

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLAND “TEREK” DIESTRO, JOSE “JOE” AGUIRRE AND ROLAND “TANGKAD” VILLARUEL, ACCUSED,

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Brought before this Court is an appeal[1] from the Decision[2] dated May 23, 2013 rendered by the Regional Trial Court of Quezon City, Branch 219 finding accused-appellant guilty as charged in Criminal Case No. Q-02-106906 for Murder, the decretal portion of which reads:

“WHEREFORE, judgment is hereby rendered finding the accused Roland “Terek” Diestro GUILTY beyond reasonable doubt of the crime of Murder and he is hereby sentenced to suffer the penalty of reclusion perpetua for the death of Senen Q. Mendoza.

Accused Roland “Terek” Diestro is further adjudged to pay the heirs of Senen Q. Mendoza, represented by his widow, Concepcion M. Mendoza, the following amounts:

- 1) Php75,000.00 as civil indemnity ex delicto;
- 2) Php50,000.00 as moral damages;
- 3) Php30,000.00 as exemplary damages; and
- 4) Php57,000.00 as actual damages, plus costs of suit.

SO ORDERED.”

Feeling aggrieved, accused-appellant comes to US challenging the said Decision and assigning the following errors as allegedly committed by the court a quo, to wit:

“I
THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II
THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III
THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.”[3]

The record shows that on September 23, 2002, accused-appellant and his co-accused Jose “Joe” Aguirre were arraigned and pleaded “not guilty”[4] under an Information for Murder, the accusatory portion whereof reads, viz

—

“That on or about the 24th day of May, 2001, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, qualified by evident

premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SENEN MENDOZA by then and there shooting him with the use of firearms, thereby inflicting upon him serious and mortal wound which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said SENEN MENDOZA.

CONTRARY TO LAW.”

Accused Roland “Tangkad” Villaruel was not arraigned and has remained at large.

The prosecution presented two (2) witnesses, namely: Concepcion M. Mendoza (victim's wife) and Ma. Luz Nisperos. The defense, on the other hand, presented accused-appellant as its lone witness.

The facts as culled from the record of the case are as follows:

On May 24, 2001 at around 8:00 to 8:30 o'clock in the evening, the three accused namely, Roland “Terek” Diestro, Jose “Joe” Aguirre and Roland “Tangkad” Villaruel fired at Senen Mendoza's house at Iris Street, Fairview, Quezon City.

Senen and his family were then preparing to retire when they heard the shots prompting Senen to check on the commotion. Sensing danger for his family, Senen went outside their house and boarded their Tamaraw FX. He lit the headlights of the vehicle directing it towards the accused and drove it away from his house. However, the three accused ran along side the Tamaraw FX and continued to fire on the front side of the vehicle hitting Senen on different parts of his body, forcing the vehicle to stop. Thereafter, the three accused ran away. The victim was brought to the FEU Hospital and was declared “dead on arrival”. He sustained multiple gunshot wounds on the forehead, eyebrow, right arm and shoulder. A case for murder was filed against the accused at the Regional Trial Court of Quezon City.

The presentation in open court of prosecution witnesses PO1 Joseph Dino[5] and Josephine Sapungan (Head of the Medical Records Division of FEU Hospital)[6] were dispensed with as the contexts of their testimonies were stipulated upon by the parties.

For its part, the defense asserted that after working as painter at Robinsons Mall in Sta. Lucia on May 24, 2001, accused-appellant Rolando “Terek” Diestro went home at No. 9 Iris Street, West Fairview, Quezon City. At the corner of Iris Street, he met his friends and co-accused Roland Villaruel (a security guard) and Joel Aguirre. The two were having their snacks of chicharon and balut and they asked him to join them. When Villaruel brought down his hand and stooped, the sling of the shotgun he was carrying slipped from his shoulders and fell on a chair. The shotgun was discharged and fired at the direction of the street. For fear that the gun might fire again, accused-appellant took his balut and left his co-accused. When the shotgun accidentally fired, there were children and women around, but he did not notice if somebody was hit.

In August, 2001, police officers came over at accused-appellant's house and invited him to go to Camp Karingal to shed light on the incident that took place on May 24, 2001. He was surprised that upon reaching Camp Karingal, he was locked up in an unoccupied cell. He waited for the police officers to question him but they did not do so. In the evening, he was brought to a room with a table and was told to admit the crime so that he will not be hurt. When he denied any participation in the incident, he was subjected to physical abuse by the police officers. At a certain point, he even lost his consciousness. He was brought out of the said room around noontime. Bullets were placed between his fingers and they were pressed together until his fingers were swollen before he was told to sign a document which he was not able to read. Afterwards, he was brought before the public prosecutor for inquest. Out of fear, he admitted the offense being charged against him to the public prosecutor.

