

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMEON BRIONES (ALIAS OCUANG), GAUDENCIO MADERA, NARCISO JALLORES, AND VICENTE PATRIARCA, DEFENDANTS AND APPELLANTS.

G.R. No. 9589. November 12, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of "robo con homicidio." The complaint alleged:

"That on or about April 6, 1901, in the sitio of Sabang Bunga, of the municipality of Tigaon, Ambos Camarines, the said accused, Simeon Briones (alias Ocuang), Gaudencio Madera, Vicente Patriarca, and Narciso Jallores, all armed with bolos, did, for the purpose of robbing and plundering the houses of Pablo Zamora and Ventura de Luna, enter the same and, by the use of violence and intimidation against the families of these latter, maliciously, criminally, and unlawfully abstract money of the value of P500, clothing of the value of more than P100, belonging to the family of Pablo Zamora, and clothing of the value of P25, belonging to the family of Ventura de Luna, against the will of the said owners.

"That immediately thereafter and by reason and on the occasion of the said robbery, the accused Gaudencio Madera inflicted cuts with a bolo upon Pablo Zamora and Ventura de Luna, the accused Narciso Jallores inflicted cuts with a bolo upon Sinforoso Clerigo, Juan Clerigo, and Ignacio Clerigo, the accused Vicente Patriarca inflicted cuts with a bolo upon Vildo Patingo, and the accused Simeon Briones (alias Ocuang) inflicted cuts upon Fermin de Mesa, as a result of which cuts all the said injured parties, with the exception of Fermin de Mesa, then and there died; which acts were committed with violation of the law."

Upon said complaint the said defendants were arrested, arraigned, tried, found guilty, and sentenced by the Honorable Percy M. Moir. The court found that there existed the aggravating circumstance mentioned in article 10, paragraph 15, of the Penal Code, and gave the accused the benefit of article 11 of said code. The sentence is as follows :

"The court, therefore, in accordance with article 503 of the Penal Code, sentences Simeon Briones (alias Ocuang), Gaudencio Madera, Narciso Jallores, and Vicente Patriarca,, and each of them, to life imprisonment in Bilibid Prison, as provided by law; to indemnify the heirs of Pablo Zamora in the sum of P200, value of the clothing and money which belonged to them; to indemnify the heirs of Ventura de Luna in the sum of P25, value of the articles taken from his house as charged in the "querella," and each to pay one-fourth part of the costs of this prosecution. The accused are also sentenced to suffer .the accessory penalties provided by article 54 of the Penal Code."

From this sentence the accused and each of them appealed to this court and made the following assignments of error:

"I. That the evidence adduced does not justify the sentence of the court.

"II. That the evidence does not show beyond a reasonable doubt that the accused, or any of them, are guilty of the crime of robbery with homicidio,

"III. That the sentence of the lower court is contrary to law."

After the attorney for the appellants as well as the prosecuting attorney had presented their briefs in this court, the appellant Simeon Briones (alias Ocuang) on the 1st of October, 1914, withdrew his appeal and the sentence of the lower court as to him became final.

Inasmuch as the assignments of error present a question of fact only, they may all be discussed together.

The lower court, after hearing the evidence and seeing the witnesses, made the following finding of facts:

On the date mentioned in the "querella," to wit, the 6th day of April, 1901, in the sitio of Sabang Buña, municipality of Tigaon, Ambos Camarines, there were living with the fisherman Pablo Zamora, his family, and various other fishermen employed by him. About 7 o'clock at night on said date there came to his house a band of robbers composed of about 20 men. Four of the members of this band, armed with bolos, entered the house of Pablo Zamora, tied him and the other men up, made them go down outside of the house, and demanded of Pablo Zamora where he kept his money. He replied that his daughter kept the money; the four men then went back inside the house and demanded the money of the daughter, Sotera Zamora. She gave them all the money there was in the house—about P500. After looting the place and taking all the clothing they could find the robbers went outside the house again where they had left Pablo Zamora and the other men tied and proceeded to murder them with their bolos. Witnesses state that Gaudencio Madera attacked Pablo Zamora and Narciso Jallores attacked Sinforoso, Ignacio, and Juan Clerigo, and Vicente Patriarca attacked Vildo Patingo. All five of these were killed and another man, Fermin de Mesa was severely wounded by Simeon Briones. One of the blows given to Fermin de Mesa, however, cut his bonds and he escaped. The robbers then left and went to the house of a neighbor 20 or 30 meters distant, where they found Ventura de Luna with his wife. They killed him and wounded another man who was going there to buy some cigarettes. After killing Ventura de Luna they proceeded to rob the house, leaving his wife unharmed. The name of his wife is Dominga Pareja. There were six men killed and two wounded.

