

ROMULO NATIVIDAD Y SAN DIEGO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-40233. June 25, 1980

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court reverses the decision of the Court of Appeals affirming the trial court's judgment of conviction of petitioner for robbery and absolves him, for the evidence of his identification as the author of the crime charged, being unreliable, does not preclude the reason-able possibility of mistake. The identity of the alleged perpetrator of a crime, like the crime itself, must be proven beyond reasonable doubt. In the absence of such proof beyond reasonable doubt which re-quires moral certainty, the accused's constitutional right of presump-tion of innocence until the contrary is proved entitles him to an ac-quittal.

The information dated January 26, 1972, which brought about petitioner Romulo Natividad y San Diego's trial and subsequent convic-tion in the Circuit Criminal Court of Manila (which court sentenced him to suffer imprisonment of from two (2) years, ten (10) months and twenty (20) days of prision correccional as minimum to eight (8) years of reclusion temporal as maximum, to indemnify the victim in the amount of P943, and to pay the costs of suit, as affirmed in the Court of Appeal's judgment which corrected the trial court's erroneus designa-tion of the maximum penalty imposed to eight (8) years of prision mayor rather than reclusion temporal) charges him with robbery in an inhabited house committed on January 3, 1972 at 1660 Luis Ma. Guerrero St., Malate, Manila, and recites that he robbed Nellie Primavera y Givera of cash in different denominations totaling P900 at gunpoint inside her bedroom.

The record evinces that on January 3, 1972, at about 5 o'clock in the afternoon, Primavera, resident manager of the Manila Christian Guesthouse (consisting of three (3) buildings in a compound) located at 1660 Leon Ma. Guerrero St. chanced upon a man inside her second floor bedroom whom she asked what he wanted and who replied that he killed a person and wanted to hide. The man then ordered her to get inside a closet to which order she retorted, "You are the one who would like to hide,[1] why will I be the one to go inside that closet." [2] Nonetheless, she got inside the closet but stood by its door and watched the man as he pulled open the drawers in her cabinet.

Primavera continued to watch as the man took her keys on top of her sewing machine and, with these keys, tried to unlock one of the drawers (wherein she kept her money and jewelry) in her table. Upon doing so, the man pulled open the unlocked drawer and found money therein in one of the four partitions thereof, part of which money represented Primavera's collection of the guesthouse's income. Realizing that Primavera stood on watch, the man ordered her to get inside the bathroom where she locked herself in. After about ten to fifteen minutes, Primavera rapped on the door and, hearing no response, opened the same only to find the man gone from her bedroom and her money gone from the drawer.

Primavera shouted and her cook, Nieves Dagooc, rushed to her bedroom. Dagooc then called for the laundrywoman, Anicia Galvadores, and the houseboy, Fernando Solimen, both of whom also rushed to Primavera's bedroom where the latter narrated to them what transpired, coupled with a description of the man. In turn, Galvadores related that she also saw the man and even bumped into him, and Solimen mentioned that he likewise saw the man when he entered the compound.

Thereafter, Primavera reported the incident by telephone to the police authorities at Precinct 4 of the Manila Metropolitan Police (MMP) who, however, considering the amount allegedly taken, referred her to the Theft and Robbery Division of their Detective Bureau. At about 9 o'clock in the evening, two police officers arrived at the Manila Christian Guesthouse to investigate the reported robbery.

Subsequently, one of the investigators submitted an alarm report[3] dated January 3, 1972 wherein he included a brief narration of the incident and a description of the man suspected as the robber, all based on the verbal statements given by Primavera.

Ten days later on January 13, 1972, Primavera, while inside the United Missionary Office about five (5) blocks away from the Manila Christian Guesthouse, saw a man enter the said office whom she allegedly recognized as the man who robbed her. However, she waited until someone talked to him in order to confirm whether or not he had "gold teeth." She saw that he had so she made inquiries about him from the accountant and the bookkeeper of the United Missionary Office to whom she also related the robbery incident. She learned from the book-keeper the man's name - Romulo Natividad - and his occupation as well as his employer - collector of the Allied Brokerage Corporation. She telephoned the police authorities to report this development and also made arrangements with those in the United Missionary Office to call her up when the man came to the said office again so she could send either Galvadores or Solimen to take a look at him.

