

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALENTIN BERNABE, DEFENDANT AND APPELLANT.

*G.R. No. 6923. September 12, 1912*

Ponente: TORRES, J.

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### TORRES, J.:

This case comes to us on appeal from a judgment of conviction rendered by the Honorable Simplicio del Rosario, judge.

About half past 7 o'clock in the morning of July 30, 1910, while the unmarried girl, Ana Arasigan, a minor 14 years of age, was walking along San Sebastian street, on her way from Sampaloc to the millinery store named "Chic Parisien," situated in this city on the Escolta, where she worked as a seamstress, Valentin Bernabe, who was accompanying her, advised her, on the pretext that it was very late, to take a vehicle in order that she might get to the store quickly. The girl, therefore, hailed a carromata which was going by and immediately got into it; but when the vehicle had gone a short way, Bernabe suddenly entered the carromata also, sat down beside her and immediately ordered the driver to go toward San Miguel and the Ayala Bridge, and, notwithstanding that the girl tried to have the vehicle stopped in order that she might get out of it, as it was not being driven to the Escolta, the driver, by order of Valentin Bernabe, continued to go on until they arrived at the pueblo of Pasig. On the way the girl made no outcries, through the fear of creating a scene, and her abductor assured her that upon their arrival at Pasig they should be married, to which she replied that she was unwilling. As soon as they arrived at the said pueblo, the defendant had the carromata stopped in front of a house into which he endeavored to make her enter, and as the girl refused to get out of the vehicle Bernabe caught her by the hand and pulled her, compelling her by the use of violence to get out of the carromata, for one of her slippers fell to the ground. At this moment the girl began to cry, on which account, before the abducted party had entered the said house and while she was near the stairs in view of a woman who was looking at them from a window above, a neighbor, who had seen what had occurred, called the policeman Esteban Santos, who conducted both the girl and her abductor to the municipal building of Pasig, and as there were many people in the justice of the peace court, he took the girl thence to the house of a physician where she remained until 7 o'clock that evening, when her mother, Tomasa Garcia, who had been searching for her daughter, came there and took charge of her.

For the foregoing reasons, and in view of the preliminary investigations made at the request of the abducted girl's mother, an information was filed in the Court of First Instance of Rizal, by the provincial fiscal, charging Valentin Bernabe with the crime of abduction, and, this cause having been tried, the court, on January 27, 1911, pronounced judgment therein by sentencing the defendant to the penalty of one year eight months and twenty-one days of prison correccional, to the accessory penalties and to payment of the costs, from which judgment the defendant appealed.

The acts aforesated are in fact characteristic of the crime of abduction, provided for and punished by article 446 of the Penal Code, committed with the offended party's assent and with unchaste designs, inasmuch as the girl, Ana Arasigan, notwithstanding that she stated to her abductor that she was not willing to marry him, from the

moment that the accused ordered that the vehicle be driven from Quiapo Square toward the pueblo of Pasig, without having heeded the desires and requests of the offended party that it be stopped so that she might get out, as it was not going toward the store on the Escolta, and being informed of the defendant's determination, did not protest, made no effort whatever to free herself from her abductor, and did not cry out to the passers by for help, while the vehicle was still being driven through such populous places as Quiapo Square and Echague and San Miguel streets, she giving her assent and keeping silent during so long a trip to Pasig when she could have attracted the notice, on the way, of some policeman or any passer-by, had she wished to beg help against the wrong that might be done her. Therefore it must be held that the girl was taken to Pasig with her assent, notwithstanding that she would not consent to the marriage suggested to her on the way by the accused.

The said article of the code does not expressly require that the circumstance of unchaste designs must be present in the commission of the crime of abduction punished thereby, since, according to the decision of the supreme court of Spain, rendered on November 30, 1875, the doctrine was established, in treating of the application and fulfilment of the corresponding article in the Penal Code of Spain, that the purpose of the same was to provide punishment, not for the violence against the party abducted, especially when her assent is assumed, but for the insult to her family and the alarm caused to it by the disappearance of one of its members who, as well on account of her age as because of her sex, is more exposed to seduction and deceit; it being immaterial where the abduction is committed, the Penal Code makes no reference thereto.

