

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
FLORENTINO MOISES Y SANIDAD, EUSEBIO MOISES Y SANIDAD, AND  
BALTAZAR MOISES Y SANIDAD, DEFENDANTS AND APPELLANTS.**

*G.R. No. L-32495. August 13, 1975*

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**PER CURIAM:**

Review of the decision of the Court of First Instance of Pangasinan, Branch V at Urdaneta, in its Criminal Case No. U-1426, finding all accused guilty beyond reasonable doubt of the crime of Murder, and imposing upon the accused, Florentino Moises y Sanidad and Eusebio Moises y Sanidad, the penalty of death, and upon the accused, Baltazar Moises y Sanidad, an indeterminate penalty of ten (10) years prison mayor to fourteen (14) years, ten (10) months and twenty-one (21) days of reclusion temporal.

The factual background of the case is as follows:

The three brothers, Florentino Moises y Sanidad, Eusebio Moises y Sanidad, and Baltazar Moises y Sanidad, were charged with Murder before the above mentioned court in an information dated December 3, 1969, which read as follows:

"That on or about 12:55 P.M., July 19, 1969, in Guiset Norte, Poblacion, municipality of San Manuel, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully, and feloniously, assault, attack, shoot, bolo, hit, and injure one Jose Soloria with the use of a pistol, caliber .45, bolo, and stone, inflicting upon the latter multiple wounds, to wit:

x x x x x x x x

"AUTOPSY FINDINGS:

- Lacerated wound on the head at the vertex 3 inches long. The parietal bones fractured at its junction.
- Incised wound below the left ear, from the angle of the left lower jaw to the middle of the neck. Two thirds of the neck was cut.
- Incised wound on the back between the two scapula on the level of the third rib, 5 inches long and involved the skin nad subcutaneous tissues.
- Bullet wound entrance on the back on the medial border of the scapula on the level of the 5th interspace, right with a diameter of about .45 of an inch. There is no visible powder burn.
- Similar bullet wound entrance on the neck, left side of the sagital line on the level of the third cervical vertebrae coming out infront beside the eternocleidmostoid muscle on its lateral side about its mid portion.
- Similar bullet wound entrance on the back at the tip of the inferior angle of the left scapula coming out infront on the level of the ninth rib on the par-axillary line, right.

- A bullet wound entrance similar to the rest of the bullet wounds in front on the anterior axillary line, right, level of the 8th rib coming out on the back on the posterior axillary line left on the level of the ninth rib.

#### **"CAUSE OF DEATH:**

Shock due to profuse internal and external hemorrhages secondary to gunshot and incise wounds.

#### **"CONCLUSION:**

Which injuries resulted in the death of the said Jose Soloria instantaneously thereafter.

Contrary to Article 248 of the Revised Penal Code."

The three accused brothers pleaded "not guilty" to the charge and went to trial assisted by their attorneys, after which the court found them —

"x x x guilty beyond reasonable doubt of the crime of Murder, as charged, and there being present the aggravating circumstances of evident premeditation and abuse of superior strength, without any mitigating circumstances of evident premeditation and abuse of superior strength, without any mitigating circumstance to offset the same, hereby imposes upon the accused Florentino Moises y Sanidad and Eusebio Moises y Sanidad the supreme penalty of Death, and upon the accused Baltazar Moises y Sanidad the indeterminate penalty of from TEN (10) YEARS of prison mayor, as minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS, and TWENTY-ONE (21) DAYS of reclusion temporal, as maximum; and for all the accused to indemnify the heirs of the victim Jose Soloria in the sum of Twelve Thousand Pesos (P12,000.00), to pay them actual damages in the sum of One Thousand Six Hundred Pesos (P1,600.00), moral damages of Fifteen Thousand Pesos (P15,000.00), and exemplary damages of Ten Thousand Pesos (P10,000.00), all to be paid jointly and severally, without subsidiary imprisonment in case of insolvency; to suffer all the necessary accessory penalties; and to pay the costs."

The three accused brothers, Florentino, Eusebio and Baltazar, all surnamed Moises appealed to this Court from the decision.

