

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS BAUIT Y DELOS SANTOS, ACCUSED-APPELLANT.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated January 7, 2014 of the Regional Trial Court, National Capital Judicial Region, Branch 140, Makati City in Criminal Case No. 11-1968 entitled: “People of the Philippines, versus Carlos Baut y delos Santos, Accused.”, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered as follows:

1. Finding the accused Carlos Baut y delos Santos GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A of paragraph 1 (a) of Republic Act No. 8353. Consequently, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility of parole pursuant to R.A. 9346.
2. Said accused is likewise ordered to pay CMP civil indemnity in the amount of P75,000.00 for moral damages, the sum of P75,000.00 and P30,000.00 as exemplary damages or a total of P180,000.00.

Costs de officio.

SO ORDERED.”

The facts are:

Accused-appellant Carlos Baut y delos Santos (Baut for brevity) was charged by the City Prosecutor's Office of Makati City with Rape under Article 266-A(1)(a) of the Revised Penal Code, in an Information[2] dated July 25, 2011, the accusatory portion of which reads as follows:

“On or about July 20, 2011, in the City of Makati, Philippines, accused, by means of force, threat or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with (sic) his biological daughter, CMP,[3] a minor, 12 years old, against her will and without her consent.

CONTRARY TO LAW.”

When arraigned on August 23, 2011,[4] accused-appellant Baut pleaded not guilty to the crime charged.

During the pre-trial conference held on September 21, 2011 the parties did not make any stipulation. The prosecution merely marked in evidence its documentary exhibits (Exhibits “A” to “F”). Thereafter, the pre-trial conference was terminated[5]

Trial on the merits ensued.

The prosecution presented CMP, LP,[6] the mother of CMP, PO2 April A. Castro whose testimony was stipulated upon by the parties, and Dr. Joseph Palmero, as witnesses.

CMP, a 13-year old first year high school student testified that: she is the daughter of accused-appellant Baut and LP, but his parents are not married to each other that is why she is not using his surname; in the early morning of

July 20, 2011, she was sleeping at home with her cousin and accused-appellant Bauit, while her mother was in Cagayan attending a funeral; her father is a carpenter, while her mother is a former overseas Filipino contract worker; at 4:30 o'clock in the morning of July 20, 2011, she was already awake and was preparing for school because she had to leave at 5:00 o'clock in the morning; her cousin had already left because she was called by her mother; while she was about to go to the bathroom to take a bath, accused-appellant Bauit held her and forced her to lie down in the living room; he pulled down her short pants, but she resisted his advances and fought back; however, her efforts were in vain because he was strong; he was able to overpower her and succeeded in removing her short pants and underwear; he then pulled down his short pants, put himself on top of her and inserted his penis into her vagina; she felt pain and all she could do was cry because she could not do anything; she could not recall how long accused-appellant Bauit was on top of her, but it took him minutes to consummate the act; after which, he ordered her to take a bath, while he cooked her baon; after taking a bath, she went to school as if nothing happened; when her mother arrived from Cagayan, she told her what accused-appellant Bauit did to her and her mother confronted accused-appellant Bauit; she also confided the incident to her cousin who, in turn, relayed it to another cousin who told her aunts about it; she and her aunts went to a barangay kagawad and reported the incident to the latter; on July 22, 2011, she went to the police station and gave her sworn statement to [*]PO1 April Castro; and, after investigation, she was sent to a doctor in Camp Crame for genital examination.[7]

LP, the common law wife of accused-appellant Bauit, declared that: she is the mother of CMP who was born on September 21, 1998, as shown by her birth certificate; the father of CMP is accused-appellant Bauit, her live-in partner; although they were already in a relationship, they started living together after CMP was born; the name of accused-appellant Bauit as the father of CMP appears in the Birth Certificate of CMP and he acknowledged her in said document as his biological daughter; on July 20, 2011, she was in Cagayan and she came home on July 21, 2011; in March 2011 CMP already told her that she was being sexually molested by accused-appellant Bauit, but she and CMP did not file a case against him; despite CMP's report of sexual molestation, she let accused-appellant Bauit stay in her house because at that time she did not have work yet and she had no means to support her daughter; accused-appellant Bauit was the only one providing support for her and her daughter; and, when she worked abroad in 2008, she left CMP under the care of her sister, but when she left for the second time, she allowed CMP to live with accused-appellant Bauit, trusting that he would take good care of her.[8]

The intended testimony of PO2 April A. Castro was the subject of stipulation[9] by the parties, to wit:

1)

That the witness is tasked as the police investigator who handled and conducted investigation in this case;

2)

That she took the statements of the minor complainant, the aunt and the persons who made warrantless arrest on the accused;

3)

That in the course of her investigation, she referred the victim to the PNP Crime Laboratory in Camp Crame for examination, hence a Medico Legal Report was submitted to her which she incorporated in her Final Investigation Report dated July 29, 2011, marked Exhibit "A".

