

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORANTE LEAL ALIAS 'BURAT,' APPELLANT.

G.R. No. 139313. June 19, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court relies on the following settled doctrines: (1) the positive identification of an eyewitness who is shown to have no ill motive to testify falsely against the accused prevails over the bare denials of the latter; (2) treachery cannot be considered if the eyewitness did not see the commencement of the assault; (3) a qualifying circumstance must be proven as clearly as the crime itself; and (4) actual damages must be proven by the best evidence available.

The Case

For the consideration of this Court is an appeal from the March 24, 1999 Decision rendered by the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45,[1] in Criminal Case No. U-4499 convicting Florante Leal on two counts of murder. The dispositive portion of the said Decision reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court finds the accused, FLORANTE LEAL Y UNGOS, GUILTY beyond reasonable doubt of TWO COUNTS of MURDER and hereby sentences him to suffer the penalty of two sentences of RECLUSION PERPETUA and for the death of the victims, JOEL JACOB and EMERSON JACOB, who are brothers, to pay the heirs of said deceased, as follows:

- 1) P100,000.00 for indemnity (P50,000.00 each);
- 2) P50,000.00 for actual expenses;
- 3) P1,000,000.00 for moral damages (P500,000.00 each); and
- 4) To pay the costs."

This case started when the Information dated August 4, 1987 was filed by Second Assistant Provincial Fiscal Jorito C. Peralta, who charged appellant with double murder, allegedly committed as follows:

"That on or about the 21st day of February 1987, at dawn, in Barangay Nancayasan, Municipality of Urdaneta, Province of Pangasinan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a sharp pointed bladed weapon, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab Joel Jacob and Emerson Jacob, inflicting upon the former a `stab wound, abdomen, epigastric region, semi-lunar in shape, measuring 3 cm. x 1-1/2 cm., penetrating, directed upwards and inwards; abrasions, chin and left [cheek]'; and the latter, `stab wound, abdomen, epigastric region, semi-lunar in shape, measuring 2 cm. x 1-1/2 cm., penetrating, directed upwards and inwards; stab wound, chest, anterior wall, left, at the region of the 5[th], intercostal space, along the mid-clavicular line, semi-lunar in shape, measuring 2-1/2 cm. x 1 cm., non-penetrating; stab wound, chest, anterior wall, left, at the region of the 5[th] intercostal space along the

anterior axillary line, semi-lunar in shape, measuring 2 cm., penetrating through and through to the posterior axillary line', which caused the deaths respectively of said Joel Jacob and Emerson Jacob, as consequences, to the damage and prejudice of their heirs.

CONTRARY to Article 248, Revised Penal Code."[3]

Appellant was arrested on the strength of a Warrant of Arrest[4] dated March 12, 1987, issued by Municipal Trial Court Judge Dario R. Navarro of Urdaneta, Pangasinan. After posting bail, appellant was subsequently released.[5] When the case was called for arraignment on September 25, 1987, however, he was absent.[6] He remained at large until he was finally committed to the provincial jail on May 24, 1993.[7]

Accused-appellant, assisted by Counsel de Oficio Pedrito B. Labarito, pleaded not guilty during his arraignment on November 20, 1998.[8] The trial court thereafter rendered the Pre-Trial Order of December 9, 1998, stating that the parties had agreed on the identities of the accused, the victims and the witnesses; and likewise on the marking of exhibits.[9]

The Facts Version of the Prosecution

The prosecution presented the testimonies of the victim's companions Moore Ganzagan and Ariel Veloria; Dr. Ramon B. Gonzales Jr.; and the victim's mother, Lagrimas Jacob.