The evidence for the prosecution shows that on July 19, 1969, at about 12:55 P.M., the victim, Jose Soloria, a resident of San Manuel, Pangasinan, then employed as a school janitor, was walking together with prosecution witnesses Inocencio Pascua and Dominador Mendoza, eastward along Bonifacio Street in Guiset Norte, poblacion of San Manuel, Pangasinan; that when the three aforementioned persons, who were walking side by side on their way to the San Manuel Central School, were near the crossing of Bonifacio and Del Pilar Streets and were about to turn right to the latter street, Jose Soloria was suddenly shot from behind; that before the shooting took place, Mendoza and Pascua saw Alejandro Tuvera near the vicinity of the crime scene; that Mendoza and Pascua fled immediately after the first burst of gunfire and were not able to identify the assailants.

The foregoing version of the prosecution was established by the testimony of the only eye-witness, Alejandro Tuvera, who testified that he saw accused Florentino Moises shoot the victim from behind with a .45 caliber pistol; that Florentino Moises fired two more successive shots at the fallen victim; that when Florentino Moises left the prostrate body of the victim, his two co-accused, Eusebio Moises and Baltazar Moises came and Eusebio Moises hacked the victim twice with a bolo while Baltazar Moises struck the head of the victim with a stone and then both accused left westward; that all the time Alejandro Tuvera was hiding under an acacia tree where he immediately sought cover after the first volley of gunfire; that only after the three accused had left the victim that witness Alejandro Tuvera called for Pat. Fernando Alvear, himself a prosecution witness, and the two proceeded to the place of the incident; that on their way to the crime scene, Tuvera informed Pat. Alvear that it was Florentino Moises who shot victim Jose Soloria while Eusebio Moises bologed him and Baltazar Moises struck

him with a stone; that Tuvera likewise informed Police Chief Marcelino Aquino at the crime scene that Florentino Moises shot the victim, Eusebio bologed him and Baltazar Moises struck him with a stone; that Tuvera likewise informed Chief of Police Aquino that the companions of the victim at the time the incident happened were Dominador Mendoza and Inocencio Pascua.

Pat. Fernando Alvear testified that when he and Tuvera arrived at the crime scene he saw the body of the victim and immediately cordoned the place; that thereafter Pat. Alvear instructed Tuvera to report the matter to the municipal building and asked for reinforcement; that Tuvera did not reach the municipal building because on his way he met three policemen who were already on their way to the crime scene as somebody had earlier reported the matter to the authorities in the municipal building.

Police Chief Marcelino Aquino testified that he was informed by Alejandro Tuvera that the assailant of the victim, Jose Soloria, were the brothers, Florentino Moises, Eusebio Moises and Baltazar Moises, and the companions of the victim at the time of the incident were Pascua and Mendoza; that at the crime scene, Police Chief Aquino conducted an on-the-spot investigation and, together with his policemen, recovered two empty shells of caliber .45 (Exhs. "C-1" and "C-2") and one lead bullet, also of .45 caliber, inside the yard of one Ernesto Bermudez about 150 meters east of the scene of the crime (Exh. "C-2"); that Chief Aquino made a sketch (Exh. "B") of the area where the crime was perpetrated and interviewed persons living in the neighborhood but they were all reluctant to talk; that Dominador Mendoza and Alejandro Tuvera gave their written statements voluntarily to him in his Office on July 30 and 31, 1969, respectively; that the motive behind the killing of Jose Soloria by the three accused brothers is that the victim and one Oscar Basco had been charged with Frustrated Murder by one of the accused, Eusebio Moises; that Chief of Police Aquino tried to arrest the three accused within his jurisdiction but they could not be found, so he solicited the help of the Philippine Constabulary to no avail; and that the accused posted bail bonds for their provisional liberty in another town.

