

GRACIANO SANTOS OLALIA, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 177276. August 20, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court which assails the Decision[1] of the Court of Appeals in CA-G.R. CR No. 23725 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 56, finding petitioner Graciano Santos Olalia, Jr. and his co-accused Jeffrey Poquiz and Pedro Poquiz, guilty beyond reasonable doubt of the crime of Frustrated Murder.

On 25 March 1998, an Information for Frustrated Murder was filed before the RTC against petitioner Graciano Santos Olalia, Jr. (Graciano), Jeffrey Poquiz (Jeffrey) and Pedro Poquiz (Pedro), which was docketed as Criminal Case No. SCC-2818. The accusatory portion of the Information reads:

That on or about February 21, 1998 in the evening in the Poblacion, Municipality of Bayambang, Province of Pangasinan, xxx and within the jurisdiction of this [Honorable] Court, the above-named accused with intent to kill, with treachery and superior strength, conspiring, confederating and mutually helping one another, unlawfully and feloniously attack, assault and stab Rommel Camacho with a knife inflicting upon him the following injuries:

- Non-penetrating stab wound 3 cm. 5[th] intercostal space mid axillary line (L)
- Non-penetrating stab wound 1.5 cm. scapular area (L)
- 2 cm. stab wound supra orbital area (L)

the accused having thus performed all the acts of execution which should have produced the crime of Murder as a consequence but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and that is due to the timely medical assistance afforded to said Rommel Camacho which prevented his death and to his damage and prejudice.[3]

During the arraignment on 3 July 1998, petitioner and his co-accused, with the assistance of counsel de parte, entered their respective pleas of not guilty.[4] Thereafter, trial on the merits ensued.

At the trial, the prosecution presented the following witnesses: (1) The 24-year old victim himself, Rommel Camacho (Rommel), who testified on matters that occurred prior, during and after the alleged stabbing incident; (2) Analyn Fernandez, a 15-year old eyewitness and one of Rommel's companions during the incident in question, whose testimony corroborated that of the victim; (3) Roderick Poquiz, a by-stander who witnessed the mauling and the stabbing incident; (4) Dr. Mario Ferdinand Garcia, the physician who attended to the injuries of Rommel; and (5) Dionisio Camacho, the victim's father who testified on the actual expenses incurred as a result of the injury.

As documentary evidence, the prosecution offered the following: Exhibit "A" - the Affidavit of a certain Maricel Soriano declaring that she witnessed the stabbing incident of Rommel; Exhibit "B" - the sworn statement of the Rommel; Exhibit "C" - the Medical Certificate of Rommel; Exhibit "D" - the receipts for the medical expenses in the treatment of the injuries suffered by the victim; and Exhibit "E" - the receipts for the transportation expenses of the victim's father who traveled from Bicol to Pangasinan to be with the victim.

The collective evidence adduced by the prosecution shows that at around 9:20 p.m. of 21 February 1998, while Rommel was squatting along Burgos Street, Zone 4 of Poblacion, Bayambang, Pangasinan, trying to disentangle the warped chain of the tribike he was driving, a tricycle driven by petitioner Graciano, and which had as passengers, the accused Jeffrey and Pedro, came by and stopped at the other side of the street. Rommel was with Maylani Poquiz and Analyn Fernandez. Jeffrey told Rommel to move the tribike to the far side of the road. Rommel replied that the road was wide enough for the tricycle to pass through. The three men on board the tricycle alighted. Jeffrey proceeded to the direction of Rommel with Graciano and Pedro following immediately behind. Without warning, Jeffrey punched Rommel's face. Graciano and Pedro lost no time and joined in the onslaught by punching the victim until he fell in the muddy canal at the side of the road. Pedro continued the attack by kicking the victim several times. As Rommel was trying to lift himself out of the canal, Pedro ordered Graciano and Jeffrey to kill the victim. Jeffrey right away drew a knife and lunged the same at Rommel's back several times. Rommel tried to dodge the attack, but his effort did not totally spare him from harm as he absorbed some wounds at his back and on the eyebrow. Feeling helpless, Rommel raised his two hands and pleaded his attackers to stop. He was nonetheless stabbed on the left side of his armpit and fell to the ground on his butt. The three assailants boarded the tricycle and sped off. Maylani Poquiz shouted for help so Rommel could be brought to the hospital. Rommel was first taken to the Bayambang Emergency Hospital and was later transferred to the Provincial General Hospital where he was confined for three days.

