

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO GARCIA, ACCUSED-APPELLANT.

G.R. No. 69581. May 21, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Appellant Virgilio Garcia was charged with the crime of Frustrated Murder in a criminal complaint[1] filed on 17 January 1977 before the Municipal Court of Masantol, Pampanga for having, with treachery and with intent to kill, "wilfully, unlawfully and feloniously shot the victim EMMANUEL USI" with a gun and inflicting upon him the injuries therein mentioned. He could not, however, be arrested as his whereabouts were unknown. The records reveal that he was "at large."

Since the victim died on 24 February 1977 as a consequence of the injuries he sustained, the original complaint was amended to one for Murder,[2] which the court admitted in its Order of 11 October 1977.[3] Upon motion of the Chief of Police for the inclusion in the complaint of Romeo Garcia, brother of appellant, the court conducted a preliminary examination. On 15 November 1977, it issued an Order finding reasonable ground to believe that Romeo Garcia is likewise liable for the offense[4] and ordered his arrest.

Romeo Garcia was forthwith arrested. The court then set the second stage of the preliminary investigation of Romeo Garcia for 20 December 1977.[5] However, he waived the same and the judge of the municipal court forwarded the records of the case and the accused to the then Court of First Instance (now Regional Trial Court) of Pampanga.[6]

On 16 February 1978, the Office of the Provincial Fiscal of Pampanga charged the appellant and Romeo Garcia before Branch VII of the aforesaid Court of First Instance with the crime of Murder in an Information which reads:

"The undersigned 1st Assistant Provincial Fiscal and Assistant Provincial Fiscal accused VIRGILIO GARCIA and ROMEO GARCIA of the felony of Murder, defined and penalized under Article No. 248 of the Revised Penal Code, committed as follows:

That on or about the 29th day of December, 1976, in the municipality of Masantol, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused VIRGILIO GARCIA and ROMEO GARCIA, conspiring together and mutually helping each other, with deliberate intent to kill, armed with a gun and blunt instrument and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously fire at, shoot and/or attack Emmanuel Usi hitting him on different portions of his body, thereby inflicting mortal and fatal injuries upon said Emmanuel Usi, which caused his death on February 24, 1977.

ALL CONTRARY TO LAW."[7]

The case was docketed as Criminal Case No. 73-371-M.

Only Romeo Garcia was arraigned as appellant continued to remain at large. Having entered a plea of not guilty, a separate trial was conducted for the former.

In the meantime, Romeo Garcia posted the reduced bail bond of P20,000.00 for his temporary liberty.[8]

On the date set for the promulgation of judgment, 15 May 1981, Romeo Garcia did not appear. The court ordered the forfeiture of his bond and the issuance of a warrant for his arrest.[9] He was never re-arrested.

Sometime in February 1983, herein appellant was arrested. The records of the case were then forwarded to Branch LIV of the Regional Trial Court of Pampanga. Upon his arraignment on 23 May 1983, appellant entered a plea of not guilty. Trial on the merits was thereafter conducted on several dates. Several witnesses testified for the prosecution. Appellant testified in his own behalf and presented Victoriano Bonifacio as his witness.

The evidence for the prosecution, as summarized in the Appellee's Brief,[10] and which We find to be accurately supported by the transcripts of the stenographic notes of the testimonies of its witnesses, is as follows:

"Between 10:00 and 11:00 o'clock in the morning of December 29, 1976, the deceased, Emmanuel Usi, and Orlando Bustos, together with others, were on their way to Barangay Palimpe, Masantol, Pampanga, to harvest the fishes which the two bought from the fishpond of Regina Bustos and Belen Hernandez (pp. 6-8, tsn, June 29, 1983; pp. 18, 20-21, tsn, July 1, 1983).

