

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BARBEROS ALIAS "EMIE"; ACCUSED-APPELLANT.

G.R. No. 187494. December 23, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Before us is an appeal from the Decision[1] dated March 5, 2008 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 00316 which affirmed with modification the Judgment[2] of the Regional Trial Court (RTC), Branch 14 in Cebu City, convicting accused-appellant Elmer Barberos alias "Emie" of the crime of rape.

The Facts

In an Information dated January 11, 1999 filed before the RTC of Cebu City and docketed thereat as Criminal Case No. CBU-49307, appellant Elmer was indicted for the crime of rape, as defined under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[3] allegedly committed as follows:

That on or about the 22[nd] day of December 1998, at around 12:00 o'clock past dawn, more or less, in Sitio Cambuntan, Barangay Bolinawan, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, with lewd design and by means of force and intimidation, the accused, did then and there willfully, unlawfully and feloniously choke her throat and threaten her "SABA RON KAY PATYON TA KA" (GO AHEAD SHOUT AND I WILL KILL YOU), then forcibly open her short pants and panty, tearing her sando, place himself on top of her and forcibly insert his penis into her vagina and succeed in having sexual intercourse with x x x [AAA], a 15 year-old girl against her will and consent.[4]

Upon arraignment, Elmer pleaded not guilty to the above charge.

Version of the Prosecution

The prosecution presented the following witnesses: AAA, the private complainant, and Dr. Daphnie Rana, the examining doctor, to establish the following facts:

In the evening of December 21, 1998, AAA, then 15 years old, along with four friends, watched a variety show near the cemetery of Cambuntan, Bolinawan, Carcar, Cebu. At around 10:00 or 11:00 p.m., a neighbor informed AAA that her father and uncle were quarreling at her grandmother's place. AAA immediately proceeded to her grandmother's house and heard, as she was nearing the place, the raised voices of her father and uncle. Alarmed, she cried for help but nobody heeded her call. It was at this instance that Elmer, a neighbor, drew near her and told her not to worry because he would protect her. Upon the urging of Elmer, AAA went with him to his two-storey house some 50 meters away. He then led her to a room at the second floor and, once inside, locked the door.

After a while, Elmer made his move and, despite AAA's loud protestation, succeeded in placing himself on top of

AAA, who shouted for help but only to be choked and told, "Saba ron kay patyon ta ka." (Do not shout, otherwise I will kill you.) AAA's attempt to wrestle herself free from Elmer's hold did not prevent the latter from getting inside her, although she felt a less-than-total penetration. And at some point during the struggle, AAA was able to cover her private part with her left hand while grabbing Elmer's sex organ with her right hand.

Then, someone knocked at the door. When Elmer stood up to open it, AAA lost no time in picking up her short pants and panty and jumped out the window. Upon reaching her grandmother's place at around 1:00 a.m., she told her grandmother the ordeal she just went through. She then washed herself. Even at that late hour, she was raring to report the incident to the police until she noticed Elmer standing outside their house.

At about 10:00 a.m. of December 22, 1998, AAA, with her mother, reported the matter to the police. From Carcar, AAA and her mother, accompanied by a policewoman, proceeded to the Don Vicente Sotto Medical Center, where Dr. Rana conducted an examination on AAA. Her findings: an intact hymen and the absence of spermatozoa in the vaginal canal. As to the first phenomenon, the doctor ventured the opinion that a woman raped could still have an intact hymen either because there was no full penile insertion, the penetration was limited only to the labia, or the hymen was distensible. The absence of spermatozoa in the vagina could be due to the fact that there might have been no ejaculation, or the sperm might have been washed out.

Version of the Defense

Elmer denied the crime imputed to him. To buttress his defense, Elmer presented his wife, Paterna, who testified being in the vicinity of AAA's grandmother's house when AAA's father and uncle were having an argument. Apparently, the uncle fired at AAA's father, with the explosion and noisy altercation attracting the neighbors.

Upon reaching home on the night in question, Paterna was surprised to find a crying AAA on the second floor, visibly afraid because of the firing incident and crying her help. When Elmer arrived with one Elijorde Paniroso,[5] AAA rushed toward the window apparently to flee and, despite Elmer's admonition to be careful, eventually jumped out.