The Office of the Solicitor General summarized the facts of the case as follows:

"[O]n the evening of February 20, 1987, Ariel Veloria was fetched at home in Barangay Bayaoas, Urdaneta City by the brothers Joel and Emerson Jacob, Moore Ganzagan and others and thereafter proceeded to the house of a friend of Joel Jacob where they drank beer and played the guitar (pp. 15-16, tsn, January 28, 1999). At about 8:00 p.m., the group (Jacob's) went to the Urduja Folk House to sing since one of their companions sings thereat (p. 17, supra). At about 11:00 p.m., the other members of the group left and went home but Veloria, Ganzagan and the Jacob brothers proceeded to Q-Mart Beerhouse where they drank beer (pp. 18-19, supra). Thereat, Jacob's group saw another group which included Emerson Jacob's brother-in-law. At the latter's invitation, Jacob's group joined them (p. 21, supra). At past midnight, Jacob's group left the beerhouse and walked home. Veloria was behind Ganzagan and Joel Jacob and behind Veloria was Emerson Jacob (p. 22, supra).

"As the Jacob's group passed by the Rosemart Disco Club, they saw Florante Leal standing in front of said disco house (p. 22, tsn, January 12, 1999). Subsequently, Veloria heard shouts and as he looked at the direction where the shouts came from, he saw Emerson Jacob running towards the north, pursued by Florante Leal who was holding a knife (pp. 7-8, tsn, January 28, 1999). Veloria knew Leal, being his barriomate in Barangay Bayaoas (p. 4, supra). Leal caught up with Emerson at a Shell gasoline station and immediately stabbed Emerson Jacob. Veloria, who was about three meters away, saw Leal fatally stab Emerson Jacob (p. 10, supra).

"Moore Ganzagan who was with Joel Jacob heard shouts and as Ganzagan looked back, he saw Emerson fall down. Standing beside the fallen Emerson was Leal, holding a knife about a foot long (pp. 19-20, tsn, January 12, 1999). On seeing his fallen brother, Joel Jacob went to his assistance but was also stabbed to death by Leal despite Joel Jacob's utterance of, 'I will not fight' (pp. 23-24, supra).

"The autopsy Report dated February 21, 1987 of Dr. Ramon Gonzales Jr., Rural Health Physician of Urdaneta City, shows that Joel Jacob suffered a stab wound in the abdomen, semi-lunar in shape, penetrating, directed upwards and inwards (p. 4, tsn, Feb. 2, 1999) and hit the heart (p. 7, supra). Emerson Jacob's cadaver was likewise autopsied. Dr. Gonzales' Autopsy Report dated February 21, 1987 shows a stab wound in the abdomen, at the epigastric region, penetrating, directed upwards and downwards; a stab wound at the left anterior chest wall; a stab wound in the chest, anterior wall along the anterior axillary line, penetrating, through and through (pp. 8-9, supra)."[10]

Version of the Defense

Appellant denies having stabbed the victims. The latter, he claims, were involved in a rumble; he only approached them to help Joel Jacob, who had fallen after being stabbed. Testifying for the defense were appellant himself; Perfecto Lazo, one of the two waiters of the Rosemart Disco Pub on duty that night, and Elmer Domingo, a patron of the disco pub. Their testimonies were summarized by the defense in the following counterstatement of the facts:

"The defense evidence tends to belie any participation of [appellant] in the alleged incident alleging among others that [o]n the evening of February 20, 1987, accused-appellant was inside the Rosemart Disco Pub situated at Poblacion, Urdaneta, Pangasinan, together with Mario Andrada and Rolando Javier drinking and disco dancing x x x. At around 12:30 early morning of February 21, 1987, Janus Mejia reported to him that he was x x x mauled so appellant x x x went outside to verify the matter. He saw and recognized the persons who mauled Mejia to be the brothers of his barkada so he pacified the protagonist[s] and let them shake hands. He returned later inside the [d]isco [p]ub and continued drinking, after which, Mario Andrada and Bobby Andrada asked permission to go home to which he acceded so appellant and companion Rolando Javier was left behind to consume the remaining bottles of beer. After a while, the security guard called appellant's attention that his two companions Mario Andrada and Bobby Andrada were involved in a rumble or fight. When he went outside, he saw two (2) groups of men fighting, one from the Folkhouse and the other outside the [d]isco [p]ub. He saw Mario Andrada and Bobby Andrada lying on the ground and on the other side of the pavement, he saw another person lying down. He carried Bobby Andrada and brought him near the building. When he went to help Mario Andrada, the latter stood up by himself so that he went near Emerson Jacob but somebody hit him on the neck, causing him to lost consciousness and regained it after a few minutes. He then saw another person lying prostrate on the ground bathed in his own blood [and] three (3) to four (4) meters away from him. He then ran inside the Rosemart Disco Pub because he was afraid and stayed there for about twenty (20) to thirty (30) minutes. He recognized that the persons outside who were involved in the rumble were the Jacob brothers, Moore Ganzagan and Ariel Veloria and one by the name of Agsalud, Byron Corpuz, Danny Agait and others whom he could no longer recognize. He recognized the person he mentioned as they were his former schoolmates in high school. After twenty (20) to thirty (30) minutes inside the pub house, he went home by riding in a tricycle. (TSN, March 15, 1999, pp. 3-9)"[11]

