

This one knew about the 'leap' month

זה ידע בעיבורו של חדש –

OVERVIEW

The משנה teaches us that if one witness testifies that the act took place on the second of the month and the other testifies that it took place on the third (nevertheless) it is a valid testimony. The משנה explains; for one witness (who said the second) knew the previous month was a 'leap' month and the other (who said the third) did not know it was a leap month. Therefore they do not contradict each other. תוספות has a difficulty understanding that based on this conjecture we accept their testimony even in capital crimes and execute the person! תוספות will explain that there is more supporting evidence to reconcile their statements.



והוא הדין¹ דהוה מצי למימר זה ידע בחסרונו של חדש –

And the ruling would be the same if גמרא **would have said, this one (witness) knew** that the previous month **was lacking a day** (it consisted of twenty nine days) and therefore he said the later date (the third of the month) -

וזה לא ידע דחדש שעבר חסר היה -

And this other witness did not know that the previous month was lacking a day (he thought it consisted of thirty days) and therefore he said the earlier date (by one day; the second of the month).

תוספות asks:²

והקשה רבינו יצחק בן אשר ומה אלו דייקין בהני סהדי –

And the ריב"א asks; and what if we would have investigated these witnesses and realized -

דתרוייהו ידעי בעיבורו של חדש והוי ליה עדות מוכחשת –

That both of them knew about the 'leap month', and then it would be a contradicted testimony and it would not be acceptable -

ואיך ניקום וניקטול מספיקא דהכי פריך בסמוך³ –

And so how can we act and kill the accused even though there is a **doubt** that

¹ states that this rule (if one says the second and the other says the third it is a proper עדות) is valid not only if the previous month was a מעובר (and one of the witnesses was not aware of it), but also if the previous חודש was חסר (for we assume that one עד thought it was a מעובר). See 'Thinking it over' # 1.

² See 'Thinking it over' # 5.

³ דף יב, א. Later רבא challenges אביי (who maintains that a person may be mistaken up to slightly more than an hour) that if we would investigate the עדים we may realize that the difference between שלש שעות and חמש שעות is almost three hours; so how could we punish the accused if there is a possibility of a contradiction.

perhaps there is no valid testimony against him; **for this is what** the גמרא **shortly asks** that we cannot kill a person if there is possibility that it is an עדות מוכחשת. The question of עדות is that instead of assuming that one made a mistake של חודש בעיבורו, let us investigate them and find out if this is indeed so, and if not it is an עדות מוכחשת.

anticipates a possible solution to his question:

אף על גב דבפרק בן סורר (סנהדרין סט,א) דייק מהכא⁴ –

Even though that in פרק זה בורר the גמרא infers from this משנה of אחד אומר בשנים בחדש - וכו' -

דרובא דאינשי עבידי דטעי בעיבורא דירחא⁵ –

That most people are apt to make a mistake concerning עיבור החודש, and therefore we follow the רוב, and that is why here too we are permitted to kill him on the basis of their testimony, since רוב people make this mistake, so we will assume that these עדות also made this mistake and if we will investigate them it is very likely (רוב) that they did make a mistake –

rejects this approach:

מכל מקום מה נפסיד אם נדקדק בהם –

For nevertheless what will we lose if we will investigate them? Granted that there is a רוב, but if we can ascertain it positively, that is surely preferable over a רוב. The question remains why we do not ask the witnesses if they are aware of the עיבור החודש.

answers:

ויש לומר דהכא דייקין בהו שפיר כיון דשיילי להו באיזה יום⁶ וקמיכווני ליום אחד –

And one can say; that here we indeed investigate them properly, for since we ask them on what day of the week did it occur and their testimony coincides on the same day of the week, it is therefore -

שמע מינה שזה לא ידע –

evident from this that this one (who gave the later date) **did not know** about the עדות של חודש. The answer of תוספות is that asking on which day of the week it occurred is tantamount to asking them if they are דירחא בעיבורא⁷.

⁴ The גמרא there attempted to prove from this משנה that we follow the רוב even by נפשות. This explains why in our משנה it is a proper עדות, since רוב people are טועה concerning עיבור החודש. See 'Thinking it over' # 3.

⁵ This would differentiate our case (where there is a רוב) from the case of the גמרא later when it asks דייקין (ומה אילו דייקין); for there, there is no רוב as to what they meant [whether it is בתחלת השעה or סוף השעה] (it is only a possibility), therefore we can ask דייקין, however here there is a רוב that supports this contention that they were טועה בעיבורא דירחא, therefore we can depend on this רוב and not be מדייק. However, תוספות rejects this line of reasoning.

