

לרבי מאיר יהבינן להו מתחילת שעה ראשונה עד סוף ה' –

According to ר"מ we grant them from the beginning of the first hour until the end of the fifth hour

OVERVIEW

The גמרא explains how the process of ¹הזמה will work now that we assume that the עדים may err in their perception of time. In the case where one עד said the incident took place בב' and the other בג', we can be מזים these עדים, only if the המזימים claim that the initial עדים were with them the entire time, including the time allotted for a possible error. According to ר"מ who maintains (in the view of רבא) that people err משהו ב' שעות חסר משהו, then the מזימים must testify that the מוזמים were with the מזימים from ה' עד סוף ה'. In that case even if each עד erred the maximum possible (which is ב' שעות חסר משהו) they are still ²מוזם. Our תוספות challenges this assumption and argues that perhaps even in this case there should be no הזמה.



תוספות asks:

הקשה רבינו יצחק בן אשר אמאי לא נתלה הטעות במזימים –

The ריב"א asks; why do we not ascribe the error to the מזימים –

וכשאומרים המזימים עמנו הייתם עד סוף ה' נאמר שטעו וקרו לד' ה' ³ –

That when the מזימים testified 'you were with us until the end of the fifth hour', let us assume that the מזימים erred and they referred to the fourth hour as the fifth hour. In reality the המזימים are claiming that the המוזמים were with them until the end of the fourth hour –

והמעשה היה בה' ⁴ ולא יהיו מוזמים בכך –

And the incident actually occurred on the fifth hour and therefore the initial עדים

¹ The הזמה is the process in which the testifying עדים are totally repudiated and receive the punishment they intended to mete out to the defendant. That is when a second group of עדים (hereinafter referred to as the 'מזימים') testify that the initial עדים (the מוזמים) could not have seen the incident at the alleged time and place, for at that very precise time the מוזמים were together with the מזימים in a different place altogether.

² The one that said ב' could not have meant before א' [since people do not mistake between night (before א') and day (from א' onwards)]. The עד that said ג', could not have meant before א' or after ה' סוף, because no one errs more than ב' שעות חסר משהו. Therefore when the מזימים claim הייתם עמנו from ה' עד סוף ה', שעה א' עד סוף ה', they include all possible errors the מוזמים can make.

³ עדים can certainly err in one hour. See 'Thinking it over' # 2 & 3.

⁴ תוספות differentiates between accepting the testimony of the עדים (where we say that two עדים do not err) and protecting the עדים from הזמה (where we claim that both עדים erred). See יד אברם ענף ג אות יג, יד.

will not be מוזם by the testimony of the עדים המזימים, because it is possible that the one who said 'בג' meant 'בה' and the מזימים claim הייתם עמנו only until ד' (if we ascribe the error to the מזימים [as well]).

ונהי שהעדוֹת מוכחשת היא שהרי אותו שאמר שתים לא היה יכול לטעות עד ה' –

And granted that the testimony will be contradictory for the עד that claims the incident happened in the second hour could not have erred until the fifth hour and therefore he is contradicting the עד who says בשלש (who we interpret to mean 'בה') and their עדות will be discarded, but –

מכל מקום מוזמים לא יהיו –

Nevertheless the initial עדים will not be מוזמים; we will not implement the rule of ועשיתם⁵. They will receive no punishment.⁵

answers: תוספות

ואומר רבינו יצחק דלא תלינן הטעות כלל⁶ בשני עדים כדפרישית לעיל⁷:

And the ר"י answers; that we do not ascribe at all an error for two witnesses as I have explained previously; we ascribe an error only to one עד, not both. Here we would have to assume that both המזימים erred when they said 'עד סוף ה', for they meant 'עד סוף ג'.

SUMMARY

We do not assume that both עדים err; only one.

THINKING IT OVER

1. When one says 'בב' and the other 'בג', why is קיימת עדותן?⁸ Let us assume that the incident happened after 'ג' שעה (but within שעות חסר משהו of 'ג' שעה), and therefore the עד who claims 'בב' is disqualified because his error is more than 'ב' שעות חסר משהו!⁹

⁵ The rule of ועשיתם applies only to עדים זוממין not to עדים המוכחשין.

⁶ Perhaps תוספות intends to emphasize (with the word כלל) that even in this case where the מזימים made the same error, 'ה' instead of 'ד' (not as in the previous תוספות where the error of both עדים was in different directions; one later the other earlier), nevertheless we never ascribe an error to both עדים (אור החמה). Alternately; even in the case of the מזימים where they were not intent on testifying to any specific act (as opposed to the מוזמים who intended to testify what they saw), nevertheless two עדים do not err (חת"ס).

⁷ On this עמוד in ד"ה אלא. The reason the מזימים must testify הייתם עמנו from 'א' שעה until 'ה' (even though both מזימים cannot err as תוספות claims), because we are not sure if the error is by the עד of 'ב' (then עד ד' would be sufficient) or by the עד of 'ג' (which requires 'ה' עד סוף ה').

⁸ Just as by הזמה we assume a maximum error, the same should apply to their initial testimony.

⁹ See footnote # 4.

2. תוספות asked that perhaps the מזימין erred and they meant 'סוף ד'. The מזימים claim that the מזומים were with them for five hours. The errors that are allowed are errors as to what time it is, but where do we find an error as to the duration of an incident?!¹⁰

3. Why did not תוספות ask that perhaps the מזימים erred משהו בב' שעות חסר and they meant 'בד' and the incident happened בסוף ג'¹¹

¹⁰ See אור חדש and מהרש"ל ל.

¹¹ See אור החמה and מהרש"א א (הארוך).