Ruling of the Trial Court

The trial court gave full credence to the testimonies of Ganzagan and Veloria, who said that they had seen appellant stab the two victims. Not only did they make categorical statements pointing to appellant as the author of both crimes, but the latter himself confirmed that these witnesses bore no grudge, misunderstanding, animosity or ulterior motive to testify falsely against him. Their positive identification of him as the assailant prevailed over his negative denials.

The testimonies of the defense witnesses, on the other hand, were contradictory on material points. One witness said that the security guard did not do anything to pacify the commotion outside the disco pub, while another said that the guard fired two warning shots in the air. Appellant claims that he returned to the disco pub and stayed there for about twenty minutes, but a witness contradicted his assertion.

Appellant, after witnessing his friends being stabbed, did not report the incident to the police but, instead, went home and proceeded as if nothing had happened. The trial court ruled that such actuation was not typical of a witness who had observed a crime; hence, his testimony was not worthy of belief. Moreover, he admitted that, while being detained at the Bureau of Jail Management and Penology (BJMP) district jail in Urdaneta City, Pangasinan, he had escaped with eleven other detainees, killed two jail guards and gone into hiding for almost twelve years. His absurd explanation was that he did so because his lawyer had gone abroad, and he had a

furniture business which he could not leave behind. Flight is an indication of guilt.

The trial court ruled that appellant was guilty of having stabbed the Jacob brothers, and that treachery had attended the killing because he had suddenly and unexpectedly stabbed the victims while they were unarmed and unaware of the impending attack.

Hence, this appeal.[12]

Issues

Appellant submits the following assignment of errors:

I

"The trial court gravely erred in finding that treachery attended the commission of the alleged deed, thus, qualifying the killing to murder.

II

"The trial court gravely erred in awarding an exorbitant amount of P50,000.00 as actual expenses and P1,000,000.00 as moral damages to the parent of the two (2) victims sans competent proof to support the same." [13]

Despite failure of appellant to allege that the trial court did not succeed in proving his guilt beyond reasonable doubt, this Court will review, as the first issue, the sufficiency of the evidence against him.

This Court's Ruling

The appeal is partly meritorious.

First Issue: Sufficiency of Prosecution Evidence

We concur with the trial court that the testimonies of the prosecution witnesses are "unequivocal, forthright and replete with details, all of which are seals of self-authentication of their credibility. x x x."

Significantly, appellant no longer insists on his innocence. Indeed, the prosecution had presented convincing eyewitness accounts of the killing, which the defense utterly failed to contradict. Appellant's stabbing of Emerson Jacob was witnessed by Ariel Veloria, who testified as follows:

"FISCAL MORENO

Q

While you were walking in front of the Rosemart Disco when you came from the Q-Mart Beerhouse [o]n that early morning of February 22, 1987, do you recall x x x any unusual incident that happened?

A

Yes, sir.

Q

What is that unusual incident that took place, Mr. Witness?

A

When we were going home we heard shouts, sir.

Q

From what direction did you hear the shouts, Mr. Witness?

A

In front of Rosemart Disco, sir.

x x x x x x x x

Q

And what did you see when you looked at the place where the shouts came from?

A

I saw Emerson running, sir.

x x x x x x x x

Q

What else did you see aside from Emerson running towards the north, if any?

A

I saw Florente Leal pursuing Emerson Jacob, sir.

