

Rather, אלא אמר רבא לדברי רבי מאיר אדם טועה ב' שעות חסר משהו –
said; according to ר"מ a person errs slightly less than two hours

OVERVIEW

רבא expands the margin of error according to (both ר"י and ר"מ) (respectively). argues that while this explains the reason why according to ר"מ they are believed in the case of ג' וג'; however the same logic should dictate that they be believed even by ג' וזה.



asks: תוספות

ואם תאמר אם כן אחד אומר בג' וא' אומר בה' אמאי עדותן בטילה –
And if you will say; if this is so, that a person errs (up to) slightly less than two hours, then if one says it occurred in the third hour and one says in the fifth, why is their testimony nullified according to ר"מ -

נימא דעובדא ברביעית¹ הוה² –

Let us say that the incident occurred in the fourth hour and neither of them is erring more than ב' שעות חסר משהו.

answers: תוספות

ויש לומר דסבר רבא דאין לתלות הטעות בשניהם –
And one can say; that רבא maintains that we cannot ascribe the error to both witnesses. It is highly unlikely that both witnesses erred. It is more likely that only one of them erred.³

asks an additional question: תוספות

אך יש להקשות אחד אומר בג' וא' אומר בה' אמאי עדותן בטילה –
However one can ask; when one says בג' and the other says בה', why is their testimony nullified -

¹ Each one erred approximately more than an hour and less than שעות חסר משהו (maximum). The one that said ג', even if he meant ג' בתחלת ג' there is less than a two hour error, and the same with the עד who said חמש even if he meant חמש בסוף חמש it is also less than שעות חסר משהו.

² In the case of ג' וג' their testimony is accepted, because we assume that an honest error in judgment was made. Even though we have no way of proving that it is an honest error, we nevertheless assume so, since the witnesses seem to corroborate each other in all other aspects [and they have a כשרות]. The same should hold true by ג' וזה that we should assume that the incident took place ד' בשעה ד' [for we have no way to prove that it did not occur בשעה ד'], and both עדים made an honest error in judgment.

³ Therefore it possible than the עד who said בג' was correct and he meant ג' בתחלת ג' and the עד who said בה' is off by more than ב' שעות חסר משהו (or vice versa).

אילו דייקת בהני סהדי דילמא האי דקאמר בג' בסוף ג' –

For if we would scrutinize these witnesses perhaps the one who claimed 'בג' meant at the end of 'ג' and the one who said בה' meant sometime during ה' (before ה' סוף ה'), which is less than ב' שעות חסר משהו. The עדים should be crossed examined (again) and if the discrepancy is less than ב' שעות חסר משהו we should uphold their testimony and administer the appropriate punishment.

תוספות answers:

ויש לומר דלהחמיר ולקיים עדותן לא בדקינן להו⁴:

And one can say; we do not scrutinize the witnesses in order to uphold their testimony and be strict with the defendant. We therefore assume that (at best) both of them are referring to either תחלת השעה וכו' or סוף השעה ג' (or תחלת שעה ה' and סוף שעה ה') and there is a discrepancy of more than ב' שעות חסר משהו

SUMMARY

When two witnesses testify different times we assume that one is exact and the other errs; we do not assume that they are both in error. We do not attempt to reconcile the apparent contradictory testimony of עדים (by scrutinizing the witnesses) to be stringent with the defendant.

THINKING IT OVER

1. Why does not תוספות ask a similar question on the א"ד of אביי according to ר"י that a person is טועה שעה ומשהו? Why does ר"י merely state they are believed if it was בג' וה', they should be believed even if they said ב' וה'? The incident happened in the beginning of שעה ד', the one who said ב' meant בסוף ב' and the one who said ה' meant בתחלת ה' and both are טועה שעה ומשהו!⁵

2. Is the second answer of תוספות (that להחמיר לא בדקינן להו), an (additional) answer for the first question as well?⁶

3. Why, on one hand, תוספות assumes that we are not בודק להחמיר, and on the other hand we are [לחומרא] מכשיר עדים (when זה אומר בב' וזה בג' וכו') because

⁴ The scrutiny is used for the purpose of discrediting the witnesses; not upholding them in a manner which will result in meting out punishment for the defendant. The תורה writes (במדבר [מסעי] לה, כד-כ"ה) that ושפטו העדה והצילו that we are to judge in a lenient (not a stringent) manner. See תוספות הרשב"א.

⁵ See צל"ח and מהרש"א [הארור].

⁶ See תוספות הרא"ש הערה 2.

מדויק and not תולה בטעות לחומרא we assume there is an honest mistake? Why are we לחומרא in their testimony⁷

⁷ See אור החמה.