

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRIQUE GALVEZ, ACCUSED-APPELLANT.

G.R. No. 212929. July 29, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Decision[1] dated January 14, 2014 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03210 convicting accused-appellant Enrique Galvez of four counts of qualified rape.

Informations[2] for four counts of rape under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act (R.A.) No. 7659, and four counts of sexual abuse under Section 5 (b), Article III, R.A. No. 7610 were filed against the accused-appellant. Except for the dates of the commission of the crimes, all the Informations for the rape charges were worded similarly as in the Information for Criminal Case No. 228-95[3]:

That on or about the 14[th] day of May, 1995 at Sitio [XXX], Brgy. [YYY], in the municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the uncle of minor [AAA[4]], by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said [AAA], a girl of 13 years old, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

The Court restates the facts as summarized by the CA.[5]

At the time of the incidents complained of, private complainant AAA, the niece of accused-appellant Galvez, was thirteen (13) years old.

On several occasions during the summer vacation of 1995, complainant AAA stayed at the house of her father's brother, accused-appellant Galvez, at Sitio [XXX], Barangay [YYY], Subic, Zambales, to keep company accused-appellant's wife.

On several days, such as on May 14, 15, 16 and 18, 1995, when accused-appellant's wife was not in the house, accused-appellant Galvez removed AAA's clothes and underwear, went on top of AAA, forced himself on AAA, and had sexual intercourse with her. Private complainant could not do anything.

Afterwards, AAA was able to leave accused-appellant's house and go to her house. There, AAA told her father what had happened to her. AAA's father brought her to the Subic Police Station, where she gave a Sworn Statement [about the alleged incidents of rape]. Afterwards, AAA's father brought her to the San Marcelino District Hospital, where AAA was examined by Dra. Echaluse.

The Medico-legal Certificate issued by Dra. Echaluse revealed the following:

“DIAGNOSIS/ FINDINGS:

- Old Hymenal tears on the 3:00, 6:00, 9:00 o'clock position.
- (-) Negative smear for spermatozoa.

- Cervix- Pink, firm with whitish discharge.
- No hematoma, echymosis, abrasion.
- No menarche.” (Emphasis supplied)

On the other hand, the defense presented the lone testimony of accused-appellant Galvez, in order to establish the following:

Upon his brother’s request, accused-appellant Galvez allowed his thirteen (13) year old niece, private complainant AAA, to stay in his house. According to accused-appellant, no unusual incidents occurred from May 14 to 16 and May 18, 1995 while AAA was at his house. Accused-appellant Galvez denied AAA’s accusation that he had sexual intercourse with her. According to accused-appellant, it was his brother, the father of AAA, who molested AAA. Accused-appellant Galvez added that, on May 18, 1995, he went to his brother’s house. There, accused-appellant Galvez saw AAA’s mother, who was mute, standing at the door of her house. Private complainant AAA’s mother, using her two (2) index fingers, demonstrated the acts of embracing and kissing. Accused-appellant Galvez then confronted his brother about the gestures made by AAA’s mother. However, accused-appellant’s brother ran away. Accused-appellant Galvez ran after his brother and told him, “Baboy[,] pati anak mo inaasawa mo”.

Afterwards, when accused-appellant Galvez was unable to catch his brother, accused-appellant went back and told the incident to accused-appellant’s mother-in-law.

Accused-appellant Galvez only came to know of the charges of Rape and violation of Sec. 5 (b), Art. III, R.A. 7610 against him when he was arrested by the barangay officials.

Subsequently, four (4) sets of Information for the crime of Rape under the Revised Penal Code, and another four (4) sets of Information for violation of Sec. 5 (b), Art. III, R.A. No. 7610, otherwise known as “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” were filed against accused-appellant Galvez.

Accused-appellant pleaded “NOT GUILTY” to all charges.

On May 2, 2007, the Regional Trial Court (RTC), Branch 74, Olongapo City, rendered its Decision[6] and convicted accused-appellant of four counts of sexual abuse under R.A. No. 7610 and four counts of rape under the Revised Penal Code:

WHEREFORE, in the light of the foregoing, accused is hereby found GUILTY for four (4) counts of sexual abuse under RA 7610 and sentenced to suffer the penalty of reclusion temporal medium to reclusion perpetua for each act; and four (4) counts of rape under the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua for each act.