Q

And how far was Florente Leal when he was pursuing Emerson Jacob?

A

Around 3 to 4 meters away only, sir.

Q

What did you notice in the appearance of Florante Leal when he was pursuing Emerson Jacob, if any?

A

He was holding a knife, sir.

x x x x x x x x

Q

Was the accused able to catch up [with] Emerson Jacob?

A

Yes, sir.

Q

Where, in what particular part [was] the accused able to catch up [with] Emerson Jacob?

A

At the Shell gasoline station, sir.

Q

And when the accused Florante Leal was able to catch up with Emerson Jacob what, if any, happened next, Mr. Witness?

A

He was able to stab him, sir.

Q

And what happened to Emerson Jacob when he was stabbed by Florante Leal?

A

He fell down to the ground, sir."[14]

The next stabbing episode was witnessed by Ganzagan who testified on how appellant had attacked Joel Jacob, as follows:

"Q

And what were you doing at the Rosemart Disco Pub at 1:00 o'clock in the morning of February 21, 1987, Mr. Witness, if you can recall, with your companions?

A

We were walking along the highway, sir.

x x x x x x x x

Q

And while you were walking along the highway at 1:00 o'clock [o]n the morning of February 21, 1987, do you recall x x x any unusual incident that happened?

x x x x x x x x

A

I saw Joel Jacob was stabbed, sir.

x x x x x x x x

Q

Do you know who stabbed Joel jacob?

A

Yes, sir.

Q

Who stabbed Joel Jacob?

A

Flor[a]nte Leal, sir.

Q

How many times did Flor[a]nte Leal stab Joel Jacob?

A

Once, sir.

Q

[W]hat instrument was used by Flor[a]nte Leal in stabbing Joel Jacob, if you know?

A

A knife, sir.

Q

How long [was] that knife if you were able to see, Mr. Witness?

A

It is a long knife, like this long, sir. (Witness indicating a length of one foot).

Q

Does that include the handle, Mr. Witness?

A

Yes, sir.

Q

And what part of the body of Joel Jacob was hit when he was stabbed by Flor[a]nte Leal, Mr. Witness?

A

Here, sir. (Witness pointing to the middle part of his chest cavity).

Q

Mr. Witness, how far were you when you saw Joel Jacob was stabbed by Flor[a]nte Leal?

A

Around three meters away, sir.

x x x x x x x x

Q

Did you come to know what happened to Joel Jacob, Mr. Witness?

A

Yes, sir.

Q

What happened to Joel Jacob that night?

A

He died, sir."[15]

Moreover, the foregoing narrations were corroborated by the medicolegal's testimony and the Autopsy Report. A detailed testimony acquires greater weight and credibility when it is confirmed by the autopsy findings.[16] To secure a conviction of murder or homicide, it is enough that the death of the victim and the responsibility of the person who caused the death are proven beyond reasonable doubt.[17]

While it is true that the defense presented witnesses who gave testimonies different from the eyewitness accounts cited above, the trial court gave full credence to the latter. Denial, like alibi, is an inherently weak defense and cannot prevail over the positive and categorical identification provided by eyewitnesses.[18] In addition, these eyewitness accounts came from witnesses who had no motive to testify falsely against appellant.

Finally, it is basic that this Court will not interfere with the trial court's assessment of the credibility of witnesses, absent any indication that some material fact was overlooked or a grave abuse of discretion committed.[19] None of the exceptions obtain in the instant case.

Second Issue: Treachery

Appellant contends that, granting arguendo that he did stab the victims, the allegation of the qualifying circumstance of treachery was barely supported by competent and convincing evidence. Emerson, the first victim, was able to run away from the assailant before the latter caught up with him and stabbed him. This fact shows that the victim had the opportunity to resist the attack and escape. Joel, on the other hand, already saw his brother Emerson down on the ground before approaching the latter. The former was likewise stabbed by appellant. Even the positions of the stab wounds inflicted upon the victims showed that the attacks were frontal. Thus, appellant avers that these attacks were made impulsively — on the "spur of the moment" — during a chance encounter, which he could not possibly have thoroughly prepared for.