On January 21, 1972, Primavera received a telephone call from those in the United Missionary Office informing her of the man's presence in the said office so she sent Galvadores there to find out if she could recognize the man. Galvadores reported back that "he was the man." [4]

Subsequently, on January 25, 1972, three police officers "fetched" Primavera, Galvadores and Solimen and they proceeded to the office of the Allied Brokerage Corporation at Port Area, Manila. Two of the police officers invited Natividad for interrogation at the MMP Head-quarters. At the MMP Headquarters, the police officers asked Natividad to join a line-up of ten (10) men. All three - Primavera, Galvadores and Solimen - identified Natividad from among those in the line-up as the malefactor. The police officers then took the written statements[5] of Primavera, Galvadores and Solimen regarding the robbery, placed Natividad under arrest and brought him to the Office of the City Fiscal. Natividad, however, secured his release upon the filing of the requisite bail bond.

On January 26, 1972, Assistant Fiscal Fernando P. Agdamag filed the corresponding information with the Circuit Criminal Court of Manila. Arraigned before the Circuit Criminal Court of Manila on January 31, 1972, Natividad pleaded not guilty. Trial ensued - at which Primavera, Galvadores and Det. Sgt. Alfredo Extremadura testified for the prosecution, and Natividad, MMP photographer Ildefonso de la Cruz, and Allied Brokerage Corporation credit manager Edith Castro testified for the defense.

On October 23, 1972, the Manila Circuit Criminal Court rendered the judgment of conviction involved herein from which Natividad interposed an appeal to the Court of Appeals. On November 14, 1974, the appellate court[6] rendered its judgment of affirmance. Natividad's subsequent reconsideration plea met with denial.

Hence, the petition at bar, which we find to be meritorious.

In the main, the case at bar raises the question as to the identity of the man who committed the robbery at the Manila Christian Guesthouse. Both the trial and appellate courts declare that the evidence, consisting principally of the respective testimonies of Primavera and Galvadores, sufficiently established the positive identification of Natividad as the malefactor. Natividad, on the other hand, flatly denies the charge and asserts that it was a case of mistaken identity.

1. The description of the robber furnished by Primavera to the police investigators in the evening of January 3, 1972 was reduced in writing in their alarm report of the same date, as follows:

"One (1) Male Filipino About 40 yrs. or 42 yrs. old, about 5'5" or 5'6" tall, regular build, oblong face, dark complexion, with one gold upper teeth [sic], hair crew cut, wearing T-shirt color light cream, blue pants, armed with a gun."

On the other hand, at the hearing of the case on June 8, 1972, the trial court, taking cognizance of the natural appearance of Natividad, made of record, upon agreement between the trial fiscal and counsel for the said Natividad, the following:

Natividad is "[t]hirty eight years and nine months" old,[7] and stands "[f]ive feet four inches" tall.[8] He has "fair complexion"[9] and has "two front upper gold teeth with two white teeth in between, and one is in the center." [10] He "is not crew cut" [11] and "he is not well-built." [12]

On the matter of the shape of Natividad's face, his counsel and the trial fiscal differ, with the former contending that he has a round face and the latter, an oblong one.

An appraisal of Primavera's original description of the man who robbed her vis-a-vis Natividad's actual and natural appearance makes apparent several discrepancies, the most serious two of which throw grave doubts on the veracity and quality of the identification in the case at bar. The discrepancies between the estimated age and height of the man who robbed Primavera as reported by her and the actual age and height of Natividad could be overlooked and excused, considering that perfectly accurate descriptions as to general characteristics of persons, with particular reference to age, height and weight, estimations of which could only be culled from deceptive physical dimensions, cannot be strictly exacted even from the most observant of witnesses. However, the serious discrepancies between the one gold tooth and crew-cut hair of the man who robbed Primavera as described by her and the actual teeth (three gold teeth, two upper and one lower, infra) and long hair of Natividad cast the gravest doubts on the faulty and inconclusive identification of the said Natividad as the malefactor.

