

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR M. MACOY, JR., ACCUSED-APPELLANT.

*G.R. No. 126253. August 16, 2000*

Ponente: PARDO, J.

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### PARDO, J.:

Accused Victor M. Macoy, Jr. appeals from the joint decision[1] of the Regional Trial Court, Branch 58, Cebu City finding him guilty beyond reasonable doubt of parricide and illegal possession of firearm and ammunition and sentencing him to two reclusion perpetua[2] and to pay Marilou M. Macoy P6,530.78 as actual damages, P50,000.00 as moral damages, P50,000.00 as death indemnity and costs for the death of his son, Joglyn Macoy, and to an indeterminate penalty of seventeen (17) years, four (4) months and one (1) day to twenty (20) years of maximum and to pay the costs.[3]

On October 10, 1995,[4] Cebu City Prosecutor II Virginia Palanca-Santiago filed with the Regional Trial Court, Branch 58, Cebu City two (2) separate informations charging accused Victor M. Macoy, Jr. with parricide and illegal possession of firearm and ammunition, as follows:

Criminal Case No. CBU-39639

"That on or about the 9th day of October 1995, at about 12:20 a. m., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm, with deliberate intent, with intent to kill, did then and there attack, assault and use personal violence upon one Joglyn Macoy, his son, by shooting him with said firearm, hitting the latter inflicting upon said Joglyn Macoy fatal wounds and as a consequence of which the latter died instantaneously.

### CONTRARY TO LAW.”[5]

Criminal Case No. CBU-39640

"That on or about the 9th day of October, 1995, at about 12:20 o'clock A. M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there keep under his control and possession one (1) snubnose .38 caliber paltik revolver (Smith and Wesson) marked "EYR10995" with three (3) rounds of live ammunition and one (1) empty shell, which was used in the commission of the crime of Parricide, without first obtaining a permit or license therefor from a competent authority.

### CONTRARY TO LAW.”[6]

The prosecutor recommended no bail for the temporary release of accused Victor M. Macoy, Jr., in both cases.

Upon arraignment on November 8, 1995, accused pleaded not guilty to both informations.[7] Thereafter, the two (2) cases were tried jointly.

At about 12:20 in the morning of October 9, 1995, accused Victor M. Macoy Jr. arrived drunk at his house in

1612 Gil Tudtud St., Lahinglahing, Mabolo, Cebu City. As he was carrying a musical instrument, his wife, Marilou M. Macoy called her son, Joglyn Macoy, to help his father. While walking toward the house, accused was complaining, in a low voice, about the muddy road leading to his house. Apparently, he could not complain aloud because he was with his friends who worked at the Department of Public Services (DPS), the department responsible for the dumping of the soil on the road leading to his house.

When Joglyn went out to help his father, he commented that "foolish this DPS people damping [sic] soil which made the road muddy." Thinking that his son was blaming his barkadas from the DPS, accused Victor angrily retorted in defense of his friends. A heated argument ensued between father and son.

At this point, Cresenciano Marikit, Marilou's younger brother arrived at the house and prevailed upon Joglyn to calm down. He invited his nephew to a nearby store, thirty (30) meters from his house.

Meanwhile, accused went to his room and took from the aparador a belt bag, which contained a .38 caliber firearm. Marilou knew the kind of gun the bag contained because accused told her so<sup>[8]</sup> and she would often see accused get the gun from that bag to clean, and return it afterwards.<sup>[9]</sup> Accused Victor took the gun, tucked it in his waist and left the house. Marilou tried to persuade him not to leave the house, but accused walked out of the house.