Days before the police invited him over to their station, the victim's wife and his neighbor Ma. Luz Nisperos went to his house asking him to testify against Roland Villaruel. He turned down their request because trouble might brew up between his relatives and the relatives of Villaruel who are living in the same province if he will be testifying against Villaruel.

Pending litigation, accused Aguirre died of cardio pulmonary failure secondary to pulmonary tuberculosis[7]. Thus, the case as against him was dismissed.[8]

After trial on the merits, the court a quo decided against accused-appellant finding him guilty as charged.

Dissatisfied, accused-appellant filed this appeal.

In seeking his acquittal, accused-appellant assails the credibility of the prosecution's witnesses. He claims that Concepcion Mendoza's testimony is weak and deserves no merit for being contrary to human experience. She gave her statement to the police almost two weeks after the incident happened and she could not even identify the assailants of her husband. She merely relied on her neighbors' "say-so". On the other hand, the account of Ma. Luz Nisperos of the situation surrounding the incident being complained of is inconsistent with the crime of murder. In fact, her testimony that his group first fired at the L300 van before firing at the victim's FX reveals the lack of intent to kill on their part for it shows that the original target is the occupant of the L300 van and not the deceased.

Accused-appellant claims that the presumption of innocence in his favor is strengthened by the fact that he did not flee and remained in the same house and community after the shooting incident took place which resulted in Senen Mendoza's death. There is no reason for him to flee because only a guilty man will do so.

Accused-appellant further insists that the trial court erred in appreciating the qualifying circumstances of treachery and abuse of superior strength against him. The prosecution failed to establish all the elements of treachery with clear and convincing evidence as the killing itself. The situation described by the victim's wife showed that Senen had all the opportunity to defend himself. After hearing the shots and learning that one of the bullets hit his roof, the deceased should have been placed on guard of the danger to his life and to that of his family. Yet, he went out of his house; drove his FX van outside and maneuvered it back to their house. Accused-appellant maintains that there is no treachery to speak of because prior to the attack the victim was already forewarned.

He also claims that there is no showing that the means of execution were deliberately and consciously adopted. The facts as established by the prosecution's own witnesses proved that the deceased was not the target during that time. His death was not caused by a deliberate plan or community of effort to kill him but was merely a result of accidental firing. In fact, according to the victim's wife the first volley of gunfire was not directed at them but came from the outside although she harbors the suspicion that a bullet hit their roof. Even the victim was convinced that they were not targeted as he kept on wondering what the commotion outside was all about prompting him to go outside and investigate.

Accused-appellant further asserts that the aggravating circumstance of abuse of superior strength could not be treated as a separate qualifying circumstance. It is absorbed in treachery. While there are three alleged assailants in this case, superiority in number does not per se mean superiority in strength. The issue is not the number of assailants but whether the aggressors took advantage of their combined strength in order to consummate the offense. There is nothing in the prosecution's evidence that would show that they took advantage of their combined strength to kill Senen.

For its part, plaintiff-appellee maintains that the prosecution was able to prove accused-appellant's guilt beyond

reasonable doubt.

In convincing this Court to overturn his conviction for murder, accused-appellant merely relied on denial and alibi. However, for the defense of alibi to prosper, the accused must prove that: (a) he was present at another place at the time of the perpetration of the crime, and (b) it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.[9]

In the extant case, accused-appellant failed to satisfy these requirements. He admitted in open court that he was present at the place, date and time of the commission of the crime although he denied any participation in the death of Senen Mendoza on the lame excuse that Villaruel's shotgun accidentally fell and misfired. After the accidental firing, he went home to sleep in his house located in the same street where the incident happened.

What strongly militates against accused-appellant's denial and alibi is his positive identification by eyewitness Ma. Luz Nisperos who testified categorically that he was present at the scene of the crime and had participated in its commission. Her straightforward and categorical account of the incident as quoted by the trial court in its assailed decision clearly points to accused-appellant as one of the assailants brandishing a firearm; firing shots at Senen Mendoza's house; and, thereafter, running alongside the Tamaraw FX relentlessly firing at Senen. Time and again, the Highest Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[10] Besides, positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.[11]

The defense contends that treachery did not attend the commission of the crime considering that Senen was forewarned of the impending danger to his life and to that of his family.

