

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SATUR APOSAGA Y GUTIEREZ, APPELLANT.

G.R. No. 127153. October 23, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

On appeal before us is a decision rendered by the Regional Trial Court (RTC) of Himamaylan, Negros Occidental, Branch 55, meting the penalty of reclusion perpetua on Satur Aposaga y Gutierrez upon finding him guilty of the crime of murder.

Appellant Satur Aposaga y Gutierrez[1] was charged in an information which reads:

That on or about the 28[th] day of March 1992, in the Municipality of Hinigaran, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapon and small ax, with evident premeditation, treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one MEDEL SIGUEZA alias "OSOY" thereby inflicting upon him injuries which caused his death.

Contrary to law.[2]

Appellant pleaded not guilty on arraignment. Trial ensued.

Jeffrey Alipoon testified that on March 28, 1992, at around 7:00 o'clock in the evening, he was with Marlon Tad-y, Wilbert Vasquez, and the deceased Medel Siqueza drinking a small bottle of whiskey at the house of Friday Magalona in Burgos Street, Hinigaran, Negros Occidental. After an hour, the deceased wanted to go home. The group went to accompany the deceased home when they chanced upon two persons named Windy and Rey who invited them to have another round of drinks. The group were already drinking beer at Foodtastic restaurant near an emergency hospital when appellant happened to pass by. The deceased invited him to join them but appellant angrily declined, saying, "I will not drink, I will go home." [3] At around 11:00 o'clock in the evening, the group started on their way home when appellant suddenly appeared from behind a mango tree. Appellant, who was carrying an axe in his right hand and a long pointed instrument in his left, shouted at the deceased to come near him. As appellant advanced towards the group, Alipoon tried to pacify appellant and block his path. When Alipoon placed his hand on appellant's shoulder, appellant brushed away his hand. Undeterred, Alipoon again placed his hand on appellant's shoulder and placated him saying, "We were just drinking on the same glass, let's forget this and settle this tomorrow." Appellant answered "Yes," but as soon as Jeffrey turned to leave, appellant rushed towards the deceased shouting, "You son of a bitch!" Alipoon, who told the deceased to run, noticed appellant raise his left hand which was holding a long pointed instrument. Moments later, Alipoon heard a thud as the two men grappled with each other to wrest control of the weapons held by appellant. Thereafter, the deceased ran towards the house of a certain Peleng Mugat at Sitio Boling-Boling while appellant also ran in the same direction. [4] Alipoon, on the other hand, accompanied by Wilbert and Marlon, proceeded to the house of the father of the deceased, Tio Manuel, located twenty meters away from the place of the incident. After reporting the

incident to Tio Manuel, Alipoon and his companions, together with the father of the deceased, headed back to the place of the incident, equipped with a flashlight. When they reached the place, they found the deceased in a pool of blood, lying face up. They brought the deceased to the emergency hospital in Hinigaran and later had him transferred to the Riverside Hospital in Bacolod City where the deceased expired.[5]

Marlon Tad-y testified that at around 7:00 o'clock on the evening of March 28, 1992, he was with Jeffrey Alipoon, Wilbert and the deceased, Medel Siqueza, drinking in the house of Friday Magalona at Burgos Street, Hinigaran, Negros Occidental. At around 8:00 o'clock in the evening, the deceased wanted to leave so the other men volunteered to accompany him home. As the group passed by Farmer's Market, they met Rey David and Windy who were invited by the deceased for a drink. They proceeded to Foodtastic, another drinking place. Tad-y left the others to go to the emergency clinic of Hinigaran but returned to Foodtastic after thirty minutes. He and the rest of the group stayed there until 11:00 o'clock in the evening after which the deceased coaxed his friends that it was time to go home. The group again volunteered to walk the deceased home.[6] While they were walking, appellant suddenly appeared from behind a mango tree. He had a sharp pointed instrument in his left hand while his right hand was holding an axe. Appellant shouted, "Osoy!" Jeffrey Alipoon tried to calm appellant by saying, "We are only one glass in drinking, we will settle this tomorrow." As Alipoon placed his hand on appellant's shoulder, Tad-y and Wilbert continued to walk the deceased home, with the deceased walking a few paces ahead of Tad-y. Suddenly, appellant rushed towards them and, raising his left hand, stabbed the deceased at the back. Tad-y fell into a canal, gripped with fear since that was the first time that he had witnessed such an incident. When he got up, he saw appellant and the deceased running away.[7]

