

**ואין אדם משים עצמו רשע –**

**And a person cannot commit himself as being wicked.**

**OVERVIEW**

עדים (אין כת"י יוצא ממק"א) if the claim that they are not believed to be פוסל the שטר. The reason that we do not accept their testimony that they were אונס ממון is because it is forbidden to sign on a שטר on account of an אונס ממון. A person is not believed to testify anything that will make him a רשע. The fact that a person is considered a relative to himself prevents us from accepting any testimony affecting his status (except for an admission of owing money). We cannot therefore accept the testimony that they were אונסים ממון. If however they claim אונסים היינו מחמת נפשות, where they are not testifying in regards to their status (there is no עבירה if one signed אונס נפשות), they are believed to be פוסל the שטר (for there is a הפה שאסר).

The statement of אונסים היינו מחמת ממון (seemingly) composed of two parts; first, that they were forced to sign the שטר (meaning that they did not see any loan taking place, and therefore their signatures are meaningless [this alone can be an acceptable testimony (if it was נפשות)]), and second, that the coercion was monetary in nature [this is not an acceptable testimony for א"א מע"ר].

There are other cases where an עד testifies in a manner that is seemingly (partially) unacceptable (similar to our case), however we divide this (unacceptable) testimony into two, and accept only the valid part, and reinterpret the invalid part to allow the testimony. The resultant testimony is then accepted. This is known as פלגינן דיבורא. We divide the testimony. Seemingly in our situation the idea of פלגינן דיבורא can (also) be applied. However it is not. פלגינן תוספות will differentiate our case from those cases where we do say פלגינן דיבורא.

asks: תוספות

ואם תאמר והא קסבר רבא פלגינן דיבורא בפרק קמא דסנהדרין (דף ט,ב ושם) –

**And if you will say; but רבא maintains in the first פרק of סנהדרין that we divide his statement.** This was said by רבא –

**גבי פלוני רבעני לרצוני –**



**And one can say since the necessity to authenticate documents is a rabbinic enactment;** עדים החתומים על השטר נעשה כמי שנחקרה עדותן מן התורה we assume that **we do not divide their statement in order to invalidate the שטר.**<sup>6</sup> The testimony of these עדים, as given, is unacceptable since א"א מע"ר. The שטר is מקויים מן התורה. The חכמים will not use the extraordinary measure of דיבורא to invalidate this קיום.

תוספות offers another answer:

– **ועוד דאין לנו לומר מעצמינו דאנוסים היו מחמת נפשות** –

**And furthermore** our case of היינו אנוסים is different than פלוני רבעני **for we cannot claim on our own that they were forced under a death threat** –

– **דאונס מחמת נפשות לא שכיח כדפרישית**<sup>7</sup> –

**For it is uncommon to coerce** witnesses to sign a loan document **with a death threat, as I previously explained** –

– **אבל התם שכיח שבא על אשת איש אחרת כמו שבא על אשתו או שרבעו<sup>8</sup> אדם אחר** –

**However, there** by פלוני בא על אשתי or פלוני רבעני לרצוני **it is just as common that the alleged perpetrator came upon another man's wife just as he came upon his wife, or that he sodomized another person** not the accuser. תוספות answer is that we can say דיבורא only when the reinterpreted version is as likely a the original (as in סנהדרין). If however the reinterpreted version is highly unlikely (as in our גמרא) we do not say דיבורא.

– **וכן בהרגתו בסוף פרק ב' דיבמות**<sup>9</sup> (דף כה,ב ושם) **יכול להיות דאדם אחר הרגו** –

**And similarly by the case of 'I killed him' in the end of the second פרק of פרק ב' דיבמות**; **for it is just as possible that another person (not the עד) killed him.** It is just as שכיח, therefore we say דיבורא.

תוספות offers yet another solution:

– **אי נמי שאני הכא דמחמת ממון או מחמת נפשות הוי פירושא דאנוסים היינו** –

**If you wish you may also say that here** by היינו אנוסים **it is different** than there

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קיום that they are believed if they say מחמת נפשות (because of the שאסר); however the הפה שאסר will not be effective if we require the additional הידוש of פלגינן as well.

<sup>6</sup> This answer may be more readily understood if we assume that הרי אלו נאמנים means merely that the שטר is not מקויים [but not that it is destroyed, see תוד"ה הרי footnote # 1]. The חכמים did not institute a פ"ד since even if they are believed it will merely be a שטר without קיום, which is כשר מה"ת. See וצ"ע ב, וצ"ע.

<sup>7</sup> See previous מחמת ד"ה תוספות (by footnote # 5).

<sup>8</sup> The שרבעו is רש"י (not שרבעו). The פלגינן is not that it was לאונסי (instead of לרצוני), but rather that he was רבע another person; not the עד. See footnote # 10.