Primavera attributes to the man who robbed her "one gold upper teeth [sic]." Natividad, whom she later identified as the malefactor, has at least "two front upper gold teeth with two white teeth in between, and one is in the center." [13] On the matter, the trial judge who had the opportunity to make an appreciation of the personal appearance of Natividad, stated that he has "two front upper gold teeth with white teeth in between and there is a lower front gold tooth at the center." [14] It is not disputed that Natividad had these "gold teeth" long before the date of the robbery on January 3, 1972. [15]

Clearly, Primavera's dental sketch of the man who robbed her as having one gold-capped upper tooth [16] starkly contrasts with Natividad's dentition - two gold-capped front upper and one gold-capped front lower teeth, all of them exposed to view whenever he talks. [17] This discrepancy was ascribed by the Court of Appeals to the circumstance that Primavera, "in the grip of great tension and fear cannot be expected to count the number of gold teeth in the person of a stranger who accosts her with a gun." [18] The appellate court further stated that "[i]t is enough that she saw and remembered that the suspect had gold in his teeth." [19] Au contraire, several circumstances on record negate Primavera's characterization by the appellate court as a woman "in the grip of great tension and fear." The record evinces that Primavera, chancing upon the man inside her bedroom, "came

close to him and asked him"[20] what he wanted; that, when ordered by the man to get inside a closet, before complying, she re-torted, "You are the one who would like to hide, why will I be the one to go inside that closet;"[21] that she stood by the closet door and watched the man as he pulled open her drawers and even asked him "what was he looking for;"[22] and that, when the man ordered her to transfer to the bathroom and after the said man closed the bathroom door, she "tried to open it again,"[23] prompting the man to threaten her.

Clearly, Primavera reacted to the situation not as a woman "in the grip of great tension and fear" but as one with a certain hardihood, manifesting no womanly fit of alarm, as evidenced by her re-peated provocative interrogation of the man in her bedroom; her dis-arming retort ("You are the one who would like to hide, why will I be the one to go inside that closet"), overbearing in its nuance; her recalcitrance when, having been ordered by the man to get inside the closet, she stood on watch surreptitiously by the closet door and ran the risk of detection; and her heedless defiance of peril when having been confined to the bathroom, she tried to open the bathroom door, despite his waving of his gun and his threats. It cannot then be accurately stated that the occurrence so unsettled Primavera with "great tension and fear" for the duration thereof as to enervate her powers of perception, rendering her absolutely incapable of accurate observation of, in particular, the specific physical characteristics of the man which left an impression on her. Precisely, when she saw Natividad near the premises of the United Missionary Office ten days later, her identification mark was to wait for someone to talk to him so she could see whether he had "gold teeth", supra. (Parenthe-tically, her conduct on this occasion betrays her own uncertainty as to the identity of Natividad as the robber - if she had been absolutely certain, she would caused his apprehension right then and there. Instead she made arrangements with those in the United Missionary Office to watch out for him when he went there again, so she could send her laundrywoman and houseboy to look at him - which was 8 days later on January 21, 1972, supra.)

It cannot also be said that Primavera had only a very limited opportunity to observe the man's distinguishing dentition, for, on record,[24] she and the man had seven (7) vocal exchanges either in face-to-face encounters or with the said man turning to face Primavera in those instances when he had his back to her. All of these occasions presented Primavera with the opportunity to ascertain the details of the man's physical and dental features and, consequently, the burden is on her to justify the material discrepancies between her descrip-tion and the actual features of Natividad.

On the second point of discrepancy - the crewcut hair of the man who robbed Primavera as described by her vis-a-vis the long hair of Natividad at the time of his apprehension on January 25, 1972 a day and three weeks after the robbery incident - the Court of Appeals stated:

"With respect to the hair, it can be seen from the two photographs (Exhibits '2' & '2-A'), taken of the accused when he was brought to the police precinct, that his hair was still short, though a little bit long for the so-called crew cut hair (no indication of a recent hair cut), and this means that his hair must necessarily be a great deal shorter than that in the photographs above-mentioned, more than three weeks before on the day of the robbery, and this accounts for the so-called crew cut hair descrip-tion of the accused in the alarm report." [25]