The defense proffered the theory that the fabricated rape charge was due to a standing feud between the Barberoses and AAA's family which started when the Barberoses built their house on a piece of land formerly tilled by AAA's family.

The Ruling of the RTC

After trial, the RTC, on November 13, 2000, rendered judgment,[6] finding Elmer guilty of the crime charged and accordingly sentenced him, thus:

WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding the accused ELMER BARBEROS GUILTY beyond reasonable doubt of RAPE falling under paragraph 1, subparagraph a, ART. 266-A of the Revised Penal Code as amended by R.A. No. 8351 [sic] and hereby imposes upon him the penalty of RECLUSION PERPETUA as imposed under ART. 266-B of the same Code, as amended.

Accused is, likewise, ordered to pay private complainant the amount of P50,000.00 as his civil liability to her.

SO ORDERED.[7]

Therefrom, Elmer appealed directly to this Court, the appeal initially docketed as G.R. No. 147241. Following, however, the submission by the parties of their respective briefs, *People v. Mateo*[8] was promulgated. And in line with *Mateo*, the Court, via its November 22, 2004 Resolution,[9] referred the instant case to the CA for intermediate review.

The Ruling of the CA

On March 5, 2008, in CA-G.R. CEB-CR-HC No. 00316, the appellate court rendered the appealed decision, affirming that of the RTC, but with the modification awarding AAA moral damages in the amount of PhP 50,000. The fallo of the CA decision reads:

All told, the assailed Decision dated 13 November 2000 by the Regional Trial Court, Branch 14, in Cebu City finding the accused guilty beyond reasonable doubt of RAPE and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED. The Civil aspect of the case is MODIFIED to read as follows: Appellant is ORDERED to pay private complainant the amount of P50,000.00 as moral damages and the amount of P50,000.00 as civil indemnity.

SO ORDERED.[10]

On April 3, 2008, Elmer filed his notice of appeal, to which the CA, per its resolution of December 12, 2008, gave due course.

In response to the Court's Resolution for them to submit supplemental briefs if they so desired, the parties manifested their willingness to have the case resolved on the basis of the Brief for the Accused-Appellant[11] and Brief for the Appellee,[12] respectively, filed in G.R. No. 147241.

The Issues

Consequently, from his Brief, appellant raises the same assignments of errors earlier passed over and resolved by the CA, to wit: first, that the courts a quo erred in finding him guilty beyond reasonable doubt of the crime of rape; and second, that the courts a quo gravely erred in adjudging him guilty of consummated rape instead of attempted rape.

The Court's Ruling

After a circumspect review of the records, the Court affirms appellant's conviction.

Prefatorily, while it is not wont to go over and re-assess the evidence adduced during the trial, more so when the appellate court affirms the findings and conclusions of the trial court, the Court, in criminal cases falling under its review jurisdiction under the Constitution,[13] is nonetheless tasked to assiduously review such cases, as in the instant appeal. Besides, utmost care is required in the review of a decision involving conviction of rape due to the pernicious consequences such conviction bear on both the accused and the offended party.[14]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the victim's testimony, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[15] Accordingly, the Court has unfailingly adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. [16]

Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape;[17] that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.[18]

Rape is defined and penalized under Arts. 266-A and 266-B of the RPC, as amended, which provide:

ART. 266-A. Rape, When and How Committed. -- Rape is committed --

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

x x x x (R.A. No. 8353, October 22, 1997.)

ART. 266-B. Penalties. -- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua. (Emphasis supplied.)

Thus, in context, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force, threat, or intimidation.

In the instant case, the prosecution established the elements of carnal knowledge and the force, threat, or intimidation employed. AAA, with firmness and certainty, pointed to appellant Elmer as the person who sexually molested her. She never wavered in her identification and was straightforward in her narration of how the assault occurred. Both the RTC and CA found the eloquent testimony of AAA positive and candid, and not at all rebutted during the cross-examination, thus deserving full weight and credit. To quote directly from the records:

Atty. Yongco: What is the full name of this Emie you are referring to?

AAA: Elmer Barberos my neighbor.

Q: You mean the accused in this case?

A: Yes.

x x x x

Q: After he put his arms around your shoulder, what did he say if any?

A: He told me that don't worry about that

x x x x

Q: After then (sic) after that, what happened next?

A: He told me he will keep me in his residence.