Testifying on the Autopsy Report (Exh. "A"), Dr. Ananias Ramos, RHU Physician of San Manuel, Pangasinan, declared that he performed the autopsy on the body of the victim, Jose Soloria, on July 19, 1969 at around 5:00 P.M. and found-seven (7) wounds thereon; that wound no. 1, located on top of the victim's head could have been possibly caused by a blunt instrument such as a stone; that wound no. 2, located under the victim's left ear running to the middle of the back neck, almost severing the neck was probably caused by a bolo; the wound no. 3, located at the victim's back was caused by a sharp-bladed instrument; that wound no. 4, a bullet wound located at the middle of the right portion of the victim's back was without any exit wound; that wound no. 5, also a bullet wound located at the back of the victim's neck exited below the left ear; that wound no. 6, also a bullet wound located at the lower left portion of the victim's back exited at the lower right portion of the right breast; that wound no. 7, also a bullet wound located below the victim's right nipple exited through the left lower portion of the back; and that all the wounds inflicted on the victim except wound no. 3 were fatal ones.

Florentina Soloria, the victim's widow, testified that on July 19, 1969, at 12:55 P.M. or thereabouts, she was in their house located in front of the San Manuel Central School, where she was informed of the violent death of her husband; that she immediately proceeded to the scene of the incident and was met by Alejandro Tuvera who informed her that the persons who killed her husband were the brothers, Florentino, Eusebio and Baltazar, all surnamed Moises; that she knows personally all the said accused; that at the time of her husband's death, he was a janitor of the San Manuel Central School with an annual salary of P2,268.00; that her husband was 48 years old with no known ailment and had rendered fifteen years of government service at the time of his death; that they have nine children, the eldest being 25 years of age and the youngest, a six months old baby; that after her husband's death their two children in college had to stop schooling; that she spent the total sum of about P2,700.00 for the funeral, burial and vigil for nine days of her deceased husband; that the receipts for funeral and

burial expenses in the amount of P1,600.00 were submitted by her to the Workmen's Compensation Commission, which amount was included in the total sum of P2,700.00 as over-all expenses incurred by her for the death of her husband.

All accused, on the other hand interposed the defense of alibi and claimed that they did not kill Jose Soloria as they were then in different places hereinafter mentioned by them and their witnesses.

Accused Florentino Moises, by his own testimony and that of Crispin Ferrer, tried to show that at the time Jose Soloria was killed he was at Barrio Cavite, San Manuel, Pangasinan, around 15 kilometers away from the scene of the crime, working in a dike construction project; that he had worked in the dike site at Barrio Cavite on that fateful day, July 19, 1969, from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M.; that at about 12:55 P.M. on July 19, 1969, he was taking his lunch in a hut near the construction site together with his witnesses, Crispin Ferrer, Nicolas Nitafan and others; that to negotiate the distance from Barrio Cavite to Guiset Norte, the place of the commission of the crime by means of a calesa, would take about two hours and if one were to walk, it would take more than two hours; that he learned about the death of the victim on that date from persons who came from the town proper; that on the night of July 19, 1969, he attended the vigil of the deceased, Jose Soloria, in the victim's house; that while at the victim's house, he asked the widow about the assailants of her husband and she answered, "we do not know"; that when he likewise asked Pedring Soloria, an uncle of the victim, on the same occasion he was told that the assailants are not known; that he attended the funeral and burial of the victim on July 24, 1969; that from July 19, 1969, to July 31, 1969. Florentino and his co-accused brothers were never invited for interrogation or investigation by the police authorities of San Manuel about the killing of Jose Soloria; that the first time he learned that he was a suspect in the killing of Jose Soloria was sometime in August of 1969; that Alejandro Tuvera's testimony pointing him as the one who shot the victim is not true.