The photographic evidence[26] taken of Natividad by MMP photographer Ildefonso de la Cruz on January 25, 1972 (only three weeks after the commission of the crime) at the MMP Headquarters where the police officers brought him for interrogation unmistakably show that Natividad had long hair combed aback, well-parted on the left and with long sideburns. If, indeed, Natividad, on January 3, 1972, had "crew cut hair" per Primavera's description, or hair "a great deal shorter," per the Court of Appeals' decision, the same could not have grown to such length (evident from the photographs) which could be well-parted and combed back. No attempt was made whatever by the prosecution to show that Natividad had ever had his hair crewcut or that he even had short hair or different appearance than that shown on the photographs taken only three (3) weeks after the commission of the

crime. The least that could be said is that this creates the greatest doubt that Natividad could be the robber with crewcut hair as described by Primavera. This evidence was not appreciated in the least by the appellate nor the trial courts.

Even as a matter of scientific fact," [o]n the average, scalp hair grows at a rate of 1/60th of an inch per twenty-four hour period, or 2.5 mm. per week." [27] Thus, Natividad's hair would have grown only by .29th of an inch or 7.5 mm. [28] in the intervening 3-week period a - length insufficient to give him his long hair as shown in the photographic evidence.

In sum, Primavera's identification of Natividad as the man who robbed her cannot be accorded any evidentiary force, for it does not preclude the reasonable possibility of mistake. "The identity of the offender, like the crime itself, must be proven beyond reasonable doubt." [29] In the absence of proof beyond reasonable doubt as to the identity of the accused, which requires moral certainty, "a cer-tainty that convinces and satisfies the reason and conscience of those who act upon it," the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome and he is entitled to an acquittal. As stated by the now Chief Justice in *People v. Lavarias*, [30] "[t]his has been the constant holding of this Court from *United States v. Reyes*, a 1903 decision . . .".

2. The identification of Natividad by the laundrywoman Anicia Galvadores as the man whom she saw and bumped into in the Manila Christian Guesthouse compound cannot likewise be conceded any probative value. First, contrary to the reference of the appellate court to Galvadores as one of the "prosecution witnesses who described the appearance of the suspect to the police," [31] it appears on record that the said Galvadores gave no description whatsoever of the man to the police investigators who looked into the reported robbery in the evening of the day the incident occurred, not having been interviewed at all by the said police investigators on the occasion. [32]

Secondly, the ambiguity surrounding the circumstances during which Galvadores made her initial verification of Natividad as the man whom she saw and bumped into in the Manila Christian Guesthouse compound renders questionable the reliability of such verification. The record only shows that after Primavera received a telephone call from those in the United Missionary Office informing her of the presence of Natividad in the said office, she sent Galvadores there to take a look at him and that the said Galvadores reported back that "he was the man." The record fails to mention whether Galvadores, when in the premises of the United Missionary Office, (1) independently picked out Natividad from among those in the said premises and recognized him as the man whom she saw and bumped into in the Manila Christian Guesthouse Compound, or (2) simply regarded Natividad after he had been pointed out to her by those in the United Missionary Office as the man whom Primavera previously recognized as responsible for the robbery. In the first case, considering that Galvadores gave no description whatsoever of the man whom she saw and bumped into in the Manila Christian Guesthouse, there could have been neither a reference point, as to specific physical characteristics of the man which may have made an impression on her, from which she could have proceeded to make the verification nor basis, with reference to both general and specific physical features of the man which may have struck her, against which she could have matched the natural appearance of Natividad. In the second case, the verification could be said as having been secured under circumstances laden with the compulsion of suggestion of her employer Primavera.

3. On record appear circumstances which detract not only from the fairness of the line-up procedure employed by the police officers in the case at bar, which procedure even the Court of Appeals concedes - albeit, according to it, for the sake of argument - as "improper and irregular," [33] but also subvert the reliability of the identification made by Primavera, Galvadores and Solimen in the course of such procedure. The record shows that on January 25, 1972, three police officers "fetched" Primavera, Galvadores and Solimen in a jeep and they proceeded to the

office of the Allied Brokerage Corporation. Primavera, et al. and a police officer stayed behind in the jeep and two police officers looked for Natividad inside the Allied Brokerage Corporation office in order to invite him for interrogation at the MMP Headquarters. Outside the said office, the police officers "threatened"[34] Natividad, for he desisted from joining them while Primavera, et al. watched from inside the jeep. Thereafter, they all proceeded "together"[35] to the MMP Headquarters where the police officers directed Natividad to join a line-up of ten (10) men. Then, the police officers "called the two women [Primavera and Galvadores] and the man [Solimen]"[36] and asked him to make the identification. It can thus be readily seen that at the premises of the Allied Brokerage Corporation office, the police officers literally paraded Natividad before Primavera et al. whom they purposely "fetched" from the Manila Christian Guesthouse "to see"[37] Natividad.