Q: Did you not ask why he is going to keep you in his residence?

A: He told me that he will just keep me in his residence because if my uncle would see me he might kill me.

x x x x

Q: After you were told by Emie that he will keep you in his residence, what did you do?

A: I went with him.

x x x x

Q: Was there anybody in the house when you reached the house?

A: None.

x x x x

Q: After Elmer Barberos told you that you will go upstairs, what did he do if any?

A: He told me that we will put off the light because if the house is lighted my uncle might see me and he will kill me and I might be seen outside.

Q: And so did Elmer Barberos put off the light inside the house?

A: Yes, Ma'am.

x x x x

Q: After the accused and you entered the room, what did the accused do?

A: He closed the door.

Q: After Elmer Barberos closed the door, what did Elmer Barberos do after he closed the door?

A: Maybe he locked the door because I cannot really see it because it was dark.

Q: So when you were already inside the room and after the accused closed and locked the door, what happened next?

A: He conversed with me.

Q: What was the topic he conversed with you?

x x x x

Q: After you told him that you wanted to go home, what did Elmer Barberos answer?

A: He told me later only.

Q: So what did you do when Elmer Barberos told you to wait?

A: I told Elmer Barberos I will just go home because they might be looking for me and they might have finished their fight.

Q: So when you [said] that to Elmer Barberos, what did Elmer Barberos do?

A: Elmer Barberos told me you are a fool and he immediately put his body on top of me.

Q: So after Elmer Barberos told you you are a fool and put himself on top of you, what happened to you?

A: I shouted for help.

Q: How did you exactly shout for help at that time?

A: I shouted Ma, help me Ma because Elmer Barberos put himself on top of me.

Atty. Yongco: I would like to put on record, Your Honor, that the witness is crying when she uttered the statement.

Q: After you made a shout for help, what did Elmer Barberos do?

A: He choked my throat and told me if you will shout I will kill you.

Q: After Elmer Barberos told you that he will kill you, what did Elmer Barberos do after that?

A: His body was on top of me and he pushed and pull.

COURT: If the accused is inside the courtroom, can you identify him?

A: Yes.

Q: Can you point to the person?

A: That one.

COURT INTERPRETER: The witness pointed to the person who responded that his name is Elmer Barberos while the victim kept on crying.

Q: At that time what were you wearing?

A: I was wearing a white t-shirt and maong short pants.

x x x x

Q: You said that after Elmer Barberos choked you and told you not to make any noise because he will kill you, he made a push and pull motion. At that time he was making the push and pull motion were you wearing your shorts?

A: I was wearing maong short pants and he immediately pulled out my short pants.

x x x x

A: He forcibly pull[ed] down my short pants because it was loose.

Q: When accused Elmer Barberos pull[ed] down your short pants, was there anything left in your underwear?

A: No more because when he pulled down my short pants my panty went with the short pants.

x x x x

Q: And so after Elmer Barberos pulled down your short pants together with your panty, what did Elmer Barberos do after that?

A: We wrestled because I resisted. There was a time that I was on top and the next time I was under him.

Q: So after you wrestled with Elmer Barberos, what happened?

A: His penis was inside my vagina but it did not penetrate. It just stayed on the lip of my vagina.

Q: And at that time what did you feel?

A: I felt pain but then again I resisted.

Q: You were telling that the penis of the accused has touched your vagina, what was your position at that time in relation to the position of the accused Barberos?

A: At that time when his penis touched the lip of my vagina my position was lying. Afterwards I wrestled again so at that time I was on top of him again.

x x x x

Q: So with that position that you were lying with your right hand at your back, what did the accused Elmer Barberos do?

A: When I was lying while my right hand was at my back he wanted again for the second time to insert his penis into my vagina but I used my left hand in covering my vagina.

x x x x

Q: And so when you were in that position, what did you feel if any on your vagina because accused Barberos according to you was trying to push his penis to your vagina?

A: Since I kept on moving at that time my right hand was able to release from my back and I took hold of his penis.

Q: After you took hold of the penis of the accused Elmer Barberos, what happened?

A: Somebody knocked at the door.

x x x x

Q: And so did Elmer Barberos open the door?

A: Yes, Ma'am.

Q: So when Elmer Barberos went to open the door, what did you do?