It would appear from the evidence that there were four persons by the name of Clerigo killed, though three only are mentioned in the complaint, the other being Irineo Clerigo; neither is the wounding of Ignacio Padis mentioned in the complaint, although he was badly wounded at the same time by the same men.

The wife of Ventura de Luna called for help, but none came and she remained at the house all that night. Her husband died about midnight, she says, as a result of the wounds he received.

The wife of Pablo Zamora, his daughter, and two other women who appear to have been living in the house, left there after the robbers had gone to the house of Ventura de Luna and hid themselves in the woods.

Fermin de Mesa, who escaped when his bonds were cut by a blow from a bolo, hid behind the house of Ventura de Luna. That same night, after the killing, some American soldiers came to the neighborhood of the occurrence and fired off their guns. This fact is clearly and conclusively established by the evidence. It does not appear from the evidence, however, whether these soldiers saw the murdered people, or whether they simply were in the immediate locality. The witness Sotera Zamora says they were on the other side of the river from them, a distance of about 20 "brazas," but Juliana Sape says they came to the house and fired off their guns. There can be no doubt that the dead men were there, but it appears, so far as the alcalde was concerned, that he knew of it first from Juliana Sape, who told him of the occurrence on Easter Sunday morning and he went to the place with the commanding officer. If the soldiers had really seen the dead men, it is reasonable to suppose that a report would have been made of the facts, and the lack of knowledge on the part of the alcalde would induce the belief that the

soldiers did not see the dead men when they visited the spot. The morning following the occurrence Juliana Sape went to the town of Tigaon and made a report of the occurrence to the alcalde, Senor Gregorio Natividad, who notified the military authorities, and then, together with the commanding officer and others, went to the place of the occurrence where they found the dead bodies mentioned in the complaint, as well as two people badly wounded.

A strong effort has been made to impeach the witnesses presented by the prosecution, and for that reason a brief statement of the declaration of each witness will be made.

The first witness called was Juliana Sape, who testified as follows:

That she is 42 years of age; widow of Pablo Zamora; lived in the sitio of Sabang Bunga, municipality of Tigaon, on the 6th of April, 1901, when her house was sacked and her husband killed. That about 7 o'clock on the night in question a band of more than 30 men came to the house for the purpose of robbing them; that when they arrived they immediately tied up her husband, took him down below, asked him where he kept his money; he told them his daughter had it. The robbers then went back into the house and obtained the money from the daughter, the money taken amounting to P500. The robbers then sacked the house, taking all their clothes and everything they had in the house, and they then turned to where they had left the men they had tied and Gaudencio Madera gave a "tajo" (bolo thrust) to her husband Pablo Zamora; Narciso Jallores gave a "tajo" to Sinforoso, Ignacio, and Juan Clerigo; and Vicente Patriarca gave "tajos" to Vildo Patingo; that after the robbers had distributed these bolo cuts they went to the house of a neighbor, Dominga Pareja. Juliana Sape, together with other women who were in the house, then made her escape to the woods but did not stay there very long as some American soldiers came to the neighborhood to rescue them. Her husband was tied, she says, at the time he was killed and he remained tied; that there were killed at the same time, Sinforoso, Ignacio, and Juan Clerigo, and Vildo Patingo; that the value of the clothes stolen amounted to P100 and the money stolen to P500; that P100 out of the P500 belonged to her husband and the other P400 to the fishermen living there, as their share in the fishing.

The witness further says three women were with her that night in the woods; they were Sotera Zamora, her stepdaughter, Bibiana Zamora, the sister of her husband, and Eusebia Clerigo, her mother, and that they were about 20 brazas distant from the American soldiers when the latter fired off their guns, and they were afraid to come out of the woods.

