



Yevamos Daf Chaf Hei

"PALGINAN DIBURAH"

ביבמות דף כ"ה. במשנה, מת, הרגתיו, הרגנוהו, לא ישא את אשתו. רבי יהודה אומר הרגתיו לא תנשא אשתו, הרגנוהו תנשא אשתו. ובגמרא, מת הרגתיו הרגנוהו לא ישא את אשתו: הוא ניהו דלא ישא את אשתו, הא לאחר תנשא, והאמר רב יוסף פלוני רבעני לאונסי, הוא ואחר מצטרפין להרגו, לרצוני, רשע הוא והתורה אמרה אל תשת ירך עם רשע להיות עד חמס, וכי תימא שאני עדות אשה דאקילו בה רבנן, והאמר רב מנשה גזלן דדבריהם כשר לעדות אשה, גזלן דדברי תורה פסול לעדות אשה, נימא רב מנשה דאמר כר' יהודה. אמר לך רב מנשה אנא דאמרי אפילו לרבנן, וטעמא דרבנן הכא כדרבא, דאמר רבא אדם קרוב אצל עצמו, ואין אדם משים עצמו רשע. לימא רב יוסף דאמר כרבי יהודה, אמר לך רב יוסף, אנא דאמרי אפילו לרבנן, ושאני עדות אשה דאקילו בה רבנן, ורב מנשה דאמר כרבי יהודה.

-א-

The difference between "palginan diburah" versus "palginan ne'emanus"

An explanation of the words of the Gemara/Even if we don't split the words into 2 parts, it is still possible to accept one aspect of the testimony and not the other/When one isn't believed to say "I allowed ploni to cohabit with me", it is because the person makes himself into a rashah

-קובץ הערות-

א. It is important to begin by giving a background to the words of our Gemara. In *Sanhedrin*¹, a dispute is raised between *Rava* and *Rav Yosef*, relating to one who says "I allowed *ploni* to cohabit with me", with the question being whether or not he can join with another witness to send the perpetrator to his death. *Rav Yosef* is of the opinion that he cannot join with another witness, for by saying "I allowed *ploni* to cohabit with me", his words make him into a *rashah*, and the *Torah* tells us how a *rashah* isn't allowed to function as a witness. On the other hand, *Rava* holds that he can join with another witness to kill the perpetrator, for being that a person is considered a *karov* in reference to himself, combined with the fact that one isn't allowed to make himself into a *rashah*, this causes us to not believe him when he mentions how he willingly allowed the act to happen, thereby splitting up his words, only accepting the testimony of the act of *reviah* alone, not the fact that he willfully participated. Conversely, *Rav Yosef* doesn't

hold of the concept of *palginan diburah*, and since he isn't believed to say he willfully participated, as such, we don't believe him at all.

Similarly, our *Mishnah* cites a dispute between the *Tannah Kama* and *Rebbi Yehudah*, concerning the concept of *eidus ishah*, where a witness testifies to having killed the husband of the woman in question. The *Tannah Kama* holds that he is believed to say he killed her husband, with the woman then being allowed to marry someone else based on his testimony. On the other hand, *Rebbi Yehudah* disagrees, holding that once he mentions how he killed the husband, this ruins his testimony, thereby preventing her from having permission to get remarried.

Our *Gemara* then explains that when the *Tannah Kama* allows the woman to get married based on the witness's testimony to having had killed her husband, this isn't a contradiction to *Rav Yosef's* assertion that one isn't believed to say "I allowed *ploni* to cohabit with me", for *eidus ishah* is different, as we allow even a *rashah* to testify when it comes to *eidus ishah*, and *Rav Yosef* holds that even a *rashah m'doraisa* is allowed to testify by *eidus ishah*. Therefore, we accept the testimony of his having had killed her husband, although his words

make him into a *rashah*, for a *rashah* is *kasher* when it comes to *eidus ishah*. On the other hand, *Rav Menasheh* disagrees, holding that a *rashah m'doraisa* isn't believed when it comes to *eidus ishah*. As such, *Rav Menasheh* is forced to hold like *Rava*, who is of the opinion that even when one says "I allowed *ploni* to cohabit with me", he is believed through the concept of *palginan diburah*. Therefore, when the *Tanna Kama* relates how the woman is allowed to get married through the witness's testimony to having had killed her husband, it also works through the concept of *palginan diburah*, with us saying that although it may be true he isn't believed to make himself into a *rashah*, nevertheless, we still accept the half of the testimony relating to the husband having died.