A: I took my short pants and panty. And since I was near the window I prayed for the help of God, I made a sign of the cross and immediately jumped over the window.[19] (Emphasis supplied.)

The foregoing positive testimony of AAA, as well as the rage that went into it, are badges of truth and sincerity. When the offended party is of tender age and immature, as here, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame and embarrassment to which she would be exposed if the matter to which she testified is not true.[20] Judging from her live birth certificate,[21] AAA was 15 years old at the time of the incident, barely 16 or 17 when she took the witness stand in 2000. It is settled that when a girl, more so when she is in her early teens, says she has been raped, she says in effect all that is necessary to prove that rape was committed, and if her testimony meets the test of credibility, that is sufficient to convict the accused.[22] As it were, AAA's testimony as to her hideous experience in the hands of appellant deserves full faith and credit, given as it were in a straightforward and candid manner, unshaken by rigid cross-examination and bereft of inconsistencies, or contradictions in material points.[23]

Auguring well for AAA's credibility was her eagerness to report right away to the proper authorities a crime committed against her person. When her grandmother exhibited reluctance about immediately reporting the matter to the police, she took it upon herself to do so, but was prevented only by the presence of appellant outside her grandmother's house. But the very next morning, she lost no time in going to the police station to report the rape incident.

The physical examination Dr. Rana conducted on AAA several hours after the incident happened also amply explains and corroborates her testimony on the fact of partial penile penetration. The medical findings of Dr. Rana embodied in her Medical Report[24] are consistent with the partial penetration testified to.

Appellant has made much of Dr. Rana's report on the absence of medical traces of hymenal laceration on AAA. Given, however, the unwavering sworn account of AAA as to what she went through in appellant's hands, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against the latter. The medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape.[25] This is because hymenal laceration is not an element of the crime of rape,[26] albeit a healed or fresh laceration is a compelling proof of defloration.[27] What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[28]

In a long line of cases, the Court has consistently held that full penile penetration of the penis into the vagina is not required for the commission of rape, as mere penile entry into the labia of the pudendum of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. In *People v. Diunsay-Jalandoni*,^[29] citing *People v. Iluis*,^[30] we ratiocinated, thus:

Further, the absence of external signs of violence does not negate the commission of rape. Nor is the absence of spermatozoa material in the prosecution of a rape case. A freshly broken hymen is, likewise, not an essential element of rape, and healed lacerations do not negate rape because full penetration is not necessary to consummate rape. Penetration of the penis by entry into the labia of the pudendum of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction of rape.^[31] (Emphasis supplied.)

In light of the foregoing disquisition, the Court need not belabor the issue as to whether appellant's liability is only for attempted, not consummated, rape. Suffice it to state that the trial court, joined by the CA, found appellant's penis to have touched the labia and penetrated AAA's vagina, albeit unsuccessful in completely entering it. Full penile penetration is not a consummating ingredient in the crime of rape. The mere knocking at the door of the pudendum by the accused's penis suffices to constitute the crime of rape.^[32]

As to the means used in the sexual assault, the prosecution had likewise sufficiently showed the force, threat, and intimidation employed by appellant to satisfy his lust. It must be borne in mind that in rape, the force and intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime. As a matter of settled jurisprudence, rape is subjective and not all victims react the same way; there is in fine no stereotypical form of behavior of a woman when facing a traumatic experience, such as a sexual assault.^[33]

In the instant case, however, AAA, true to human nature, resisted with all her might the beastly act perpetrated on her. When appellant grabbed her and placed himself on top of her, AAA cried for help which prompted Elmer to choke her and threaten her with death. Yet, while deterred from shouting, AAA still struggled resolutely--as her eloquent testimony above-quoted shows--such that Elmer was not able to achieve full penile penetration. Her vigorous resistance resulted in her being able to cover her vagina with her left hand while eventually holding Elmer's penis forcefully with her right hand.

Not lost on the Court is the established fact of AAA jumping from the second floor of Barberoses' dwelling. She said that she did it just to escape from Elmer's clutches, unmindful of the physical harm it might bring to her. This is similar to running away from danger out of uncontrollable fear, heedless of any resultant injury that might occur, considering, in the instant case, that the leap entailed a fall from a considerable height.