SO DECIDED.[7]

The RTC, relying on the testimony of AAA and the Medico-legal certificate issued by Dr. Joan Marie C. Echaluse, found accused-appellant guilty of the crimes charged.[8] The RTC gave weight to AAA’s testimony which it found to be straightforward, honest, and consistent on all material points. The RTC added that based on AAA’s testimony alone the prosecution succeeded in proving all the elements of the crimes.[9]

The CA affirmed with modifications the Decision of the RTC. The CA convicted accused-appellant of the crimes of rape only on the ground that the accused may not be subjected to criminal liability twice, for both sexual abuse under Section 5 (b), Article III, R.A. No. 7610 and rape under Article 335 of the Revised Penal Code, for the same act.[10] The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision of the trial court is AFFIRMED, with the following MODIFICATIONS:

- a.) Accused-appellant is CONVICTED of four (4) counts of Qualified Rape under the Revised Penal Code in Criminal Case Nos. 228-95, 229-95, 230-95, and 231-95;
- b.) Accused-appellant is to suffer the penalty of Reclusion Perpetua, for each count of Qualified Rape;
- c.) Accused-appellant is to pay private complainant AAA the amount of Php 75,000.00 as Moral Damages, for each count of Qualified Rape;
- d.) Accused-appellant is to pay private complainant AAA the amount of Php 30,000.00 as Exemplary Damages, for each count of Qualified Rape; and,
- e.) Accused-appellant is to pay private complainant AAA the amount of Php 75,000.00 as Civil Indemnity, for each count of Qualified Rape.

SO ORDERED.[11]

The CA noted that the testimony of AAA was corroborated by the findings of Dr. Echaluse, who conducted the physical examination of AAA.[12] The CA added that accused-appellant was positively identified by AAA as the one who had sexually forced himself on her on four occasions.[13] The CA rejected the argument of accused-appellant that the testimony of AAA was unbelievable and rehearsed. The CA noted the RTC's observation that the testimony of AAA was straightforward, honest, and consistent on all material points.[14] The CA also stated that it saw no ill-motive on the part of the prosecution witnesses and that the uncorroborated and weak defense of denial asserted by accused-appellant was negative and self-serving evidence undeserving of weight in law.[15]

Hence, this appeal.

The issues for our consideration are:

- Whether or not accused-appellant is guilty of four counts of qualified rape.
- Whether or not the award of civil indemnity and damages to AAA is proper.

This Court affirms the conviction of accused-appellant with modifications.

The accused is not guilty of qualified rape but is guilty of simple rape.

Article 335 of the Revised Penal Code defines the crime of rape and enumerates its elements, to wit:

ART. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x[16]

We now examine whether the elements of simple or qualified rape were proved beyond reasonable doubt in this case.

Carnal knowledge

Carnal knowledge is proven by proof of the entry or introduction of the male organ into the female organ; the touching or entry of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia constitutes consummated rape.[17]

In this case, the RTC and the CA both found that the element of carnal knowledge was sufficiently established by AAA's narration that accused-appellant had sexual intercourse with her, to wit:

[TSN, December 13, 1995]

x x x x

FISCAL:

Q

And you stayed [at the accused's house] on May 14, 1995 and while you were there do you know of any unusual incident that happened between you and [the accused]?

A

Yes, sir.

Q

Would you please tell this Honorable Court [w]hat was that unusual incident that happened between you and [the accused] on May 14, 1995 while you stayed with him?

A

He removed my clothes and then my under wear then he went on top of me.

x x x x

A

He had sexual intercourse with me, sir.[18]

x x x x

Q

The following day on May 15, 1995[,] were you in the house of Idring or the accused Enrique Galvez?

A

Yes, sir.

Q

Was there any unusual incident that happened between you [and the accused] on May 15, 1995?

A

Yes, sir.

Q

Could you tell us what was that unusual incident that happened between you and the accused on May 15, 1995[?]

A

He did the same thing to me sir, he again undressed me, I was naked.

COURT:

Q

And after you were undressed?

A

He again went on top of me ma'am.

Q

And?

A

None, your Honor. He again had a sexual intercourse with me.

x x x x

FISCAL:

Q

How about on May 16, 1995 were you still in the house of [the accused]?