On the hypothesis that, according to the rules in practice observed by the courts, abduction with assent must be accompanied by unchaste designs, it is therefore proper to affirm that the abduction under prosecution was committed with unchaste purposes and designs, inasmuch as the defendant, upon his arrival in Pasig with the offended party, instead of going to the court of the justice of the peace and presenting himself to that officer, who, he said, was an acquaintance of his, for the purpose of the celebration of the marriage promised the abducted girl, he conducted her to a house where he said an aunt of his lived, with the intention of lodging there and, undoubtedly, of carrying out his unchaste designs or purposes.

Had the defendant certainly entertained good and honest intentions toward the offended party, notwithstanding that, according to the latter, he was a mere acquaintance of hers, was not her suitor, and had never entered her house, the correct procedure for him would have been, after having obtained the girl's consent, to have spoken to her mother who, to judge from her testimony, perhaps would not have refused to consent to the marriage of the defendant with her daughter. Were it true that the sole intention of the accused in effecting the abduction was thus to enable him to be married by a duly authorized authority or minister of the gospel, he could very well have found such in this city, where ministers of different religious sects abound, without the need of taking the abducted girl to the pueblo of Pasig with the unlawful intent of placing her in a private house. The unchaste designs, which the accused undoubtedly had, were not manifested on account of the opportune intervention of a policeman as a result of a notice given him by a neighbor who saw the offended party crying and refusing to enter the said house in Pasig in which, had she done so, she would without doubt have been the victim of an unchaste attempt.

The defendant's guilt as the sole proved perpetrator of the crime under prosecution is very manifest, for notwithstanding his plea of not guilty, still the record of the case furnishes decisive and conclusive proof, which produces full conviction in the mind, that he did commit the crime charged; and the incriminating evidence adduced at the trial was not overcome nor weakened by his unproven exculpatory allegations.

In the commission of the crime, no extenuating or aggravating circumstance is to be considered; wherefore the penalty provided by law must be imposed upon the defendant in the medium degree, as it was in the judgment appealed from.

With respect to the question of competency and jurisdiction, referred to in the first assignment of error alleged against the trial judge by the defendant's counsel, it must be taken into account that both the judges of the Courts of First Instance of Manila and of Rizal have jurisdiction and are competent to take cognizance of the crime of abduction. It is true that the abduction herein prosecuted was commenced in this city, but it may well be said it was consummated in Pasig, of the Province of Rizal, where the defendant was to carry out or intended to execute the unchaste designs, which his counsel ignored. The question of a judge's competency or incompetency is the first one that should opportunely be raised, in order to avoid the submission of the case to a judge who, in the opinion of the defense, is incompetent and without jurisdiction to try the same. The fact is that such exception of incompetency was not taken in the first instance and the defendant submitted to the authority of the judge of the court of Rizal during the prosecution of the case, and only alleged it as an error incurred by the lower court in its judgment upon appeal in this second instance, wherefore it is improper because it was not made at the right time.

For the foregoing reasons, whereby the other errors assigned to the judgment appealed from are deemed to have been refuted, and holding that said judgment is in conformity with the law and the merits of the case, it is our opinion that the same should be, as it is hereby, affirmed, with the costs of this instance against the appellant, who, in the imposition of the penalty, shall be allowed credit for one-half of the time of imprisonment suffered by him while awaiting trial.

Arellano, C. J., Mapa and Johnson, JJ., concur.

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## DISSENTING

Trent, J., with whom concurs Carson, J.,

I dissent. This court says:

"The said article (446) of the code does not expressly require that the circumstance of unchaste designs must be present in the commission of the crime of abduction punished thereby, since, according to the decision of the supreme court of Spain, rendered on November 30, 1875, the doctrine was established, in treating of the application and fulfilment of the corresponding article in the Penal Code of Spain, that the purpose of the same was to provide punishment, not for the violence against the party abducted, especially when her consent is assumed, but for the insult to her family and the alarm caused to it by the disappearance of one of its members who, as well on account of her age as because of her sex, is more exposed to seduction and deceit; it being immaterial where the abduction is committed, the Penal Code makes no reference thereto."