The medical certificate of Rommel shows that there were three non-penetrating wounds sustained by him: first, at the back or the scapular area; second, near the left armpit or the intercostal space, mid-axillary line; and third, at the eyebrow or the supra-orbital area.

Dr. Mario Ferdinand Garcia, the attending physician of Rommel, testified that the victim could still survive his injuries even without the immediate medical assistance. He admitted though that he injected the patient with anti-tetanus serum to prevent him from dying of tetanus.

As a result of the incident, the victim's father, Dionisio Camacho, who was attending to family matters in Bicol, was forced to travel to Pangasinan and incur expenses, as evidenced by receipts, in the amount of P1,880.00. The victim's father likewise spent P10,476.75 for hospital and medical bills.

On the other hand, accused Jeffrey invoked self-defense, while accused Pedro and petitioner Graciano interposed the defense of denial. To prove their respective theories, only the testimonies of the three were presented.

Jeffrey, 21 years old and nephew of accused Pedro, testified that on the night in question, he and his companions, Graciano and Pedro, were riding on a tricycle driven by Graciano, heading home from a send-off party of a certain Atty. Benedicto Cayabyab, when they were stalled as someone was blocking the middle of the road.[5] He told the man, who was then fixing the tribike, to move to the side of the road.[6] The man, whom he identified as Rommel, responded rudely, "Vulva of your mother all of you, this road is not yours." Jeffrey tried to talk to Rommel and approached him. As he was approaching, Rommel brandished a screwdriver and stabbed Jeffrey. Jeffrey parried the strike and pushed Rommel to the canal at the side of the road.[7] Rommel fell. He, together with Graciano and Pedro, left. He also said that during the incident, Pedro was inside the tricycle sleeping, while Graciano stayed on the driver's seat.[8] When asked during cross-examination if he reported to the police officers

the attempt on his life by Rommel, he responded that it was not necessary, as he thought that such incident was inconsequential.[9]

Pedro, 51 years old, testified he was drunk and was asleep throughout the journey from Atty. Cayabyab's party to his house. He came to know of the pushing incident involving Jeffrey and Rommel when he was in his house when Jeffrey narrated to him the occurrence.[10] Upon learning of the incident, he, too, did not deem it necessary to report it to the police authorities.[11]

Graciano corroborated the testimony of Jeffrey, stating that while they were plying Burgos Street, they slowed down by Rommel's side, as the latter was fixing a tribike in the middle of the street. Jeffrey instructed Rommel to move his tribike to the side of the road and to fix it there. Rommel replied by uttering offensive and obscene words. Jeffrey went near Rommel and a heated argument between the two followed. Graciano saw Jeffrey push Rommel, with the latter falling into the canal. Graciano further said that during the commotion, he remained on the driver's seat, while Pedro was intoxicated and asleep on the passenger's seat. On cross-examination, he said he neither saw Rommel stab Jeffrey with a screw driver nor did he see Jeffrey stab Rommel.[12]

On 17 August 1999, the RTC rendered a decision finding petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

WHEREFORE, premises considered, herein three accused, Jeffrey Calpao Poquiz, Pedro Pidlaon Poquiz and Graciano Santos Olalia, Jr., nicknamed "Junior", are hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder penalized by Article 248 in relation to Articles 6 and 50 of the Revised Penal Code, as amended by R.A. No. 7659. They should suffer the indeterminate prison term of six (6) years, one (1) month and ten (10) days of prision mayor, minimum, to twelve (12) years and one (1) day of reclusion temporal, maximum, including the accessory penalties provided by law. They should proportionately pay Dionisio Mabanglo Camacho, the father of the victim who shouldered the total expenses of P12,356.75.[13]

On 27 August 1999, Graciano, Pedro and Jeffrey filed a notice of appeal.