A

Yes, sir.

Q

And do you recall of any unusual incident that took place between you [and the accused] on the same date?

A

Yes, sir.

Q

What was that unusual incident that happened between you and [the accused on May 16, 1995]?

A

The same thing, sir.[19]

[TSN, April 27, 1998]

FISCAL:

Q

While in the house of the accused on May 18, 1995, do you recall of any unusual incident that happened to you?

A

Yes, sir.

Q

What was that unusual incident that happened to you inside the house of the accused on May 18, 1995 at around 12:00 noon?

A

[The accused] undressed me and thereafter he had sexual intercourse with me.

x x x x

Q

And after he removed your clothes, what did the accused do if any?

A

He went on top of me.

Q

And when he was already on top of you, what did the accused do?

A

He had sexual relation with me.[20]

This Court agrees with the lower courts that carnal knowledge was proved. We disagree with accused-appellant that the prosecution failed to prove rape because the testimony of AAA was not detailed.[21] In *People v. Salvador*,[22] we held that the credible testimony of the victim narrating that she was defiled, such as the testimony of AAA in this case, is sufficient for a conviction of rape, to wit:

x x x [W]hen a victim of rape says that she was defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof. This is a basic rule, founded on reason and experience and becomes even more apparent when the victim is a minor. In fact, more compelling is the application of this doctrine when the culprit is her close relative.[23] (Citations omitted; emphasis supplied)

In *People v. Gecomo*,[24] we also held that what is merely required in establishing rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank[25] in her statements about the incident of rape. In this case, we agree with the RTC that the testimony of AAA was straightforward, honest, and consistent on all material points[26] and it is sufficient to establish carnal knowledge as an element of rape.

Further, while AAA may not have described the incidents of rape in detail during the trial, she identified[27] her sworn statement[28] containing a detailed account of the incidents of rape and admitted placing her thumb mark on said statement.[29] The testimony of AAA, while not as detailed, is consistent with what is stated in the sworn

statement and accurately reflects points such as the approximate time when the rape incidents on May 14,[30] 16[31] and 18,[32] 1995 occurred and the fact that the incidents occurred while accused-appellant's wife was away.[33]

Furthermore, we note that AAA's testimony is corroborated by the findings stated in the Medico-Legal Certificate[34] issued by Dr. Echaluse after her examination of AAA. In *People v. Mercado*,[35] we ruled that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.

Based on the foregoing, this Court agrees with the lower courts that the element of carnal knowledge has been sufficiently established.

Moral ascendancy in substitution
of violence and intimidation

With respect to the element of violence or intimidation, it is settled in jurisprudence that said element may be substituted by moral ascendancy.[36] The Court reiterated this rule in numerous cases where the offender and the victim were the uncle and niece respectively.[37]

In this case, the CA recognized the existence of moral ascendancy because accused-appellant is AAA's uncle and AAA lived with him and his wife during the time the acts of rape occurred.[38] We agree with the CA that accused-appellant had moral ascendancy over AAA who was a young girl living in accused-appellant's house where the only adults to provide for and discipline AAA were the accused and his wife.[39] In *People v. Gonzales*,[40] the Court also found moral ascendancy because the victim lived in a house with an uncle who raped her while her parents were not living in the same house.

Qualifying circumstance of the
victim being below 18 years of
age coupled with the fact that
the offender is a relative within
the third degree of said victim

With respect to the element that makes the offense qualified rape, that is, the minority of the victim coupled with the fact that the accused is related to her within the third civil degree,[41] it bears stressing that both minority and the third degree relationship must be established.

As to the age of the victim as a component of the qualifying circumstance, the case of *People v. Flores*[42] laid down the following guidelines on how to prove the age of the offended party:

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
- If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7

years old;

- If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

- If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

In this case, no birth certificate was offered in evidence to prove AAA's age.[43] Neither was there any other authentic document offered to prove AAA's age. It must also be pointed out that there is doubt as to AAA's real age based on the records of this case as, for instance, she testified to being 12 years old, on December 13, 1995 (6 months after the incident of rape).[44] The Medico-Legal Certificate dated May 24, 1995 stated that AAA was 14 years old.[45] Ms. Angustia R. Clavecilla[46] also testified that AAA was 12 years old at the time the felony was committed.[47] AAA herself said that she does not know when she was born.[48] Contrary to this, the Informations alleged that she was 13 years old at the time the felony was committed.