Eusebio Moises, 19 years old, single, and mason-helper; by his own testimony and that of Rodolfo Padilla and Delfin Moises, father of the three accused, tried to show that on July 19, 1969, when the victim Jose Soloria was killed in San Manuel, Pangasinan, he was in Novaliches, Quezon City, with witness Rodolfo Padilla, and stayed in the house of the grandfather of Rodolfo Padilla; that Eusebio Moises and Rodolfo Padilla left San Manuel for Novaliches, Quezon City on July 3, 1969, and stayed at Novaliches until July 23, 1969, when Eusebio left for Pangasinan to visit his father, Delfin Moises, who had met a vehicular accident, at the Urdaneta Emergency Hospital; that while staying at Novaliches, Quezon City, Eusebio on July 16, 1969, at around 8:00 A.M. went to Fort Bonifacio to secure application form from the Philippine Marines and was able to get one (Exh. "7"); that on July 17, 1969, accused Eusebio took the examination for Philippine Marines at Fort Bonifacio; that on July 18, 1969, Eusebio went to work with Rodolfo Padilla in Novaliches the whole day; that on July 19, 1969, the date of the killing, he again went to work with Rodolfo Padilla in Novaliches the whole day; that on July 20, 1969, he went to Fort Bonifacio and took another examination and returned to Novaliches past 12:00 Noon already; that on July 23, 1969, he left for Pangasinan to visit his hospitalized father at the Urdaneta Emergency Hospital and thereafter on that same date he proceeded to San Manuel; that he is the complainant in a criminal case for Frustrated Murder against the late Jose Soloria and Oscar Basco; that the victim and Alejandro Tuvera are cousins, and since the filing of the frustrated murder case aforementioned Tuvera has been hating him and that is the reason why Tuvera pointed to him as the one who bolloed the victim.

For the accused Baltazar Moises, 16 years old, single and student, thru his own testimony and that of his father, Delfin Moises, he tried to show that on July 19, 1969, at about 12:55 P.M., said accused was at the Urdaneta Emergency Hospital, Urdaneta, Pangasinan visiting his injured father; that he arrived at the aforementioned hospital at about 12:35 P.M. on that date, July 19, 1969, having left their town, San Manuel, Pangasinan, earlier at around 10:30 A.M.; that he knows prosecution witness Alejandro Tuvera as they are neighbors in San Manuel;

that the testimony of Tuvera pointing to him as the one who struck the victim with a stone is not true, he being then in the Urdaneta Emergency Hospital on the date and time of the killing of Jose Soliria; that he admitted not having any time-piece with him when he was at the aforestated hospital on July 19, 1969; that he was born on January 6, 1954 (Exh. "10").

The prosecution presented two rebuttal witnesses in the persons of Police Chief Marcelino Aquino who testified under his previous oath and Ernesto Mercado, Philippine Navy Sergeant, 36 years old, married, serviceman, formerly assigned as recruiting sergeant of the Philippine Navy, and a resident of No. 4, Amapola Street, Pembo, Fort Bonifacio, Rizal. Rebuttal witness Aquino declared that the warrant of arrest for the accused in this case at bar was issued by the court on July 31, 1969, and from that date on he tried to serve the warrant against the accused but they were nowhere to be found in San Manuel; that the distance from Guiset Norte, where the killing took place, to the dike site in Barrio Cavite where accused Florentino Moises claimed to have been working at the time, and vice-versa, could be negotiated by jeep via Barrio San Roque in thirty (30) minutes, and via Barrio Narra in only about twenty to twenty-five minutes ride; and that if one takes a calesa or caromata the same could be negotiated in about half-an-hour and by walking, maybe in about one (1) hour.

The other rebuttal witness, Sgt. Ernesto Mercado, declared that one of his duties is to screen applicants for enlistment in the Philippine Navy; that the certification of Abraham Serquina to the effect that accused Eusebio Moises took the examination for Philippine Marines on July 17, 1969 (Exh. "9") is not correct, because there was only one examination for applicants in the Philippine Marines given for that month of July, and that was given on July 8, 1969, at about 9:00 A.M., and no other else; that the I.Q. test for applicants in the Philippine Marines scheduled for July 8, 1969 at 9:00 A.M. (Exh. "I"; "13") was not postponed as claimed by accused Eusebio; that among the listed applicants in Exhibit "I" or "13" is accused Eusebio Moises (Exh. "I-1"; "13-A"); that Eusebio Moises actually took the examination on July 8, 1969, as scheduled (Exh. "H"); and that he obtained a rating of 70% in that I.Q. examination of July 8, 1969, as evidenced by Exhibit "J".

Accused-appellants' assigned errors boil down to only one issue, and that is the question of credibility of witnesses, more particularly in the appreciation of the testimony of the lone eye-witness, Alejandro Tuvera.