On further examination by the fiscal she identifies Gaudencio Madera, Vicente Patriarca, and Narciso Jallores. She states she has known Vicente Patriarca and Narciso Jallores always; she was formerly afraid of making a statement but she is not now as the pueblo is tranquil.

The court can see nothing in the testimony of this witness that would lead to any doubt of her veracity. She states that immediately after the killing she was frightened. And the court considers she may well have been frightened after witnessing such a night of bloodshed and terror as she had witnessed. She had been cautioned by the murderers that if she told they would follow and kill her. It was a time when revolutionary parties were prowling through the country and she had sufficient reason because of the threats of the robbers to keep silent. Her failure and refusal at the time to give the names of the assailants seem natural and reasonable under all the circumstances.

The next witness called by the Government was Sotera Zamora, who testified as follows:

That she is 33 years of age; married, and that she is the daughter of Pablo Zamora.

Her evidence, in effect, is the same as that of Juliana Sape, her stepmother.

She says there first entered the house four armed men; Gaudencio Madera, Vicente Patriarca, Narciso Jallores,

and one unknown; that they tied her father and took him below, and that Gaudencio Madera came back and asked her for the money. He entered a "copete" where he found Sinforoso Clerigo, and that, when he went below he gave orders to his "gente" and they began to take clothing; she testifies she gave Gaudencio Madera P500 which she had in a "tampipi;" that the four men were armed with "minasbad," "palmabrava" and "rodela;" that Gaudencio Madera went down in front of her father and asked him where the rest of his money was and that he then gave him a bolo thrust in the breast; she states she did not see the others attacked; that after she saw her father killed she was in such distress she did not know what happened; that she had seen Narciso Jallores enter the house and that he was armed as were the others; that after the robbers left she and the other women returned to the house and they found her father lying dead together with others, some of whom were killed and some wounded, there being three wounded.

Fermin de Mesa, 30 years of age, was the next witness called for the prosecution.

He is one of the men who was in the house of Pablo Zamora on the night of the robbery and murder and was badly wounded. He has the scar of a bad wound just above the elbow of his left arm which cut in very deep and seems to have cut the muscles and his arm is almost useless. He has another wound on the left shoulder which apparently was very serious, and he had a third wound near the wrist.

He testifies to practically the same facts told by Sotera Zamora. He says there were more than thirty men in the gang; that four of the robbers entered the house; that he knew them and he identifies all the accused in court; that when the robbers arrived they tied the people who were in the house, took them outside the house and then went back inside; that there were four persons bearing the name of Clerigo who were tied; namely, Juan, Sinforoso, Ignacio, and Ireneo Clerigo, besides himself, Vildo Patingo, Pablo Zamora, and Venancio Sadsad, and that Simeon Ocuang (Briones) was the one who wounded him, the witness. He says that Simeon Briones first cut him on the left arm near the elbow and the blow that cut the arm also cut his bones, and he received two other wounds before he made his escape; that Gaudencio Madera wounded Pablo Zamora and Venancio Sadsad; and Narciso Jallores wounded Sinforoso Clerigo and his two sons Ignacio and Juan, but that he does not know who wounded Ireneo Clerigo; that Vicente Patriarca wounded Vildo Patingo, and that Patingo said to Patriarca: "Como, Manoy Vicente, tu vas a ser el mismo que me vas a herir?" (Why! Manoy Vicente, are you yourself going to wound me?) The witness testifies that after he was wounded he made his escape and hid behind the house of Ventura de Luna; that he intended going into the house of Ventura but that the robbers went there and he heard the groans of Ventura de Luna when he was wounded by Gaudencio Madera, and he heard Ventura say, "Dios mio, perdonenme ya Vds. porque no tengo culpa, no les he faltado a Vds. y me estan hiriendo!" (For God's sake, spare me! I am not to blame, I haven't done anything to you, and you are wounding me!); that all the parties were armed; that after the attack and after the robbers had left, he went into the house of Ventura and there spent the night.