In *People v. Ortega*,[49] we explained how to resolve this doubt in the victim's age:

x x x Given the doubt as to AAA's exact age, the RTC properly convicted Ortega only of simple rape punishable by reclusion perpetua.

In *People v. Alvarado*,[50] we did not apply the death penalty because the victim's age was not satisfactorily established, thus:

"We agree, however, that accused-appellant should not have been meted the death penalty on the ground that the age of complainant was not proven beyond reasonable doubt. The information alleged that, on July 26, 1997, the date of the rape, Arlene was 14 years old. In her testimony, Arlene stated that she was 14 years old at the time of the incident. Accused-appellant confirmed this during the presentation of the defense evidence, but Lonelisa Alvarado, complainant's mother, testified that Arlene was born on November 23, 1983, which would mean she was only 13 years old on the date of the commission of the crime. No other evidence was ever presented, such as her certificate of live birth or any other document, to prove Arlene's exact age at the time of the crime. As minority is a qualifying circumstance, it must be proved with equal certainty and clearness as the crime itself. There must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by accused-appellant. Since there is doubt as to Arlene's exact age, accused-appellant must be held guilty of simple rape only and sentenced to reclusion perpetua."

x x x x

We further stressed in *People v. Villarama*[51] that:

"Court decisions on the rape of minors invariably state that, in order to justify the imposition of the death penalty, there must be independent evidence showing the age of the victim. Testimonies on the victim's age given by the prosecution witnesses or the lack of denial of the accused or even his admission thereof on the witness stand [are] not sufficient. This Court has held that, to justify the imposition of the death penalty for rape committed against a child below 7, the minority of the victim must be proved with equal certainty and clarity as the crime itself. The failure to sufficiently establish the victim's age with factual certainty and beyond reasonable doubt is fatal and consequently bars conviction for rape in its qualified form." (Emphasis

and underscoring supplied)

It must likewise be remembered that the minority of the victim must concur with the second component which is the third degree relationship between the victim and the offender. As to such second component of the qualifying circumstance, *People v. Libo-on*[52] teaches:

It is well-settled that this attendant circumstance, as well as the other circumstances introduced by Republic Act Nos. 7659 and 8493 are in the nature of qualifying circumstances. These attendant circumstances are not ordinary aggravating circumstances which merely increase the period of the penalty. Rather, these are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed.

In this regard, we have previously held that if the offender is merely a relation – not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim – it must be alleged in the information that he is “a relative by consanguinity or affinity (as the case may be) within the third civil degree.” Thus, in the instant case, the allegation that accused-appellant is the uncle of private complainant is not specific enough to satisfy the special qualifying circumstance of relationship. The relationship by consanguinity or affinity between appellant and complainant was not alleged in the information in this case. Even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree. (Citations omitted; emphasis and underscoring supplied)

Since the Informations contained only a statement that the accused-appellant was the uncle of AAA without stating that they were relatives within the third civil degree, the qualifying circumstance of relationship cannot likewise be appreciated in the case at bar.

In sum, since the prosecution was able to prove the elements of carnal knowledge and the moral ascendancy of accused-appellant over AAA but failed to clearly prove the age of AAA and allege the third degree relationship between accused-appellant and AAA, accused-appellant should be convicted of the crimes of simple rape only.

Because the crime committed was simple rape, the award of civil indemnity and damages should be reduced.

The CA awarded civil indemnity and moral damages of P75,000 and exemplary damages of P30,000. The award of the CA is premised on the fact that the accused was convicted of qualified rape. Since the crime committed is simple rape, the amounts awarded must be modified.

In a simple rape case, the victim is entitled to P50,000 as civil indemnity, P50,000 as moral damages and P30,000 as exemplary damages for each count of rape.[53] Interest at the rate of 6% per annum on all damages awarded in this case is likewise proper.

WHEREFORE, we DISMISS the appeal and AFFIRM with MODIFICATION the Decision dated January 14, 2014 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03210. Accused-appellant Enrique Galvez is hereby convicted of four counts of simple rape under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, and sentenced to suffer the penalty of reclusion perpetua for each count of simple rape. He is ordered to pay AAA civil indemnity of P50,000 and moral damages of P50,000 and exemplary damages of P30,000 for each count of simple rape. Interest of six percent (6%) per annum on all damages awarded in this case reckoned from the finality of this Decision until fully paid shall likewise be paid by accused-appellant.

