

But rather, they were insinuating hints

אלא דקמרמזי רמוזי –

OVERVIEW

asked, why is there a difficulty only if we maintain גברא לייעודי, there is a similar difficulty even if we maintain תורא לייעודי for the third set of עדים can claim that we only came to obligate him for a ה"נ. The גמרא answered that the different sets of witnesses were making gestures and hinting to each other, therefore they cannot claim they did not want to make him a מועד for there is an apparent collusion between the witnesses. Our texts read דקמרמזי רמוזי¹; in other texts it reads גירסא אלא דקמרמזי רמוזי. Our תוספות discusses this last

לפי הספרים דגרסי אלא² משמע דבעי לאוקמי הכא נמי דקמרמזי רמוזי³ -

According to the texts that read, אלא דקמרמזי רמוזי, it seems that the גמרא wants to establish here too (by לייעודי גברא) that they were hinting -

וניחא אפילו אי לייעודי גברא וכגון שבכל שלשה ימים באו אלו עם אלו וקמרמזי -

So the ברייתא will be understood even if we maintain גברא לייעודי, where for instance that in all the three days where a different set of עדים came to testify, these other two sets of עדים came to ביד with this set that testified and they were hinting to each other.

responds to an anticipated difficulty:

ולא ברמיזה כההיא דהניזקין⁴ דהתם מיירי ברמיזה גרועה דלאו מילתא היא -

¹ רש"י בד"ה ה"ג דקא explains that this justifies the view of תורא לייעודי only; for they all came to ביד in one day and were hinting to each other. [However if we maintain לייעודי גברא they came on three separate days, so there can be no collusion.]

² If we are not גורס the word אלא the conversation of the גמרא is as follows; the גמרא says that the ברייתא is difficult if we maintain גברא לייעודי; and רב כהנא asks, 'and is the ברייתא understood if we maintain תורא לייעודי?' The גמרא answers it is understood if we maintain תורא לייעודי since דקמרמזי רמוזי. We continue with the original assumption, that the ברייתא is understood if we maintain תורא לייעודי, but not if we maintain גברא לייעודי. See footnote # 1.

³ The thrust of רב כהנא's question (and answer) according to תוספות is as follows. רב כהנא asked, you say that there is a difficulty if we maintain גברא לייעודי, but there is a similar difficulty even if we maintain תורא לייעודי, so your only option (to explain תורא לייעודי) is to say that they were hinting at each other; in that case we can even establish the ברייתא according to לייעודי גברא and they were also hinting at each other, as תוספות continues to explain. The word 'אלא', indicates that we reject the initial assumption that the ברייתא is not understood if we maintain גברא לייעודי.

⁴ This should read דהנזקין (instead of דהניזקין); it is in סנהדרין פ"ב. The גמרא there says that if there were witnesses that a person sold another person (and they were הוים) they do not get killed, even if the עדי גניבה came later and both sets of עדים (the עדי מכירה and the עדי גניבה) were hinting at each other, nevertheless we do not kill the עדי מכירה, for the accused could have said (when only the עדי מכירה testified, before the עדי גניבה came), 'I sold my slave' (and he would not be מהויב מיתה), therefore the עדי מכירה alone did not testify to a capital offense. In any event it appears from that גמרא that hinting is no proof of collusion, this contradicts with our גמרא. See 'Thinking it over' # 1.

And the hinting here is not like the hinting in פרק הנחנקין, for there we are discussing an inferior hinting, which is meaningless; however here it was very obvious from their hinting that all three כתי עדים were in collusion.⁵

תוספות offers an alternate distinction:

אי נמי דיני נפשות שאני -

Or you may also say that capital offenses are different, and any type of hinting is insufficient to give the death penalty, however by monetary cases, (this same type of) hinting is a sufficient cause to make them pay.

תוספות concludes (based on the 'אלא'):

וכל הנך שנויי בתראי⁶ אתו נמי⁷ ליעודי גברא:

And all the following answers in the גמרא, which explain the ברייתא if we maintain ליעודי תורא, **are also appropriate** answers if we maintain ליעודי גברא.

SUMMARY

The (three) answers of the גמרא (beginning with [אלא] דקמרמזי רמוזי) explain the ברייתא even if we maintain ליעודי גברא. Hinting to each other is sufficient evidence of collusion to make witnesses pay and maybe even to receive capital punishment.

THINKING IT OVER

1. Seemingly we cannot compare the cases of מועד and נפש מכירת נפש.⁸ By מועד their claim to avoid the כאשר זמם is that they did not know they were making him a מועד [but their testimony can make him into a מועד], which is disproved by דקמרמזי רמוזי. However, there the עדי מכירה claim that they never testified to a capital offense since the defendant can claim מכרתי, so there was never any testimony at all.⁹

2. What is the difference between the answer of רמוזי and the answer of רצופין?

⁵ In our case the fact that they all came each day (even though two sets of עדים had no business in בי"ד on each day) indicates some type of collusion (but insufficient on its own to convict them); when you add the fact that they were hinting to each other, this makes the proof of collusion conclusive. However there the fact that the עדי גניבה ועדי מכירה were together in בי"ד does not indicate any impropriety, therefore the hinting alone is inconclusive to prove collusion.

⁶ The גמרא offers two more תירוצים (besides the answer of רמוזי); one answer is that they came רצופים, and another answer is that they only recognize the owner of the ox but they do not recognize the ox.

⁷ באו maintains (בד"ה רב אשי) that the answer of רצופים applies only תורא ליעודי; however תוספות maintains that רצופים means that all three sets of witnesses came each day and each set heard the others testify on their day. See 'Thinking it over' # 2. Regarding the last answer of מכירין, see the following במכירין תוס' ד"ה במכירין.

⁸ See footnote # 4.

⁹ See # 29. אוצר מפרשי התלמוד.