**ואין אדם משים עצמו רשע –**

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

Overview

רבי בר חמא taught that (even in a case where אין כת"י יוצא ממק"א) if the עדים claim that כת"י הוא זה אבל אנוסים היינו מחמת ממון they are not believed to be פוסל the שטר. The reason that we do not accept their testimony that they were אנוסים מחמת 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 אנוסים מחמת ממון. If however they claim אנוסים היינו מחמת נפשות, where they are not testifying in regards to their status (there is no עבירה if one signed מחמת אונס נפשות), they are believed to be פוסל the שטר (for there is a הפה שאסר).

The statement of אנוסים היינו מחמת ממון is (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 מחמת 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. תוספות will differentiate our case from those cases where we do say פלגינן דיבורא.

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תוספות asks:

**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 –**

**Regarding** the cases where one testified **‘that person sodomized me with my consent’;** the law is that he can team up with another עד and have this perpetrator put to death for משכב זכר.[[1]](#footnote-1) We split his statement. We accept his testimony that sodomy was performed by the alleged perpetrator but not with the accuser.[[2]](#footnote-2) We cannot accept his testimony that he preformed sodomy willingly, for אין אדם משים עצמו רשע.A similar ruling applies when he testifies -

**ופלוני בא על אשתי –**

**Or ‘that person came upon my wife’.** The ruling is that together with another supporting עד, the accused will be killed for איסור אשת איש; however the wife of the accuser will not be killed even if he testifiedthat she consented. The reason is that he is a relative to his wife and a relative cannot testify. There too, we split his testimony. We accept his עדות concerning the adulterer, that the man committed adultery, but not concerning his wife. This is called פלגינן דיבורא. We accept that part of the testimony which is acceptable. תוספות continues with the question:

**אם כן הכא נהימנו דאנוסים היו אבל לא מחמת ממון אלא מחמת נפשות –**

**If this is so** that רבא maintains פלגינן דיבורא, then **here** too **let us believe them that they were coerced** to sign the שטר (which is an acceptable testimony), **however it was not for monetary** reasons as they testified (which is an unacceptable testimony since they are משים עצמם רשעים) **but rather on account of** saving their **lives** (which is an acceptable testimony).

We cannot argue that our גמרא does not subscribe to פלגינן דיבורא[[3]](#footnote-3) –

**דאליבא דרבא קיימא[[4]](#footnote-4) –**

**For we are following the view of רבא!** He is the one who maintains פלגינן דיבורא. תוספות is asking why by פלוני רבעני לרצוני which is an unacceptable testimony, for he is משים עצמו רשע by saying רבעני לרצוני, nevertheless we accept פלוני רבע, (and we reinterpret רבעני לרצוני to mean רבע לפלוני). The same should be here where they testify אנוסים היינו מחמת ממון (which is an unacceptable testimony, for they are משים עצמם רשעים by saying מחמת ממון). Let us also accept only the אנוסים היינו, and reinterpret מחמת ממון to mean מחמת נפשות as we did by פלוני רבעני לרצוני. The שטר would then be פסול.

תוספות answers:

**ויש לומר כיון דקיום שטרות מדרבנן לא פלגינן דיבורא כדי לפסול את השטר[[5]](#footnote-5) -**

**And one can say since** the necessity **to authenticate documents is a rabbinic enactment**; מן התורה we assume that עדים החתומים על השטר נעשה כמי שנחקרה עדותן בבי"ד and no קיום is required. Therefore, since this שטר is מקוים מן התורה **we do not divide their statement in order to invalidate the שטר.[[6]](#footnote-6)** 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 פלגינן דיבורא to invalidate this קיום.

תוספות offers another answer:

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

**And furthermore** our case of אנוסים היינו 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[[7]](#footnote-7) -**

**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[[8]](#footnote-8) אדם אחר –**

**However, there** by פלוני רבעני לרצוני or פלוני בא על אשתי **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 פלגינן דיבורא only when the reinterpreted version is as likely a the original (as in מס' סנהדרין). If however the reinterpreted version is highly unlikely (as in our גמרא) we do not say פלגינן דיבורא.

