

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. URBAN SALCEDO ABDURAHMAN ISMAEL DIOLAGRA, ABDULAJID NGAYA, HABER ASARI, ABSMAR ALUK, BASHIER ABDUL, TOTING HANO, JR., JAID AWA...

G.R. No. 186523. June 22, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is an automatic review of the Decision [1] of the Court of Appeals (CA) promulgated on November 24, 2008, in accordance with Section 2 of Rule 125, in relation to Section 3 of Rule 56 of the Rules of Court. The CA found accused-appellants guilty beyond reasonable doubt of the crime of kidnapping in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187 and sentenced them to reclusion perpetua.

A close examination of the records would reveal the CA's narration of the antecedent facts to be accurate, to wit:

Accused-appellants interpose the present appeal to the Decision of branch 2 of the Regional Trial Court of Isabela City, Basilan, convicting them for the crime of Kidnapping and Serious Illegal Detention with Ransom, as defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659. After arraignment and due trial, accused-appellants were found guilty and, accordingly, sentenced in Criminal Case No. 3537-1129 to Reclusion Perpetua, and in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187 to the Death Penalty.

The Decision in Criminal Case No. 3537-1129 decreed as follows:

WHEREFORE, in Criminal Case No. 3537-1129, for the kidnapping of Joe Guillo, the Court finds the following accused guilty beyond reasonable doubt as principals:

- Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
- Abdurahman Ismael Diolagla, a.k.a. "Abu Sahrin"
- Abdulajid Ngaya, a.k.a. "Abu Ajid"
- Haber Asari, a.k.a. "Abu Habs"
- Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
- Bashier Abdul, a.k.a. "Abu Jar"
- Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
- Jaid Awalal, a.k.a. "Abu Jaid" (in abstencia)
- Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
- Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)

- Margani Hapilon Iblong, a.k.a. "Abu Nadim"
- Lidjalong Sakandal/Sabandal
- Imran Hakim y Sulaiman, a.k.a. "Abu Nadim"
- Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
- Kamar Jaagar, a.k.a. "Abu Jude"
- Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
- Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, the lesser penalty of RECLUSION PERPETUA is hereby imposed on them.

The aforementioned accused shall jointly and severally pay Joel Guillo by way of moral damages the sum of P200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

On the other hand, the court a quo in Criminal Case No. 3608-1164 decreed as follows:

In Criminal Case No. 3608-1164, for the kidnapping of Reina Malonzo, the court finds the following accused guilty beyond reasonable doubt as principals:

- Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
- Abdurahman Ismael Diolagla, a.k.a "Abu Sahrin"
- Abdulajid Ngaya, a.k.a. "Abu Ajid"
- Haber Asari, a.k.a. "Abu Habs"
- Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
- Bashier Abdul, a.k.a. "Abu Jar"
- Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
- Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
- Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
- Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
- Margani Hapilon Iblong, a.k.a. "Abu Nadim"
- Lidjalong Sakandal/Sabandal
- Imran Hakim y Sulaiman, a.k.a. "Abu Nadim"
- Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
- Kamar Jaagar, a.k.a. "Abu" Jude"
- Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
- Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised

Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay Reina Malonzo by way of moral damages the sum of P200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

Likewise, the lower court, in Criminal Case No. 3611-1165 decreed as follows:

In Criminal Case No. 3611-1165, for the kidnapping of Shiela Tabuñag, the (court) finds the following accused guilty beyond reasonable doubt as principals:

- Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
- Abdurahman Ismael Diolagla, a.k.a. "Abu Sahrin"
- Abdulajid Ngaya, a.k.a. "Abu Ajid"
- Haber Asari, a.k.a. "Abu Habs"
- Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
- Bashier Abdul, a.k.a. "Abu Jar"
- Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
- Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
- Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
- Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
- Margani Hapilon Iblong, a.k.a. "Abu Nadim"
- Lidjalong Sakandal/Sabandal
- Imran Hakim y Sulaiman, a.k.a. "Abu Nadim"
- Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
- Kamar Jaagar, a.k.a. "Abu" Jude"
- Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
- Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay Shiela Tabuñag by way of moral damages the sum of P200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

And in Criminal Case No. 3674-1187, it entered its judgment against the accused-appellants as follows:

In Criminal Case No. 3674-1187, for the kidnapping of Ediborah Yap, the court finds the following accused guilty beyond reasonable doubt as principals:

Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
Abdurahman Ismael Diolagla, a.k.a "Abu Sahrin"
Abdulajid Ngaya, a.k.a. "Abu Ajid"
Haber Asari, a.k.a. "Abu Habs"

Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
Bashier Abdul, a.k.a. "Abu Jar"
Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
Margani Hapilon Iblong, a.k.a. "Abu Nadim"
Lidjalong Sakandal/Sabandal
Imran Hakim y Sulaiman, a.k.a. "Abu Nadim"
Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
Kamar Jaagar, a.k.a. "Abu" Jude"
Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay to the heirs of Ediborah Yap by way of civil indemnity the sum of P50,000.00, moral damages in the sum of P200,000.00 and, considering the attendant aggravating circumstances, the sum of P100,000.00 by way of exemplary damages.

SO ORDERED.

The salient facts in this case are the following:

On June 1, 2001, Shiela Tabuñag, Reina Malonzo, and Ediborah Yap, were serving their duty shift as nurses at Jose Maria Torres Memorial Hospital in Lamitan, Basilan. Joel Guillo, the hospital accountant, on the other hand, had just finished his duty and decided to rest in the doctors' quarter.

At around 12:30 past midnight of June 2, 2001, the Abu Sayaff Group (ASG for brevity) led by Khadaffy Janjalani and Abu Sabaya, with 30 armed followers entered and took control over said hospital. Previously, however, another group of ASG with 60 followers led by Abu Umran hiked towards Lamitan for the sole purpose of reinforcing the group of Khadaffy Janjalani and Abu Sabaya. However, upon reaching the vicinity of the hospital, a firefight had already ensued between the military forces and the group of Janjalani and Sabaya. Simultaneously, the band also became entangled in a firefight with a civilian group led by one retired Col. Baet, who was killed during the encounter. Moments later, the band fled to different directions, with its members losing track of one another.

Pandemonium ensued in the hospital on that early morning, as the people were thrown into a frenzy by the shouting, window glass breaking, and herding of hostages from one room to another by the ASG. The group was also looking for medicine and syringes for their wounded comrades as well as food and clothing. The firefight lasted until the afternoon of June 2, 2001. Finally, at around 6:00 in the evening, the ASG and the hostages, including those from the Dos Palmas Resort, were able to slip out of the hospital through the backdoor, despite the intense gunfire that was ongoing. Hence, the long and arduous hiking towards the mountains began.

On June 3, 2001, at about noontime, the group of Janjalani and Sabaya met with the group of Abu Ben in Sinagkapan, Tuburan. The next day, Himsiraji Sali with approximately 60 followers also joined the group. It was only on the third week on July that year that the whole group of Abu Sayaff was completed, when it was joined by the group of Sattar Yacup, a.k.a. "Abu Umran."

Subsequently, new hostages from the Golden Harvest plantation in Tairan, Lantawan were abducted by the

Hamsiraji Sali and Isnulun Hapilon.

On June 12, 2001, Abu Sabaya informed the hostages that Sobero had been beheaded and was warned of the consequences should said hostages fail to cooperate with the ASG. Hence, the ASG formed a "striking force" that then proceeded to behead 10 innocent civilians.

On October 1, 2001, Reina Malonzo was separated from the other hostages and taken to Zamboanga City by Abu Arabi with two other ASG members on board a passenger watercraft to stay at a house in Sta. Maria. Later on October 13, 2001, a firefight broke out between the ASG and the military, giving Joel Guillo and 3 other hostages the opportunity to escape from their captors. On even date, Sheila Tabuñag was released together with 2 other hostages from Dos Palmas, allegedly after paying ransom. Reina Malonzo was soon after also released by order of Khaddafy Janjalani on November 1, 2001.

Finally, after a shootout between the ASG and the military on June 7, 2002, at Siraway, Zamboanga del Norte, Ediborah Yap, died at the hands of her captors. Thereafter, a manhunt by the military was conducted, where the accused-appellants were subsequently captured and held for trial.

Hence, criminal informations for kidnapping and serious illegal detention under Art. 267 of the Revised Penal Code as amended by Sec. 8 of R.A. No. 7659 were filed against 17 ASG members on August 14, 2001, October 29, 2001, March 6, 2002, and March 12, 2002. As defense for the accused-appellants, 11 of the 17 of them raise the defense of alibi. Among them were Jaid Awalal, Imran Hakim Sulaiman, Toting Hano, Jr., Abdurahman Ismael Diolagla, Mubin Ibbah, Absmar Aluk, Bashier Abdul, Annik/Rene Abbas, Haber Asari, Margani Hapilon Iblong, and Nadzmer Mandangan. On the other hand, Bashier Ordonez, Sonny Asali, Lidlalon Sakandal/Sabandal, and Abdulajid Ngaya claimed that they were merely forced by the Abu Sayyaf to join the group. The defense of being deep penetration agents of the military was conversely raised by 2 accused-appellants, Urban Salcedo and Kamar Jaafar.

