

## Did you come to testify

## לאסהודי אתיתו –

### OVERVIEW

The גמרא explains that in order to verify the intent of the עדים הפסולים, we ask them whether they came to testify (in which case the entire עדות is בטל), or whether they just came to see, but not to testify (in which case the testimony of the עדים כשרים is valid). תוספות takes exception with this interpretation<sup>1</sup> and offers an alternate interpretation.

תוספות asks:

קשה דאם כן לא יהרג אדם לעולם דהקרובים יבואו ויאמרו<sup>2</sup> לאסהודי אתינו<sup>3</sup> -

**There is a difficulty with this interpretation,<sup>4</sup> for if indeed this is so (that we ask the עדים הפסולים what their intent was) no person will ever be executed by בי"ד, for the relatives of the accused will come to בי"ד and claim, we have come to testify –**

תוספות offers an alternate explanation:

ופירש רבינו חיים כהן דאמרינן לעדים כשרים לאסהודי עם הפסולין אתיתו -

**And רבינו חיים explained that בי"ד asks the עדים כשרים, 'did you come to testify together with the פסולים (in which case the עדות is invalid) -**

**או למיחזי אתיתו בלא הפסולין<sup>5</sup> -**

**Or did you come to see without the פסולין' -**

**ואי אמרי הכשרים למיחזי אתינו בלא הפסולים אז לא הוי עדותן בטלה<sup>6</sup> -**

**And if the עדים כשרים say, 'we came to observe without the פסולים', then their עדות is not disqualified -**

**אפילו אם נמצא אחד מהן קרוב או פסול –**

**Even if one of the entire group of עדים was found to be a פסול או קרוב -**

**אבל אי אמרי לאסהודי אתינו עם הפסולין הוי עדותן בטילה<sup>7</sup> -**

**However, if the עדים כשרים said, 'we came to testify with the פסולין', their עדות is invalid.**

תוספות asks:

<sup>1</sup> This seems to be the interpretation of היכי בד"ה היכי.

<sup>2</sup> previously (בד"ה היכי) stated that by דיני נפשות we do not question the עדים (whether or not they are coming to testify), because if they did not warn him, it is assumed that they are not coming to testify; nonetheless, we are concerned that the קרובים will say, 'we warned him (and are coming to testify)'. See מהרש"א.

<sup>3</sup> This will disqualify the entire עדות since they are קרובים and are coming to testify.

<sup>4</sup> See 'Overview'.

<sup>5</sup> We ask the עדים כשרים who are testifying in בי"ד, 'when you observed the crime, did you intend to testify later in בי"ד (together with these other עדים who turned out to be פסולים), or did you just come to observe, but (at that time) you did not intend to testify'.

<sup>6</sup> This is so, even if the פסולים did intend to testify, as long as the כשרים merely came to observe. See אוצר מפרשי # 245. התלמוד

<sup>7</sup> This is true even if the פסולים did not intend to testify (ibid). See 'Thinking it over'.

ומכל מקום תימה קצת היאך יהיו גם העדים כשרים נאמנים לומר לאסהודי אתינן -  
But nonetheless, it is somewhat astonishing; for how can the כשרים be  
believed to say to the בי"ד after they already testified that 'we came to testify' -  
כדי לבטל העדות הו ליה כחוזר ומגיד<sup>8</sup> כיון שכבר העידו -  
In order to void the עדות, for it is like 'recanting and testifying', since they  
already testified!

answers: תוספות

ויש לומר דסברא<sup>9</sup> דכיון דבאין לבית דין עם הכשרים עכשיו -  
And one can say; that it is logical (that the כשרים intended to testify with the  
כשרים - כשרים פסולים), for since the פסולים are now coming to בי"ד together with the  
נראין הדברים<sup>10</sup> שמתחלה כולו לאסהודי קא אתו דהוכיח סופן על תחלתן:  
The matter is apparent, that initially they all came to (observe in order to)  
testify, for the end (that they are all testifying in בי"ד) proved the beginning (that  
they all observed in order to testify).

### SUMMARY

The question of עדים כשרים או למחזי אתינן (not the כשרים) and they are believed to say לאסהודי אתינן, for the logic supports them since all (the כשרים and the פסולים) came to testify

### THINKING IT OVER

What would be the ruling (according to רבינו חיים כהן) if both the כשרים and the פסולים did not initially intend to testify, is the עדות כשר or בטל?<sup>11</sup>

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<sup>8</sup> The rule is that once עדים testify in בי"ד they cannot recant their testimony. This is referred to as כיון שהגיד שוב אינו (once he testified, he cannot recant and testify differently). Here too the עדים initially testified that a capital crime was committed, for which there is a death penalty. Now they are saying that they intended to testify (with the פסולים), which voids their testimony, it is similar to חוזר ומגיד.

<sup>9</sup> The דסברא כיון הוצא דכיון (instead of דסברא כיון) amends this to read הגהות הב"ח.

<sup>10</sup> We do not rely (only) on the testimony of the כשרים that לאסהודי אתינן, but rather logic dictates and supports their claim, therefore it is not considered חוזר ומגיד. However if the כשרים say they merely came to observe, we certainly believe them, and their initial testimony is upheld. That is why בי"ד questions them.

<sup>11</sup> See 248-9 # אוצר מפרשי התלמוד.