The *Kovetz He'aros*² gives a more in depth explanation for how on the one hand *Rav Yosef* holds that a person is believed to say he killed a woman's husband, while on the other he doesn't believe one who says "I allowed *ploni* to cohabit with me", with the basis for the answer being how a *rashah* is *kasher* when it comes to *eidus ishah*. He raises how on the surface it would seem questionable for *Rav Yosef* to hold that one isn't believed to say "I allowed *ploni* to cohabit with me" (on the basis that one isn't believed to *passul* himself), for we find a number of places where within the same testimony, one is believed with regards to one aspect, and not believed with regards to another, and we then accept the aspect for which he is believed, and reject the aspect for which he isn't. Such a scenario can be found later³, where the *Gemara* relates how if a witness testifies to the death of a woman's husband, he is believed to allow her to get remarried, as one witness is sufficient when it comes to *eidus ishah*, yet he isn't believed with regards to the inheritance of the dead man (for his brothers to then divide his estate), for we need 2 witnesses when it comes to monetary matters. Although it may be true that the 2 matters would seem to be contradictory, for if we allow her to get remarried because of her husband's death, it should inherently allow the brother's to also divide up the estate, and if we don't allow them to divide up the estate because we aren't sure he is dead, it should also be forbidden for his wife to remarry, nevertheless, there is a rule when it comes to *eidus*, which is for us to accept testimony with regards to one aspect, and to reject it with regards to another. Practically speaking, this is referred to as "*palginan ne'emanus*", with us believing the witness

with regards to *eidus ishah*, and rejecting his testimony when it comes to the inheritance. As such, this should raise the question of why *Rav Yosef* doesn't believe one who says "I allowed *ploni* to cohabit with me" to join with another witness to kill him, for we should believe his testimony with regards to *ploni*, while at the same time rejecting his testimony said in reference to himself.

However, as to the answer for this, it is because *Rav Yosef* holds that it isn't possible to accept the testimony of "I allowed *ploni* to cohabit with me", for the person makes himself a *rashah* through such words, and since a *rashah* is *passul* for *eidus*, as such the *eidus* is worthless.

Practically speaking, although it may be true that when a witness testifies about something relevant to 2 separate matters, it is possible for us to believe him with regards to one aspect and not the other, such as where he testifies to a woman's husband having had died, where he is believed to allow her to remarry, but not for the brothers to inherit the estate, nevertheless, when it comes to one saying "I allowed *ploni* to cohabit with me", the case is much worse, for his words cannot be accepted at all, as a *rashah* is *passul* for *eidus*. It isn't comparable to one who testifies about the death of a woman's husband, where he is believed for her to remarry, but not for the brothers to inherit the estate, for the truth is we really would have believed him about the estate as well, just when it comes to monetary matters, we need 2 witnesses, not one. Conversely, when it comes to the testimony of "I allowed *ploni* to cohabit with me", there is complete contradiction in the *ne'emanus*, for we cannot accept his testimony at all, as a *rashah* is *passul l'eidus*.

On the other hand, when one testifies to having had killed a woman's husband, where the question is whether or not she is allowed to remarry, there *Rav Yosef* admits for us to believe him, for he holds even a *rashah m'doraisa* is *kasher* when it comes to *eidus ishah*. As such, the whole issue of him becoming a *rashah* is inconsequential, for although it may be true his words make him into a *rashah*, nevertheless, even a *rashah* is believed when it comes to *eidus ishah*. Therefore, we accept the aspect of the testimony relating to the husband being dead, while at the same time rejecting his assertion that he was the murderer. It is akin to what we find in the other places, where we accept the *eidus* for the parts about which he is believed, while at the same time rejecting it with regards to the parts about which he isn't. [1]

The Kovetz He'aros then further explains the discussion, relating how when Rava holds for us to believe the testimony of "I allowed *ploni* to cohabit with me", unlike Rav Yosef who holds we cannot believe someone who makes himself into a *rashah*, it is because he holds of the concept of "*palginan diburah*", which means we split the testimony into 2 parts, thereby allowing us to accept the testimony of *ploni* having committed *reviah*, while at the same time rejecting his admission to having willfully allowed the act to happen. As such, being that we don't accept his admission to having willfully allowed the act to happen, the words don't have the power to make him into a *rashah*, for we don't look at them at all.