Jeffrey Alipoon, who was left behind, suggested that they go to the house of Manuel Siqueza, father of the deceased. After reporting the incident to Manuel Siqueza, the group, together with Manuel and Wilbert immediately returned to the scene of the incident. They found the deceased lying in a pool of blood so they brought him to an emergency clinic in Hinigaran, Negros Occidental. While they were carrying the deceased, Marlon lost his slippers. From Hinigaran, the deceased was brought to Bacolod City where he later expired.[8]

A post mortem examination conducted by Dr. Francisco Aycayno, the rural health physician of Hinigaran, Negros Occidental, revealed the following findings:

1.

stab wound left chest 1 st interspace about 2 inches long $1\frac{1}{2}$ lateral the sternum penetrating and lacerating the big vessels of the heart.

2.

stab wound left chest 6 th interspace $1\frac{1}{2}$ inches below left nipple penetrating hitting the left ventricle of the heart.

3.

stab wound right scapular area $1\frac{1}{2}$ inches long back about $1\frac{1}{2}$ inches deep.

4.

stab wound right mid-thigh penetrating about $\frac{3}{4}$ inches long 2 inches deep.

5.

Abrasion right chest "dot-like" $\frac{1}{4}$ inch deep.

6.

Abrasion right elbow.

7.

Abrasion left Medial Maleolus. [9]

Dr. Aycayno said that the death of the deceased was due to "cardio pulmonary arrest secondary [to] hypovolemic shock due to stab wounds in the chest." He opined that the wound which could have possibly caused the death of the victim was the stab wound on the left chest below the left nipple which penetrated the left ventricle of the heart.[10]

SPO1 Lea Belardo, a member of the Philippine National Police (PNP) and a resident of Hinigaran, Negros Occidental testified that on March 28, 1992 at about 11:00 o'clock in the evening, she was awakened by a shout asking for help near her residence. When she came out from her house, she saw two victims who were rushed to the Hinigaran Emergency Clinic. Belardo herself went to the Hinigaran Emergency Clinic but when she arrived, the two victims were already rushed to Bacolod City for further medical attention. [11] Belardo then went to the place of the incident near the Farmer's Market to conduct an investigation. She was able to recover a blood-stained fan knife, six pairs of slippers, an axe and a bolo. One of the slippers recovered bore the name of Marlon Tad-y.[12]

Another witness for the prosecution, Delilah Mugat, testified that she knows appellant Satur Aposaga. On March 28, 1992 at around 8:00 o'clock in the evening, Mugat was inside a store when appellant came in. Appellant asked Mugat what is her choice of position should she die. Mugat replied that she would prefer to die lying face up. According to Mugat, appellant commented that he would prefer to die lying face down "so that he can return." He then went out and later came back to the store to borrow a flashlight. Appellant, together with someone else, proceeded to Sto. Rosario Subdivision. Appellant then came back to the store to return the flashlight. At 11:00 o'clock in the evening, Mugat again saw appellant who was now carrying an axe. Mugat testified that more than a month before the stabbing incident on March 28, 1992, appellant and the victim had a quarrel and their conflict had never been settled.[13]