The next witness is Ignacio Padis; 38 years old; laborer. He testifies he knew Pablo Zamora and Ventura de Luna; that on the 6th of April, 1901, he went to the house of Ventura de Luna for the purpose of buying some cigarettes, coming from his own house which is distant from the place; that when he neared the house of Ventura de Luna the place was assaulted; that he knew they were "asaltantes" because they wounded him with their bolos. Witness shows one wound in the middle of his breast which evidently had cut deep into the bone; the wound is about 6 inches long. He has another wound on the top of the right shoulder about 2 inches long. Both wounds must have been very severe ones. He says Gaudencio Madera was the man who wounded him and he identifies audencio Madera in court. He says he saw only three robbers, Vicente Patriarca, Narciso Jallores, and Gaudencio Madera; that he did not see the robbers at all until they assaulted him; that he does not know why they wounded him, because he simply said "buenas noches." When he received the wounds he escaped into the "nipales" a distance of

about 40 brazas from the house of Ventura; that when he was wounded Ventura de Luna was in front of Gaudencio Madera and that the latter wounded Ventura. It was some time after 7 o'clock when the occurrence took place; that there was a moon and the night was very clear. He testifies he has known Narciso Jallores, Vicente Patriarca, and Gaudencio Madera for a number of years; that he made a declaration before the justice of the peace of Tigaon on the 11th of January of this year, and also one before the justice of the peace of Goa on the following day, and that he made this second declaration because he had not finished his declaration before the justice of the peace of Tigaon; that he was taken to the town of San Jose by the Americans after the killing, but that he was not asked anything about the occurrence because he was "muy mal de salud" (in very bad health); that he left San Jose before he was fully cured and stayed in Tigaon.

The next witness called is Dominga Pareja, widow of Ventura de Luna. She says she is 80 years of age and lives in Tigaon. She is an old woman, but her mind appears clear.

She testifies that on the 6th of April, 1901, she was in Sabang Bunga, municipio of Tigaon; that she did not have a house there but that she was staying in a house and living with her husband Ventura de Luna; that she does not know in what year her husband was killed because she is an old woman and much time has passed since the occurrence; that she remembers that her husband was killed by Gaudencio Madera who gave her husband a "tajo" (bolo thrust); that she knows Gaudencio Madera (whom she identifies in the court room); that her husband went out to see who was calling him, and as she heard him cry out, she went out and the robbers had already wounded him once; that she did not see her husband receive the first wound but she saw him given a bolo stroke in the right leg and a wound on the right shoulder just above the lung; that after they had killed her husband they made her go down stairs, then they tied her and took her back into the house and then proceeded to take their clothing. She says the value of the clothing taken was about P30 as she was not rich, and that the robbers also took P10 in money; that they did not stay long in her house but they stayed long enough to eat up her rice. She states her house was 20 meters distant from the house of Pablo Zamora; that after the robbers left she shouted for help but none came; that she did not give an account of the occurrence to the authorities because she was very weak and there was nothing she could do; that she knows Gaudencio Madera because he had been "teniente" of the "sitio of Moriones" in the Spanish times and that he had sometimes questioned them when they were carrying rice; that she heard Ignacio Padis whistling and heard the robbers ask him where he was going and he said he was coming to buy some cigarettes, and then they gave him bolo cuts and he escaped; that she does not know who cut Ignacio Padis because she was inside the house and he was in front of her house; that she heard no noise in the house of Pablo Zamora, because she is half deaf; that there were at that time revolutionary bands, and that this band was such a one; that Gaudencio Madera was a revolutionary soldier and that he was chased by the Americans.

Antonio Dinido, a "montes" 28 years old, is the next witness for the prosecution. He is called an "Igorrote" part of the time and sometimes he is mentioned as a "Negrito," but he is neither one nor the other. He is simply a baptized wild-tribe man.

It was attempted in his cross-examination to show that he was not 28 years of age and that he was born in 1888. From his appearance the court considers that he is at least 28 years of age. The court informed the attorneys for the defense that if they wished they could procure his certificate of baptism and present the same. However, it was not put in. If this witness had been born in 1888 he would have been only 13 years of age at the time this crime was committed in 1901.