Upon examination of the decision of the supreme court of Spain referred to in the above quotation it will be seen that the defendant took the abducted girl to an inn and kept her there two days, during which time he had sexual relations with her. It is therefore clear that the remarks in question were unnecessary and consequently mere obiter. In the case of the United States vs. Rodriguez (1 Phil. Rep., 107), this court, speaking through Mr. Justice Mapa, said:

"The unchaste designs constitute one of the essential elements that characterize the crime of abduction, as well when committed with violence against the will of the woman as when carried out with her consent in case of her minority. This is precisely the point which constitutes one of the principal differences which distinguish this crime from crimes against personal liberty and security. If the removal of a woman from her house, although she be a virgin under the age of 23 years, is committed for the purpose of murdering her or

demanding a ransom, or holding her a prisoner somewhere, it would undoubtedly constitute a crime but would by no mean fall under the provisions of the sections of the Penal Code which define and punish the crime of abduction, but of other section's quite distinct, although there exists in such case the material fact of the stealing away of a woman. This consideration demonstrates that the unchaste purpose is essential in all cases to the crime of abduction, and this same conclusion is deduced from the fact that the crime is classified in the code among the crimes against chastity."

That unchaste designs are a necessary or essential element in the crime of abduction has long since been definitely settled by this court. The question is no longer an open one, and this court, in now holding otherwise, is in direct conflict with every decision upon the question that this court has rendered. Consequently, if the record in the case at bar fails to disclose that the appellant accompanied the offended party from the city of Manila to Pasig with unchaste designs, then he is not guilty of abduction.

The real question presented is one of fact; that is: Did the defendant take the offended party to Pasig for unchaste designs? In determining this question the court was not merely passing upon the credibility of witnesses, but it was necessary to pass on the reasonableness of the story told by the offended party. Is her story, under the admitted facts, to be unreservedly accepted as true? The offended party admits and so testified that she entered the carromata voluntarily. She also admits and so testified that she made no outcry nor any resistance whatever from the time she entered the carromata until the arrival of the couple in Pasig, and that there was nothing offensive in the conduct of the appellant during this time.

The statement of facts adopted by the majority opinion is taken practically in toto from the testimony of Ana Arasigan, in the most part wholly unsupported by any other witness, interested or disinterested, and in great part flatly contradicted by the defendant. The testimony of the latter is corroborated by apparently two disinterested witnesses who saw the couple enter the carromata on Calle San Sebastian, by the cochero who drove them to Pasig, also apparently disinterested, and by the woman of the house in Pasig where the defendant and his companion were arrested by the policeman. This woman is also an apparently disinterested witness. Ana Arasigan herself further made several admissions which tend to corroborate the testimony presented by the defense, and which also tend to seriously affect the credibility of her own story. It is simply a precaution against the miscarriage of justice to require that where the testimony of one witness is adopted as against that of several others, especially when those witnesses whose testimony is discountenanced by that of the single opposing witness are disinterested, to require that the latter give a consistent and reasonable account of the matter before the court, free from material contradictions.

In refutation of the statement of the girl that she was going to work on the morning in question, we have the testimony of the defendant that the preceding night they had planned to go to Pasig on the following day to get married and were to meet early on the morning of July 30th near the Sampaloc church for that purpose. With reference to the entrance of the couple into a public carromata, the defendant states that he called the carromata. This statement is supported by the driver of the vehicle, Manuel Gomez, and Julian Tumali, a printer on his way to work, who knew the defendant, and who, on the trial, identified the girl. The defendant and these two witnesses, together with one Teodoro Alquiros, a laundryman, also on his way to work and who likewise knew the defendant and identified the girl at the trial, state that the two entered the carromata together. The driver of the carromata testified that on the way to Pasig the two in conversation talked of going to the house of the defendant's aunt to get married. He testified that the defendant made absolutely no threats and used no force while en route from Manila to Pasig. This testimony is, of course, corroborated by that of the defendant himself. The woman, Petra Loreto, testified that she was a relative of the defendant's aunt but no relation of his. She testified that she saw the carromata containing the couple arrive in front of her house; that the defendant informed her that they were looking for his aunt to accompany them to the juzgado as they were going to get married. She, in company