Dr. Joseph Palmero, a Medico Legal Officer assigned at PNP Crime Laboratory in Camp Crame, Quezon City,

testified that: in the course of the performance of his official functions as Medico Legal Officer, he examined CMP in response to a Request for Genital Examination dated July 22, 2011 from the Makati Central Police Station; in preparation for the examination, she interviewed CMP; he prepared a Sexual Crime Protocol that CMP and her aunt signed in his presence; he then asked for the consent of CMP and her aunt to the genital examination that he would conduct on CMP; during the examination, he noted that CMP had two (2) deep healed lacerations at 3:00 o'clock and 7:00 o'clock positions of the hymen; since the lacerations were already healed, the same could have been inflicted more than a week before the genital examination of CMP; aside from the deep healed lacerations, there were no other signs of physical injuries noted on the body of CMP; the presence of deep healed hymenal lacerations indicates a blunt penetrating trauma on the genitalia; in other words, CMP was no longer a virgin, having had sexual contact before; he reduced his findings in writing and signed it; and, his immediate superior and chief of staff also signed the Medico Legal Report No. R-11-1065 dated July 23, 2011 which he prepared.[10]

For its part, the defense presented accused-appellant Bauit as its sole witness. He testified that: before his detention, he worked as a construction worker in Fort Bonifacio, Taguig, Metro Manila; he lived in a house with four (4) rooms at No. 5052, Malvar Street, Makati City; he, LP and CMP occupied the first room, CMP's aunt, her husband and their two (2) children stay in the second room, the third room is occupied by a brother of LP, his wife and two (2) children, and the fourth room is where the another sister of LP and her family stay; the size of each room is only four (4) square meters and the house consists of only one (1) floor; the partitions between the rooms are made of thin plywood; in the evening of July 19, 2011, he slept alone in their room since his wife was in Cagayan to attend the wake of his deceased uncle, while CMP spent the night with her cousin in the fourth room; CMP is the best friend of her cousin and they have a habit of staying together in the fourth room where the latter lives; he woke up at 5:30 o'clock in the morning of July 20, 2011 to prepare for work because he would leave the house at 6:30 o'clock in the morning; CMP is a problem child because she has a boyfriend at a very young age and she would always go out with her peers to the point that her studies were being affected; he and his wife would scold and reprimand her whenever she went out with her boyfriend at night; every time he reprimanded and prohibited her from seeing her boyfriend, she would get mad and would become rebellious and sometimes, she would not talk to him; the siblings of his wife do not like him and they do not want him to live in their house; there is no truth to the statement of CMP that she slept beside her cousin in their room because he was alone in their room on July 19, 2011; there is also no truth to the allegation of CMP that when she was about to take a bath, he held her and made her lie down; theirs is a common bathroom located in front of the fourth room and before reaching the bathroom, one has to pass by three (3) rooms; he could not have made CMP lie down in the sala or living room because their house has no sala or living room; the accusation of CMP that he raped her is impossible to happen because the rooms are separated only by plywood and any resistance by CMP or commotion she caused in their room would surely alarm the occupants of the adjoining rooms; it is not true that he raped CMP because he loves her and the lies she peddles were meant to cover up for all her wrongdoings; her mother's siblings support the accusations leveled against him because they do not like him and he is not acceptable to them; and, on July 21, 2011, he was arrested by police officers on account of a complaint for rape lodged against him by CMP.[11]

On rebuttal, the prosecution was supposed to present Gladys Pascua and Irene Sese as its witnesses. However, their oral testimonies were dispensed with after the parties agreed to stipulate on their intended testimonies, to wit:

1)

The daughter of Ms. Gladys Pascua, Aina Pascua and the private complainant slept at the latter's room on July 19, 2011.

2)

Ms. Irene Sese will deny the claim of the accused that this case was filed only because the Sese sisters are angry at him.