Manuel Siqueza, the father of the deceased, testified that on March 28, 1992, at around 10:30 o'clock in the evening, he was in his house located at Sto. Rosario Subdivision, Hinigaran, Negros Occidental, when he heard three men calling him. As soon as he went out of his house, Marlon Tad-y, Jeffrey Alipoon and Wilbert Vasquez told him that they, including the deceased, were ganged up at the Farmer's Market. The group, together with Manuel Siqueza, then hurriedly proceeded to the place of the incident and found the deceased lying face down.[14] Manuel and someone else carried the deceased. Together with Jeffrey Alipoon and Reynaldo Hamon, they brought the deceased to the Riverside Hospital in Bacolod City. The deceased expired thirty minutes after having been brought to the emergency room.[15] Manuel testified that when he brought the deceased to Dr. Pablo O. Torre, Sr. Memorial Hospital, he spent P1,077.75.[16] He also spent P10,000 for the funeral services[17] and another P10,000 for the construction of a tomb.[18] When asked if he knew whether the deceased had any enemy, Manuel said that appellant and the deceased quarreled twice. The last time that the deceased and appellant quarreled was about 1 to 1½ months before the night of the stabbing incident. Said quarrel had never been settled between the two.[19]

Appellant, on the other hand, offers the following version of the incident:

Appellant knew the deceased because they resided in the same place in Hinigaran, Negros Occidental. On March 28, 1992, he went to his Uncle Siano's house at 6:30 o'clock in the evening and stayed there until 9:00 o'clock in the evening, after which he headed home. At around 11:00 o'clock in the evening, appellant asked permission from his mother to buy cigarettes at Farmer's market which was located near their house. While walking towards

Farmer's market, he met four persons, namely: Medel Siqueza, Jeffrey Alipoon,[20] Marlon Tad-y and Vasquez. The four men then asked him, "Part, where are you going?" Appellant told them that he was going to buy some cigarettes but one of the men said, "You seem to be smart (tigas)." The deceased then stabbed appellant, hitting the latter on the left side of the body. Appellant asked the deceased what was his fault but the deceased stabbed him again. Fortunately, appellant was able to parry the blow and push the deceased.[21] Tad-y and Alipoon then held appellant's shoulders but he elbowed one of them and boxed the other with his right hand. The deceased again tried to stab appellant but the latter was able to hold the hand of the deceased. When Alipoon tried to stab appellant, the latter parried the blow causing Alipoon to stab the deceased instead. Appellant then pushed the deceased and ran home.[22]

Appellant sought help from his neighbor, Lando, who woke up appellant's cousin, George. The two men brought him to Hinigaran Emergency Clinic located fifty meters away from his house, for treatment. When he was about to be boarded in the ambulance which would bring him to Bacolod City for further medical attention, the deceased arrived and was also boarded in the same ambulance with appellant. They were brought together to Bacolod City. The deceased was accompanied by Manuel Siqueza and Jeffrey Alipoon while appellant was accompanied by his mother. Appellant denied ever having had a quarrel with the deceased.[23]

Diana Dote, a witness for the defense, testified that she knows appellant who is her neighbor. Appellant's house is located only three meters away from Dote's house. Dote said that she also knew the deceased and Jeffrey Alipoon. On March 28, 1992, at around 11:00 o'clock in the evening, Dote was at home. While answering the call of nature, she distinctly heard appellant ask permission from his mother to go out and buy cigarettes. When appellant returned, she heard him tell their neighbor Lando, "Toy, I was stabbed." Dote then hurried outside and saw appellant leaning on the post, holding the left side of his body. Dote stood observing the scene from a distance of about six meters when appellant's cousin, brother and their neighbors brought him to an emergency clinic.[24]

While she was following the group to the clinic, she heard someone at the back of Farmer's market, which was about ten meters away from where she was, say, "This is still Satur." Dote said, "You pity Satur." A man wearing a white shirt, whom she recognized to be Jeffrey Alipoon, then focused a flashlight on Dote. He was with two other companions. Dote was still standing when the flashlight was focused on the deceased. Alipoon then remarked, "God damn it, this is Osoy." [25] The group then brought the deceased to the Hinigaran Emergency Clinic and placed him near the door since appellant was still inside the clinic. Alipoon who left earlier, returned to the clinic with the parents of the deceased. He slammed the flashlight on the table and exclaimed, "Why Osoy, it is you!" Thereafter, the deceased and appellant were boarded on the ambulance and were brought to Bacolod City. [26]

Another witness for the defense, eighteen-year-old George Gomez, testified that on March 28, 1992, at around 11:00 o'clock in the evening, he was at the house of appellant, who happened to be his first cousin. While watching television, Gomez heard appellant ask permission from his mother to buy cigarettes outside. Gomez did not know where appellant proceeded but when appellant returned, he was already asking for help from Gomez since he was stabbed. When Gomez came down from appellant's house, he saw appellant leaning at the house of their grandfather. When Gomez asked who stabbed him, appellant answered he was stabbed by Medel Siqueza.