After due trial, the court a quo, on August 13, 2004, rendered the appealed decisions which convicted all the accused-appellants of the crime of kidnapping with serious illegal detention. [2]

In Criminal Case No. 3537-1129, for the kidnapping of Joel Guillo, accused-appellants were sentenced to reclusion perpetua; in Criminal Case No. 3608-1164, for the kidnapping of Reina Malonzo, they were sentenced to Death; in Criminal Case No. 3611-1165, for the kidnapping of Sheila Tabuñag, they were sentenced to Death; and in Criminal Case No. 3674-1187, for the kidnapping of Ediborah Yap, they were also sentenced to Death.

The case was then brought to this Court for automatic review in view of the penalty of death imposed on accused-appellants. However, in accordance with the ruling in *People v. Mateo*, [3] and the amendments made to Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, the Court transferred this case to the CA for intermediate review.

On November 24, 2008, the CA promulgated its Decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing premises, We hold to AFFIRM the appealed judgments with the modification that the penalty of death be reduced to Reclusion Perpetua in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187.

SO ORDERED. [4]

Thus, the case is now before this Court on automatic review. Both the prosecution and the accused-appellants opted not to file their respective supplemental briefs with this Court.

In the Brief for Accused-Appellants filed with the CA, it was argued that the prosecution's evidence was

insufficient to prove guilt beyond reasonable doubt. It was further averred that some of the accused-appellants were merely forced to join the Abu Sayyaf Group (ASG) for fear for their lives and those of their relatives, while four (4) of them, namely, Wahid Salcedo, Magarni Hapilon Iblong, Nadzmer Mandangan and Kamar Jaafar, were supposedly minors at the time the alleged kidnapping took place; hence, Republic Act (R.A.) No. 9344 (otherwise known as the Juvenile Justice and Welfare Act of 2006), should apply to said accused-appellants. It was then prayed that accused-appellants Nadzmer Isnani Madangan, Magarni Hapilon Iblong, Wahid Salcedo, Kamar Jaafar, Abdulajid Ngaya, Lidjalon Sakandal and Sonny Asali be acquitted, while the sentence for the rest of the accused-appellants be reduced to reclusion perpetua.

On the other hand, appellee maintained that the State had been able to prove accused-appellants' guilt beyond reasonable doubt and that the defense failed to adduce proof of minority of the four accused-appellants.

The Court finds no reason to reverse or modify the ruling and penalty imposed by the CA.

The defense itself admitted that the kidnapped victims who testified for the prosecution had been able to point out or positively identify in open court all the accused-appellants [5] as members of the ASG who held them in captivity. Records reveal that the prosecution witnesses were unwavering in their account of how accused-appellants worked together to abduct and guard their kidnapped victims, fight-off military forces who were searching and trying to rescue said victims, and how ransom was demanded and paid. The prosecution likewise presented two former members of the ASG who testified that they were part of the group that reinforced the kidnappers and helped guard the hostages. They both identified accused-appellants as their former comrades.

In the face of all that evidence, the only defense accused-appellants could muster are denial and alibi, and for accused-appellants Iblong, Mandangan, Salcedo and Jaafar, their alleged minority. Accused-appellants' proffered defense are sorely wanting when pitted against the prosecution's evidence. It is established jurisprudence that denial and alibi cannot prevail over the witnesses' positive identification of the accused-appellants. More so where, as in the present case, the accused-appellants failed to present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission thereof. [6] In *People v. Molina*, [7] the Court expounded, thus:

In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime. x x x [8]

Furthermore, the detention of the hostages lasted for several months and they were transferred from one place to another, being always on the move for several days. Thus, in this case, for accused-appellants' alibi to prosper, they are required to prove their whereabouts for all those months. This they were not able to do, making the defense of alibi absolutely unavailing.