3)

Ms. Sese will also deny the claim of the accused that the private complainant had a boyfriend and that she was having problems in school.[12]

After trial, the lower court rendered the assailed judgment. Hence, this appeal, assigning this lone error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant Baut argues that: the common bathroom where CMP intended to take a bath is located near the fourth room where she and her cousin slept, thus her testimony that she was preparing for school and was about to take a bath when she was held and made to lie down in the sala by accused-appellant Baut has no basis; since she slept in the fourth room, she could have directly gone to the bathroom nearby without the knowledge of accused-appellant Baut; the testimony of CMP that she resisted accused-appellant Baut's sexual advances and fought back is incredible, for if it was true, the occupants of the adjoining rooms would have been alarmed, considering that the four (4) small rooms only had thin plywood as partition; the testimony of Dr. Joseph C. Palmero who was presented as an expert witness appears to contradict the allegation of CMP that she was raped, since said doctor declared that the two (2) deep healed lacerations he noted on the genital of CMP were sustained more than one (1) week before he conducted the examination on July 22, 2011; if CMP was indeed raped, there should have been traces of sperm cells and/or acid phosphatase inside the vagina of CMP, but the doctor found none; the absence of any injury on the genital and the anus of CMP is another badge that contradicts the allegation of rape, especially if she claims that she resisted and fought back during the sexual assault; there is reasonable doubt that CMP was telling the truth and her version of the story does not seem to fit simple logic and common sense; and, the evidence for the prosecution, therefore, is not enough to sustain a finding of accused-appellant Baut's guilt beyond reasonable doubt.

The Office of the Solicitor General counters that: the lower court found the testimony of CMP straightforward, candid and categorical and was given full weight and credit, as against the accused-appellant Baut's weak defense of denial; the lower court correctly ruled that CMP's testimony could not be discredited by the denial of accused-appellant Baut; contrary to accused-appellant Baut's submission, it is neither improbable nor impossible for a rapist to employ such criminal design in the presence of his own family or nearby neighbors, especially when overcome by lust; it is a common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby; rape may even be committed in a room adjacent to where the victim's family was sleeping or even in a room which the victim shared with other women; with regard to the allegation of accused-appellant Baut that CMP was no longer a virgin before the alleged rape happened, the fact that she had prior sexual encounter does not, in any manner, negate or weaken her allegation that she was raped by accused-appellant Baut; the state of virginity (or lack thereof) does not render the act of rape impossible or any less atrocious; there can be rape even if the medical examination shows no vaginal laceration; while the result of a medical examination may be considered strong evidence to prove that the victim was raped, such evidence is not indispensable in establishing the guilt or innocence of the accused; it is a settled rule that a medical report is not even necessary in a prosecution for rape, as long as the evidence on hand convinces the court that conviction is proper; also, the absence of spermatozoa is not a negation of rape since it is penetration, not ejaculation, which

constitutes the crime of rape; the lower court correctly gave weight and full credence to the testimony of CMP; it is a well-settled rule that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observation and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood, or erroneously appreciated, and which if properly considered, would alter the result of the case; besides, when it comes to evaluating the credibility of the testimonies of the witnesses, great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth; it is against ordinary human logic that a child of tender age would concoct a story, allow her private parts to be examined just so she can get even with her father, unless it was solely because of her desire to tell the truth and to have the offender, her very own flesh and blood punished; and, the uncorroborated denial of accused-appellant Bauit cannot prevail over the positive and substantiated testimony of CMP.

The appeal has no merit.

Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, classified rape as a crime against persons. It also amended Article 335 of the RPC and incorporated therein Article 266-A which reads:

Article 266-A. Rape, When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

X x x x x x x x.

According to the foregoing provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[13] Both elements of the crime of rape were indubitably established by the prosecution.

Accused-appellant Bauit was charged with having carnal knowledge of her own biological daughter CMP, a 12-year old minor, through force or intimidation on July 20, 2011 in their own abode and during the absence of her mother, LP. A material portion of the testimony of CMP on the incident that happened in that fateful morning of July 20, 2011 runs as follows:

Q

Now you said on July 20, 2011 at 4:30 in the morning you were inside your house?

A

Yes, sir.

Q

What were you doing then?

A

I was preparing for school, sir.

Q

Why? What time do you have to go to school?

A

I need to leave the house at 5, sir.

COURT:

5 what?

A

5 a.m., your Honor.

PROS. GAVIDA:

Q

Why? What time do you report to school?

A

I need to be in school at about 5:30 in the morning, sir.

Q

While you were preparing to go to school that early morning, do you recall of anything unusual that happened to you?

A

Yes, sir.

Q

Tell us what is that that happened to you, CMP.

A

I was preparing for school at that time and was about to take a bath when my father hold (sic) me and made me lie down. He pulled down my shorts and panty and inserted his organ inside mine, sir.

