

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME CADAG JIMENEZ, ACCUSED-APPELLANT.

G.R. Nos. 137790-91. April 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated February 18, 1999, of the Regional Trial Court, Branch 273, Marikina City, finding accused-appellant Jaime Cadag Jimenez guilty of two counts of acts of lasciviousness committed against his daughter Joanna[2] as defined and punished in Art. III, §5(b) of R.A. No. 7610 and sentencing him on each count to reclusion perpetua and ordering him to pay the victim a fine in the total amount of P40,000.00 and the costs.

The informations against accused-appellant alleged:

Crim. Case No. 97-1551-MK:

That on or about the 12[th] day February 1997, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant Joanna Marie Jimenez y San Pedro, did then and there willfully, unlawfully, and feloniously commit lascivious conduct upon the person of Joanna Marie Jimenez y San Pedro, a girl of 12 years old, by then and there inserting his finger into the private part of said Joanna Marie Jimenez y San Pedro, against her will and consent.

CONTRARY TO LAW.

City of Marikina, Philippines

March 3, 1997.[3]

Crim. Case No. 97-1577-MK:

That on or about the 2[nd] week of November 1996, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant Joanna Marie Jimenez y San Pedro, did then and there willfully, unlawfully and feloniously commit lascivious conduct upon the person of Joanna Marie Jimenez y San Pedro, a girl of 12 years old, by then and there inserting his finger into the private part of said Joanna Marie Jimenez y San Pedro, against her will and consent.

CONTRARY TO LAW.

City of Marikina, Philippines

March 17, 1997.[4]

Upon arraignment, accused-appellant pleaded not guilty[5] to the charges, whereupon he was tried.

Three witnesses, namely, Joanna Marie Jimenez,[6] SPO1 Lucymay Robles,[7] and Rowena Villegas[8] were

presented by the prosecution. Their testimonies established the following facts:

The victim Joanna Marie Jimenez is the eldest of five children of accused-appellant Jaime Cadag Jimenez, a construction worker, and Nimfa San Pedro Jimenez, housewife. She was born on January 25, 1985 (Exh. F).[9] Her family resided at Parang, Marikina in a one-bedroom house. At night, the family slept in the sala, which is about three meters wide, Nimfa and accused-appellant lying beside each other, the youngest child sleeping next to Nimfa, the second youngest next to the youngest, and so on. Joanna, being the eldest, was farthest from her parents.[10] Several times from August to October 1996, while his family was asleep at night, accused-appellant carried Joanna to the bedroom and there lay on top of her, kissed her, and fondled her breasts. Afterwards, he removed her shorts and panties and inserted his penis inside her vagina. On the sixth time, Joanna told accused-appellant that she had started menstruating on November 5, 1996.[11] These alleged six instances of abuse are subject of a separate criminal complaint filed by Joanna against accused-appellant.[12] Sometime in the second week of November 1996, while Joanna, then 11 years old, was asleep at night, she was awakened by accused-appellant who again lay on top of her, caressed her breasts and private parts, and then inserted his finger inside her vagina. She was so afraid of her father that all she could do was to close her eyes, occasionally opening them to see what he was doing to her. Accused-appellant was able to abuse Joanna while her siblings and her mother were asleep beside her.[13] Joanna related the incident to two friends, Roselle and Hazel, who urged her to tell her mother Nimfa, but Joanna was afraid she would not be believed and so did not tell her mother.[14] Shortly after her 12th birthday on January 25, 1997, at about 7 o'clock, accused-appellant again molested his daughter by inserting his finger inside her vagina.[15] This time Joanna told her classmate and best friend Eunice what her father had been doing to her. Eunice in turn told her aunt about the incident. The latter sought the assistance of the Bantay Bata ABS-CBN Foundation which reported the matter to the principal of the Valeriano Fugoso Memorial School where Joanna was studying. On February 27, 1997, a teacher of the school went to Joanna's house and told Joanna's mother Nimfa about accused-appellant's abuses. The next day, Nimfa reported the matter to the Marikina City police. Joanna was examined by Dr. Dennis Bellin, medico-legal officer of the NPC-PNP Crime Laboratory Group at Camp Crame, whose findings are set forth in a medical certificate he issued, dated February 28, 1997. The report (Exh. A) stated:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3, 6 and 7 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

....

