

באומר עדות שקר העדתי – When he said; ‘I presented false testimony’

OVERVIEW

רבא said that we can establish the ruling of רב (that an עד pays proportionately) in a case where one witness recants and states, ‘I testified falsely’ (when I stated that someone owes money). In such a case the ruling of רב applies that an עד will have to pay his share for the loss he caused by his false testimony. It is not clear (which עד has to pay, and) whether the explanation of רבא is in a case where the עד\עדים were הוזמו after this admission or not.

ושוב הוזם¹ -

And then he (this עד who recanted) **was discredited** by the הזמה process.

גמרא presents (and rejects) a different interpretation of the תוספות:

לכאורה משמע² דכי³ אמר הכי משלם חלקו⁴ דאם כן בקש להפסיד ממון חבירו בעדותו -
Seemingly it would appear that if the recanting witness stated this (that he testified falsely) **he would pay his share** (even without הזמה), **for if indeed** it is true that he testified falsely, **so he attempted, through his false testimony, to cause a loss to his friend’s money.** This is how it appears (superficially) from רבא’s statement.

רבא (however) rejects this interpretation of תוספות:

ולא נראה דהא ליתא⁵ מאן דמשלם ממון אלא אם כן⁶ הוזם במקום פלוני עמנו הייתם⁷ -
But this does not appear to be correct, for there is no one who maintains **that an עד pays money** (for recanting); **unless he** (and the other עד) **was הוזם** by עדים who testify that **‘you were with us in that (other) place** so you were not able to see the

¹ See the marginal notes. Others delete these two words ושוב הוזם. Others amend it to הוזמו (instead of הוזם). This (הוזם ושוב) reflects the conclusion of תוספות as will be explained later in this תוספות. See footnote # 7.

² The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י [see ד"ה כל]).

³ The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י [see ד"ה כל]).

⁴ The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י [see ד"ה כל]).

⁵ The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י [see ד"ה כל]).

⁶ The following is the פירוש of the רמב"ן וריטב"א (and perhaps פרש"י [see ד"ה כל]).

⁷ There is never an obligation for an עד to pay because he admits to lying and tried to make the accused pay, unless there was a proper הזמה.

testimony you claim.

In summation; we cannot say that רבא meant that the עד needs to pay his share because he admitted that he testified falsely and attempted to cause a loss to the accused. The only time עדים need to pay the accused is if they became זוממין when other עדים claimed הייתם.

תוספות offers his interpretation:

לכך יש לפרש עדות שקר העדתי ושוב הוזמו⁸ שניהן⁹ -

Therefore the explanation of עדות שקר העדתי is that one עד recanted first **and afterwards both עדים were הוזמו** -

דהשתא יש לפרש¹⁰ כדאמר עדות שקר העדתי סותר עדותו¹¹ -

So now we can explain that when one עד stated עדות שקר העדתי, he is invalidating his initial testimony -

ולא שייכא ביה תורת הזמה¹² כי אם בחבירו -

So the rules of הזמה do not apply to him (since he already recanted); the הזמה applies **only by his associate** (the other עד). It is the other עד who must pay his share since he was הוזם, but not the עד who recanted since he invalidated his previous testimony, so there can be no הזמה. This was s'רבא explanation of חלקו לפי חלקו; we are referring to the עד who did not recant.

תוספות continues with the s'גמרא challenge to s'רבא explanation:

ופריך הא כל כמיניה אפילו הוא בעצמו אתי לידי הזמה דכיון שהגיד שוב אינו חוזר ומגיד¹³ -

But the גמרא asked; 'can this עד be believed' to recant his testimony?! תוספות explains; **Even if the עד himself admitted that he lied, nevertheless he can be הוזם, for since the rule is that once a witness testifies, he cannot come back and recant his testimony -**

והוי כלא סתר את דבריו¹⁴ ואם כן הו' שניהם זוממין ומשלמין ממון:

So it is considered as if he did not contradict his previous testimony, and

⁸ This is what תוספות wrote in the beginning of this תוספות. See footnote # 1.

⁹ הוזמו is effective only if both עדים were הוזמו.

¹⁰ The אמר עדים (instead of עדות) דכשאר עדות, (לפרש דכשאר עדות, אמר עדים) ה"ה.

¹¹ See 'Thinking it over' # 2.

¹² We are now assuming that we implement the זמן, ועשייתם לו כאשר זמן, only when the original עדים maintain their testimony and were הוזם. However, since this one עד recanted his testimony, the rule of זמן כאשר does not apply to him; it only applies to his friend who did not recant. See 'Thinking it over' # 1.

¹³ There is a rule (see ד"ה כיון שם) that once a witness gave his testimony he cannot change or recant his testimony (even if he subsequently admits that he was lying). We only accept his original testimony.

¹⁴ We discount his recanting and his testimony remains as it was originally. Therefore he (together with the other עד) can be הוזם.

therefore both עדים become זוממין and both pay the money. This cannot therefore be the case of עד זומם משלם לפי חלקו, since they both pay.

SUMMARY

ועשיתם לו assumed that if the עד recanted he can no longer be liable for the כאשר זמם. However, the גמרא concluded that his recanting is meaningless and כאשר applies to him as well. The גמרא did not (ever) mean that the עד should pay (without הזמה) because he recanted.

THINKING IT OVER

1. assumed that since this one עד recanted he is not בתורה הזמה.¹⁵ On the other hand תוספות maintains that both עדות have to be הוזם.¹⁶ If however one of the עדים (the one who recanted) is not בתורת הזמה, why should the other עד (who was הוזם) pay; since there was no תורת הזמה by both עדים?¹⁷

2. According to רבא's thinking that by saying שקר העדתי he is סותר עדותו;¹⁸ the rule of בטלה כולה מקצה שבתלה בטלה כולה should apply and the testimony of the second עד is also בטלה, and there can be no הזמה!¹⁹

¹⁵ See footnote # 12.

¹⁶ See footnote # 9.

¹⁷ See # 71. אוצר מפרשי התלמוד and פני יהושע.

¹⁸ See footnote # 11.

¹⁹ See # 76-78. אוצר מפרשי התלמוד.