

## דברים פרק יז:

על פי שנים עדים או שלשה עדים יומת המת לא יומת על פי עד אחד:

On the word of two witnesses, or three witnesses, shall the executed be executed; he must not die on the word of one witness

## דברים פרק יט:

לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר:

A single witness must not arise against a man regarding all punishment and all guilt for regarding any sin which he since – on the mouth of two witnesses or on the mouth of three witnesses the matter must arise.

## תלמוד בבלי מסכת פסחים דף קיג עמוד ב

שלשה הקדוש ברוך הוא אוהבן: מי שאינו כועס, ומי שאינו משתכר, ומי שאינו מעמיד על מדותיו. שלשה הקדוש ברוך הוא שונאן: המדבר אחד בפה ואחד בלב, והיודע עדות בחבירו ואינו מעיד לו, והרואה דבר ערוה בחבירו ומעיד בו יחיד.

כי הא דטוביה חטא, ואתא זיגוד לחודיה ואסהיד ביה קמיה דרב פפא. נגדיה לזיגוד. אמר ליה: טוביה חטא וזיגוד מינגד?

אמר ליה: אין, דכתיב "לא יקום עד אחד באיש", ואת לחודך אסהדת ביה - שם רע בעלמא קא מפקת ביה! אמר רבי שמואל בר רב יצחק אמר רב: מותר לשנאתו, שנאמר "כי תראה חמור שנאך רבץ תחת משאו". מאי שונא?

אילימא שונא נכרי, והא תניא: שונא שאמרו - שונא ישראל, ולא שונא נכרי! אלא פשיטא, שונא ישראל.

ומי שריא למסניה? והכתיב "לא תשנא את אחיך בלבבך"? אלא, דאיכא סהדי דעביד איסורא.

כולי עלמא נמי מיסני סני ליה, מאי שנא האי?! אלא לאו כי האי גוונא, דחזיא ביה איהו דבר ערוה.

רב נחמן בר יצחק אמר: מצוה לשנאתו, שנאמר "יראת ה' [שנאת] רע".

אמר רב אחא בריה דרבא לרב אשי: מהו למימרא ליה לרביה למשנייה? אמר ליה: אי ידע דמהימן לרביה כבי תרי - לימא ליה; ואי לא - לא לימא ליה.

## Pesachim 113b

Three whom The Holy One Who is Blessed loves:

- one who does not get angry
- one who does not get drunk
- one who does not insist on his status.

Three whom The Holy One Who is Blessed hates:

- one who speaks when his mouth differs from his heart
- one who knows testimony that will help his friend and does not testify
- one who sees his fellow commit a sexual transgression and testifies about it alone as in the case where

Tuvia sinned, and Zygud came alone and testified against him in front of Rav Pappa.

Rav Pappa had Zygud flogged.

Zygud said to him: Tuvia sinned and Zygud is flogged?!

Rav Pappa replied: Yes, because Scripture writes "A single witness must not arise against a man"; you testified against him alone, so you are merely slandering him!

Said Rabbi Shmuel bar Rav Yitzchak said Rav: (Nonetheless) it is permitted to hate (the person whom you saw sin) . . .

Rav Nachman bar Yitzchak said: It is a mitzvah to hate him . . .

Devarim 17:6 and 19:15 apparently each present a rule that at least two witnesses are required for a halakhic court to reach a verdict. 17:6 refers explicitly to capital cases, whereas 19:15 has a broader but vaguer scope. But what interests me today is the difference in the formulations; 17:6 focuses on the criminal, whereas 19:15 focuses on the witness.

Pesachim 113b cites this difference in a fascinating context. As part of a series of nonlegal lists, we are told that G-d hates those who testify alone about a fellow's sexual transgression. This is followed by a story, known from elsewhere to be proverbial, in which Zygud is flogged for testifying against Tuviah. When he protests, Rav Pappa answers that he is in violation of 19:15, read literally as a prohibition against testifying. Various Amoraim then assert that the witness himself, however, may or must 'hate' the transgressor, and may inform those who give him absolute credibility ('believe him as if he were two') of the transgression, presumably so that they will 'hate' the sinner as well.

Various later sources understand Rav Pappa as articulating a formal halakhic principle, although it is not clear that anyone before the Chafetz Chaim understood it as a d'oraita prohibition. All were aware, however, of Talmudic narratives in which such testimony was acted upon, with no hint of censure against the witness. SMaG's solution is that 'the case is different when he is seeking to separate someone from sin', and Chafetz Chaim essentially generalizes this to mean 'when it has no productive purpose'.

In shiur this summer, I pointed out that once one acknowledges that a judge has the authority to flog "even when not justified by law", as for example on the basis of one witness, no witness can know in advance that his testimony will have no productive purpose. Another challenge to this principle is why any court would allow one witness to testify, knowing that the testimony could only result in the flogging of the witness.

Now, if one were just reading the story, one might take Rav Pappa's citation as homiletic, with the real issue being that he simply did not believe Zygud. A Rambam-influenced reader would see this as confirmed by Rav Pappa's categorization of Zygud as "motzi shem ra". However, I don't see Rambam's linguistic distinction between lashon hara (true) and hotzaat shem ra (false) as Talmudically rooted, and the Talmudic context seems clearly to assume that the witness is being truthful, as otherwise, what would be the point of permitting/requiring him to hate the transgressor?

Perhaps Rav Pappa is telling us that the legal system is required to treat everyone as innocent until proven guilty, and this is along the lines of Rambam's declaration that it is better for a thousand guilty men to go free than for one innocent to be convicted of a capital crime. But the threat of punishment is surely designed to discourage even truthful (single) witnesses from coming forward.

It is certainly worth noting that the original *beraita* referred only to sexual transgressions, and it may be that the Tuviah/Zygud cases involved such a transgression as well. It is also relevant that outside of court, Zygud's testimony would be instantly recognizable as lashon hara, especially once we are required to assume per Chafetz Chaim that it had no positive intent whatsoever.

What I suggest is the following:

In private interactions, halakhah takes as a starting point a formal prohibition against speaking negatively about another. Knowing another's flaws and misdeeds accurately is not an intrinsic value, but rather is permitted only on utilitarian grounds, when it will lead to better results than not knowing. I suggest that this results from a recognition that lashon hara corrodes the soul of the speaker.

The court system, by contrast, does generally have a legitimate interest in being told the truth about its constituency. We do not encourage people to decide whether or not to testify in court based on whether the consequences seem likely to be positive.

One risk created by the tension between the last two paragraphs is that people will use the court system to make public statements that would otherwise be lashon hara. This is ordinarily a risk halakhah is prepared to take.

However, I suggest that halakhah regards victimless sexual transgressions differently. The Rabbis were aware that prurient interest can create an overwhelming public focus on lashon hara, and that allowing courts to become the clearinghouse for sexual gossip might leave them time for little else. Furthermore, the Talmud declares elsewhere that (victimless) sexual

transgressions are less reflective of character than others, and therefore do not impact general acceptability as witnesses. Thus perhaps it is specifically with regard to victimless sexual transgressions that we are willing, perhaps even eager, to intimidate truthful witnesses into silence.

The above suggestion is based on the language of the original beraita; "Haroeh dvar ervah bachveiro". Devarim 19:15, however, refers to a broader if vague array of sins, and I am compelled to admit that I have not found any precedent for limiting the legal effect of the Zygod case to "divrei ervah" specifically.