They first proceeded to the house of appellant's father, Ben Garcia, who was then the guard of the fishpond, to seek the latter's permission. But they were not able to reach Ben Garcia's house, because they were stopped near the watergate of the fishpond by Ben's wife (Senyang Garcia), mother (Pinang Garcia), children (including appellant) and other relatives -- the women were standing on top of the watergate, while the men were standing on the ground near the watergate. Appellant was then armed with a .22 caliber rifle with magazine, his brothers Romeo and Renato with a club (liyong) and ax, respectively, his sister Marilou with mattock, and his mother with a .22 caliber pistol with magazine (pp. 8-10, tsn, June 29, 1983; pp. 22-23, tsn, July 1, 1983).

Forthwith, Bustos informed the Garcias of their purpose, showing to them a written contract (Exhibit "C") evidencing the sale to them of the fishes in the fishpond of Regina Bustos and Helen Hernandez. But Senyang Garcia refused to honor the document, even as Pinang Garcia warned Bustos and his companions not to catch the fishes in the fishpond, or else they would be killed (p. 10, tsn, June 29, 1983; pp. 23-25, tsn, July 1, 1983).

Whereupon, Bustos decided to leave after telling the Garcias that he would inform the owners of the fishpond of what transpired. Then, as Bustos and his companions were leaving, the Garcias released their dogs, causing the former to run towards the fishpond of a certain Nungcas. But Bustos was not able to reach the fishpond of Nungcas, because he was fired upon by Senyang Garcia with a .22 caliber pistol, hitting the former on his right leg which caused him to fall into the fishpond (pp. 10-12, tsn, June 29, 1983; pp. 25-27, tsn, July 1, 1983).

Bustos' companions were not able to come to his rescue because appellant and his brothers charged (sic) them. When appellant's brother Romeo had overtaken Emmanuel Usi, the former hit Usi with a club on the head, causing the latter to fall on his knees. At this juncture, appellant, who was closely following, shot Usi three times at the back, but hitting (sic) him only twice, with a .22 caliber rifle. Thereafter, the Garcias chased Bustos while appellant was watching them on top of the dike holding his firearm. This enabled Sonny Mariano to bring Usi to the fishpond of the Nungcas. As soon as the Garcias left, Mariano rescued Bustos by also taking him to the place where he brought Usi (pp. 12-18, tsn, June 29, 1983; pp. 27-30, tsn, July 1, 1983).

Meanwhile, Emmanuel Usi's father, Fructuoso Usi, who followed his son that morning of December 29, 1976,

arrived at the crime scene after the incident. He immediately joined the group at the corner of Nungca's fishpond, where his son told him that he was shot by appellant near the latter's house in the fishpond of Regina Bustos. Forthwith, they brought the victims on a banca to Masantol, thence, to the Central Luzon General Hospital in San Fernando, Pampanga, where Emmanuel Usi died (pp. 8-19, tsn, June 24, 1983).

Dr. Luisito Simpao, who conducted an examination on Emmanuel Usi, issued a Medical Certificate dated January 14, 1977 (Exhibit "B"), stating therein his findings, to wit:

- '1. Lacerated wound left lobe of liver.
2. Laceration at the region of pyloro-duodenal junction.
3. Through and through perforation of the gallbladder.
4. Through and through perforation of the transverse colon.
5. Rounded wound, about ½ cm. in diameter about 6 cm. above and 6 cm. posterior iliac spine.'

According to the doctor, the wounds sustained by the victim could have been caused by bullets. An operation was conducted on the patient, who subsequently died due to complications (pp. 11-14, tsn, July 1, 1983).

Upon his death, Emmanuel Usi's cadaver was examined by Dr. Erasto Aquino, who issued on February 24, 1977 a Certificate of Death (Exhibit "A"-Virgilio Garcia), describing therein the cause of death of Emmanuel Usi as --

'Hypostatic pneumonia Calorie fistula, post explanatory Inpalatomy.' (Exhibit "A-1")

The doctor affirmed that the cause of death of the victim was the gunshot wounds he sustained (pp. 5-8, Ibid)."