Defendants-appellants maintain that Alejandro Tuvera is biased against them, considering that he is a first cousin of the victim; that Tuvera having hid himself behind an acacia tree after the first outburst of gunfire could not have seen all the details of the incident; besides his narration of facts of the shooting, the hacking and stoning of the victim by the assailants, are too detailed and too good to be true; and the fact that it took him 12 days after the killing to give his written statement on the incident, all these cannot but evoke serious doubts on the credibility of this eye-witness. The defense, therefore, insists that credit should have been given to the respective alibi of the accused.

That eyewitness Alejandro Tuvera is related to the victim does not necessarily mean that he is biased or prejudiced against the accused, there being no sufficient showing that witness Tuvera was impelled by ulterior motives in testifying against them. As long as the testimony of a witness who is related to the victim is clear, convincing and corroborated in some aspects, the same is worthy of credence. (PP vs. Hamtig, G.R. No. L-27431, August 22, 1969; 29 SCRA 14). The mere fact that lone eyewitness Tuvera hid and sought cover behind an acacia tree does not necessarily mean that the said witness could not have seen the shooting, hacking and stoning of the victim by the accused brothers. It might have been the curiosity in him that impelled him to see for himself and witness, as he did actually witness, the shooting of the victim by accused Florentino Moises and the subsequent hacking and stoning of the body of the victim by accused Eusebio Moises and Baltazar Moises, respectively. Likewise, that Alejandro Tuvera let 12 days pass after the incident before giving to the authorities his written statement on the matter is of no moment. The fact remains that said principal witness gave the names of the

accused brothers as the assailants of the victim to Pat. Fernando Alvear when he called for and asked help from the latter on the day of the killing. Tuvera also informed Chief of Police Marcelino Aquino on the same day about the identity of the assailants and their participation in the killing of the victim when the Police Chief was conducting an on-the-spot investigation at the crime scene a few minutes after the incident. Besides, it is not altogether unusual for witnesses to first refuse involvement in court cases especially testifying in criminal proceedings. (PP. vs. Lumantas, G.R. No. L-28355, July 17, 1969; 28 SCRA 764).

The defense having failed to discredit and destroy the testimony of Tuvera as the principal witness for the prosecution, the respective alibi of the accused become enervated, useless and absurd. Settled in the rule that the defense of alibi cannot be entertained when the accused has been positively identified by eyewitnesses. (PP. vs. Elmer Estrada, G.R. No. L-26103, January 17, 1968, 22 SCRA 111; PP. vs. Antolin Cardenas, G.R. No. L-29090, April 29, 1974, 56 SCRA 631). Alibi cannot prevail over the positive testimonies of witnesses identifying and showing that the accused was indeed present at the place where the offense occurred. (PP. vs. Tapitan, et al., G.R. No. L-21492, April 25, 1969; 27 SCRA 959).

In giving credence to the testimony of Alejandro Tuvera, the trial court aptly observed:

"As Alejandro Tuvera appears to be the principal witness for the prosecution as he was the only eye-witness who testified, the Court has carefully and painstakingly examined and re-examined his statements. On the witness stand, his demeanor and appearance show sincerity as he gave his answers in a plain and straightforward manner. The Court therefore does not entertain any doubt as to the truthfulness of his declaration: But, it may still be well to mention why the Court so believes. In the first place, the fact alone that he is the cousin of the victim was not sufficient to destroy his credibility. As he was an eye-witness and no other persons have the courage to testify against the accused, he deemed it his duty, as he said, to reveal the truth. More often than not, vital prosecution witnesses are relatives of the victim, and such cannot be avoided especially if they are the only ones who have actually witnessed the commission of the crime. Even assuming that Tuvera was a biased witness in view of his relationship with the victim, then why was it that he had to name all the herein accused as the assailants, if they were not really seen by him as having committed the crime? Perhaps, he could have chosen to implicate only one or two but not all the three brothers.