A few minutes later, she heard a burst of gunfire and saw a commotion at the nearby store. When she arrived at the place, she saw her brother Cresenciano holding her husband, accused Victor, while her son Joglyn was being carried to a taxicab to be brought to the hospital. At the Cebu Chong Hua Hospital, the attending physician declared Joglyn Macoy dead on arrival.<sup>[10]</sup>

For hospitalization and funeral expenses, Marilou spent three thousand eighty pesos and seventy eight centavos (P3,080.78) and three thousand four hundred fifty (P3,450.00) pesos, respectively, supported by receipts. For the services of a lawyer, she spent fifty thousand (P50,000.00) pesos. By way of moral damages, Marilou said that five hundred (P500,000.00) pesos would not be enough to compensate for the loss of her son.<sup>[11]</sup>

Cresenciano Marikit positively identified accused as the assailant. At about 12:30 in the morning of October 9, 1995, he and Danilo Macasero were repairing his jeep outside his house at Lahinglahing, Mabolo, Cebu City. Victor and his musician-friends passed by. They were all drunk.

Later, he heard noise coming from accused's house, prompting him to go there and verify what was going on. He found out that accused and his son, Joglyn Macoy were having an argument regarding the repair being done by the city government on the road leading to their house and the inconvenience it had caused. When accused saw him, accused told him "shut up, it is none of your business."<sup>[12]</sup>

To prevent the argument from worsening, Cresenciano took his nephew out of the house and brought him to a nearby store, about thirty (30) meters from the house of the accused.

At the store while Cresenciano was talking to Joglyn, accused Victor arrived, armed with a snub nose .38 caliber revolver and fired at Joglyn. Accused missed with his first shot because the bullet got stuck in the barrel. He fired a second shot hitting Joglyn near the left shoulder. Joglyn fell to the ground.

While Joglyn was still on the ground, accused Victor fired a third shot, but the bullet got stuck again. Cresenciano approached the accused and wrestled with him for the possession of the gun. In the scuffle, accused lost possession of the gun and it fell to the ground. Danilo Macasero picked it up and threw it at the nearby canal. Joglyn was then brought to the Cebu Chong Hua Hospital, while Cresenciano dragged accused toward his (Cresenciano's) house, twenty (20) meters from the scene of the crime.

When the shooting incident happened, accused was about two (2) meters away from the victim.[13]

Based on the death certificate issued by medico legal officer Dr. Jesus P. Cerna, PNP, Cebu City, the time of injury was about 12:30 midnight of October 9, 1995. The cause of death was "hemorrhage, acute, severe, secondary to gun shot wound at the left chest." One .38 caliber slug was recovered from the second thoracic vertebra of the victim. The wound, 2.01 by 1.01 in diameter, was directed "downward and from the left towards the right side at the back hitting the second rib lacerating the lung particularly the upper lobe of the left lung, then the bullet fractured the second thoracic vertebra, meaning, the bone of the spinal column which is the second thoracic vertebra lacerating the spinal cord." [14] Considering the nature and characteristic of the gunshot wound entrance and the absence of powder burns of the skin around the entrance, the distance of the "muscle" [sic] of the gun to the skin of the victim was "24 inches." The trajectory of the bullet found inside the body of the victim revealed that he was in a lower position than his assailant and that they might have been facing each other, with the assailant more to the left of the victim.[15]

At the time of his death, Joglyn Macoy was twenty seven (27) years old and worked as a newspaper correspondent.

SPO4 Romeo O. Carreon, SPO1 George M. Ruiz, PO2 Elmo Y. Rosales and PO2 Filomeno D. Mendaros, Philippine National Police, Cebu City, were the team-on-duty from 8:00 in the morning of October 8, 1995 until 8:00 in the morning of October 9, 1995. At about 1:00 in the morning of October 9, they received a report from the base control operator about a shooting incident at Gil Tudtud St., Lahinglahing, Mabolo, Cebu City.[16]

They proceeded to the place and conducted an ocular inspection. They found out that the victim of the shooting was Joglyn Macoy and the person responsible was the victim's own father, Victor Macoy, Jr. y Midal. Since accused was no longer at the scene of the crime, they went to his house.

Accused was arrested at his house after the policemen explained to him his constitutional rights. Accused admitted that he shot his son Joglyn Macoy. Later, accused's brother-in-law arrived and informed them that Joglyn was dead on arrival at the hospital.