The prosecution rebuts, arguing that the attacks were so sudden and unexpected that any defense either victim might have put up was bound to be ineffective. It contends that appellant deliberately allowed the victims' companions to pass and, when their backs were turned, he pounced on Emerson who naturally found it difficult to maneuver away from his assailant, let alone defend himself. The attack on Joel was also treacherous, since he was running to his fallen brother's succor, pleading for his own life and saying he would not fight, yet he was stabbed by appellant. His pleas were akin to those of a man with hands raised above his head in surrender and, thus, clearly in a defenseless position.

We agree with appellant. Treachery exists "when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure the execution, without risk to himself arising from the defense which the offended party might make." [20] It requires the concurrence of the following conditions: (1) the employment of means, methods or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has thus no opportunity for self-defense or retaliation; and (2) the deliberate or conscious choice of such means, methods or manner of execution.[21]

While the accounts of the eyewitnesses positively identify the assailant, they were, however, unclear in depicting how he had launched his attack against Emerson. We would be going into the realm of speculation if we were to conclude that appellant planned the attack. Ganzagan said that he, together with Joel and Voloria, had already passed appellant when the former heard shouts coming from behind. By the time he turned around, Emerson was already running away. For treachery to be appreciated, it must be present and seen by the witness right at the

inception of the attack.[22]

Where no particulars are known as to how the killing began, its perpetration with treachery cannot be merely supposed.[23]

As regards the attack on Joel, the victim already knew that his life was at risk when he saw his fallen brother and the assailant. But given the ties of blood, Joel chose to ignore the threat in order to help his brother. These circumstances, though heroic and tragic, hardly prove treachery. Even if treachery becomes evident at a subsequent stage, if it was not so at the start and the attack was continuous, it cannot be considered in the judgment.[24]

The testimonies of Ganzagan and Voloria failed to establish the requisites of treachery. Neither of them described how the attack commenced — whether it was sudden and unexpected, and whether the victims were totally caught unaware. Treachery cannot be presumed.[25] To aggravate the killing as murder, the qualifying circumstance must be proved as indubitably as the crime itself.[26]

Because the qualifying circumstance of treachery was not established, under Article 249 of the Revised Penal Code, appellant's conviction should be on two counts of homicide only.[27]

Third Issue: Amount of Damages

Appellant disputes the bare testimony of the victims' mother. Without any other supporting evidence, her claim that she spent P50,000 for the wake and another P50,000 for the funeral of her sons is insufficient to sustain the trial court's award of P50,000 for actual damages.

The solicitor general maintains that the mother's testimony was enough and recommends that indemnification should be increased to P75,000 for each death in keeping with existing jurisprudence.

To recover actual damages, the amount of loss must be proven with competent proof or the best evidence obtainable.[28] On this basis, we cannot uphold the trial court's award of actual damages.

The moral damages given by the trial court were palpably and scandalously excessive. The mere fact that the moral suffering of the victims' family cannot be quantified in monetary terms does not ipso facto justify the award of P1 million. Appellant is obviously not a rich man; in fact, he is about the same age as his victims and is working as a laborer.[29] It is settled that moral damages are not intended to enrich the victims' heirs or to penalize the convict, but to obviate the spiritual sufferings[30] of the heirs. The award is reduced to P50,000 for each offense.

WHEREFORE, the appeal is GRANTED IN PART. Appellant is hereby convicted on two counts of HOMICIDE and is SENTENCED to the indeterminate penalty of eight years and one day of PRISION MAYOR, as minimum, to fourteen years, eight months and one day of RECLUSION TEMPORAL, as maximum, for each count of homicide. He is further sentenced to PAY the heirs of the victims civil indemnity of P50,000 for each killing and moral damages in the same amount. The award for actual damages is DELETED. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Joven F. Costales.

[2] Rollo, pp. 46-47; RTC Decision, pp. 28-29.