-ב-

Whether or not a person is allowed to make himself into a *rashah*

The dispute between Rava and Rav Yosef as to whether or not one is allowed to make himself into a rashah/The concept of "palginan ne'emanun" isn't universally agreed to

-תומים בשם הרדב"ז, קהלות יעקב-

ב. The *Tumim*⁴ cites the *Ridvaz*⁵ as explaining the dispute between Rava and Rav Yosef relating to one who says "I allowed *ploni* to cohabit with me" to not hinge on whether or not we apply the concept of *palginan diburah*. Instead, even Rav Yosef holds of *palginan diburah*, for if he wouldn't hold of *palginan diburah*, the person wouldn't even be believed to say "Ploni forcefully cohabited with me", for such a testimony is still relevant to the witness himself. If not for splitting up his words, only

On the other hand, Rav Yosef disagrees, holding that we cannot split up his words to make it as if he never admitted to willfully allowing the act to happen, and although it may be true he holds of "*palginan ne'emanus*" for us to believe a testimony for one aspect and not another, nevertheless, this applies specifically to a testimony about which the person has the ability to be believed. Conversely, when dealing with words about which we aren't allowed to believe the witness, for they make him into a *rashah*, such words prevent us from accepting the testimony.

taking the testimony of *ploni* having had cohabited with another man, we wouldn't be allowed to believe one who says "Ploni forcefully cohabited with me".

As such, when Rav Yosef doesn't believe the person who says "I allowed *ploni* to cohabit with me", although he holds of *palginan diburah*, it is because he disagrees with the *ikar* words of Rava, concerning how he asserts that person is called a *karov* in reference to himself, and is also incapable of making himself into a *rashah*. Rav Yosef argues that a person is believed to make himself into a *rashah*, and once he testifies to having had allowed *ploni* to cohabit with him, we accept the testimony, with him being believed to make himself into a *rashah*. However,

NOTES

The ne'emanus of a father to give his son the status of a ben grushah, through his relating to having had married a gerushah b'meizid

-נמוקי יוסף, רבי עקיבא איגר-

[1] *Rebbi Akiva Eigar* similarly explains that when Rav Yosef believes a person to say how he killed a woman's husband, but not to having had allowed another to cohabit with him, it is because we cannot accept the testimony of "I allowed *ploni* to cohabit with me", for the person makes himself a *rashah* by doing so, preventing us from accepting the testimony, while by *eidus ishah* this isn't problematic, for a *rashah* is *kasher* when it comes to *eidus ishah*, thereby allowing us to accept the testimony of his having had killed her husband.

Within the subject, the *Gemara* in *Bava Basra*⁷ relates how *Rebbi Yehudah* holds that the same way a person is believed to identify his son as a *bechor*, for the *pasuk* says⁸ "יכיר", so too a person is believed to identify his son as a *ben grushah*. On these words, the

*Nemukei Yosef*⁹ comments that they must be dealing with a person who relates to having had cohabited with a *gerushah b'shogeig*, for if the act was instead *b'meizid*, he wouldn't be believed, for a person isn't allowed to make himself into a *rashah*.

However, *Rebbi Akiva Eigar* has difficulty with his words, for the *Nemukei Yosef* there implies that even a *rashah* has the ability to testify to his son having the status of a *bechor*, as it isn't like other types of *eidios* where a *rashah* isn't believed. As such, it is hard to understand why he needs to establish the case of *ben grushah* to be discussing a *shogeig* admission, with the reasoning to avoid *meizid* because of the *rashah* implications, for the same way by *eidus ishah* we say a person is believed to testify about having had killed a woman's husband, for there isn't a *pesul* of *rashah* by *eidus ishah*, so too a person should be believed to identify his son as a *ben grushah* even by saying he cohabited with a *gerushah b'meizid*, for even a *rashah* is believed when it comes to testifying about a son. [He leaves this question unanswered.]

once given the status of a *rashah*, this inherently prevents us from believing his words about *ploni* having had cohabited with him, for he has the status of a *rashah*, one who is *passul l'eidus*. At the same time, this applies only by other types of *eidios*. Conversely, when dealing with *eidus islah*, a person will be believed to testify to having had killed a woman's husband, for although the words make him into a *rashah*, something which Rav Yosef holds a person can do, nevertheless, a *rashah* is capable of testifying when it comes to *eidus islah*.