Q

He made you lie down in which part of the house, CMP?

A

At the sala, sir.

Q

You said earlier that your cousin also slept at your house. At that time that your father did what you just said to you, where was your cousin then?

A

She already left, sir, because she was called by her mother.

Q

When you said your father pulled you and undressed you, what if any did you do?

A

I tried to fight back until I can, sir.

Q

What happened to your efforts to resist or fight back?

A

None, sir, because he is so strong.

Q

What were you wearing at that time, CMP?

A

I was wearing bra and panty, sir.

Q

What about Carlos? What was he wearing at that time?

A

He has (sic) shorts and underwear.

Q

You said he pulled you, made you lie down and undressed you. What if any did he do to this shorts and underwear?

A

He also pulled it (sic) down, sir.

Q

And you said he inserted his organ into your organ?

A

Yes, sir.

Q

What if any did you feel while he was doing that; inserting his organ to you?

A

I felt pain, sir. I was hurt and I was crying because I could not do anything.

Q

If you recall, how long was he on top of you?

A

I do not know but it takes (sic) minutes, sir.[14]

Based on the foregoing testimony of CMP which is clear, straightforward and categorical, unswayed by the cross-examination conducted by the defense, the lower court correctly convicted accused-appellant Bautit of the crime charged. This Court defers to the factual findings of the lower court that accused-appellant Bautit committed the crime charged, thus:

“The prosecution was able to convince the court that CMP was only 12 years old when she was raped by her father. Likewise, the child victim positively identified her father, the herein accused, as the person who raped her on July 20, 2011. Although irrelevant considering that the accused had moral ascendancy over the victim, the prosecution still proved that there was tenacious resistance on the part of the victim while being sexually assaulted by the accused. Being straightforward and categorical, complainant's testimony should be given full weight and credence.

While uncorroborated, the testimony of CMP was found credible and convincing by the lower court. Time and again, the Supreme Court has held that, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[15]

On the matter of the credibility of witnesses, the Supreme Court in *People v. Padigos*,[16] said:

“... we reiterated a long held principle that the Court gives great weight to the trial court's assessment. We held that “the trial court's finding of facts is even conclusive and binding if it is not shown to be tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The wisdom behind this rule is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying, thus, it is in a better position than the appellate court to properly evaluate testimonial evidence.”

On the contention of accused-appellant Bautit that the testimony of CMP is incredible considering that they have no sala and the bathroom is about sixteen (16) meters away from their room, this Court finds the same flimsy, meriting no serious consideration. Whether or not the bathroom is outside the room being occupied by accused-appellant Bautit and CMP and about sixteen (16) meters away is immaterial and irrelevant and will not in any manner affect the credibility of CMP and her story that she was raped by her own father. She convincingly testified that she was made to lie down and was sexually abused by accused-appellant Bautit in their room, as she was preparing for school and about to go to the bathroom. Likewise, whether or not the family has a receiving room or sala would not make the testimony of CMP unbelievable or less credible. What matters is that she narrated that the incident happened inside the room they were occupying and not somewhere else.

While accused-appellant Bautit insists that CMP slept in the room of her cousin in the evening of July 19, 2011, he entered into a stipulation with the prosecution on June 26, 2013 and agreed, among others, that: “The daughter of Ms. Gladys Pascua, Aina May Pascua, and the private complainant slept at the latter's room on July 19, 2011,” thereby contradicting his own assertion that CMP did not sleep in their room on said date.

Regarding the argument of accused-appellant Bautit that he could not have committed the crime of rape because the four rooms being occupied by LP and her siblings are separated only by thin plywood, the Solicitor General correctly pointed out citing the cases of *People vs. Dumadag*[17] and *People vs. Alviz*[18] that:

“Contrary, to said submissions, it is neither improbable nor impossible for appellant to employ such criminal design in the presence of his (appellant) own family or nearby neighbors, especially when overcome by lust. It is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby. Lust is no respecter of time and place. Rape may even be committed in a room adjacent to

where the victim's family was sleeping, or even in a room which the victim shared with other women.

Jurisprudence teaches us that rape may be committed even in places where people congregate. Thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case.[19]

Accused-appellant Baut also posits that when Dr. Joseph C. Palermo examined CMP barely three (3) days after the alleged rape, he found that she had two (2) deep healed hymenal lacerations which were sustained more than a week earlier, which finding contradicts her testimony that she was raped by her father. He hastens to add that said deep healed lacerations must have been caused by somebody else and not by him.