With the accused in tow, the policemen went to Cebu Chong Hua Hospital to question other witnesses. There they saw Danilo Macasero, who informed them that he knew where the firearm used in the commission of the crime was. They went back to Gil Tudtud St., Lahinglahing, Mabolo, Cebu City. Danilo Macasero personally identified and turned over to the police the murder weapon, a .38 caliber revolver (paltik).

Accused Victor Macoy was taken to the police station. When asked to present the authorization to legally possess or carry the subject firearm, accused failed to produce any. The policemen arrested accused for violation of Presidential Decree No. 1866, or illegal possession of firearm and ammunition. Thereafter, accused underwent paraffin examination, while the murder weapon was subjected to gunpowder residue examination and ballistics test.[17]

Police Senior Inspector Myrna P. Areola, PNP, Cebu City found that "the chemical analysis conducted on both hand casts of Victor Macoy, Jr. y Midal gave positive results for the presence of gunpowder residue," [18] while the ballistic test conducted on the .38 revolver snubnose Smith and Wesson marked "EYR10995" was found positive for gunpowder residue.[19]

Danilo Macasero testified that at about 12:30 in the morning of October 9, 1995, he and Cresenciano Marikit arrived in Mabolo, Cebu City from Lahug, Cebu City where they repaired Cresenciano's jeep. They went to a store near Cresenciano's house to have snacks. Cresenciano left to park his jeep at his house nearby. When he came back he was with his nephew, Joglyn Macoy. He was informed that Joglyn had a heated argument with his

father accused Victor Macoy.[20]

As Cresenciano and Joglyn were talking, accused arrived shouting and looking for his son. Accused approached the store, pulled the gun from his waist and aimed at Joglyn. By this time, Joglyn, in a squatting position, saw his father and told his uncle, Cresenciano Marikit, "Tiyo, Papa is here." Accused aimed the gun at his son and fired, but the bullet got stuck. Accused fired a second time hitting Joglyn on the left shoulder and he fell to the ground. Accused tried to fire his gun again, but the weapon did not function.[21]

Cresenciano grappled with accused for the possession of the gun and in the course of the scuffle, accused lost hold of the weapon. Danilo picked up the gun and threw it in the canal, about eight (8) to ten (10) meters away from the place of the shooting. Thereafter, he helped bring Joglyn to the Cebu Chong Hua Hospital, where Joglyn was declared dead on arrival.[22]

At the hospital, policemen from Ramos Police Station arrived and began questioning witnesses to the shooting incident. Accused Victor M. Macoy, Jr. was there, inside a police service car. Since Danilo knew where the firearm used in the shooting was, he returned to the scene of the crime, together with Sonny Arriola and Patrolman George Ruiz, and retrieved the firearm from the canal. Danilo turned over the gun to Patrolman Ruiz. Then, Danilo went home.[23]

In open court, Danilo Macasero identified the firearm on exhibit as the gun used in shooting Joglyn Macoy and the very same gun he retrieved from the canal and turned over to Patrolman Ruiz.[24]

In his defense, accused Victor M. Macoy, Jr. denied shooting his son and owning the gun used in the shooting.

He claimed that at around 12:30 in the morning of October 9, 1995, he arrived home at Lahing-Lahing, Mabolo, Cebu City from a birthday party where he and his musician-friends played music.

Upon arrival, he had an argument with his son Joglyn Macoy over the muddy road leading to their house. Joglyn blamed him because the people responsible for the dumping of the soil on the road were his friends from the Department of Public Services (DPS), Cebu City. As their argument escalated, Cresenciano Marikit, his wife's brother, arrived to intervene and he took Joglyn out of the house. Accused Victor did not know where his son and brother-in-law went.

Meanwhile, accused decided to go out of the house and get some fresh air. Before leaving however, he got his gun, a .22 caliber revolver. His wife tried to prevent him from leaving the house and bringing the gun with him. However, he prevailed over her because there were many thieves lurking in the neighborhood.

When he was about five (5) meters from their house, he heard a commotion at the back of their house. Thinking that there were thieves, he fired a warning shot in the air.[25]

Accused continued walking toward the direction of the store, one hundred (100) meters from his house. As he was near the store, he noticed a group of people and he approached them. There, he saw his son Joglyn Macoy who uttered to his uncle Cresenciano, "Tiyo, Papa is coming, please intercept, he might do something."