He testifies he is a "montes;" that he does not know the sitio of Sabang Bunga because he did not grow up in that locality; but that he has heard the name; that he did not know Pablo Zamora nor Ventura de Luna because he did not know the "gente" in that locality. He was then asked if he knew the prisoners; he said "yes" and identified each one of them; he says he accompanied them when they did the killing; that they killed seven persons. Asked if they

wounded them, he says "no, they killed them;" that he knows this because he accompanied them when they did it; he insists that there were seven people killed. He says that Gaudencio Madera, Capitan Narciso Jallores, and Vicente Patriarca passed by the "sitio" of Moriones and Gaudencio Madera told him to follow them. He asked where they were going and the reply was simply to follow them; that he was afraid and he went. When they got to the "sitio" of Sabang Bunga they assaulted two houses, tied the persons and carried them down below and wounded them. He says they killed seven, but he does not know their names. Asked when the occurrence took place, he replied it occurred when the Americans came; he says they did not give him any of the spoils; that after the assault they went away; that he returned to Moriones; that there were 19 in the assaulting party—3 from the town, the rest of them being Igorrotes. Those who were not Igorrotes were Gaudencio Madera, Narciso Jallores, and Vicente Patriarca. He says he has no enmity against any of the accused. Asked on cross examination if he knew why Simeon Briones (alias Ocuang) was accused and not himself, he replied that it was because Briones had done some of the killing and he had not.

He states he heard about the arrest of the parties and he went to inform Lieutenant Yance of the Constabulary at Goa of what he knew of the affair; that he did not tell him before this because the crime had not been discovered; that he knows the names of his other companions and that he gave these names to Lieutenant Yance when he went and told what he knew of the occurrence; that he was told he was 28 years old by his "padrino." He says further that there were bands of "insurrectos" in those times, and that this band was such a one; that Gaudencio Madera was the "teniente" of the band and "Capitan Narciso" was the "comandante," but that he does not know what office Vicente Patriarca held; that he, witness, was not a soldier as he only carried a short knife and that he was only small then; he does not know how old he was, but he was very small; that he was not a muchacho, nor was he a soldier, he was simply told to follow them, and that they got him from the sitio of Moriones, within the jurisdiction of Pili; that nobody told him the accused had been carried to Nueva Caceres; he knew it simply because of "noticias;" that he did not talk with anyone about the case before he was called to testify. He was then asked if he was a muchacho for Juliana Sape and Sotera Zamora, and he denied ever having been their muchacho; that he did not know them nor had he ever entered their house; that nobody sent to call him to testify before the court, but that he came of his own volition; that he came to Tigaon at 5 o'clock on the afternoon of the day preceding the trial; that he slept below the court, in the "tribunal," having been told to go there to sleep by Lieutenant Yance; that nobody told him he was to testify but that he knew he was to testify before he left Moriones though he had not received any subpoena, Benita Saludo, 60 years of age, was the next witness called. She states that her occupation in the year 1901 was that of "lavandera" and that she was called upon by Gaudencio Madera to wash a coat of his which was covered with blood; and that this was on Easter Sunday in the year 1901.

It is difficult to find a case where the culpability of the defendants is more clearly proved, if we accept the declarations of the witnesses for the prosecution, than the present. The attorney for the appellants calls our attention to many circumstances which, under ordinary conditions would discredit the veracity of some of the witnesses for the prosecution. For example, the crime was committed on the night of the 6th of April, 1901, and the complaint was not presented until the month of January, 1913. Practically all of the witnesses for the prosecution were present and saw the defendants and recognized them on the night when the alleged crime was committed. Some of them admit that they reported to the authorities the next morning the fact that the crime described in the complaint had been committed. At that time they failed to give the authorities the names of the perpetrators. They now explain why they did not give the names of the perpetrators of the crime to the authorities. They say that public order in the community where they lived was very much disturbed by the existence of a revolution. That the American army had just arrived in the locality. That they were ignorant and were just as much afraid of the American soldiers as they were of the "malhechores." And, furthermore, they now say that the