<sup>9</sup> The גמרא there infers from the משנה that if a person claims 'I killed him', the wife of the alleged victim is permitted to remarry. In that case there is also the issue of א"א מע"ר and nevertheless we permit her to marry only on the basis of דיבורא.

by פלוני רבעני וכו' **for their statement of 'on account of money' or on account of a death threat'**; these phrases **are the explanation of 'we were forced'**. It is not a separate statement; it is a necessary qualifier to explain how they were coerced –

– הלכך לא פלגינן דיבורא –

**Therefore we cannot divide their statement;** for there is only one statement –

– אבל לרצונו<sup>10</sup> או בא על אשתו הוי דיבור בפני עצמו<sup>11</sup> –

**However,** the addendum of **'willfully'** (which makes him a רשע) by פלוני רבעני, or **'came upon his wife'** by על אשתו בא על פלוני, these phrases **are considered a separate statement** not intrinsically tied with the initial statements. Therefore (only) in those situations (do) we say דיבורא.

תוספות offers a final distinction between the cases:

– אי נמי<sup>12</sup> הכא עיקר עדות הוא במה שאומרים אנוסים היינו –

**If you wish you may also say that here the main testimony consists in their saying that אנוסים היינו –**

– היינו שבאו לומר שלא ראו המלוה –

**Which means, that they came to testify that they did not see the loan take place –**

– אם כן מיד עושים עצמם רשעים כיון שחתמו אם לא יעשו פירוש לדבריהם –

**If this is so** that they are testifying that we signed a document illegally **they immediately commit themselves as being רשעים, since they signed on a document without knowing whether it is true, unless they interpret their actions** (that they signed it because they were נפשות מחמת נפשות) –

– הלכך לא שייך הכא פלגינן דיבורא –

**Therefore the concept of פלגינן דיבורא dos not apply here,** since in the main thrust of their testimony they become רשעים –

– אבל ההיא דהרגתיו<sup>13</sup> עיקר עדות הוא לומר שנהרג להשיא את אשתו –

**However, by that case of 'הרגתיו' the main thrust of the testimony is to testify that the husband was killed (not who killed him), in order to enable his wife to remarry –**

– וכן פלוני רבעו או בא על אשתו עיקר עדות להרוג פלוני –

**And similarly in the cases of פלוני רבעו or על אשתו בא the main thrust of the**

<sup>10</sup> According to the גירסא of the רש"ש (see footnote # 8) תוספות should not have said 'לרצונו', but rather 'שרבענו'.

<sup>11</sup> The claim of אנוסים requires a qualifier intrinsically. How did the אנוס take place? We are not פלגינן an intrinsic qualifier. The claim of רבעני does not require an intrinsic qualifier. The act of רביעה, or בעילה with an א"א, is sufficient grounds for חיוב מיתה. The qualifier is merely completing a statement.

<sup>12</sup> See 'Thinking it over' # 2.

<sup>13</sup> תוספות asks first from 'הרגתיו' for that seems most similar to אנוסים. He begins by saying 'I killed him'.

testimony is to kill him; in the main thrust there is no משים עצמו רשע –

הלכך פלגינן דיבורא<sup>14</sup> ולגבי להשים עצמו רשע או לגבי אשתו לא יהא נאמן:

**Therefore we divide his testimony; concerning making himself a רשע** (through saying הרגתיו or רבעני לרצוני) **or concerning his wife** (that she was an adulteress) **he will not be believed** and we are פלגינן דיבורא.

### SUMMARY

פלגינן דיבורא offers four criteria for accepting or rejecting תוספות.

- a) If it does not go against a דאורייתא, but not if it is against a דאורייתא.
- b) If the פלגינן is שכיח, not if it is not שכיח.
- c) If the unacceptable statement is not integral, but not if it is integral
- d) If the thrust is acceptable, but not if it is unacceptable.

### THINKING IT OVER

1. פלגינן דיבורא asks that here too there should be a דיבורא.<sup>15</sup> Seemingly, there is a דיבורא by פלגינן דיבורא. We believe them that כתי"י הוא זה, but we do not believe them that אנוסים היינו!<sup>16</sup>

2. What is the difference between תוספות answer of א"נ שאני הכא דמחמת ממון וכו' and תוספות final answer<sup>17</sup> א"נ הכא עיקר עדות וכו' and פירושא וכו'?

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<sup>14</sup> We accept his main testimony to kill the perpetrator or allow the woman to remarry; and in order that his testimony not be discredited since he also stated certain aspects which made him a רשע we are פלגינן דיבורא.

<sup>15</sup> See footnote # 3.

<sup>16</sup> See סוכ"ד אות צא.

<sup>17</sup> See footnote # 12.

<sup>18</sup> See דרכי דוד.