The people at the store stood up and faced him. Fearing that he would be attacked, he drew his gun and pointed it upwards. Immediately, Cresenciano blocked his path and grappled with him for the possession of the gun. In the course of their struggle, accused heard a burst of gunfire and saw his son Joglyn fall to the ground. Then he heard Cresenciano telling Danilo Macasero to pick up the gun. All this time, he was still holding his gun so the gun that fell and was picked up by Danilo was not his (Victor).[26]

Accused Victor was shocked by the fact that his son was shot. The people gathered in the store helped his son and brought him to the hospital. His mind went blank and he simply walked home.

When he arrived home, he inspected his gun, a .22 caliber, and found one (1) empty shell and five (5) live bullets left. He was then sure that another gun was used in shooting his son. Accused hid his gun under the ipil-ipil trees in front of his house.[27]

Not long after, policemen arrived and he invited them in. He was asked if he shot his son, which he denied. Suddenly his brother-in-law, Cresenciano Marikit, arrived and said that his son Joglyn was dead on arrival at the hospital. Accused commented that what happened to his son was regretful.

Together with the police officers, they went to the Cebu Chong Hua Hospital. Afterwards, accused was brought to the Ramos Police Station, Cebu City where he was further investigated about the firearm and the shooting of his son. All the time that he was undergoing investigation, he was not apprised of his constitutional rights. He was not assisted by counsel from the time he was asked searching questions in his house up to the time of the filing of the cases against him with the City Prosecutor's Office, Cebu City. When he was asked if he had a license for his .22 caliber revolver, he replied that the person who sold the gun to him promised to secure a license for him.[28]

When accused Victor was asked in open court to identify the gun on exhibit, he said that it was not his and that it was the first time he had seen that gun. His gun was a .22 caliber revolver while the one presented on exhibit was a .38 caliber revolver. Moreover, the gun on exhibit had four (4) bullets; one (1) empty shell and three (3) live bullets. Accused Victor admitted that at the time of the shooting he was holding a gun, different from the one on exhibit. His gun was not licensed and the seller was following it up for him. He loved his son Joglyn because he was his only son. He was not able to assist his son when the latter fell to the ground because his mind went blank.

On August 12, 1996, the trial court rendered a joint decision finding accused Victor M. Macoy, Jr. guilty beyond reasonable doubt of parricide and illegal possession of firearm, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding the accused, VICTOR M. MACOY, JR., GUILTY beyond reasonable doubt of the Crimes of Parricide and Illegal Possession of Firearm and Ammunitions and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA in the case of Parricide in Criminal Case No. CBU-36639,[29] and to pay Marilou M. Macoy the cum of P6,530.78 as actual damages, the sum of P50,000 as moral damages and another sum of P50,000.00 as indemnity for the death of her son and to pay the costs; in Criminal Case No. CBU-39640 for Illegal Possession of Firearm and Ammunitions, the said accused is hereby sentenced to suffer the indeterminate penalty of seventeen (17) years, Four (4) months and One (1) day to Twenty (20) years and to pay the costs. These penalties shall be served by the accused in accordance with Art. 70 of the Revised Penal Code, and, in serving his sentence, the accused is credited with the full time of the preventive imprisonment which he had undergone under the conditions imposed in Art. 29 of the Revised Penal Code.

“The firearm (Exh. H) and the three (3) live ammunitions and one (1) empty shell (Exhs. I and I-1) are hereby forfeited in favor of the government to be disposed of in the manner provided for by law.

“SO ORDERED.

“Cebu City, Philippines, August 12, 1996.

“JOSE P. SOBERANO, JR.