⁶ There are seven חקירות; one of them is that we ask them on which day of the week did the incident occur.

⁷ See 'Thinking it over' # 2.

דיני by רוב in גמרא anticipate a difficulty; how can the prove that we follow the רוב by דיני בקי, perhaps the reason we kill him is because we ascertain with certainty that one was not נפשות by verifying the day of the week?!

replies: תוספות

ומכל מקום שפיר מוכיח בן סורר (שם) מהכא דאזלינן בתר רובא בדיני נפשות –

But nevertheless the משנה properly infers from this גמרא in סורר that we follow the רוב even in נפשות; the רוב in this case being that -

דרובא טעי בעיבורא דירחא דאי לא אזלינן בתר רובא –

Most people are mistaken about דירחא; for if we would not follow the רוב by דיני נפשות, then -

כיון שזה אומר בשנים וזה אומר בשלשה מיד הוא ליה מוכחשין –

As soon as one said the second of the month and the other said on the third of the month (and if we do not follow the רוב who are דירחא טעי, since it is דיני נפשות, then) they immediately become contradictory witnesses -

וכי הדר מכוונים ליום אחד הוא ליה חוזר ומגיד⁸ –

And the fact that later they coincide to one day, that is considered a reversal of testimony which is not accepted.

proves that when there is no רוב and they contradict each other, the עדות cannot be resurrected on the basis of a later coinciding.

תדע דהא אחד אומר בג' ואחד אומר בה' עדותן בטלה אף על פי שמכוונים ליום אחד –

You will know that this is so, for if one witness claims it happened on the third of the month and the other claims on the fifth, their testimony is nullified even though that subsequently they coincide as to the same day of the week; nevertheless it is meaningless -

ולא אמרינן דטעו בשני עיבורים דבתרי עיבורי לא טעו אינשי וחשבינן להו חוזר ומגיד:

And we do not say that perhaps they made a mistake concerning two עיבורים (since they agree as to the weekday) and therefore they are two month days apart. The reason we do not assume so is because people are not mistaken concerning two עיבורים (only one עיבור) and we consider them as revising their testimony. Their first testimony which was two days apart indicates that their testimony is contradictory (for there is no רוב which can reconcile it); when they later offer the same weekday, we consider it a new and different testimony. Witnesses, however, cannot revise their testimony.

⁸ Once עדים offer their testimony they cannot reverse it. If there is no רובא דטעי, then their contradictory testimony cannot be revived. However if there is a רובא דטעי, then when they said ב' וג' respectively there was no contradiction, and when they were ליום אחד, that is considered as if we verified it positively that they were indeed טעי בעיבורא דירחא.

SUMMARY

A contradictory testimony (זה אומר בג' וזה אומר בה') cannot be reconciled by a subsequent testimony (יום אחד בשבוע), for it is considered חוזר ומגיד. However if the initial contradictory testimony (זה אומר בב' וזה אומר בג') can be reconciled on its own by assuming the רוב people make this error (רובא טעי בעיבורא דירחא), the testimony is not considered contradictory (הולכין אחר הרוב בדיני נפשות), and is accepted if it is later verified that indeed it was not contradictory (by מכוונים ליום השבוע).

THINKING IT OVER

1. Is it more likely to mistake a חודש חסר for a חודש מעובר than to mistake a חודש מעובר for a חודש חסר?⁹
2. Instead of asking the עדים in which weekday it occurred, let בי"ד ask them if they are aware of קביעות החודש?¹⁰
3. רובא דאינשי עבידי דטעו בעיבורא דירחא גמרא which states that תוספות cites the גמרא which states that רובא דאינשי עבידי דטעו בעיבורא דירחא; does that mean that most people make a mistake concerning עיבור החודש?! In the case of עיבור החודש there are two options either it was מעובר or it was not. It is difficult to assume that when there are two choices, we should assume that most people make the wrong choice!¹¹
4. In the חקירות of עדים do they ask first, in which day of the week did it occur, or in which day of the month?¹²
5. Is there a connection between the beginning of תוספות (that והוא הדין concerning ומה אילו דייקנן) and the subsequent question of (לא ידע בחסרון של חודש)?¹³

⁹ See צל"ח.

¹⁰ See חתם סופר.

¹¹ See ברכת אברהם (ענף א' אות ג).

¹² See פנ"י.

¹³ See אור חדש.