"It must be remembered, too, that Tuvera is a public school teacher at the San Manuel Central School. The records do not show that he had been charged with or committed perjury at one time or another. His narration of the killing of the victim by the three accused and especially of the details thereof, notwithstanding the rigid and lengthy cross-examination to which he was subjected, deserves credence. According to him, the victim was walking close side by side with Dominador Mendoza and Inocencio Pascua. The latter was in the middle while Dominador was at the northern side and the victim at the southern end. They were only three (3) to four (4) inches apart. With the first burst of the gunfire by accused Florentino who was about three (3) meters directly behind the victim, the latter fell to the ground and again Florentino fired two more successive shots. Accused Eusebio who came from the western direction about a minute later boloed the victim and their co-accused Baltazar followed and hit him with a stone. The gun used by Florentino was a .45 caliber revolver nickle-plated, while the bolo was about two (2) feet long and the stone about the size of Tuver's "open-fist right hand". Tuvera said he is familiar with a .45 caliber firearm as he previously underwent ROTC training, and that he was on actual field training in Binalonan, Pangasinan. These facts were never controverted.

"Furthermore, Tuvera testified that when the accused Florentino fired his gun he was facing eastward, hence, this accounts for the presence of the bullet lead recovered from said direction by the policemen, as aforementioned. After the three (3) accused had inflicted the injuries, they fled westward. During all the time that the crime was being committed, witness Tuvera was behind an acacia tree just about 50 meters away to the scene of the killing, and at said distance he positively stated he could, as he did, very well recognize all the accused. He hid behind the acacia tree, Tuvera said, as he also feared for his life because the accused Florentino knew that Tuvera and the victim were first cousins. That Tuvera was actually near or at the scene of

the crime, was confirmed by witnesses Mendoza and Pascua. Tuvera was also present when the policemen were conducting their on-the-spot investigation of the body of the victim and its immediate vicinity. The prosecution has established that at the time Tuvera had even named the herein three accused as the assailants to the Chief of Police and later to the victim's widow who came to see the body of her husband. But, according to Mendoza and Pascua, they fled immediately after the first gunfire and so they did not see the assailants. However, the Court is more inclined to believe that they are merely afraid to give the full version of the incident, much less to point at the accused as the killers. This is not unusual today. Hence many crimes remained unsolved. Criminality has been constantly increasing." (Appealed Decision dated July 31, 1970, pp. 35-38, Rollo).

As the principal issue here is one of credibility of witnesses, We hold, as this Court has held in a long line of decisions, that in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court, the appellate courts will not interfere with the trial court's findings on the credibility of witnesses, or set aside its judgment, considering that it is in a better position to decide the question, having heard and observed the witnesses during the trial. There being no cogent reason on the basis of the facts and evidence presented to depart from this rule this Court has no other choice than to accept Tuvera's testimony.

The Commission of the crime was attended by the aggravating circumstances of evident premeditation and abuse of superior strength, with no mitigating circumstance to offset them, thereby justifying the imposition of the maximum penalty of death upon the accused.

WHEREFORE, the appealed judgment imposing the death penalty upon the accused, Florentino Moises y Sanidad and Eusebio Moises y Sanidad, is hereby affirmed.

The portion thereof which imposes upon the accused, Baltazar Moises y Sanidad, an indeterminate penalty of from TEN (10) YEARS of prision mayor, as minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY-ONE (21) DAYS of reclusion temporal, as maximum, for being a minor when the crime was committed and hence entitled to a penalty one degree lower (Article 68, paragraph 2 of the Revised Penal Code), or from prision mayor, maximum to reclusion temporal, medium, is hereby modified and Baltazar Moises y Sanidad is condemned to suffer an indeterminate penalty of not less than TEN (10) YEARS of prision mayor and not more than SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal.

In imposing an indeterminate sentence upon Baltazar Moises y Sanidad, We hereby overrule the contrary doctrine in *People vs. Colman, et al.*, 103 Phil. 6, Resolution of March 26, 1958, pp. 19-20, holding that the Indeterminate Sentence Law (Act No. 4103 as amended by Act No. 4225) is not applicable to a case similar to that of accused Baltazar Moises y Sanidad. The penalty actually imposed upon this accused not being death, he is entitled to the benefits of the Indeterminate Sentence Law.

In all other respects, the appealed judgment is affirmed. Costs against all accused.

### **SO ORDERED.**

Makalintal, C.J., Castro, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Fernando and Antonio, JJ., took no part.

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