

LOSING ON THE REBOUND

by Nechama Stamper

Losing on The Rebound¹

If a false witness stands against a man,...you shall do to him as he conspired to do to his fellow, and you shall destroy the evil from your midst.

Rashi: As he conspired to do, but not what he succeeded in doing. Chazal derive from this that if the witnesses prevailed in having the accused executed before they were determined to be false witnesses, they are not themselves executed.

Maharal: This law strikes people as paradoxical. How could attempted murder be worse than murder itself? Why should the conspiring witnesses be punished for attempting to frame an innocent man, but walk free if the victim is executed by the court on the strength of their false testimony?

Ramban offers a reason. The witnesses are executed for trying to frame an innocent person. When a second set of witnesses arrives in court to falsify the testimony of the conspiring witnesses, we understand their testimony to be a life-saving intervention. They save a guiltless party from death he does not deserve. Those who tried to kill him ought to be punished. When the second set of witnesses testifies only after the intended victim has been executed by the court, we are no longer confident in the innocence of the framed party. Hashem Himself provides assistance to the members of the beis din. He would not allow such a travesty of justice, unless the accused was actually not so innocent! Although he was executed for a crime he may not have committed, he surely must have been guilty of an equivalent crime. If not, G-d would have found a way to guide the court to a different conclusion. While the conspiring witnesses had no way to know that, and were certainly full of evil and malice, the bottom line is that they did not harm an innocent person, but a guilty one. Therefore, the court does not execute them.

I, Maharal, cannot accept this reasoning. Judges do make mistakes, and they can be misled by false witnesses. The gemara emphasizes that there are limits to what the members of the court can learn. "A judge has nothing more to go by than what his eyes can see." The judge cannot see what is invisible, even if what can't be seen has enormous impact on the case. If the judge is misled by lying witnesses, they are the ones who bear the entire weight of moral responsibility for the outcome - not the judges.

If we had to offer an explanation, it would come from the end of the pasuk, "You shall destroy the

evil from your midst." By "evil" the Torah does not mean the witnesses, but their evil thoughts and intentions. Thoughts are not substantive; they are also ephemeral and fleeting. They have no fixed presence. Once a thought has been turned into action, it ceases to have importance. Often a person decommissions his own thought by acting upon it, turning it into something of substance. In regard to the plotting witnesses, they are not the ones to act upon the evil thought. It is the court that does that when it executes the accused. The members of the court are blameless; they simply followed procedure in accepting the testimony of the false witnesses before they were unmasked. There are no grounds to punish them. On the other hand, while the plotting witnesses are certainly morally responsible for the death of the accused, they cannot be punished as murderers. The fact remains that they didn't shed his blood - the court did! They cannot be executed for the actual death, because they didn't commit the deed. Neither can the court go after their evil thought (along with them, for bearing it) once the thought disappears by turning into action. Thus, they escape punishment, at least at the hands of a human court.

While this explanation has some merit, it is not the best explanation. That we have left for last.

The punishment of the conspiring witnesses is unusual. We could find justice in visiting upon the false witnesses whatever discomfort they wished to inflict upon their intended victim. But this stated punishment includes taking their lives, upon occasion. Applying the rule to those who falsely accuse a person of a capital crime, they would be executed for the attempt. Now it is clear that what we call "justice" is only one of a number of considerations that the Torah uses in criminal procedure. Typically, only a small fraction of what we would call first-degree murder cases could possibly lead to a court-mandated execution. Halacha raises the bar for a capital conviction to dizzying heights. Even where there is no question about factual guilt and premeditation, not all murderers are punished by the court. Halacha calls for taking the a human life only when the victim is killed more or less directly at the hands of the murderer. All of this contrast strongly with the court executing false witnesses for something they did not do, and was a crime only in the arena of their imagination. Why does the Torah relax its rules about execution in this one kind of case?

We must conclude that the punishment of eidim zomemim is sui generis. It is not so much a response to a crime as a statement about the power of thought. The Torah communicates to us that thought is powerful; focused, determined thought will produce results. When they do not produce those results in the desired place, they ricochet and harm the person who thought them. Should those thoughts bear fruit - even evil, unjust fruit - they no longer pose any danger. Once their potential for harm has been shifted to action, there is nothing that needs to be dealt with. Where that shift has been thwarted, e.g. when a second set of witnesses unmasks the plot, the evil in the thought remains to be discharged - and finds the thinker the nearest target.

Chazal tell us² that whoever unjustly suspects his fellow of a wrongdoing will suffer bodily as a consequence. It is the same principle at work. The unjust suspicion, having no place to go since its object is in fact innocent, rebounds back and strikes the person who gave rise to it. For the same

reason, they tell us³ that it is better to be at the receiving end of a curse, rather than the one issuing the curse. In all these cases, the force of some powerful thought is redirected at the thought's original author.

Human thought has great potency. It should not be dismissed as simply an internal affair. Hashem endowed it with power - far greater power than we would have imagined. Once launched, it will leave an impression. If it encounters an insurmountable obstacle, it will turn on the one who created it. Think of it as a projectile, thrown against some surface. If it cannot penetrate that surface, it will carom back against the one who threw it.

Wherever it lands, machshavah, thought, is the output of the soul. It should never be trifled with.

1. *Based on Gur Aryeh, Devarim 19:19; Be'er HaGolah, 2nd Be'er*
 2. *Shabbos 97A*
 3. *Sanhedrin 49A*
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