On the other hand, the evidence for the appellant, as substantially summarized by him in his Brief,[11] is as follows:

"At about 10:00 o'clock in the morning of December 29, 1976, defense witness Victoriano Bonifacio of Bo. Palimpe, Masantol, Pampanga saw from the window of his house at a distance of about 3 meters Emmanuel Usi, Sonny Mariano and Orlando Bustos with some companions numbering about 10 of them walking towards the property of Regina Bustos, and carrying with them two firearms, one a short firearm tucked in the waist of Orlando Bustos, and a long firearm, about two feet carried by Sonny Mariano. These persons entered the land of Regina Bustos situated in Bo. Palimpe, Masantol, Pampanga which was then being tended by Ben Garcia, father of accused Romeo and Virgilio Garcia who were then helping their father at the said ricefield of about 9 hectares. Upon reaching the house of accused inside the landholding, Orlando Bustos told their mother Señang Garcia that he would open the watergate, to which Senang replied that the watergate could not be opened because the ricefield would accumulate (sic) refuse ('sukal'). Thereafter, Orlando Bustos poked a short firearm to (sic) Señang Garcia and upon seeing this, accused Virgilio Garcia run (sic) from the house to come to the aid of his mother but he was not able to come close because the deceased Emmanuel Usi boxed him so they grabbed (sic) with one another and twisted themselves, facing each other until he heard three shots and when he looked around he saw Sonny Mariano holding a firearm pointed towards him and Emmanuel Usi and because accused Virgilio Garcia was frightened, he was able to push backward Emmanuel Usi. At this juncture, he saw Sonny Mariano holding a long firearm. Virgilio Garcia then run (sic) towards his house and upon entering his house, he did not know what else transpired. Thereafter, his mother told him that he 'better leave first because they might return.'

On cross-examination, accused Virgilio Garcia testified that after the incident on December 29, 1976, he went to Isabela and stayed there more or less six years where he was able to get married to a person whose family name is Bustos. He left Masantol, Pampanga for Isabela at 11:00 o'clock in the morning of December 29, 1976 immediately after the incident because he was frightened of Sonny Mariano who pointed a gun at him. After

six years in Isabela, he visited his brothers and sisters in Morong, Rizal in February 1983 after he came to know through a duck trader from Isabela that his brothers and sisters are already residing in Morong, Rizal. But during his visit at Morong, Rizal he was arrested by the police and it was only then that he came to know that he is one of the accused in this case.

He further testified that the persons who were with him in the house of his father on December 29, 1976 were his sisters Linda, Angelina, Luz, Marilin, Elvie and Marilou; his brothers Romeo, Renato, Nicolas, Viray, his brother-in-law Eddie Talavera; that when the group of 10 men arrived, he was with his brothers inside the house while his other sisters were on top of the watergate near the house of his father; that the landholding of his father at that time was under water which was about a foot high and that the water in the ricefield was higher than the elevation of the water at the creek along the ricefield, so that refuse would not go to the ricefield if the watergate is opened, but that the grass will grow; that when Orlando Bustos poked a gun to his mother, he thought that the life of his mother was in danger, so he went down from the house; that he did not think about the danger of being shot by Sonny Mariano when he approached him because he was shocked then, because he saw Orlando Bustos boxed (sic) his mother and his intention was to bring back his mother to the house because he loves his mother and he saw that he (sic) was being hurt; that he did not fight Emmanuel Usi, he merely made a defensive stand when they grappled with one another; that after he was grappling with Emmanuel Usi, he heard the three shots; that at that point in time, he saw Sonny Mariano on the other side of the watergate after he pushed Emmanuel Usi; that the reason why he run (sic) was because he saw Sonny Mariano aiming his gun to (sic) him, but no fire was shot (sic) at that time until he run (sic) back to the house of his father; that he did not see Emmanuel Usi prostrate on the ground before entering their house; that he did not see Emmanuel Usi being aided by Sonny Mariano and his father towards the property of the Nungcas; that he did not also learn that Emmanuel Usi died because of that incident on December 29, 1976; and that he did not also learn that Orlando Bustos was shot in that incident because immediately after the incident, he fled to Isabela."

On 30 July 1984, the trial court promulgated its judgment[12] finding the appellant guilty beyond reasonable doubt of the crime charged, qualified by treachery, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused Virgilio Garcia guilty beyond reasonable doubt of the crime of Murder charged in the Information and hereby sentences him to suffer the penalty of reclusion perpetua.