**וכן בהרגתיו בסוף פרק ב' דיבמות[[9]](#footnote-9) (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** מסכת **יבמות**; for **it is** just as **possible that another person** (not the עד) **killed him**. It is just as שכיח, therefore we say פלגינן 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 אנוסים היינו **it is different** than there 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[[10]](#footnote-10) או בא על אשתו הוי דיבור בפני עצמו**[[11]](#footnote-11) **-**

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

תוספות offers a final distinction between the cases:

**אי נמי[[12]](#footnote-12) 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 אנוסים 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[[13]](#footnote-13) 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 בא על אשתו the main** thrust of the testimony **is to kill him;** in the main thrust there is no משים עצמו רשע –

**הלכך פלגינן דיבורא[[14]](#footnote-14) ולגבי להשים עצמו רשע או לגבי אשתו לא יהא נאמן:**

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

Summary

תוספות offers four criteria for accepting or rejecting פלגינן דיבורא.

1. If it does not go against a דאורייתא, but not if it is against a דאורייתא.
2. If the פלגינן is שכיח, not if it is not שכיח.
3. If the unacceptable statement is not integral, but not if it is integral
4. If the thrust is acceptable, but not if it is unacceptable.

Thinking it over

1. תוספות asks that here too there should be a פלגינן דיבורא.[[15]](#footnote-15) Seemingly, there is a פלגינן דיבורא by אנוסים היינו. We believe them that כת"י הוא זה, but we do not believe them that אנוסים היינו![[16]](#footnote-16)

2. What is the difference between תוספות answer of א"נ שאני הכא דמחמת ממון וכו' הוי פירושא וכו'’, and תוספות final answer[[17]](#footnote-17) א"נ הכא עיקר עדות וכו'?[[18]](#footnote-18)

1. If the accuser testifies that he was coerced into sodomy then all agree that he is believed. There is no need for פלגינן דיבורא. [A victim can be an עד.] [↑](#footnote-ref-1)
2. See תוספות there ד"ה ואין. [↑](#footnote-ref-2)
3. See ‘Thinking it over’ # 1. [↑](#footnote-ref-3)
4. רבא challenged the initial understanding of רב"ח; presumably רבא agrees with the conclusive understanding of רב"ח that אנוסים היינו מחמת ממון is not believed even if אין כת"י יוצא ממק"א. [↑](#footnote-ref-4)
5. מדאורייתא the עדים would not be believed to be פוסל the שטר in the רישא even if they said אנוסים מחמת נפשות, because since there is no need for קיום, there is no מיגו (it is as if כת"י יוצא ממק"א). It is only מדרבנן who require קיום that they are believed if they say מחמת נפשות (because of the הפה שאסר); however the הפה שאסר will not be effective if we require the additional חידוש of פלגינן as well. [↑](#footnote-ref-5)
6. This answer may be more readily understood if we assume that הרי אלו נאמנים means merely that the שטר is not מקוים [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 סוכ"ד אות צ"ב, וצ"ע. [↑](#footnote-ref-6)
7. See previous תוספות ד"ה מחמת (by footnote # 5). [↑](#footnote-ref-7)
8. The רש"ש is גורס 'שרבע' (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. [↑](#footnote-ref-8)
9. 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 פלגינן דיבורא [↑](#footnote-ref-9)
10. According to the גירסא of the רש"ש (see footnote # 8) תוספות should not have said 'לרצונו', but rather 'שרבעו'. [↑](#footnote-ref-10)
11. The claim of אנוסים requires a qualifier intrinsically. How did the אונס 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. [↑](#footnote-ref-11)
12. See ‘Thinking it over’ # 2. [↑](#footnote-ref-12)
13. תוספות asks first from 'הרגתיו' for that seems most similar to אנוסים. He begins by saying ‘I killed him’. [↑](#footnote-ref-13)
14. 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. [↑](#footnote-ref-14)
15. See footnote # 3. [↑](#footnote-ref-15)
16. See סוכ"ד אות צא. [↑](#footnote-ref-16)
17. See footnote # 12. [↑](#footnote-ref-17)
18. See דרכי דוד. [↑](#footnote-ref-18)