In an Order dated 30 August 1999, the RTC ordered the transmittal of the entire records of the case to the Court of Appeals.[14]

Despite their notice of appeal, on 31 August 1999, Pedro and Graciano, nonetheless, filed a Motion for Reconsideration.[15]

Since all the accused already perfected their appeal, and since the RTC lost jurisdiction over the case by reason of the appeal, it did not resolve the motion for reconsideration.

The Court of Appeals, on 25 September 2006, promulgated its Decision affirming the decision of the RTC, with modification on the penalty imposed, thus:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 56 of San Carlos City, Pangasinan in Criminal Case No. SCC-2818 finding appellants Jeffrey Poquiz, Pedro Poquiz, and Junior Olalia GUILTY beyond reasonable doubt is AFFIRMED with Modification. As modified, the appellants are hereby sentenced to suffer the indeterminate penalty of Six (6) Years, One (1) Month and Ten (10) Days of prision mayor as minimum to Fourteen (14) Years, Eight (8) Months and one (1) Day of reclusion temporal as maximum. The appellants' solidary liability for the amount of P12,356.75 to the victim's father Dionisio Mabanglo Camacho is AFFIRMED.[16]

On 19 October 2006, petitioner alone filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution[17] dated 2 March 2007.

Hence, the instant petition filed by petitioner Graciano Santos Olalia, Jr.

Petitioner asserts that the prosecution failed to establish his guilt beyond reasonable doubt.

This submission is unmeritorious.

The prosecution, through the testimony of Rommel, positively identified petitioner as one of the men who assaulted him. Rommel likewise declared in the witness stand that he heard Pedro order petitioner and Jeffrey to kill him:

Pros. Manaois:

Q:

While you were fixing your tribike beside the road, near the corner, do you recall if there was any unusual incident that happened?

A:

Yes, sir.

Q:

What was that unusual incident?

A:

The tricycle of Pedro Poquiz arrived, sir.

Q:

And what happened when the tricycle of Pedro Poquiz arrived?

A:

They stopped near us, sir.

Q:

And when they stopped, what happened next?

A:

They shouted, they were asking us (sic) to move our tribike at the side of the road, sir.

Q:

And what did you do?

A:

I told them "the road is wide enough" and they can pass through, sir.

Q:

After you told them that "the road is wide enough," they can pass through, what happened next?

A:

They alighted, sir.

Q:

Who alighted?

A:

The three (3) of them, sir.

Q:

And what did they do to you, if any?

A:

Jeffrey Poquiz boxed me on my face, sir.

Q:

How about Pedro Poquiz, what did he do to you?

A:

He also boxed me, sir.

Q:

How about Junior Olalia, what did he do to you?

A:

The three helped one another in mauling me, sir.

Q:

After you were boxed on the face several times, what happened to you after you were boxed by the three (3) accused on the face?

A:

I fell on the canal, sir.

Q:

And what happened next after you fell on the canal?

A:

When I fell on the canal, Pedro Poquiz kicked me several times, sir.

Q:

Were you hit?

A:

Yes, sir.

Court:

Q:

Where?

A:

In the different parts of my body, your Honor.

Pros. Manaois:

Q:

After you were kicked by Pedro Poquiz on the different parts of your body, what happened next?

A:

I went out of the canal, sir.

Q:

Were you able to go out of the canal?

A:

Yes, sir.

Q:

And what happened after you went out of the canal?

A:

Pedro Poquiz ordered that I be killed, sir.

Q:

To whom did Pedro Poquiz order to kill you?