defendants threatened to pursue and to kill them, if they divulged their names to the authorities. Some of the witnesses for the prosecution evidently believed that the authorities would be able to ascertain who the defendants were without their giving their names. The attorney for the appellants also criticizes the prosecution for the long delay between the time of the commission of the offense and the actual presentation of the complaint. That, of course, under ordinary circumstances, would be suspicious. Article 131 of the Penal Code, however, provides that a criminal action, such as the present, may be commenced within any time within a period of twenty years. The fact that the prosecution did not commence the action earlier, while it is suspicious, nevertheless is not conclusive that the facts stated in the complaint are not true. The attorney for the appellants further calls our attention to the fact that even during the preliminary examination, the declaration of some of the witnesses was different before the justice of the peace from their declaration in the Court of First Instance. There are many circumstances which tend to show that the preliminary examination was not conducted with that degree of impartiality which should characterize such proceedings. Furthermore, two of the witnesses swore positively that the justice of the peace refused to hear them upon certain matters upon which they desired to declare. One of the witnesses who had been refused the right to make a full, free, and open statement before the justice of the peace, went before another authority and completed his statement. The mere fact, however, that a witness declares to certain facts during a preliminary examination and to another set of facts upon the trial of the cause in the Court of First Instance, does not necessarily discredit his testimony nor destroy it, if such contradictions are satisfactorily explained. (U. S. vs. Magtibay, 17 Phil. Rep., 417.) In the present case we are not inclined to permit the contradictions made by some of the witnesses in their declarations before the justice of the peace and in the Court of First Instance to discredit their testimony because, in our opinion, such contradictions were fully explained by the witnesses themselves, during their examination at the trial of the cause.

There were many witnesses presented by the defense, some of whom were more or less interested in the outcome of the action, whose declarations tend to exculpate the defendants. The lower court, however, after having seen and heard them and weighing their testimony with that of the testimony offered by the prosecution, found that the declarations of the witnesses for the prosecution were to be believed rather than the declarations of the witnesses for the defense. While as we said above, the fact that some of the witnesses for the prosecution who were present at the time and place where the crime was committed, on the very next morning failed to give the names of the perpetrators to the authorities might, under other circumstances discredit their declarations, yet, nevertheless, considering all of the facts and circumstances surrounding the commission of the present crime, together with the fact that an insurrection existed in the locality, and also the fact that their testimony given during the trial of the present cause is corroborated in practically all of the details by the declarations of other witnesses, we find no reason now for not accepting their testimony as true.

There were many aggravating circumstances connected with the commission of the crime. The crime was committed at nighttime, by a band composed of from twenty to thirty men. All of the facts surrounding the commission of the crime indicate that the defendants selected the nighttime for the purpose of more effectually committing their crime. The crime was committed in the house of the offended persons. Before the four persons described in the complaint were killed, they were manacled and were killed while they were manacled. The defendants not only committed the crime of assassination with the qualifying circumstance of alevosia, together with the aggravating circumstances of nocturnity and morada, but they also committed the crime of robbery, making them clearly guilty of the crime of assassination with robbery. They should, therefore, be punished in accordance with the provisions of paragraph 1 of article 503, in relation with article 502 of the Penal Code. The lower court gave the defendants the benefit of article 11 of the Penal Code, compensating all of the aggravating circumstances by said article. The Solicitor-General, in a very carefully prepared brief, undertakes to demonstrate that the defendants, by reason of their character and intelligence, are not entitled to the benefit of said article 11,

as amended by Act No. 2142. We are very much inclined to agree with this conclusion of the Solicitor-General.

Therefore, in view of the foregoing facts, the sentence of the lower court must be modified, and considering the aggravating circumstances above mentioned, the said defendants Gaudencio Madera, Narciso Jallores and Vicente Patriarca must be sentenced in the maximum degree of the penalty provided for in paragraph 1 of article 503 of the Penal Code, or with the penalty of death, and each of them is hereby condemned jointly and severally to pay to the heirs of Pablo Zamora the sum of P1,000, and to indemnify, jointly and severally, the heirs of Ventura de Luna in the sum of P1,000; to indemnify, jointly and severally, the heirs of each of the deceased Vildo Patingo, Sinforoso Clerigo, Juan Clerigo, and Ignacio Clerigo in the sum of P1,000, and that they return to the heirs of Pablo Zamora the sum of P250, the value of the clothes and money robbed from him; that they also return to the heirs of Ventura de Luna the sum of P25, the value of the clothes robbed from him, and each to pay one-fourth part of the costs.

Arellano, C. J., Torres and Araullo, JJ., concur.

DISSENTING

CARSON, J., with whom concurs

TRENT, J.

I agree with Justice Moreland that under all the circumstances of this case the penalty imposed by the trial court should not be disturbed.

DISSENTING

MORELAND, J.

The judgment appealed from should be affirmed without any modification.

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