The "line-up" was thus a useless ceremony. The police officers had already paraded and identified Natividad to Primavera and her witnesses when they were all fetched together in the police jeep to be brought to the MMP Headquarters, so their identifying Natividad in the line-up was a foregone conclusion.

As was pungently stated by the late Chief Justice Fred Ruiz Castro in *People v. Cruz*,[38] "[t]he manner by which [the witnesses] Emma and Zenaida were made to identify the accused at the police station was pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eyewitnesses. This unusual, coarse and highly singular method of identification, which revolts against the accepted principles of scientific crime detection, alienates the esteem of every just man, and commands neither our respect nor acceptance."

4. The defense of alibi interposed by Natividad assumes considerable importance and gains commensurate strength in view of the unreliability of the evidence of his identification as the perpetrator of the robbery at the Manila Christian Guesthouse.[39]

Natividad testified that on January 3, 1972, he delivered bills for payment to and collected checks from the clients of the Allied Brokerage Corporation. He started at 8:45 o'clock in the morning and finished at 4:30 o'clock in the afternoon at which time he returned to the office. At the Allied Brokerage Corporation office, he arranged copies of the bills he delivered and the checks he collected in the Credit and Collection Department room. After about twenty (20) minutes, he submitted his collection to the cashier who issued him the corresponding receipt. After keeping the receipt in the Credit and Collection Department room, he attended the staff meeting of his Department which started a little after 5:00 o'clock and ended at or about 5:25 o'clock. After the meeting, he punched his timecard out. While still outside the Allied Brokerage Corporation office, the secretary of the corporate Vice-President called for him and asked him to pass by the house of the President of the Allied Brokerage Corporation at San Juan, Rizal to deliver a sealed envelope. After delivering the envelope, he proceeded home to Morong, Rizal, arriving thereat at around 9 to 9:30 o'clock in the evening.[40]

Allied Brokerage Corporation credit manager Edith Castro corroborated the attendance of Natividad at the staff meeting, having seen him personally at the said meeting together with the other personnel of the Credit and Collection Department and having seen him personally leave after the meeting[41] at about 5:50 p.m. Natividad then could not possibly have been at the robbery which took place at about 5 p.m.

The trial Court made short shift of these vital facts establishing the accused's alibi with the statement that "the very thing that renders the alibi of the accused entirely worthless is that even before his apprehension, that was right on the day of the commission of the robbery, he was already identified as having a gold tooth," but failed to appreciate the vital discrepancies between Primavera's identification and the actual appearance of Natividad, supra, which made such description entirely worthless as against Natividad for it did not fit him at all.

5. Other circumstances likewise cast grave doubt on the charge against Natividad. It is undisputed that Natividad,

39 years old, married, without any criminal record, has been gainfully employed as collector of the Allied Brokerage Corporation since 1968, and that the United Missionary Church was a client of his employer - such that he was well known there and the bookkeeper, in responding to Primavera's query, forthwith identified him by name, his occupation as well as his employer. It is against the course of human experience and conduct that assuming that such a man would suddenly turn to crime, that he would pick a place to rob where he was well known to the employees and occupants and which he frequented in the course of his employment and could readily be identified and would proceed to the chosen site of the crime which was thickly populated "with a belt of bullets around his waist"[42] - as if to assure that no one failed to notice him.