with the cochero, testified that there was absolutely no force used on the part of the defendant to induce the girl Ana to alight and that the girl alighted first. Petra Loreto further testified that the girl alighted on the side nearest her house while the defendant alighted on the other side; that, after paying the driver of the carromata, the two ascended as far as the landing at the top of the stairs; that she would not permit them to enter her house because she did not know them; that just at that moment the policeman came and took both away with him. As to the slipper of the girl which the defendant had in his hand when the policeman arrived on the scene, this witness testified that in her haste to alight from the carromata the girl had left it within and that after reaching the stairway the defendant returned to the carromata to get the slipper. The statement in the opinion of the court that the girl refused to get out of the carromata and that thereupon this defendant caught her by the hand and compelled her to alight by the use of force and that one of her slippers fell to the ground during the struggle, is entirely dependent upon the statement of the girl herself. On the other hand, we have the testimony of the cochero Gomez, and of the woman Loreto, that the girl alighted unassisted and of her own free will. I submit that here is another highly improbable statement on the part of the girl Ana. They stopped at the house in Pasig at about 8 o'clock in the morning. That both the defendant and the girl alighted is admitted. The driver of the carromata was certainly a witness to this scene. Is it probable that the defendant would have attempted anything so foolhardy in broad daylight in a populous town? If he did use force, how much resistance did the girl offer? It is true that the attention of a neighbor was attracted to the pair and that he notified a policeman. But the latter states that when he arrived he saw no "scandal." It is admitted that the girl reached the landing at the top of the stairway and that she was crying after alighting from the carromata. The mere fact that she was crying, and that she was a stranger in the neighborhood, would have been sufficient to arouse the suspicions of this neighbor.

Notwithstanding the declaration of the girl Ana, on the witness stand that she did not go to Pasig with this appellant of her own free will, this court has found as a fact that such was the case. As its reason for so holding, the court states that had she of a certainty not desired to accompany the accused to Pasig, she could very easily have called for assistance "while the vehicle was still being driven through such populous places as Quiapo Square and Echague and San Miguel streets." In this I agree. But the court holds that although she did accompany the accused voluntarily, she would not accept the defendant's proposals of marriage. What purpose had she then in riding with him? According to her story, she was leaving her work and traveling with a casual male acquaintance, who was importuning her with offers of marriage which were not agreeable to her, and yet, so the court holds, she went willingly. Such a hypothesis of the attitude of this young lady toward the appellant is untenable. It is too inconsistent with feminine chastity and modesty, and I am not at all disposed to impute a want of these attributes to this young lady. The fact that she accompanied him voluntarily and listened to his overtures of marriage, renders highly improbable her assertions that the defendant was merely a slight acquaintance, that she was going to work on the morning in question, and that on the way to Pasig she refused to entertain his offers of marriage. On the other hand, this fact fits in exactly with the testimony of the defendant to the effect that on the preceding night it was agreed between himself and this girl to go to Pasig and get married there, and that they went there with that object in view. The girl Ana, further testified in her direct examination that she did not know the driver of the carromata. On being recalled, she stated that she did remember the driver of the vehicle and on Manuel Gomez being presented, she testified that he was not that person. It is presumed that she meant by this that she remembered the cochero's face but not his name. I have carefully noted the testimony of the witness Manuel Gomez. There is not a single contradiction in his declarations, and his story agrees in all material points with that of the other witnesses for the defense. As set forth above, the girl Ana, in my opinion, mixed falsehood with fact in her direct testimony. Having so far departed from the truth, it is quite possible that she would go a little further and testify untruthfully about a matter in which she was almost sure to escape detection. Or adopting the most charitable view of the matter possible, her simple denial that Gomez was not the driver, in the face of the latter's statements, should be subject to the rule of positive and negative testimony, because the identity of the cochero

was a matter about which she cannot be presumed to have made any careful observations.

Designs such as are imputed to the accused are vastly more easy to carry out at night when the danger of being discovered is reduced to a minimum; and an examination of the cases will show that abductors are prone to take advantage of the nighttime. The accused took this girl to Pasig about eight o'clock in the morning in an open carromata. According to the girl's own story, he took no indecent liberties with her in any way whatever. Is it safe for a court of justice to speculate on what the intentions of the defendant were on such a basis as the facts of this case present? On the one hand we have the practically uncorroborated testimony of the girl, Ana, which is inherently improbable in many important particulars. Every point in her testimony which is essential to proving an immoral purpose on the part of the defendant is contradicted by apparently reliable and disinterested witnesses, and it is these very accusations of dishonorable conduct which are inherently improbable. By what rules for weighing evidence can the conclusion be reached that such a story is true, when it deviates so far from ordinary human conduct, and when it is opposed by a number of witnesses who gave sane and reasonable accounts of what they saw and did, which, when pieced together, produce a statement of facts which is consistent and in harmony with ordinary human conduct?