Appellant was brought by his brother and sister to the Hinigaran Emergency Clinic. A few minutes later, the deceased was brought in by a man, followed by two others.

Dr. Jose Mari Salvador, a resident physician at the Doña Corazon Locsin Montelibano Memorial Regional Hospital, Bacolod City, testified that he has been connected with the hospital since his appointment on August 8, 1990.

On March 29, 1992, he treated a patient by the name of Joffran Aposaga.[27] After conducting a medical examination on the patient, he issued a medical certificate with the following findings:

"Incised wound, 1 cm. anterior chest 6[th] intercostal space mid-clavicular penetrating thoracic cavity."

"X-ray: Chest PA: Irregular lucencies noted at the left side of the neck and at the left lateral chest wall. Cardiac silhouette is enlarged in its transverse diameter. Engorged hilar shadows with prominence of the upper lobe vessels. Thoracotomy tube in situ."[28]

Dr. Salvador said that the edges of the wound inflicted on appellant were clean and not rugged and could only have been caused by a sharp bladed instrument such as a knife.[29]

The trial court, however, did not give credence to the defense and on May 30, 1996, it rendered a decision, the dispositive portion of which reads, as follows:

WHEREFORE, based on the foregoing premises and considerations, the court hereby renders judgment finding the accused Satur Aposaga y Gutierrez guilty beyond reasonable doubt of the crime charged against him and the court hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

The court hereby orders Satur Aposaga y Gutierrez to indemnify the family of the victim the amount of P100,000 for moral damages and the amount of P21,077.75 as actual damages without subsidiary imprisonment in case of insolvency.

SO ORDERED.[30]In rendering the decision, the trial court ruled that the killing was attended with evident premeditation because appellant and the deceased had a quarrel a month before the stabbing incident took place. The conflict between the two men had never been settled. The trial court further held that when appellant saw the deceased drinking with a group of men, he had already decided to kill the deceased as manifested by the fact that he refused the offer made by the deceased to join them in their drinking session. The trial court said that the killing of the deceased was preceded by a calm resolution of the accused to kill the victim after having had a sufficient period of time to reflect upon the consequences of his act. The trial court, however, did not rule as to whether or not treachery may be appreciated as a qualifying circumstance in the killing of the deceased and merely held that appellant's allegations that he was waylaid by the deceased and the latter's friends, and that he only acted in self defense, do not merit credence. Appellant, in his appeal, now raises the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE QUALIFYING AGGRAVATING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND TREACHERY ATTENDED THE COMMISSION OF THE CRIME CHARGED.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED.

Appellant contends that the trial court erred in appreciating the existence of evident premeditation in the killing of the deceased since there is no competent and direct evidence of the particular time when appellant allegedly hatched the plan to kill the deceased. Appellant laments that the trial court gave undue credence to the statement made by the witness for the prosecution, Delilah Mugat, that appellant, just before the stabbing incident, asked Mugat what is her preferred position should she die. Appellant insists his conversation with Mugat was nothing but a casual attempt at small talk because he was then trying to borrow a flashlight from her. Appellant says there is no proof from the conversation he had with Mugat that he actually planned to kill the deceased.

For evident premeditation to be appreciated as a qualifying circumstance, the prosecution must clearly establish

the following:

- The time when the offender determined to commit the crime;
- An act manifestly indicating that the culprit has clung to his determination; and
- A sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[31]

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during an interval of time sufficient to arrive at a calm judgment.[32] There must be evidence showing that the accused meditated and reflected on his intention between the time when the crime was conceived by him and the time it was actually perpetrated. The premeditation must be evident and not merely suspected.

