since he is his enemy we assume that the killing was done במזיד, and not בשוגג.

<sup>8</sup> When the משנה states that a שונא is not גולה it is discussing the same case where an אוהב is גולה, for if it is discussing a case where an אוהב is also not גולה, why state שונא (no one is גולה in such a case).

<sup>9</sup> It obviously was done בשוגג so why should the שונא not be גולה (see footnote # 7).

<sup>10</sup> Otherwise (even) an אוהב is not גולה since he could claim מזיד הייתי

<sup>11</sup> However, by an אוהב (not a שונא) since there is רגלים לדבר that it was בשוגג, there is no independent reason to assume that it was done במזיד. (and the claim of מזיד הייתי will not be accepted)

<sup>12</sup> According to this answer if there was רגלים לדבר that it happened בשוגג, even a שונא would go to גלות.

<sup>13</sup> See footnote # 8.

**But nevertheless** (even if there is no רגלים לדבר that it was בשוגג), the **גולה is אוהב**, (only) in a case where **for instance where** the alleged killer **was silent** in בי"ד **when the witnesses told him**, you killed him.<sup>14</sup> He cannot claim מזיד הייתי, since he accepted the testimony of the עדים.

**בדאי**<sup>15</sup> **אי הוה אמר לא הרגתי יכול לתרץ ולומר לא הרגתי שוגג אלא מזיד -**  
**If killer would have responded, 'I did not kill him', he could certainly interpret his statement to mean, 'I did not kill him בשוגג, but rather I killed him**  
**- במזיד**

**כמו בלא אכלתי חלב**<sup>16</sup> **אבל כיון דשתק כהודאה דמיא:**  
**Just as in the case of אכלתי חלב; however since he was silent, it is like he admits**  
to the testimony of the עדים that he killed בשוגג, therefore he is גולה.

In summation; the rule of גלות is where there was no רגלים לדבר that it was בשוגג and the alleged killer did not deny the testimony of the עדים. Therefore by a שונא he does not go to גלות, since we assume that he killed him במזיד; however by an אוהב, he goes to גלות since he is admitting to the testimony of the עדים (that he killed בשוגג). If however he denies the testimony and claims לא הרגתי, he does not go to גלות since we can interpret לא הרגתי to mean מזיד אלא שוגג.

## SUMMARY

We can either assume that the חיוב גלות is in a case where he (is silent or) claims לא הרגתי, but there is רגלים לדבר that it was בשוגג (and nevertheless by שונא we still assume that it was במזיד), or that the חיוב גלות is where he makes no counterclaim, therefore by an אוהב we assume it was בשוגג, since he did not contradict the עדים (and by a שונא that it was במזיד). However, if he claimed לא הרגתי then he would not be גולה ([even] by an אוהב) since he can interpret it to mean מזיד אלא שוגג.

## THINKING IT OVER

1. מזיד asks why the accused should be גולה since he could have claimed מזיד הייתי.<sup>17</sup> However how could he have claimed מזיד הייתי,<sup>18</sup> since we have a rule that

<sup>14</sup> However by a שונא even if he did not respond to the עדים, we assume that he killed במזיד since he is a שונא. However by an אוהב we assume that it was בשוגג (even if there was not רגלים לדבר). There is no reason to assume that he killed במזיד since he is not a שונא of the victim. See 'Thinking it over' # 3

<sup>15</sup> Others amend this to דודאי (instead of בדאי).

<sup>16</sup> By לא אכלתי חלב he can reinterpret his words to mean מזיד אלא שוגג (and be exempt from a קרבן). Similarly if he would have claimed לא הרגתי, he could have interpreted it to mean מזיד אלא שוגג and be exempt from גלות.

<sup>17</sup> See footnote # 3.

<sup>18</sup> This is especially difficult according to the interpretation of תוספות (see footnote # 5) that we interpret his claim of

בס"ד. מכות ב, א תוס' ד"ה מעידין וכו' שחייב  
19 (we do not believe anyone who claims he transgressed a sin, which would make him a רשע)?!<sup>19</sup>

2. What does תוספות assume in his initial question (and first answer) regarding the response of the alleged killer; was he silent or did he claim לא הרגתי?

3. In תוספות initial question (and in the final answer<sup>20</sup>) we do not assume that there is גולה, perhaps he killed (that he killed בשוגג);<sup>21</sup> why therefore should he be גולה, perhaps he killed במזיד?<sup>22</sup>

4. Is תוספות initial question<sup>23</sup> in general; how can עדים ever be גלות (since he can claim מזיד הייתי), or is it specifically a question on our משנה?<sup>24</sup>

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לא הרגתי שוגג אלא מזיד to mean לא הרגתי

<sup>19</sup> See # 148 – 161, etc. אוצר מפרשי התלמוד מהרש"א

<sup>20</sup> See footnote # 14.

<sup>21</sup> We assume this only in the (first) answer.

<sup>22</sup> See שיעורי ר' שמואל

<sup>23</sup> See footnote # 2.

<sup>24</sup> See # 132. אוצר מפרשי התלמוד