

## דבעידנא דאסהידו עדים לאו בר קטלא הוא –

**For at the time the עדים testified he was not condemned to die**

### OVERVIEW

שמעון on Sunday, and then other עדים testified on Tuesday that that the עדים זוממין could not have seen ראובן kill on Sunday for the עדים זוממין were together with the עדים on Sunday elsewhere, and additionally the fact is (according to the עדים who are testifying on Tuesday) that שמעון killed ראובן on Monday (or the preceding Friday) but not on Sunday; the עדים זוממין are put to death because at the time of their testimony (on Monday) ראובן (the alleged killer) was not condemned to die yet). He was first condemned to die on Tuesday when the עדים testified that ראובן killed on Monday (or Friday). There is a dispute between ראובן is not a קטלא בר at the time of the testimony on Monday why תוספות and רש"י by the עדים זוממין (since he already killed; especially if he killed on Friday).

פירש הקונטרס<sup>1</sup> משום דאי הוה מודה מיפטור<sup>2</sup> -

**explained;** the reason ראובן is not a קטלא בר when the עדים זוממין testified, is **because if ראובן would have admitted** to killing שמעון before the עדים זוממין testified on Tuesday, **he would be exempt** from capital punishment.

disagrees: תוספות

ולא נראה דזה לא מצינו דאם כן כל חייבי מיתות בית דין יכול להודות ולפטור עצמו<sup>3</sup> -

**And this does not appear** to be correct; **for we do not find such a thing** that מודה should be פטור from מיתה, **for if indeed it were so, everyone who is חייב** מיתה **could admit and exempt himself** from מיתה. **בי"ד**

offers his explanation: תוספות

ונראה לפרש לאו בר קטלא הוא פירוש קודם שנגמר דינו<sup>4</sup> הוא -

**And it appears that the explanation of לאו בר קטלא הוא** means that when the first עדים testified **before his judgement was concluded [it is doubtful]**, for even though we know now that he killed, but nevertheless at the time of the testimony of the עדים זוממין there is the possibility -

דשמא לא יבואו עדים ואם יבואו עדים לא יהא עדותן קיים<sup>5</sup> -

<sup>1</sup> בד"ה מאי.

<sup>2</sup> חייב is מודה בקנס (כפל like) חייב בקנס; just as by חייב קנס to חייב מיתה compares רש"י. מיתה that if the accused admitted to his crime before the עדים testified he is exempt from מיתה.

<sup>3</sup> A person is not מחויב מיתה unless עדים warn him not to do the עבירה (killing someone) and he nevertheless does it. The murderer need for fear punishment, because as soon as he killed his victim he will go to בי"ד and admit that he killed and he will be exempt from punishment. This is unacceptable (to תוספות).

<sup>4</sup> Others amend this to read; דינו ספק הוא (instead of דינו הוא).

<sup>5</sup> We may find some contradiction in their testimony that will invalidate it.

**That perhaps עדים will not come (on Tuesday) and even if the עדים come and testify, their testimony may not be effective -**

**ועוד שאסור להורגו עד שיגמר דינו<sup>6</sup> -**

**And additionally, it is forbidden to kill the accused until judgement is passed -**

**וכשנגמר דינו<sup>7</sup> כבר ודאי בר חיובא הוא הואיל וכבר באו עדים ונתקבל עדותן וההורגו פטור:**

**However, once judgement was already passed, he is certainly considered liable for the death penalty, since witnesses came already and their testimony was accepted (and a judgement was issued), so whoever kills this person is exempt from punishment since he killed a בר קטלא (a condemned man).**

### **SUMMARY**

לאו בר קטלא therefore he is a מיתה is exempt from מודה בחיוב מיתה רש"י maintains that since at the time of the testimony of the עדים זוממים he could have been מודה and be מודה במיתה פטור. However תוספות maintains there is no such thing as פטור ממיתה, but rather he is לאו בר קטלא since there was (no קבלת עדות and) no דין גמר.

### **THINKING IT OVER**

1. Is there a scenario where there will be a difference between רש"י and תוספות whether the accused is considered a בר קטלא?

2. Why was it necessary for תוספות to write the conclusion<sup>8</sup> וכו' וכשנגמר דינו וכו'?

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<sup>6</sup> It would seem that according to רש"י he is not a בר קטלא (only) if it is actually possible for him to be exempt from חיוב מיתה. However according to תוספות (even if it is not possible for him to be actually exempt from מיתה, nevertheless) as long as there is no דין גמר for מיתה he is not considered as of yet a בר קטלא. See 'Thinking it over' # 1.

<sup>7</sup> See 'Thinking it over' # 2.

<sup>8</sup> See footnote # 7.