Some of the accused-appellants maintained that they were merely forced to join the ASG. However, the trial court did not find their stories persuasive. The trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of witnesses. [9] The Court again explained the rationale for this principle in *Molina*, [10] to wit:

As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the

ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. [11]

The Court cannot find anything on record to justify deviation from said rule.

Lastly, the Court sustains the trial court's and the appellate court's ruling regarding the minority of accused-appellants Iblong, Mandangan, Salcedo and Jaafar. Iblong claimed he was born on August 5, 1987; Mandangan stated his birth date as July 6, 1987; Salcedo said he was born on January 10, 1985; and Jaafar claimed he was born on July 13, 1981. If Jaafar's birth date was indeed July 13, 1981, then he was over 18 years of age when the crime was committed in June of 2001 and, thus, he cannot claim minority. It should be noted that the defense absolutely failed to present any document showing accused-appellants' date of birth, neither did they present testimonies of other persons such as parents or teachers to corroborate their claim of minority.

Section 7 of R.A. No. 9344 provides that:

Sec. 7. Determination of Age. - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

x x x x

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law. [12]

It should be emphasized that at the time the trial court was hearing the case and even at the time it handed down the judgment of conviction against accused-appellants on August 13, 2004, R.A. No. 9344 had not yet been enacted into law. The procedures laid down by the law to prove the minority of accused-appellants were not yet in place. Hence, the rule was still that the burden of proving the minority of the accused rested solely on the defense. The trial court, in the absence of any document stating the age of the aforementioned four accused-appellants, or any corroborating testimony, had to rely on its own observation of the physical appearance of accused-appellants to estimate said accused-appellants' age. A reading of the afore-quoted Section 7 of R.A. No. 9344 shows that this manner of determining accused-appellants' age is also sanctioned by the law. The accused-appellants appeared to the trial court as no younger than twenty-four years of age, or in their mid-twenties, meaning they could not have been under eighteen (18) years old when the crime was committed. [13] As discussed above, such factual finding of the trial court on the age of the four accused-appellants, affirmed by the CA, must be accorded great respect, even finality by this Court.

Moreover, even assuming *arguendo* that the four accused-appellants were indeed less than eighteen years old at the time the crime was committed, at this point in time, the applicability of R.A. No. 9344 is seriously in doubt. Pertinent provisions of R.A. No. 9344 are as follows:

Sec. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and

ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That the suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

x x x x

Sec. 40. Return of the Child in Conflict with the Law to Court. -

x x x x

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years. [14]

If accused-appellants' claim are true, that they were born in 1985 and 1987, then they have already reached 21 years of age, or over by this time and thus, the application of Sections 38 and 40 of R.A. No. 9344 is now moot and academic. [15]

However, just for the guidance of the bench and bar, it should be borne in mind that if indeed, an accused was under eighteen (18) years of age at the time of the commission of the crime, then as held in *People v. Sarcia*, [16] such offenders, even if already over twenty-one (21) years old at the time of conviction, may still avail of the benefits accorded by Section 51 of R.A. No. 9344 which provides, thus:

Sec. 51. Confinement of Convicted Children in Agricultural Camps and Other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in cooperation with the DSWD.

Nevertheless, as discussed above, the evidence before the Court show that accused-appellants Iblong, Mandangan, Salcedo and Jaafar, were not minors at the time of the commission of the crime, hence, they cannot benefit from R.A. No. 9344.

WHEREFORE, the Decision of the Court of Appeals, dated November 24, 2008 in CA-G.R. CR.-H.C No. 00239, is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, [*] Abad, and Mendoza, JJ., concur.

[*] Acting member per Special Order No. 1006.

[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring; rollo, pp. 6-24.

[2] Id. at 7-13.

[3] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

[4] Rollo, p. 23.

[5] Brief for the Accused-Appellants, CA rollo, p. 183.

[6] Lumanog v. People of the Philippines, G.R. No. 182555, September 7, 2010, 630 SCRA 42, 130-131.

[7] G.R. No. 184173, March 13, 2009, 581 SCRA 519.

[8] Id. at 538. (Emphasis supplied.)

[9] People v. Flores, G.R. No. 188315, August 25, 2010, 629 SCRA 478, 488.

[10] Supra note 7.

[11] Id. at 535-536.

[12] Emphasis supplied.

[13] RTC Decision, CA rollo, p. 140.

[14] Emphasis supplied.

[15] See Padua v. People, G.R. No. 168546, July 23, 2008, 559 SCRA 519, 535.

[16] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 51.

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