WE agree.

There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[12] For treachery to be appreciated two elements must concur: 1) the employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself and 2) the means employed were deliberately or consciously adopted by the offender.[13]

The trial court appreciated the qualifying circumstance of treachery on the ground that the accused suddenly attacked the victim. However, it does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. In appreciating treachery, it must also be shown that the mode of attack was consciously adopted. This means that the accused must make some preparation to kill the deceased in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or to retaliate. The mode of attack, therefore, must be planned by the offender, and must not spring from the unexpected turn of events.[14]

In *People vs. Alberto S. Antonio, et al.*, [15] the Supreme Court expounded that:

“It is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate

adoption of the mode of attack for a specific purpose.

All the evidence shows that the incident was an impulse killing. It was a spur of the moment crime.

The precedents are many. They are consistent. Among them:

“Mere suddenness of attack is not enough to constitute treachery where accused made no preparation or employed no means, method and form of execution tending directly and specially to insure the commission of a crime and to eliminate or diminish risk from defense which the victim may take.”

“A sudden and unexpected attack would not constitute alevosia where the aggressor did not consciously adopt a mode of attack intended to perpetrate the homicide without risk to himself.”

“A sudden and unexpected attack constitutes the absence of alevosia where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself, as where the appellant followed the victims when the latter refused appellant's invitation to have some more alcoholic drinks.”

“The mere suddenness of attack does not, of itself suffice for a finding of alevosia if the mode adopted by the accused does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that might be offered.”

“The aggravating circumstance of treachery is not present when decision to attack was arrived at on the spur of the moment.”

The annotations are similarly consistent. It is not enough that the means, methods, or form of execution of the offense was without danger to the offender arising from the defense or retaliation that might be made by the offended party. It is further required, for treachery to be appreciable, that such means, method or form was deliberated upon or consciously adopted by the offender. Such deliberate or conscious choice was held non-existent where the attack was the product of an impulse of the moment.

The trial court's ruling that the mere suddenness of an attack makes the killing a murder because of treachery is not consistent with the decisions of this Court. Conscious deliberation or conscious adoption of the mode of attack has to be proved beyond reasonable doubt. For it is likewise an established principle that the quantum of evidence to prove a person's being guilty of a crime is also required to prove treachery. The same degree of proof to dispel any reasonable doubt is required before any conclusion may also be reached respecting the attendance of treachery, whether as qualifying or aggravating, in a criminal case. There is no such proof in this case.”

While at first blush it would seem that the shooting of Senen was attended by treachery for it appeared to be a sudden attack, a meticulous review of the evidence, however, prevents a conclusive finding of treachery and any doubt as to its presence must be resolved, like the fact of the commission of an offense, in favor of the accused.

From the records, it is apparent that the shooting of Senen sprung from the unexpected turn of events. Under the circumstances surrounding of the case, Senen and his family were made aware of the incipient violence when they heard gunshots and their roof was hit by a bullet. When they first heard the gunshots coming from the outside, they were already forewarned of the impending danger to their lives. In fact, Senen's family ducked while he remained standing to see what the commotion was all about. To veer away the accused, Senen decided to go out of their house and lighted the headlights of his FX van to distract their attackers and drove off towards the street. Apparently, the deceased was not only forewarned of the impending danger but was also given ample time to reflect on what to do to repel it.

The High Court held, time and again that when the accused gave the deceased a chance to prepare, there was no treachery. The accused herein announced their presence with initial gunshots forewarning the victim of their

hostile intentions. Such mode of attack negated the existence of treachery because surprise which marks the presence of treachery was absent.[16] From the testimony of prosecution witness Ma. Luz Nisperos, the killing of Senen was not planned and the mode of attack was not consciously adopted. The accused initially shot an L300 van, which got away, before they focused their attention to Senen's FX. She testified, viz –

“Q:

Madam witness, do you remember where you were on the evening of May 24, 2011 between the hour of 8:00 and 8:30 in the evening?

A:

I was in Irish Street waiting for my niece, Sir.

Q:

And, who was with you at that time while you were waiting for your niece?

A:

I was with a lot of companions but the children ran away after hearing the shots, Sir.

Q:

You said that you heard shots, will you please tell us prior to the hearing of shots while you were waiting for you niece, what did you observe, if any?