The trial court's conclusion of lack of any "improper motive actuating the offended party and principal prosecution witness" has been likewise seriously assailed by Natividad, whose counsel has pointedly averred in his brief that the "complaining witness, Nelie Primavera, had an ulterior motive in pointing to the petitioner as the suspect, although she knew very well that petitioner was a different man from the suspect she described to Corporal Guina on January 3, 1972. She had to frame-up herein petitioner to cover her deficit in her accounting to the United Missionary office, which is shown by the fact that she had to increase the amount allegedly stolen by the suspect from P560.00, which was the amount she reported to the office of the United Missionary on January 6, 1972 (t.s.n., June 8, 1972, pp. 95-96), to P943.00 the amount she said during the trial. However, Primavera reported to Corporal Guina on January 3, 1972 a different amount which was P700.00 (Exh. B) and the stolen amount alleged in the information was P900.00. Her motive to cover-up her accountability to her employer is also reflected in her testimony that the suspect took her money only, leaving behind her numerous precious jewelries. This is so, because her accountability consisted of money matter only, not her jewelries."

The totality of all the foregoing circumstances perforce compels the Court to absolve Natividad of any and all responsibility for the robbery at the Manila Christian Guesthouse.

ACCORDINGLY, the judgment of conviction of the Court of Appeals is hereby reversed and set aside.

Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

Guerrero, J., took no part.

[1] TSN, June 8, 1972, p. 73.

[2] Ibid., p. 11.

[3] Original Record, p. 50.

[4] TSN, July 5, 1972, p. 18.

[5] Original Record, pp. 48-49 and 51-52.

[6] The Seventh Division composed of Associate Justices Jose N. Leuterio, Roseller T. Lim and Francisco Tantuico, Jr. (ponente).

[7] TSN, June 8, 1972, p. 102.

[8] Ibid., p. 101.

[9] Ibid., p. 102.

[10] Ibid., p. 100.

[11] Ibid., p. 101.

[12] Ibid.

[13] Ibid., p. 100.

[14] CCC decision, Rollo, p. 51.

[15] Ibid., Rollo, p. 48.

[16] Parenthetically, both the Manila Circuit Criminal Court and the Court of Appeals use the phrases "gold tooth" and "gold teeth" which phrases appear to be, technically speaking, inaccurate, considering that a tooth, in restorative dentistry, could only be capped in gold but could not be of gold.

[17] TSN, September 12, 1972, pp. 60 and 61.

[18] Rollo, p. 62.

[19] Ibid.

[20] TSN, June 8, 1972, p. 10.

[21] Vide footnotes 1 and 2.

[22] TSN, June 8, 1972, p. 12.

[23] Ibid., p. 19.

[24] Ibid., pp. 10, 11, 12, 16, 18 and 19.

[25] Rollo, pp. 61-62.

[26] Original Record, Exhibits "2" and "2-A", pp. 63-64.

[27] American Jurisprudence Proof of Facts Annotated, Volume 5, p. 574; Criminalistics, William W. Turner, Consulting Editor, 1965, p. 186.

[28] Multiplying 2.5 mm. (rate of hair growth per week) by 3 weeks (number of weeks corresponding to the period from January 3 to 25, 1972) results in 7.5 mm. (length of hair growth for 3 weeks). On the other hand, for the purpose of conversion, multiplying 7.5 mm. by .03937 (constant for converting millimeters into inches) results in .29 inch or .29th of an inch.

[29] People of the Philippines v. Amelito Beltran, L-31860, November 29, 1974, 61 SCRA 246, 250.

[30] 23 SCRA 1301 (1968).

[31] Rollo, p. 61.

[32] TSN, July 5, 1972, p. 17.

[33] Rollo, p. 61.

[34] TSN, September 12, 1972, pp. 40-41.

[35] Ibid., July 5, 1972, p. 20.

[36] Ibid., September 12, 1972, p. 42.

[37] Ibid., July 5, 1972, p. 19.

[38] 32 SCRA 181, 186 (1970).

[39] *People v. Amelito Beltran*, *supra*; *People v. Cruz*, *supra*; *People v. Primitivo Salas, et al.*, L-35946, August 7, 1975, 66 SCRA 126; *People v. Jose Omega*, L-29091, April 14, 1977, 76 SCRA 262; *People v. William Lim, et al.*, L-46890, November 29, 1977, 80 SCRA 496.

[40] TSN, September 12, 1972, pp. 20-37.

[41] *Ibid.*, pp. 67-70.

[42] CCC decision, Rollo, p. 52.

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