The *Kehillos Yaakov*⁶ cites these words of the *Tumim b'shem* the *Ridvaz*. Based on them, he further explains Rav Yosef to hold that the same way a person is believed to testify to owing money to *ploni*, for *hoda'as baal din* is akin to the testimony of 100 witnesses, so too he is believed to make himself into a *rashah*, by means of the *din* of *hoda'as baal din* being akin to the testimony of 100 witnesses. [2]

Bearing this in mind, he then relates that to the *Ridvaz* we have no revelation from our *Gemara* indicating for Rav Yosef to hold of *palginan ne'emanus* although he doesn't hold of *palgnian diburah*, which would then allow Rav Yosef to believe the person who killed a woman's husband, accepting only his words relating to the death of the husband, not those about him being the murderer, for the *Ridvaz* is of the opinion that Rav Yosef

accepts the entire testimony. The person is believed to *passul* himself, with us accepting even his words relating to having had been the murderer.

The *Kehillos Yaakov* then goes on to cite a number of sources, with them all indicating that when we say even if one doesn't hold of *palginan diburah*, nevertheless, there still will be a concept of *palginan ne'emanus*, it isn't universally accepted. Instead, there are those who hold that when we reject the concept of *palginan diburah*, it inherently means we reject the concept of *palginan ne'emanus* as well.

He then writes though that one shouldn't use this to ask on the (aforementioned) *Mishnah* later, where it relates how a single witness is believed to allow a woman to remarry, but not for the brothers of the dead man to inherit his estate, which would indicate that we can accept testimony for one aspect and not another, for the *din* applies specifically to something not viewed as an *eidus gemurah*, such as *eidus islah* where *Chazal* believed even a single *eid* and even an *eid passul*. As such, it is why the witness is believed to allow her to remarry, but not for the brothers to inherit the estate. Conversely, when dealing with a scenario where we need *eidus gemurah*, it is still possible to say we will not accept testimony for one aspect while at the same time rejecting it with regards to another.

NOTES

Hoda'as baal din to passul oneself/The difference between passuling oneself versus making another culpable for a punishment

-רש"י, קרן אורה-

[2] Concerning Rava's assertion that a person is considered to be a *karov* in reference to himself, and that a person isn't allowed to make himself into a *rashah*, *Rashi*¹⁰ comments that when we use the concept of *hoda'as baal din* being akin to 100 witnesses, it applies specifically to monetary matters. Conversely, when it comes to *kenas*, *o'nes*, *malkus*, and *pessul*, the whole concept is irrelevant. Now, as we have seen, Rav Yosef disagrees with this, holding that when it comes to *hoda'as baal din*, there is no differentiation between monetary matters versus *passuling* oneself.

The *Keren Orah* questions *Rashi's* words (that when it comes to *passuling* oneself we cannot apply the concept of *hoda'as baal din* being akin to 100 witnesses, for it is comparable to *kenas*), pointing that when we say *hoda'as baal din* fails to work by *kenas*, it is learnt out in *Bava Kama*¹¹ from the *pasuk* "אשר ירשיעון אלהים", which

comes to exclude one who makes himself into a *rashah*, showing that one is *pattur* for admitting to a *kenas*.

He then writes how *Rebbi Yehudah* of the *Mishnah* and Rav Yosef both hold that a person is capable of making himself into a *rashah*, and although by *kenas* one isn't allowed to testify about himself, this is because of the *pasuk* "אשר ירשיעון אלהים", which comes to exclude one making himself into a *rashah*. If not for the *pasuk*, *hoda'as baal din* would have worked even by *kenas* for one to obligate himself, akin to how we say *hoda'as baal din* is like 100 witnesses when it comes to monetary matters, with a person not being considered comparable to a *karov*. However, when it comes to *misah* and *malkus*, there all agree for *hoda'as baal din* to fail to work, with the person being considered tantamount to a *karov*. On the other hand, when it comes to *passuling* oneself, there Rava and Rav Yosef disagree, or also *Rebbi Yehudah* and the *Rabbanan*. The *Rabbanan* and Rava all say a person cannot *passul* himself, while *Rebbi Yehudah* and Rav Yosef disagree, holding that a person isn't considered to be a *karov* when it comes to *passuling* himself.

מראי מקומות