A:

I noticed something but I did not give meaning to it. I just saw that they shot an L300.

Q:

You said that you noticed something but you did not give meaning to it, what is this something that you noticed but did not give meaning to it?

A:

They were running and then, I heard them cocked their gun and they started shooting.

Q:

Madam witness, you keep mentioning they, they were running and cocked their gun, who were these “they” that you are referring to?

A:

Roland Diestro, Joe Jose Aguirre and Roland Villaruel. The three (3) of them, Sir.

Q:

When you saw these persons, this commotion of these three (3) persons whom you said you saw them running and cocked their firearms and fired it, what did you do?

A:

I was hidden by the plants and I saw them shooting their guns at an FX and I saw them running and keep on firing their firearms and my compare called me.

Q:

Let us go back a little, Madam witness. Earlier you mentioned that you saw them fired at L300 van, who were these persons who fired at L300 van?

A:

It was Diestro, Sir.

Q:

Now, when they fired at this L300 van, what happened?

A:

The L300 just proceeded probably they got scared because the side mirror was hit.

Q:

Now, after you saw these persons fired at this L300, what happened then?

A:

They turned to the FX, Sir.

Q:

You said that you saw them fired(sic) at the FX, what happened next after you saw them fired(sic) at the FX?

A:

After the FX was fired at, I saw the occupant of the FX waving at me but, I didn't know what to do because the shots were continuous. There were three (3) successive shots. I did not know what to do because I was scared.

Q:

You earlier mentioned that the person, the occupant of the FX was waving or calling you, what did you do when you saw him waving at you or calling to you?

A:

The gunmen ran away and I went home. Then, I went back to the place of the incident to find out what happened to the occupant of the FX and my husband told me that he was already dead.

Q:

How far away from you these gunmen when they were shooting the FX?

A:

I was near. Interpreter Witness indicating a distance of 2.4 meters.

Q:

These persons whom you saw killed Senen Mendoza, where were they in relation to the FX taxi when they were shooting at it?

A:

They were shooting the front side of the FX, Sir.

Q:

If you were more or less three (3) meters away from them when they were shooting, how far away were they from the FX at that time?

A:

They were just near the FX because they were beside the road and they were shooting at the FX while the FX was moving "sinusundan nila ng baril." "Binabaryl nila yung FX habang tumatakbo."

Court

Q:

“Yung mga taong bumabaryl, tumatakbo rin?”

Witness

“Tumatakbo sila pero dahan-dahan po.”

Prosecutor Maceren

Q:

When you said that they were running, what do you mean by that?

A:

While they were running, they kept on shooting, Sir.

Q:

At the FX?

A:

Yes, Sir.”[17] (Emphasis supplied)

It is also clear from the foregoing that the decision of the accused to shoot the victim was sudden brought about by Senen's unexpected reaction of going out of their house and driving away therefrom so that the accused would follow him and spare his family from their further attacks. The prosecution is utterly lacking in evidence to show that the accused had pondered upon that mode of attack to insure the victim's death or remove any risk to themselves that might arise from the defense the victim might offer. The fact is, the eyewitness stated the gunshots were directed at the front portion of the FX where the victim could very well see where the accused were while chasing him. This is not to say that the victim could also repel the accused by directing the FX towards their direction to hit or pin them down, although he was not able to do so because he was outnumbered and his attackers were all armed.

Anent the alleged qualifying circumstance of evident premeditation, the same must not only be evident but must also be proved with certainty as the crime itself and must be based on external acts indicating deliberate planning. For evident premeditation to be considered, the following facts must be established: (1) the time when the accused determined to commit the offense; (2) the commission of an act manifestly indicating that the accused clung to his determination; and (3) the lapse of time between the moment the accused decided to commit the offense and its actual commission, sufficient for the aggressor to reflect on the consequences of his act.[18] Such proof must be based on external acts that are not merely suspicious but also notorious, manifest, evident and indicative of

deliberate planning. The evidence must show the decision to kill prior to the moment of its execution was the result of meditation, calculation, reflection or persistent attempts. Absent such evidence, mere presumptions and inferences are insufficient.[19]

The facts at hand are insufficient to satisfy the requisites of evident premeditation. The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[20] In the absence of evidence indicating that the accused had, prior to the killing, resolved to commit the same and that the shooting was the result of meditation, calculation or resolution, the aggravating circumstance of evident premeditation cannot be said to be present as in the case at bar.