Accused Virgilio Garcia is further ordered to indemnify the heirs of the deceased Emmanuel Usi the sum of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency for the death of Emmanuel Usi, the sum of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency to be paid to Fructoso (sic) Usi to reimburse him for hospitalization and burial expenses, and the further sum of ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency to the heirs of Emmanuel Usi for moral damages, and the costs.

SO ORDERED."

It discredited the appellant's version because his suggestion that it was Sonny Mariano, the victim's companion, who shot Emmanuel Usi, is wholly unacceptable as it is contrary to human nature and the normal course of events. Moreover, appellant fled immediately after the incident to Isabela, a place where he has no relatives and which he had not previously visited, where he stayed for almost six (6) years without the knowledge of his parents whom he did not even visit in Masantol, Pampanga. Such flight indicates guilt.

On 31 July 1984, the appellant, assisted by the Citizens Legal Assistance Office, now the Public Attorney's Office, filed his Notice of Appeal.[13]

In his Brief, appellant imputes upon the trial court the commission of the following errors:

"I

x x x IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THE TESTIMONIES OF THE DEFENSE WITNESSES.

II

x x x IN CONCLUDING THAT THE PROSECUTION EVIDENCE HAVE (sic) ESTABLISHED THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT.[14]

In issue is the correctness of the trial court's evaluation of the testimonies of the witnesses. This Court has reiterated in a multitude of cases, the first of which is the 1910 case of *United States vs. Pico*,[15] that the conclusions reached by the trial court, which has the opportunity to observe the witnesses when they testify as to what transpired, is entitled to full respect unless of course it could be demonstrated that there was a failure to judge correctly the significance of a fact or circumstance or what is worse, that it was ignored.[16]

In the recent case of *People vs. Santito, Jr.*,[17] this Court, speaking through Mr. Justice Regalado, restated the doctrine more emphatically as follows:

"It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying in (sic) their teeth. The assessment is accepted as correct by the appellate court -- is indeed binding upon it -- in the absence of a clear showing that it was reached arbitrarily.[18] Thus, the principle is firmly settled that the consequent findings of the trial court as to the credibility of witnesses are entitled to such a degree of respect by the appellate court." [19]

We have carefully reviewed the records of this case and nothing therein provides any justification for disturbing the findings of the trial court as to the degree of credit to be accorded the witnesses or for departing from the above doctrine. Affirmance then of the decision appealed from is not difficult to render.

Appellant does not dispute the fact that he was present at the scene of the crime. Prosecution witnesses Sonny Mariano and Orlando Bustos positively identified him as the person who shot the victim, Emmanuel Usi, with a .22 caliber rifle. Thus:

"Mariano's Testimony

FISCAL PANGILINAN:

Q When Orlando Bustos was shot on his leg and fell on the fishpond, what did you do?

A Orlando Bustos said, 'Come to my aid. They are going to kill me.'

x x x

A When Orlando Bustos fell into the fishpond and shouted, 'Come to my aid', I was about to come to his succor when we were chased by Virgilio Garcia, Romeo Garcia, Marlon Garcia, Renato Garcia and Nicolas Viray.

Q What happened after you were chased by these persons whom you just mentioned?

A When they chased us Romeo Garcia hit Emmanuel Usi on the head thereby making Emmanuel Usi fell (sic) on his niece (sic). Thereafter Romeo Garcia shot him.

Q Where was Emmanuel Uwi (sic) facing when he was shot by Romeo Garcia?

A The back of Emmanuel Usi was facing Romeo Garcia and at that time Emmanuel Usi was on his knees.

A How many times did Virgilio Garcia shot (sic) Emmanuel Usi while he was in that position with his knees on the ground?

A He shot him for (sic) three times but hit him twice.

Q What part of the body of Emmanuel Usi was hit with those two shots?

x x x

A He was hit on his back (Witness pointed with his right hand the outer edge of his back) and he was hit on (sic) the second time on his head.

Q What kind of gun did Virgilio Garcia use in shooting Emmanuel Usi?