J u d g e”[30]

On August 22, 1996, accused Victor M. Macoy, Jr. filed a notice of appeal.[31]

Accused Victor Macoy, Jr. y Midal alleges that the trial court erred in finding him guilty of illegal possession of firearm as the gun alleged by the prosecution to have been used in the shooting of his son, Joglyn Macoy, was not the same gun in his possession. Corollarily, he could not be held responsible for his son's death.[32]

On the other hand, the Solicitor General submits that due to the enactment of Republic Act No. 8294, the penalty against the accused should be modified from maximum period to reclusion perpetua. Under Republic Act No. 8294, the penalty for illegal possession of low powered firearm such as handgun, .38 or .22 caliber and others of similar firepower, has been lowered to prison correccional maximum and a fine of not less than fifteen (P15,000.00) thousand pesos, provided that no other crime was committed.[33]

In denying responsibility for parricide and illegal possession of firearm, accused Victor Macoy, Jr. y Midal advances the theory that two (2) firearms were involved, a .38 caliber revolver, snubnose and his .22 caliber paltik revolver. He intimated that his brother-in-law, Cresenciano Marikit, was also armed when the latter tried to grapple with him for possession of his .22 caliber paltik revolver. He denied owning the .38 caliber revolver. However, the .22 paltik revolver he owned was not presented in evidence. Neither was it licensed. To avoid suspicion that he shot his son, he buried the gun under the ipil-ipil trees in front of his house immediately after the incident. Why did he not retrieve the gun to show that it is a .22 cal. revolver?

Though accused categorically denied ownership of the .38 caliber revolver presented as prosecution evidence, prosecution witnesses Marilou Macoy, Cresenciano Marikit and Danilo Macasero positively identified the gun as the weapon used by the accused on the night in question. No ill motive has been established against these witnesses that might have prompted them to incriminate the accused or falsely testify against him. "It is settled that when there is no showing that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that the witnesses were not so actuated and their testimonies are thus entitled to full faith and credit. Testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given credence." [34] Their narration of what exactly transpired on that fateful night was consistent and corroborative of each other's testimony.

Considering that, as alleged by accused, many people were gathered at the store when the shooting incident occurred, how come that no one saw his brother-in-law was armed with a gun. This leaves us with no other conclusion than that accused Victor concocted the two-gun theory to avoid criminal liability.

Hence, accused's defense of denial must fail. In fact, accused admitted his presence at the scene of the crime.

His denial of the killing of his son can not prevail over his positive identification by prosecution witnesses. "It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a negative self-serving assertion, which deserves no weight in law." [35]

With regard to accused's conviction for illegal possession of firearm, as aptly submitted by the Solicitor General, the penalty imposed on him should be modified because of the enactment of Republic Act No. 8294 amending Presidential Decree No. 1866. As held in *People vs. Molina*, [36] *People vs. Feloteo*, [37] and *People vs. Narvasa*, [38] there can be no separate conviction of the crime of illegal possession of firearm if homicide or murder is committed with the use of unlicensed firearm. Such use of an unlicensed firearm shall be considered as an aggravating circumstance in the homicide or murder committed.

Republic Act No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The crimes involved in the instant case took place on October 9, 1995. As in the case of any penal law, the provisions of Republic Act No. 8294 will have generally only prospective application. In cases, however, where the new penal law will be advantageous to the accused, the law may be given retroactive application (Article 22, Revised Penal Code). Insofar as it will spare accused-appellant from a separate conviction for illegal possession of firearm, Republic Act No. 8294 may be given retroactive application. [39]

Further, in line with this Court's ruling in *People vs. Valdez*, [40] "in so far as this particular provision of Republic

Act No. 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an ex-post facto law." The application of the cited provision of the new law would not be beneficial to the accused, as it would increase the penalty for parricide from reclusion perpetua to death.

The trial court, therefore, correctly found accused Victor Macoy, Jr. y Midal guilty of parricide. The crime has been duly established by the prosecution. Under Article 246 of the Revised Penal Code, the penalty for parricide is reclusion perpetua to death. The two penalties being indivisible, and there being neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied pursuant to the second paragraph of Article 63 of the Revised Penal Code.[41] The court a quo properly meted the proper penalty of reclusion perpetua.