The last alleged aggravating circumstance is abuse of superior strength.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[21]

In the extant case, the aggravating circumstance of abuse of superior strength attended the killing of Senen. Not only did the three accused outnumber their victim, they were likewise all armed with different calibers of firearms while the latter was unarmed and alone. Obviously, the accused took advantage of their combined strength to consummate the offense when they continuously fired shots at the FX driven by Senen. Their concerted armed attack against the unarmed victim glaring shows the disparity of strength between them. The use of excessive force rendering the victim unable to defend himself also demonstrates the notorious inequality of forces which gave the accused an unfair advantage over their victim.

In the case of *People vs. Parreno*,[22] it was explained that:

“As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. While it is true that superiority in number does not per se mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants. Abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense. However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.”

Abuse of superior strength alone and by itself qualified the killing of herein victim to murder pursuant to Article 248 of the Revised Penal Code which is punishable by reclusion perpetua to death. However, with the abolition of the death penalty, only reclusion perpetua may be imposed under Republic Act No. 9346 subject to the qualification that the convicted person shall not be eligible for parole.

This Court affirms the trial court’s award of P75,000.00 civil indemnity, moral damages of P50,000.00 and exemplary damages of 30,000.00 conformably to current jurisprudence. The award of actual damages of 57,000.00 is likewise proper, the same having been duly proven. Lastly, the interest rate of 6% per annum is imposed on all damages awarded from the date of finality of this ruling until fully paid[23]

WHEREFORE, the assailed Decision of the Regional Trial Court of Quezon City, Branch 219, is **AFFIRMED WITH MODIFICATIONS**. Accused-appellant is found **GUILTY** of murder qualified by abuse of superior strength under Article 248 of the Revised Penal Code as amended, and is hereby sentenced to suffer the penalty of reclusion perpetua with all its accessory penalties without being eligible for parole.

He shall be liable to pay to the heirs of Senen Q. Mendoza the following: the amount of P57,000.00 as actual damages, P75,000.00 as civil indemnity ex delicto, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. He is further ordered to pay interest at the rate of six percent (6%) per annum on the award of civil indemnity, moral damages and exemplary damages from the finality of judgment until fully paid.

SO ORDERED.

Abdulwahid, H.S., Chairperson, and Inting, S. B., JJ., concur.

[1] Record, p. 154.

[2] Ibid, pp. 141-151.

[3] Rollo, pp. 43-44.

[4] Record, p. 23.

[5] See Order dated October 9, 2003, Record, p. 67.

[6] See Order dated October 6, 2009, Record, p. 214.

[7] See Death Certificate of accused Aguirre, Record, p. 238.

[8] See Order dated October 7, 2010, record, p. 248.

[9] See People v. Trayco, G.R. No. 171313, August 14, 2009.

[10] See People v. Dejiillo, G.R. No. 185005, December 10, 2012.

[11] See People vs. Marcos Asuela, et al., G.R. Nos. 140393-94, February 04, 2002; People vs. Andres Caisip, G.R. No. 119757, May 21, 1998.

[12] See People vs. Esperidion Balais, G.R. No. 173242, September 17, 2008.

[13] See People vs. Pablo Lusabio, Jr., et al., G.R. No. 186119, October 27, 2009 People v. Cabande, G. R. No. 132747, February 8, 2000.

[14] See People vs. Charles Joy Flores alias “Pok-Pok”, G.R. No. 137497, February 05, 2004.

[15] G.R. No. 128900, July 14, 2000.

[16] See People v. Visagar, 93 Phil. 319(1953); People vs. Luna 76 Phil 101(1946); People v. Manzano, Nos. L-33643-44, July 31, 1974; People vs. Cunanan, 75 SCRA 15(1977).

[17] See TSN, June 3, 2004, pp. 4-8.

[18] See People vs. PO3 Noel Feliciano; G.R. Nos. 127759-60, September 24, 2001.

[19] See People vs. Efipania Dela Cruz Go (at large) and Riz Jarlos, G.R. No. 140897, February 19, 2003.

[20] See People vs. Durante, G.R. No. 31101, August 23, 1929 (53 Phil 363).

[21] See People vs. Elizer Beduya and Ric Beduya, G.R. No. 175315, August 09, 2010.

[22] G.R. No. 144343, 7 July 2004.

[23] See People vs. Marcelino Dadao, et al., G.R. No. 201860, January 22, 2014; People vs. Jose Pepito D.

Combate, G.R. No. 189301, December 15, 2010.

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