It is conceded that it is not necessary to prove sexual intercourse in order to obtain a conviction under article 446 of the Penal Code. The mere intent to seduce the girl is sufficient. But it is submitted that in the absence of overt acts, very cogent proof is needed to establish a man's intentions.

Were there any overt acts on the part of the defendant in the case at bar which were inconsistent with honorable purpose? In the case decided by the supreme court of Spain on November 30, 1875 (cited in the majority opinion), the defendant took the girl to an inn and kept her there two days, during which time he had carnal relations with her. The court here had something more than mere intentions upon which to base its judgment of conviction. Tracing the acts of the defendant in the case at bar from the time he and the girl Ana entered the carromata until the policeman arrested the two in Pasig, is there anything in the outward demeanor of the said defendant which can be called improper? In *United States vs. Alvarez* (1 Phil. Rep., 351), the defendant had the abducted girl in his house for a period of ten days. The intimacy between the two had existed for several months notwithstanding that the defendant was already married. Here was another clear case in which the court was not obliged to rely upon the unexpressed intentions of the defendant. In *United States vs. Meneses* (14 Phil. Rep., 151), the defendant induced the girl to accompany him in a carromata on the promise that he would take her before an officer and marry her. After riding around the streets of Manila for some time, he stated that it being Saturday afternoon he could get no one to perform the ceremony, and about 9 o'clock that night took her to a room where he had sexual intercourse with her. Another clear case of overt acts, or rather fulfilled intentions. In *United States vs. Padua* (7 Phil. Rep., 399), the defendant took the girl from a town called Candon to a town called San Ildefonso, and on arrival at the latter place took her to the convent for the purpose of asking the parish priest to marry them. The court reversed the lower tribunal and set the defendant at liberty. It seems to me that the reasons back of this decision were (1) that the defendant committed no overt acts showing unchaste designs, and (2) the facts of the case did not sufficiently show that his intentions were unchaste in taking the girl away from home. In *United States vs. Ysip* (6 Phil. Rep., 26), the defendant was a peddler. On arriving at the town of Bacon, he made the acquaintance of the girl and obtained her consent as well as her mother's to a marriage, the record not disclosing why he did not ask for the consent of the girl's father. While the father was absent in a neighboring town, the girl, accompanied by her mother and two little brothers, started with the defendant for his native province with the intention of marrying him. After being on the road two days, her father overtook the party and a charge of abduction was filed against the accused, which was sustained in the lower court. This court set the defendant at liberty. The court said:

"We think, however, that the premises do not justify the conclusion (of the trial court that in taking<sup>1</sup> the girl to his native province without previously marrying her the presumption of improper motives was created), and we are confirmed in this opinion by the fact that the accused burdened himself in his flight with the impedimenta of a prospective mother-in-law and her two minor children, and also by the exemplary conduct of the young couple on their journey as far as they succeeded in making it, for it was conclusively proven that during their flight the girl never left her mother's side."

Here, again, there were no overt acts on the part of the defendant, and his avowed design of marrying the young lady was completely frustrated, leaving the court to speculate as freely upon what might have been his real intentions in the matter as in the case at bar. Yet the court did not consider the evidence sufficient to show unchaste designs. In all the cases I have had the opportunity of examining, wherein a conviction was obtained under article 446 of the Penal Code, there were sexual relations between the defendant and the abducted girl. On the other hand, in all those cases which have reached this court wherein the defendant had been sentenced in the lower court for his intentions only, the judgment was reversed. I believe it is therefore safe to assert that if there be any adjudicated case wherein the defendant has been convicted under article 446 solely on his intentions, there must have been potent facts which showed his manifest designs too strongly for any reasonable doubt. It is not impossible, under this article, as stated above, to convict a defendant on his clearly expressed intentions. Such a result would obtain if, for example, in the present case the defendant had been already married; or if he had taken any indecent liberties with her. Such facts would have sufficiently shown his unchaste design. But, as I have said, there were no overt acts on the part of the defendant in the case at bar, and the court must rely upon the intentions of the defendant as far as they can be ascertained from his conduct up to the time he was arrested by the policeman. Speaking of the defendant's intentions, the court says:

"Were it true that the sole intention of the accused in effecting the abduction, was thus to enable him to be married by a duly authorized authority or minister of the gospel, he could very well have found such in this city, where ministers of the different religious sects abound, without the need of taking the abducted girl to the pueblo of Pasig with the unlawful intent of placing her in a private house."