In its appellee's brief, the Office of the Solicitor General insists that the killing of the deceased was attended by evident premeditation as shown by the following circumstances: Appellant happened to pass by at the Foodtastic restaurant shortly after eight o'clock in the evening when the deceased invited him to join the group for a drink. Appellant, who had a misunderstanding with the deceased a month before, angrily declined the invitation of the deceased to join them in a drinking session. When appellant dropped by at the store where Delilah Mugat was, also at around past eight o'clock in the evening, appellant asked the latter what position she would prefer if she were to die.[33] Appellant left after borrowing a flashlight from Mugat which he returned later. At around 11:00 o'clock in the evening, Mugat saw appellant already carrying an axe. Based on the testimonies of Alipoon and Tad-y, it was also around 11:00 o'clock in the evening when appellant, armed with an axe and a long pointed instrument, suddenly emerged from behind a mango tree when they, together with the deceased, happened to pass by. Appellant then challenged the deceased to come nearer. Alipoon tried to pacify Appellant but the latter went past him and rushed towards the deceased, stabbing the latter at the back. The Office of the Solicitor General thus concluded that the attendance of evident premeditation in the killing of the deceased was clearly established.

We do not agree. There is nothing in appellant's query, "What position would you prefer if you were to die?" which would clearly indicate that he already conceived of a plan to kill the deceased. It must be noted that the query was directed to Mugat and the name of the deceased was never mentioned during their conversation. Moreover, even if appellant and the deceased had an argument a month before the night of the stabbing incident, it is settled that mere existence of ill feelings or grudges between the parties is not sufficient to sustain a conclusion of premeditated killing.[34] Since the time as to when appellant hatched his plan to kill the deceased has not been established by the prosecution, it cannot also be deduced as to whether a sufficient interval of time had elapsed from the moment appellant conceived of his plan to kill the deceased up to the time of the execution of thereof to allow appellant to reflect on the consequences of his act. Consequently, evident premeditation cannot be considered to exist. To repeat: It is not sufficient that there is premeditation; it must be evident.

Appellant maintains that the killing of the deceased was not attended by treachery because there was no proof that the deceased could not have put up a fight when appellant stabbed the deceased from behind. Appellant contends that it would be improbable for him to conceive of attacking the deceased, who was in the company of three friends who could easily defend the deceased from any untoward act of appellant. Hence, there is no proof that appellant employed ways and means to insure the killing of the deceased without risk to himself arising from the defense the offended party might make.

Appellant's contention has merit. It is the contention of the posecution that the deceased and appellant had a misunderstanding a month before the stabbing incident. At past 8:00 o'clock in the evening of the incident, he declined, allegedly in anger, the invitation of the deceased to join them for a drink. Under the aforesaid

circumstances, the deceased should have been sufficiently forewarned of the hostile attitude of appellant. Although the deceased may have been taken by surprise since appellant stabbed him from behind, just when appellant appears to have been placated by Alipoon, treachery may not be appreciated as a qualifying circumstance. Treachery does not connote the element of surprise alone. The essence of treachery is that the attack is deliberate and without warning - done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[35] It must be shown that the offender employed means, methods or forms which tended directly to ensure the execution of his criminal objective without risk to himself arising from the defense which the offended party might make.

In the case at bar, when appellant stabbed the deceased at the back, the two men fell to the ground and grappled for the possession of the deadly weapons held by appellant. Said stab wound inflicted on the deceased could not have rendered him defenseless since he was still able to run after he and appellant fell to the ground grappling for the possession of the deadly weapons. It is significant to note that apart from a bolo and an axe, a fan knife was also recovered from the scene of the crime and appellant himself suffered a stab wound. This indicates that the deceased was not completely helpless when he was assaulted. While the medical examination shows that the deceased suffered four stab wounds, it was not established, apart from the wound at his back, how and when, during the scuffle, the other stab wounds were inflicted. Consequently, the qualifying circumstance of treachery may not be appreciated against appellant.