FISCAL PANGILINAN:

The testimony of the witness as to who shot Emmanuel Usi (sic). The witness is referring to Romeo Garcia not Virgilio Garcia.

ATTY. RIVERA:

The question has been answered.

FISCAL PANGILINAN:

I will try to clarify that point. May we be allowed to ask again the question.

COURT:

Granted.

FISCAL PANGILINAN:

Q For clarification Mr. Mariano, who shot Emmanuel Usi?

x x x

A Virgilio Garcia, sir.

Q How many times did Virgilio Garcia shot (sic) Emmanuel Usi?

A Three times, sir.

Q How many times was he hit with those three shots?

A Two times one on (sic) the back and another one on his head, sir'.

Q What kind of firearm did Virgilio Garcia use in shooting Emmanuel Usi?

A A .22 caliber rifle with a magazine, sir."[20]

"Bustos' Testimony

FISCAL PANGILINAN:

Q When you fell on the fishpond, did you see Emmanuel Usi?

A Yes, sir, I saw him running together with Sonny Mariano running towards the fishpond of the Nungas (sic), sir.

Q Did you see accused Virgilio Garcia?

A Yes, sir and he was carrying (sic) firearm.

Q What kind of firearm was he holding when you saw him?

A A long firearm, sir. He was holding it with both hands, sir.

Q What did Virgilio Garcia do with this firearm?

A He shot Emmanuel Usi and (sic) the latter was near, sir.

Q How many shots did you hear?

A Three, sir.

Q Did you see what happened with (sic) Emmanuel Usi when he was shot three times by Virgilio Garcia?

A Yes, sir, I saw him assisted by Sonny Mariano in running to the fishpond sir, of the Nungas (sic)."[21]

Against this positive identification, appellant offered his lame defense suggesting, as the trial court also correctly noted, that it was Sonny Mariano who shot the victim. The thrust of his 10-page testimony[22] on direct examination is outright general denial, which can not prevail over the positive testimony of the eyewitnesses. He presented Victoriano Bonifacio as his sole witness. This Court gathers from the records that appellant's co-accused, Romeo Garcia, presented many witnesses, namely: Dr. Pedro Bautista,[23] Wenceslao Garcia,[24] Florentina Garcia[25] and Dr. Erasto Aquino.[26] Romeo Garcia also took the witness stand in his defense.[27] Victoriano Bonifacio was not called to testify for Romeo Garcia. It is difficult to understand why appellant chose not to present as his witnesses any of the aforementioned witnesses of his co-accused. The records do not yield any explanation.

Moreover, appellant offered no acceptable explanation for his escape to Isabela late in the morning of 29 December 1976, or immediately after the incident. He was candid enough to admit that this was the first time he went to Isabela and that he stayed there for about six (6) years. It was too long for a vacation in an unfamiliar place which had not been proven to be a vacationist's haven. He never informed his parents, brothers and sisters that he was in Isabela. He never even visited his parents. It was only in February of 1983 that he left Isabela to visit his brothers and sisters in Morong, Rizal. Keeping his hideaway' a secret even to his parents and siblings in whom one's confidence is usually placed is proof enough of guilt. He could not even trust them. In a manner of speaking, he was afraid of his own shadow. The only reason he offered for his escape was that he was afraid of Sonny Mariano who pointed a gun at him during the incident.[28] We agree with the trial court that his fear was clearly unfounded as:

"There is no evidence adduced that Sonny Mariano is a notorious killer who could generate such degree of fear in the heart of the accused which could cause him to hide for six long years in a strange province without friends or relatives. Besides, no reason was given why Sonny Mariano should harm the accused considering that they were neighbors in Palimpe, Masantol, Pampanga."

Besides, if Sonny Mariano was the one who shot Emmanuel Usi as suggested, why should the appellant be the one to escape from the clutches of the law? If, on the other hand, Mariano did in fact point a gun at him and, therefore, was the aggressor, why did he not proceed to the municipal building of Masantol to report the incident and seek protection from the police authorities instead of fleeing to Isabela, where he could not find shelter from relatives or friends and sympathy and support from his parents?