- [3] Rollo, p. 10.
- [4] Records, p. 14.
- [5] Records, p. 17.
- [6] Records, p. 39.
- [7] Records, p. 71.
- [8] Records, p. 79.
- [9] Records, pp. 92-93.
- [10] Appellee's Brief, pp. 3-4; rollo, pp. 129-130.
- [11] Appellant's Brief, pp. 4-5; rollo, pp. 71-72.
- [12] The case was considered submitted for decision upon this Court's receipt of appellant's Manifestation in Lieu of Filing a Reply Brief on January 11, 2001. Appellee's Brief, filed on December 14, 2000, was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Karl B. Miranda and Solicitor Mauro A. Elizano. Appellant's Brief, signed by Attys. Carina J. Demaisip, Arceli A. Rubin and Bartolome P. Reus of the Public Attorney's Office, was filed on June 23, 2000.
- [13] Appellant's Brief, p. 1; rollo, p. 68.
- [14] Ariel Veloria, TSN, January 28, 1999, pp. 7-9.
- [15] Moore Ganzagan, TSN, January 12, 1999, pp. 5-8.
- [16] *People v. De Guia*, 280 SCRA 141, 155, October 2, 1997; *People v. Molina*, 312 SCRA 130, 134, August 10, 1999.
- [17] *People v. Serzo Jr.*, 274 SCRA 553, 569, June 20, 1997.
- [18] *People v. Salazar*, 277 SCRA 67, 84, August 11, 1997; *People v. Zamora*, 278 SCRA 60, 75, August 21, 1997.
- [19] *People v. Dadles*, 278 SCRA 393, 406, September 1, 1997; *People v. De Guia*, 280 SCRA 141, 150, October 2, 1997; *People v. Sabalones*, 294 SCRA 751, 781, August 31, 1998; *People v. De la Cruz*, 291 SCRA 164, 182, June 26, 1998; *People v. Molina*, 292 SCRA 742, 765, July 22, 1998.
- [20] Art. 14(16), Revised Penal Code; *People v. Botona*, 304 SCRA 712, 734, March 17, 1999; *People v. Elijorde*, 306 SCRA 188, 198, April 21, 1999.
- [21] *People v. Realin*, 301 SCRA 495, 514, January 21, 1999; *People v. Piamonte*, 303 SCRA 577, 589-590, February 25, 1999; *People v. Mahinay*, 304 SCRA 767, 778, March 17, 1999.
- [22] *People v. Sambulan*, 289 SCRA 500, 515, April 24, 1998; *People v. Amanmangpang*, 291 SCRA 638, 653, July 2, 1998; *People v. Bautista*, 312 SCRA 214, 235, August 11, 1999; *People v. Sioc Jr.*, 319 SCRA 12, 22, November 24, 1999; *People v. Maldo*, 307 SCRA 424, 440-441, May 19, 1999.
- [23] *People v. Borreros*, 306 SCRA 680, 693, May 5, 1999; *People v. Silvestre*, 307 SCRA 68; 89-90, May 12, 1999.
- [24] *People v. Badon*, 308 SCRA 175, 189, June 10, 1999.

[25] *People v. Eribal*, 305 SCRA 341, 351, March 25, 1999.

[26] *People v. Albao*, 287 SCRA 129, 155-156, March 6, 1998; *People v. Peña*, 291 SCRA 606, 615, July 1, 1998; *People v. Molina*, 292 SCRA 742, 774, July 22, 1998.

[27] "ART. 249. Homicide.--Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal."

[28] *People v. Nialda*, 289 SCRA 521, 535, April 24, 1998; *David v. Court of Appeals*, 290 SCRA 727, 746-747, June 17, 1998; *People v. Aguilar*, 292 SCRA 349, 359, July 10, 1998.

[29] TSN, March 15, 1999, p. 2.

[30] *People v. Lumiwan*, 295 SCRA 215, 229, September 7, 1998; *Sanitary Steam Laundry, Inc. v. Court of Appeals*, 300 SCRA 20, 34-35, December 10, 1998; *Benguet Electric Cooperative, Inc. v. Court of Appeals*, 321 SCRA 524, 537, December 23, 1999; *Coca-Cola Bottlers, Phils., Inc. v. Roque*, 308 SCRA 215, 223, June 14, 1999.

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