In the absence of any qualifying circumstance attending the killing of the deceased, appellant may only be convicted of the crime of homicide which is punishable under the Revised Penal Code with reclusion temporal. Considering that no modifying circumstance attended the commission of the felony, the minimum imposable penalty therefor, applying the Indeterminate Sentence Law, shall be taken from the full range of prision mayor which is one degree lower than reclusion temporal, and the maximum period of the penalty shall be taken from the medium period of reclusion temporal.

With regard to damages, the trial court failed to award civil indemnity to the heirs of the deceased. In accordance with prevailing jurisprudence, the heirs of the deceased are entitled to civil indemnity in the sum of P50,000 and moral damages in the sum of P50,000. We sustain the sum of P21,077.75 as actual damages awarded to the heirs of the deceased, there having been receipts of the expenses presented by the prosecution to the court.

WHEREFORE, the decision of the Regional Trial Court of Himamaylan, Negros Occidental, Branch 55, in Criminal Case No. 513, finding appellant Satur Aposaga y Gutierrez guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is MODIFIED. Appellant is found guilty beyond reasonable doubt of homicide. Applying the Indeterminate Sentence Law, appellant is meted the penalty of imprisonment of 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal as maximum. Appellant is also ordered to indemnify the heirs of the deceased the sum of P50,000 as civil indemnity, P50,000 as moral damages and P21,077.75 as actual damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] Appellant identified himself before the trial court as Joffran Aposaga alias "Satur." TSN, August 23, 1993, pp.3-4.

- [2] Records, p. 26.
- [3] TSN, October 15, 1992, p. 7.
- [4] TSN, October 15, 1992, pp. 8-11.
- [5] TSN, October 15, 1992, pp. 11-14.
- [6] TSN, December 3, 1992, pp. 3-9.
- [7] TSN, December 3, 1992, pp. 9-13.
- [8] TSN, December 3, 1992, pp.13-16.
- [9] Exhibit "J," Records, p. 9.
- [10] TSN, March 5, 1993, pp. 7-8.
- [11] TSN, January 6, 1993, pp. 6- 7.
- [12] TSN, January 6, 1993, pp. 17-19.
- [13] TSN, January 6, 1993, pp. 4-8.
- [14] TSN, February 4, 1993, pp. 3-5.
- [15] TSN, February 4, 1993, pp. 5-6.
- [16] Exhibit "I," Records, p. 120.
- [17] Exhibit "K," Records, p. 121.
- [18] Exhibit "L," Records, p. 122.
- [19] TSN, February 4, 1993, pp. 12-13.
- [20] Appellant, in his testimony, referred to Jeffrey Alipoon by the latter's nickname "Botoy."
- [21] TSN, August 23, 1993, pp. 4-9.
- [22] TSN, August 23, 1993, pp. 9-10.
- [23] TSN, August 23, 1993, pp. 10-16.
- [24] TSN, May 19, 1993, pp. 4-7, 12
- [25] TSN, May 19, 1993, pp. 7-10.
- [26] TSN, May 19, 1993 pp. 13-15.
- [27] Satur Aposaga and Jofrran Aposaga are one and the same person. See note 1.
- [28] Exhibit "I-A," Records, p. 235.
- [29] TSN, June 20, 1994, p. 6.
- [30] Records, pp. 268-269.
- [31] *People v. Biñas*, 320 SCRA 22, 58-59 [1999], *People v. Pinca*, 318 SCRA 270, 296 [1999]; *People v. Sarabia*, 317 SCRA 684, 694 [1999]; *People v. Rabanillo*, 307 SCRA 424, 441 [1999], *People v. Batidor*, 303

SCRA 335, 351 [1999] and *People v. Realin*, 301 SCRA 495, 513 [1999].

[32] *People v. Bibat*, 290 SCRA 27, 40 [1998].

[33] TSN, January 6, 1993, pp. 4-5.

[34] *People v. Sambulan*, 289 SCRA 500, 516 [1998].

[35] *People v. Galano*, 327 SCRA 462, 475 [2000] citing *People v. Zamora*, 278 SCRA 60, 76 [1997].

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