Here the court in effect attempts to outline the correct procedure for a couple who have eloped with the intention of getting married. If the couple do not go to the nearest minister or official competent to perform the ceremony, the would be husband may be convicted of abduction under article 446 of the Penal Code. The temptation to indulge in levity presents itself in considering any such restrictions upon the methods adopted by couples who elope for the purpose of getting married. But in all seriousness, the liberty and innocence of a citizen is at stake. He is facing a term of nearly two years in the penitentiary.. In the case of *United States vs. Ysip* (supra), the couple were going from one province into another, requiring a trip of several days. Yet this court rejected the idea that the defendant in that case had unchaste designs because he did not marry the young lady in her own town. Also, in the case of *United States vs. Padua* (supra), it was doubtless unnecessary for the defendant to take his loved one to another town to have the marriage ceremony performed. It appears that the persons concerned in these two cases had sacrificed convenience for the sake of some other unascertained purpose in connection with their desire to get married. Parties frequently travel a long way to have the marriage ceremony performed by a particular personage, in a particular place, or for some other particular reason. This court is going far into the realm of uncertain speculation in attributing improper motives to the defendant in the case at bar because he took his bride-to-be to Pasig to have the ceremony performed instead of having it done in Manila. In reference to taking the girl to the house where he supposed his aunt lived instead of taking her to the justice of the peace court, the court draws another inference of unchaste designs, saying:

"The unchaste designs, which the accused undoubtedly had, were not manifested on account of the opportune intervention of a policeman as a result of a notice given him by a neighbor who saw the offended party crying

and refusing to enter the said house in Pasig in which, had she done so, she would without doubt have been the victim of an unchaste attempt."

Yet the only testimony in the record on the point is that of the woman of that house, who states that she refused entrance to the two. It further appears that defendant's aunt was not there, and that the woman of the house did not know either the defendant or the girl Ana. Is it possible that the defendant, with the immoral purpose attributed to him by the court, would have taken the girl to a house where he was not known? To my mind, such a purpose calls for connivance and conspiracy on the part of the owner of the house. There is not that certainty of acquiescence on the part of an unknown person in such an immoral purpose as would induce an abductor to apply for the use of his house to aid in its fulfilment. I think the court here goes further into the realm of speculation as to what the defendant's intentions were. It is also admitted that the girl was crying when the policeman arrived and that she then and thereafter made statements inconsistent with any desire to marry the defendant. If judicial notice may be taken of so tender a subject, it may be said that it is not uncommon to see adult women of the best families crying just previous to the marriage ceremony, when they are surrounded by their relatives and friends and everything is being done in the most orthodox fashion. It may even be insinuated that there have been instances of the bride-to-be refusing to fulfil her part of the contract at the last moment. How much more, then, may we expect to see this young girl, 14 years of age, poor and uneducated, who had left her home under such circumstances, adopting such tactics?

Viewing the abortive attempt of the defendant in the light of the evidence adduced, it is clear that whatever his plans were, he failed to carry any of them to completion except that of getting the girl, Ana, to the town of Pasig. The recorded account of that journey is such that the defendant could have proceeded in an honorable manner to the fulfilment of his stated design of marrying the girl had not the guardians of the peace prevented him from doing so. It is elementary when a special intent is required to make an act an offense, that the doing of the act does not raise a presumption that it was done with the specific intent. (*People vs. Plath*, 100 N. Y., 590, 53 Am. Rep., 236, citing *Lawson*, *Presumptive Evidence*, 472.)

I am therefore of the opinion that the prosecution has not only failed to establish the guilt of the appellant beyond a reasonable doubt, but that the appellant has established his innocence beyond any question.

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