With costs against accused-appellant.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez,[*] and Jardeleza, JJ., concur.

August 26, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____July 29, 2015____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 26, 2015 at 9:08 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[1] Rollo, pp. 2-22. Penned by Associate Justice Michael P. Elbinias (deceased) and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes.

[2] Records, pp. 2, 10, 19, 35, 57, 65, 73 and 81.

[3] Id. at 57. The Informations for sexual abuse for violation of Section 5 (b), Article III, R.A. No. 7610 are no longer quoted as the accused-appellant was cleared of those charges.

[4] A fictitious name is used in place of the private complainant's name to protect her privacy pursuant to the case of *People v. Cabalquinto*, 533 Phil. 703 (2006) and R.A. No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules.

[5] Rollo, pp. 3-6.

[6] Records, pp. 466-468. Penned by Judge Ramon S. Caguioa.

[7] Id. at 468.

[8] Id. at 467-468.

[9] Id. at 467.

[10] Rollo, pp. 14-16.

[11] Id. at 21.

[12] Id. at 9.

[13] Id. at 7.

[14] Id. at 10-11.

[15] Id. at 12.

[16] REVISED PENAL CODE (1930), Article 335, as amended by R.A. No. 7659 (1993).

[17] *People v. Aguiluz*, 406 Phil. 936, 944 (2001).

[18] TSN, December 13, 1995, p. 15; records, p. 369.

[19] Id. at 18-19; id. at 372-373.

[20] TSN, April 27, 1998, pp. 6-8; id. at 405-407.

[21] CA rollo, p. 98.

[22] 433 Phil. 602 (2002).

[23] Id. at 609-610.

[24] 324 Phil. 297 (1996).

[25] Id. at 312.

[26] Records, p. 467.

[27] TSN, April 27, 1998, p. 11; id. at 410; TSN, December 13, 1995, pp. 24-27; id. at 378-381.

[28] Records, pp. 5-6.

[29] TSN, December 13, 1995, pp. 25-27; id. at 379-381.

[30] Id. at 15 & 17; id. at 369 & 371.

[31] Id. at 19-20; id. at 373-374.

[32] TSN, April 27, 1998, pp. 6-7; id. at 405-406.

[33] TSN, December 13, 1995, pp. 18 & 20; id. at 372 & 374.

[34] Records, p. 235.

[35] 664 Phil. 747, 751 (2011).

[36] Reyes, L.B., *THE REVISED PENAL CODE CRIMINAL LAW BOOK TWO* 561 [17th ed. (2008)], citing *People v. Betonio*, 345 Phil. 35 (1997).

[37] See *People v. Betonio*, id.; *People v. Aquino*, 430 Phil. 915, 931 (2002); *People v. Dumlao*, 422 Phil. 156, 173 (2001); *People v. Gonzales*, 393 Phil. 338, 353 (2000); *People v. Zaballero*, 340 Phil. 731, 744 (1997).

[38] Rollo, p. 17.

[39] TSN, December 13, 1995, p. 14; records, p. 368.

[40] *People v. Gonzales*, supra note 37.

[41] REVISED PENAL CODE (1930), Article 335, as amended by R.A. No. 7659 (1993).

[42] 653 Phil. 313, 321-322 (2010).

[43] TSN, December 13, 1995, p. 16; records, p. 370.

[44] Id. at 9; id. at 363.

[45] Records, p. 235.

[46] Also spelled as Clavicilia elsewhere in the records.

[47] TSN, October 19, 1998, p. 17; records, p. 439.

[48] TSN, December 13, 1995 p. 9; id. at 363.

[49] G.R. No. 186235, January 25, 2012, 664 SCRA 273, 290-292.

[50] 429 Phil. 208, 224 (2002) as cited in *People v. Ortega*, id. at 290-291.

[51] 445 Phil. 323, 341-342 (2003) as cited in *People v. Ortega*, id. at 291-292.

[52] 410 Phil. 378, 406-407 (2001).

[53] *People v. Ortega*, supra note 49, at 292.

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