The defense had offered a theory about the jumping incident. The arrival of appellant and his friend, Elijorde, allegedly so frightened the hiding AAA that she was forced to jump from the second floor window. This is, of course, incredulous, for if AAA indeed sought shelter in the Barberoses' residence out of fear of her uncle, as Paterna asserted in the witness box, the Court cannot understand why the mere arrival and sight of the appellant and Elijorde would give AAA a scare.

Paterna's naturally biased testimony in support of her husband's denial of culpability deserves scant consideration in light of the positive identification and categorical declaration made by AAA against the appellant. When the denial of the accused is tended to be established only by himself, his relatives, or friends, such denial should be accorded the strictest scrutiny--it is necessarily suspect and cannot prevail over the testimonies of the more credible testimonies for the prosecution.^[34] So it must be here.

The thesis the defense espoused that AAA's family fabricated the charge against Elmer owing to some misunderstanding over a piece of land taxes credulity. For one, no credible evidence had been adduced to prove

the supposed land dispute. For another, the lengthy narrative of AAA of how appellant ravished her strikes the Court as a product of her thirst for justice, not as a jumping board to settle old slight. And for a third, the presence of the elements of the crime of rape had been sufficiently established. In *People v. Gagto*, we held that "not a few accused in rape cases have attributed the charges brought against them to family feuds, resentment, or revenge. But such alleged motives have never swayed the court from lending full credence to the testimony of the complainant who remained steadfast throughout her direct and cross examinations, especially a minor in this case." [35]

The Court also affirms the penalty thus meted on the appellant, reclusion perpetua being the imposable penalty even for unqualified rape. Finally, the award by the CA of moral damages in the amount of PhP 50,000, on top of the award of PhP 50,000 as civil indemnity ex delicto, is in order, even without further proof of moral suffering or anguish, as *People v. Jumawid*[36] and other cases teach.[37]

WHEREFORE, premises considered, we AFFIRM IN TOTO the March 5, 2008 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00316.

No pronouncement as to costs.

SO ORDERED.

Corona, (Chairperson), Nachura, Peralta, and Del Castillo,[*] JJ., concur.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

[1] Rollo, pp. 4-20. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla.

[2] CA rollo, pp. 20-26. Penned by Presiding Judge Raphael B. Yrastorza, Sr.

[3] Otherwise known as the Anti-Rape Law of 1997, which became effective on October 22, 1997.

[4] CA rollo, p. 12. Amended Information.

[5] His testimony for the defense was stricken off the record for his failure to appear during cross examination.

[6] Supra note 2.

[7] Id. at 25-26.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] CA rollo, pp. 130-131.

[10] Rollo, p. 19.

[11] CA rollo, pp. 42-58, dated January 22, 2002.

[12] Id. at 75-123, dated May 24, 2002.

[13] Art. VIII, Sec. 5(2)(d) of the 1987 Constitution provides:

SEC. 5. The Supreme Court shall have the following powers: x x x x

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts x x x.

- [14] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.
- [15] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.
- [16] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.
- [17] *People v. Ceballos*, G.R. No. 169642, September 14, 2007, 533 SCRA 493.
- [18] *People v. Balonso*, G.R. No. 176153, September 21, 2007, 533 SCRA 760.
- [19] TSN, February 14, 2000.
- [20] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296; *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400.
- [21] Exhibit "D."
- [22] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481.
- [23] *People v. Canuto*, G.R. No. 169083, August 7, 2006, 498 SCRA 198, 216; citing *People v. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29, 46.
- [24] Exhibit "A."
- [25] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 546.
- [26] *People v. Esteves*, 438 Phil. 687, 699 (2002).
- [27] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106.
- [28] *People v. Logmao*, 414 Phil. 378, 387 (2001).
- [29] G.R. No. 174277, February 8, 2007, 515 SCRA 227.
- [30] G.R. No. 145995, March 20, 2003, 399 SCRA 396, 406.
- [31] *Supra* note 29, at 236.
- [32] *People v. Plurad*, G.R. Nos. 138361-63, December 2, 2002, 393 SCRA 306.
- [33] *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140, 145; *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771.
- [34] *People v. De Guzman*, G.R. No. 173197, April 24, 2007, 522 SCRA 207.
- [35] G.R. No. 113345, February 9, 1996, 253 SCRA 455, 467-468.
- [36] G.R. No. 184756, June 5, 2009.
- [37] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225.

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