This Court is not convinced.

Granting that CMP was no longer a virgin when accused-appellant Baut forced himself unto her, the same would not negate the commission of rape. The Supreme Court held that the absence of fresh lacerations does not prove that the victim was not raped.[20] A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.[21] For that matter, in crimes against chastity, the medical examination of the victim is not an indispensable element for the prosecution of the crime as her testimony alone, if credible, is sufficient to convict the accused as in this case.[22]

Likewise, the absence of spermatozoa does not negate the conclusion that accused-appellant Baut forcibly inserted his penis into the vagina of CMP. Jurisprudence is replete with examples where, despite the absence of spermatozoa, the accused was still found guilty of consummated rape. *People v. Dones*[23] held that the important consideration in rape cases is not the emission of semen, but the penetration of the female genitalia by the male organ. In *People v. Bato*,[24] the Supreme Court affirmed that the presence or absence of spermatozoa is immaterial in a prosecution for rape, the important consideration not being the emission of semen, but the unlawful penetration of the female genitalia by the male organ. Similarly, the Supreme Court stressed in *People v. Arivan*[25] that the absence of spermatozoa in the private complainant's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.

The lower court is correct in not giving credence to the defense of accused-appellant Baut that CMP fabricated the rape story against him as a vengeance for sternly disciplining her. As aptly pointed out by the lower court, a young woman of tender age would not concoct a story, allow her private parts to be examined, and thereafter subjected herself to public trial and humiliation, just to get even with his father, unless it was solely because of her desire to tell the truth and to have the offender punished. In *People v. Felipe*,[26] and *People v. Sambangan*,[27] the Supreme Court said:

“X x x. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, Andrelyn would have allowed herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. Verily, it takes an extreme sense of moral depravity for a daughter to accuse her very own father of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction if only to exact revenge on her father who allegedly maltreated her. As earlier held by the Court, a true Filipina would not go around in public unravelling facts and circumstances of her defloration for no reason, if such were not true.”

Besides, the defense failed to show that CMP was morally depraved and capable of concocting a web of lies that could cost the life and liberty of her own father.

All told, this Court finds no cogent reason to disturb the findings and conclusions of the lower court, thus this

appeal must fail.

WHEREFORE, appeal is DENIED. The assailed Decision dated January 7, 2014 of the Regional Trial Court of Makati City, Branch 140 in Criminal Case No. 11-1968 is AFFIRMED.

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A., JJ., concur.

[1] Record, pp. 111-118

[2] Record, p. 1.

[3] The name of the victim is withheld to protect her identity and privacy, *People vs. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Sec. 40, Rule on Violence Against Women and their Children; Sec. 63 Rule XI, Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2002.

[4] Record, p. 20

[5] Record, pp. 24-25

[6] The name of CMP's mother is withheld to protect the identity of the victim, *Supra*.

[*] He was then PO1, but later promoted to PO2.

[7] TSN, January 25, 2012

[8] TSN, March 20, 2012; July 13, 2012

[9] As contained in the Order dated July 31, 2012; Record, pp. 43-44

[10] TSN, November 13, 2012

[11] TSN, April 13, 2013

[12] As stated in the Order dated June 26, 2013, Record, pp. 96-97

[13] *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

[14] TSN, January 25, 2012, pp. 7-9

[15] See *People v. Subesa*, G.R. No. 193660, November 16, 2011, 660 SCRA 390, 401.

[16] G.R. No. 181202, December 5, 2012, citing *People v. Bosi*, G.R. No. 193665, June 25, 2012.

[17] G. R. No. 176740, June 22, 2011

[18] G. R. Nos. 144551-55, June 29, 2004

[19] *People vs. Guillen*, G.R. No. 191756, November 25, 2013

[20] *People v. Baylen*, 431 Phil. 106, 116 (2002).

[21] *People v. Orilla*, 467 Phil. 253, 274 (2004).

[22] *People vs. Amigable*, G.R. No. 133857, March 31, 2000 23 325 Phil. 173 (1996).

[24] 382 Phil. 558, 566 (2000), citing *People v. Juntilla*, 373 Phil. 351, 366 (1999); *People v. Sacapaño*, 372 Phil. 543, 555 (1999); *People v. Manuel*, 358 Phil. 664, 672 (1998).

[25] G.R. No. 176065, 22 April 2008, 552 SCRA 448, 469.

[26] G.R. No. L-40432, 19 July 1982, 115 SCRA 88;

[27] G.R. No. L-44412, 25 November 1983, 125 SCRA 726.

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