A:

His two (2) companions.

Q:

You are referring to Jeffrey Poquiz and Junior Olalia?

A:

Yes, sir.

Q:

And what happened after Pedro Poquiz ordered his companions to kill you?

A:

Jeffrey Poquiz drew a balisong (29), sir.

Q:

After Jeffrey Poquiz drew his balisong (29), what happened next?

A:

He stabbed me and I was hit at the back, sir.

Q:

How many times?

A:

Several times because the other thrust, I was not hit because I was able to evade, sir.

Q:

What happened after you were hit?

A:

He was moving back but he was still stabbing me and I was hit on my left elbow, sir.

Q:

And after you moved back and you were still hit on the left eyebrow, what happened after that?

A:

I was pleading "that's enough" (Witness is raising his two (2) hands) but I was still stabbed and I was hit on the armpit, sir. (witness pointing to his left armpit.)

Q:

After you were hit on your left armpit, what did you do if you did anything?

A:

I fell on the ground in a sitting position while my lady-companion shouted for help saying "help us", sir.

Q:

How about the three (3) accused Jeffrey Poquiz, Pedro Poquiz and Junior Olalia, what did they do next?

A:

They boarded the tricycle and left, sir.[18]

Witness Roderick Poquiz, who was in the place where the incident happened, corroborated Rommel's testimony that petitioner was one of the perpetrators of the crime:

Q:

While you were on that particular place, date and time, do you remember of any unusual incident that happened, Mr. witness?

A:

While I was along the road, I heard a shout seeking for help, sir.

Q:

What did you do after you heard those shouts?

A:

I went to the place and to see what's happening, sir.

Q:

And what did you see?

A:

I saw Rommel Camacho being mauled by Jeffrey Poquiz, Pedro Poquiz and Junior Olalia, sir.

Q:

Specifically, what did Jeffrey Poquiz do to Rommel Camacho?

A:

Jeffrey Poquiz stabbed Rommel Camacho, sir.

Q:

How many times?

A:

Many times, sir, and Rommel Camacho was hit at the back, at the armpit (Witness pointing to the left armpit and at the forehead near the eye).

Q:

How about Pedro Poquiz, what was his participation?

A:

He helped in mauling boxing and kicking Rommel Camacho, sir.

Q:

How about Junior Olalia, what did he do?

A:

The same with what Pedro Poquiz did, sir.

Q:

You said while ago that Jeffrey Poquiz stabbed Rommel Camacho several times, how did Jeffrey stabbed Rommel?

A:

Witness raising his right hand in swaying position form back and forward at the level of his armpit?

Q:

What weapon did he use in stabbing Rommel Camacho?

A:

Balisong, sir.[19]

These detailed accounts eloquently depict what transpired on the night in question. Only trustworthy witnesses could have described such picturesque view of the incident which ineluctably points to petitioner as one of the culprits in the wrongdoing. Given the sincere, trustworthy and positive identification by the prosecution witnesses of the assailants and the latter's respective participation in the felony, petitioner's denial is rendered futile. Under

settled jurisprudence, denial cannot prevail over the positive testimonies of witnesses. Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

Also, petitioner maintains that the RTC's findings on the attendance of conspiracy and on his participation in the stabbing of Rommel are based on a glaring misapprehension of facts. The testimonies of the prosecution witnesses, he avers, merely indicate that he and his co-accused punched the aggrieved party, but the same testimonies are absolutely silent as to his specific participation in the stabbing of said victim. He insists that he did not exhibit any overt act showing that he heeded the prodding of accused Pedro to kill Rommel. In fact, he dissociated himself from accused Jeffrey when the latter drew his knife but it was too late for him to prevent what his companions were about to do, since he had no idea what the two were thinking.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] Direct proof of a previous agreement to commit a crime is not necessary.[21] Conspiracy may be deduced from the acts of the accused before, during, and after the commission of the crime, which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack, so that the act of one accused becomes the act of all.[22]