WHEREFORE, the Court AFFIRMS the appealed decision with modification. As thus modified, the Court finds accused-appellant Victor Macoy, Jr. y Midal guilty beyond reasonable doubt of parricide defined and penalized under Article 246 of the Revised Penal Code, and hereby sentences him to reclusion perpetua, with all the accessory penalties of the law; to indemnify the heirs of the victim in the amount of P6,530.78 as actual damages, P50,000.00 as death indemnity, P50,000.00 as moral damages and to pay the costs.

The Court dismisses Criminal Case No. CBU-39640 for violation of Presidential Decree No. 1866. Costs de oficio.

### **SO ORDERED.**

Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Davide, Jr., C.J., see separate opinion.

Bellosillo, J., no part.

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### **SEPARATE OPINION**

#### **DAVIDE, JR., C.J.:**

The ponencia concludes that R.A. No. 8294 should not be given retroactive effect because it would have disadvantageous effect on appellant. If the use of the illegally possessed firearm in this case would be considered an aggravating circumstance, the penalty for parricide would have to be death, the maximum of that prescribed by law (reclusion perpetua to death). I agree.

Consequently, the illegal possession of firearm must remain as a separate offense. Hence, appellant must have to be penalized for illegal possession of firearm. However, it is the reduced penalty therefor under R.A. No. 8294 that should be imposed. The law can be given retroactive effect since that would result to appellant's advantage.

[1] In Criminal Cases Nos. CBU-39639 and CBU-39640, Decision promulgated on August 12, 1996, Judge Jose P. Soberano, Jr., presiding.

[2] Criminal Case No. CBU-39639.

[3] Criminal Case No. CBU-39640.

[4] Trial Court Record, Criminal Case No. CBU-39639, p. 1; Criminal Case No. CBU-39640, p. 1.

- [5] Trial Court Record, Criminal Case No. CBU-39639, p. 7.
- [6] Trial Court Record, Criminal Case No. CBU-39640, p. 9.
- [7] Trial Court Record, Criminal Case No. CBU-39639, p. 13.
- [8] TSN, January 10, 1996, p. 14.
- [9] TSN, *ibid.*, pp. 5-6.
- [10] TSN, *ibid.*, pp. 10-17.
- [11] TSN, *ibid.*, pp., 7-8.
- [12] TSN, January 11, 1996, p. 4.
- [13] TSN, *ibid.*, p. 8.
- [14] TSN, February 8, 1996, pp. 5-6.
- [15] TSN, *ibid.*, pp. 7-8.
- [16] TSN, February 14, 1996, p. 3.
- [17] TSN, February 13, 1996, pp. 18-23.
- [18] TSN, February 8, 1996, p. 14.
- [19] TSN, *ibid.*, p. 15.
- [20] TSN, February 13, 1996, pp. 4-5.
- [21] TSN, *ibid.*, p. 6.
- [22] TSN, *ibid.*, pp. 7-8.
- [23] TSN, *ibid.*, pp. 9-10.
- [24] TSN, *ibid.*, p. 11.
- [25] TSN, March 26, 1996, pp. 2-6.
- [26] TSN, *ibid.*, pp. 7-9.
- [27] TSN, *ibid.*, p. 9.
- [28] TSN, March 26, 1996, p. 13.
- [29] This should read Criminal Case No. CBU-39639.
- [30] Rollo, p. 39.
- [31] Rollo, p. 41.
- [32] Appellant's Brief, Rollo, pp. 71-103, at p. 96.
- [33] Appellee's Brief, Rollo, pp. 156-198, at p. 196. (Emphasis supplied)
- [34] *People vs. Radel Gallarde*, G.R. No. 133025, February 17, 2000.
- [35] *People vs. Ramil Dacibar and Warlito Dicon*, G.R. No. 111286, February 17, 2000.

**[36] 292 SCRA 742 [1998].**

**[37] 295 SCRA 607 [1998].**

**[38] 298 SCRA 637 [1998].**

[39] People vs. Valdez, 304 SCRA 611, 630 [1999] .

[40] Supra.

[41] People vs. Lyndon Sañez y Lacson, G.R. No. 132512, December 15, 1999.

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