It was written in the literature of the Old Testament several centuries ago that:

“The wicked man flees though no man pursues,

But the righteous are as bold as a lion.”[29]

As early as 1913, in *United States vs. Alegado*,[30] this Court already ruled that:

“Indeed, the law is entirely well settled that the flight of the accused is competent evidence against him as having a tendency to establish his guilt.”

Five (5) years later, in *United States vs. Sarikala*,[31] this Court, quoting the above biblical statement, held:

“Flight, when unexplained, is a circumstance from which an inference of guilty (sic) may be drawn. ‘The wicked flee, even when no man pursueth; but the righteous are as bold as a lion.’”

In subsequent cases, this Court declared that flight evidences guilt and a guilty conscience,[32] that it strongly indicates a guilty mind,[33] or betrays the existence of a guilty conscience.[34]

The trial court correctly appreciated against appellant the qualifying circumstance of treachery, which is alleged in the Information. The victim, Emmanuel Usi, was in a kneeling position after he fell when hit with a club by Romeo Garcia at the precise moment appellant fired twice upon him from behind, hitting him at the back and on his head. There can be no question that the victim was totally unaware of what the appellant would do and was in no position to defend himself. Under such circumstance, the appellant employed means, methods or forms in the execution of the crime which tended directly and specially to insure its execution without risk to himself.[35]

The law and the facts support the decision.

WHEREFORE, judgment is hereby rendered AFFIRMING in toto the decision appealed from.

Costs against the appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin and Romero, JJ., concur.

[1] Original Records, 1.

[2] *Id.*, 9.

[3] *Id.*, 11.

[4] Original Records, 15-16.

[5] *Id.*, 20.

[6] *Id.*, 22.

[7] Original Records, 24.

[8] *Id.*, 40.

[9] *Id.*, 200.

[10] Brief for the Appellee, 4-9; Rollo, 117, et seq.

[11] Rollo, 102, et seq.

[12] Original Records, 238-255. Per Judge Lorenzo B. Veneracion.

[13] Original Records, 256.

[14] Brief of Appellant, 1; 8-13.

[15] 15 Phil. 549 [1910].

[16] *People vs. Tigulo*, 94 SCRA 183 [1979], and *People vs. Baltazar*, 96 SCRA 556 [1980], with the host of cases cited therein.

[17] 201 SCRA 87, 94 [1991].

[18] Citing *People vs. Manalansan*, 189 SCRA 619 [1990].

[19] Citing *People vs. Catubig*, 195 SCRA 505 [1991].

[20] TSN, 29 June 1983, 11-15.

[21] TSN, 1 July 1983, 27-28.

[22] TSN, 11 August 1983, 4-13.

[23] TSN, 12 November 1979, 3-6.

[24] TSN, *Id.*, 6-19; TSN, 28 December 1979, 2-11.

[25] TSN, 18 March 1980, 4-15; TSN, 7 April 1980, 4-23; TSN, 10 June 1980, 2-5.

[26] TSN, 17 July 1980, 3-15.

[27] TSN, 31 July 1980, 4-22; TSN, 11 August 1980, 3-10; TSN, 2 September 1980, 2-5; TSN, 17 September 1980, 3-7; TSN, 14 January 1981, 4-5.

[28] TSN, 11 August 1983, 15-18.

[29] Proverbs, 28:1.

[30] 25 Phil. 510 [1913].

[31] 37 Phil. 486 [1918].

[32] Among which are *People vs. Tanchoco*, 76 Phil. 463 [1946]; *People vs. Lacaya*, 86 Phil. 118 [1950]; *People vs. Sibayan*, 31 SCRA 246 [1970]; *People vs. Hecto*, 135 SCRA 113 [1985]; *People vs. Bocasas*, 137 SCRA 531 [1985]; *People vs. Anquillano*, 149 SCRA 442 [1987]; *People vs. Marquez*, 153 SCRA 700 [1987].

[33] *People vs. Millarpe*, 134 SCRA 555 [1985].

[34] *People vs. Romero*, 119 SCRA 234 [1982].

[35] Article 14 (16), Revised Penal Code.

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