In the case under consideration, unity of design or objective can easily be drawn from the concerted acts of the three assailants. Coming from a drinking party, it is not far-fetched to infer that the three were easily agitated and peeved by the straightforward answer of Rommel when asked to move to the side of the road. They rushed towards the target. Jeffrey, who was the first to get near the victim, right away hit the victim's face. Petitioner and Pedro joined in the punching spree, throwing punches and pounding. As the victim tried to pick himself up, Pedro ordered his companions to kill him. Jeffrey complied and dealt several stab blows to the victim, while petitioner stood behind Jeffrey. Petitioner's act of punching the victim indubitably showed his desire to hurt him, which intent was also shared by Pedro and Jeffrey. Moreover, his presence during the stabbing served no other purpose than to ensure that no one else would come to the aid of the victim and thereby stop their criminal design from being accomplished. If indeed his desire was merely to punch the victim, he could have told or stopped Jeffrey from stabbing Rommel, since Jeffrey was just in front of him. However, instead of doing so, he remained where he was. He committed no act whatsoever to indicate that he did not concur with the act of stabbing or killing the victim. Thus, their conspiracy is evident, notwithstanding petitioner's assertion that he did not participate in the stabbing. Having shown that the three were in conspiracy through their concerted acts, there is collective criminal responsibility, since "all the conspirators are liable as principals regardless of the extent and character of their participation, because the act of one is the act of all."

Petitioner also disagrees with the findings of the RTC and the Court of Appeals appreciating the aggravating circumstance of treachery. He claims it was error for said courts to rely on the location of one of the stab wounds inflicted at the victim's back as a basis for considering the attack as treacherous. He states that the location alone of the wound, as ruled consistently by this Court, does not prove treachery. According to him, treachery could not have existed, since it was the victim who instigated the fight when he uttered insulting words against the assailants. This verbal altercation which immediately preceded the attack, he insists, would negate the presence of treachery. He adds that the fact that the victim was able to parry some stab blows and was able put up a fight indicates that the attack was not sudden and unexpected.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[23] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[24] What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.[25] In the instant case, the victim who fixed his attention to what

he was doing and was unwary of what the assailants were about to do, and without warning, was suddenly mauled by the three. When he was about to get out from the canal, he was again hit. The barrage of bodily harm inflicted on the victim culminated in the stabbing. Said attack was so sudden and unexpected that the victim had not been given the opportunity to defend himself or repel the aggression. He was unarmed when he was attacked. Indeed, all these circumstances indicate that the assault on the victim was treacherous. While he was at some point able to avoid some of the stab blows, that does not mean that the aggression was not sudden. The survival instinct, which is inherent in every extant human being, may have worked well for the victim, or he might just have been fortunate to escape some of the thrusts dealt him, but these things would not negate the presence of treachery. Contrary to petitioner's claim, there was no heated argument preceding the aggression. Victim Rommel Camacho merely testified that when he was ordered by Jeffrey to get out of the way, he answered that the road was wide enough for the tricycle to pass through. Jeffrey's order and the victim's answer can hardly be considered as a heated argument.

Petitioner likewise makes much of the fact that the medical certificate presented by the prosecution states nothing about the injuries sustained from the punching. The seeming silence of the medical certificate on the injuries caused by the punching does not at all discount the evidence established by the prosecution of the act of mauling. The credible testimonies of the prosecution witnesses were sufficient to establish such fact.

The Office of the Solicitor General recommends that petitioner and his companions be convicted of attempted murder and not frustrated murder because the wounds inflicted were non-penetrating or not mortal wounds.

We subscribe to such argument.

The rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.[26] By commencing their criminal design by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than their own desistance, petitioner and his cohorts committed an attempted felony. In the instant case the three assailants already commenced their attack with a manifest intent to kill by punching Rommel countless times and when one of the malefactors stabbed him, but failed to perform all the acts of execution by reason of causes independent of his will, that is, the agility of the victim. Rommel sustained three stab wounds which were characterized by the prosecution witness Dr. Mario Ferdinand Garcia as non-penetrating or non-life-threatening wounds.

The penalty of consummated murder under Article 248 of the Revised Penal Code, as amended, is reclusion perpetua to death. The imposable penalty should be reduced by two degrees under Article 68 of the Revised Penal Code because the appellant is a minor. As reduced, the penalty is reclusion temporal. Reclusion temporal should be reduced by two degrees lower, conformably to Article 51 of the Revised Penal Code, which is prision correccional. Applying the Indeterminate Sentence Law, the penalty imposable on a principal in an attempted murder, where there is no aggravating or mitigating circumstance, is prision correccional in its maximum period to prision mayor in its medium period. As applied, appellant shall suffer the penalty of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and twenty (20) days of prision mayor, as maximum.

As to the damages, we affirm the actual damages awarded by the RTC to Dionisio Camacho in the amount of P12,356.75, the same being supported by receipts.

One last note. Records reveal that the Court of Appeals affirmed the RTC decision convicting Graciano Santos Olalia, Jr., Pedro Poquiz and Jeffrey Poquiz of frustrated murder. However, only petitioner Graciano Santos Olalia, Jr. appealed the judgment of conviction. Accused Pedro Poquiz and Jeffrey Poquiz, for unknown reasons,

did not seek to assail their conviction before the Court. Since the Court downgraded the crime committed by petitioner from frustrated murder to attempted murder, and considering that the same set of facts were used to convict Pedro Poquiz and Jeffrey Poquiz, the Court holds, that the favorable verdict on petitioner's appeal should likewise be extended to Pedro Poquiz and Jeffrey Poquiz, since under Section 11(a), Rule 122 of the present Rules on criminal procedure, an "appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." [27]

WHEREFORE, the Decision of the Court of Appeals dated 25 September 2006 2006 in CA-G.R. CR. No. 23725 is hereby MODIFIED. Graciano Santos Olalia, Jr., Pedro Poquiz and Jeffrey Poquiz are found GUILTY of ATTEMPTED MURDER and are sentenced to suffer the prison term of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and twenty (20) days of prision mayor, as maximum. They are also ordered to pay jointly and severally Dionisio Camacho, the father of the victim, the amount of P12,356.75 as actual damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Tinga, and Reyes, JJ., concur.

[*] Justice Dante O. Tinga was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated September 24, 2007.

[1] Penned by Associate Regalado E. Maambong with Associate Justices Marina L. Buzon and Japar B. Dimaampao, concurring. Rollo, pp. 85-107.

[2] Penned by Judge Edelwina Catubig Pastoral; rollo, pp. 30-36.

[3] Rollo, p. 30.

[4] Records, Vol. I, p. 84.

[5] TSN, 21 July 1999, p. 29.

[6] Id.

[7] Id. at 30.

[8] Id.

[9] TSN, 23 July 1999, p. 32.

[10] Id. at 27-28.

[11] Id. at 31.

[12] Id. at 40-41.

[13] Records, Vol. I, p. 255.

[14] Id. at 344.

[15] Id. at 345-352.

[16] CA rollo, pp. 102-103.

[17] Id. at 156-157.

[18] TSN, 2 December 1998, pp. 4-7.

[19] TSN, 11 August 1998, pp. 11-12.

[20] *People v. Pagalasan*, 452 Phil. 341, 363 (2003).

[21] *People v. Panida*, 369 Phil. 311, 341 (1999).

[22] *Id.*

[23] *People v. Belaro*, 367 Phil. 90, 107 (1999).

[24] *Id.*

[25] *People v. Pidoy*, 453 Phil. 221, 230 (2003).

[26] *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 670-671.

[27] *Lim v. Court of Appeals*, G.R. No. 147524, 20 June 2006, 491 SCRA 385, 394.

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