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.[16]

Accused-appellant denied the allegations against him. He contended that he could not have molested his daughter

because he and his wife slept in the sala with all their children. According to accused-appellant, he used to leave the house for work at 4:30 every morning and come home at different times of the day, depending on the work at the construction site. But he claimed he was never left alone in the house with his daughter.[17] Accused-appellant's wife Nimfa, who tried to withdraw the case filed against her husband, testified in his favor. She said that she and accused-appellant had been married for 14 years and that he had been a good father to his children. She said that it was impossible for accused-appellant to have molested their daughter Joanna on February 12, 1997 because she (Nimfa) never left the house on that day. In fact, at no time did she ever leave the house without taking her children with her.[18] After trial, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1) in Crim. Case No. 97-1551-MK - the Court finds accused Jaime Cadag Jimenez GUILTY BEYOND REASONABLE DOUBT of Violation of Article III, Section 5, paragraph (b) of R. A. No. 7610, as amended, defined, and penalized under the same provision, in relation to Section 31, paragraph (c) of Article XII of the same Act, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay a fine in the amount of P20,000.00 to be administered as a cash fund by the Department of Social Welfare and Development, and disbursed for the rehabilitation of complainant Joanna Marie Jimenez, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs;

2) in Crim. Case No. 97-1577-MK - the Court finds accused Jaime Cadag Jimenez GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Article III, Section 5, paragraph (b) of R. A. No. 7610, as amended, defined, and penalized under the same provision, in relation to Section 31, paragraph (c) of Article XII of the same Act, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay a fine in the amount of P20,000.00 to be administered as a cash fund by the Department of Social Welfare and Development, and disbursed for the rehabilitation of complainant Joanna Marie Jimenez, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.[19]

Hence, this appeal. Accused-appellant contends that —

- THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF COMPLAINANT JOANNA MARIE JIMENEZ WAS PUNCTURED WITH MATERIAL INCONSISTENCY, IMPROBABILITY, AND UNRELIABILITY THEREBY CAUSING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

- GRANTING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN INCREASING THE PENALTY IMPOSED ON HIM FROM RECLUSION TEMPORAL IN ITS MEDIUM PERIOD TO A MAXIMUM PERIOD OF RECLUSION PERPETUA IN RELATION TO SECTION 13, PARAGRAPH C, ARTICLE XII OF REPUBLIC ACT 7[6]10 DESPITE THE FACT THAT BOTH CRIMINAL INFORMATIONS FAILED TO ALLEGE THE SPECIAL CIRCUMSTANCE OF RELATIONSHIP OF THE VICTIM OF THE ACCUSED-APPELLANT.[20]

First. Accused-appellant points out the alleged inconsistencies between Joanna's testimony in court and her sworn statement, and in her testimony, which she claims cast doubt on Joanna's credibility, to wit:

1. In her testimony, Joanna claims that accused-appellant committed the alleged lascivious acts in the sala, while in her sworn statement, she stated that accused-appellant first carried her from the sala to the bedroom where he performed the alleged lascivious acts.

2. During direct examination, Joanna testified that the entire family sleep in the sala, while on

cross-examination, she stated that accused-appellant sleeps in the bedroom while the rest of the family sleep in the sala.

Accused-appellant's contention has no merit.

Joanna said in her sworn statement (Exh. C) that accused-appellant molested her in the bedroom of their house with reference to incidents which took place from August to October 1996, thus:

T:

Paano ka ginapang ng papa mo?

S:

Hinahalikan po niya ako sa pisngi ko, tapos hinihimas niya po ang suso ko tapos po hinahalikan din po niya ang pekpek ko. Tapos pagtulog na po sina mama at mga kapatid ko binubuhat po niya ako sa kuartero hindi po niya sinisindihan o binubuksan ang ilaw. Pagnakahiga na po kami sa sahig ng kuartero inaalas niya po isa-isa ang short ko tapos ang panty ko tapos po dinadaganan na po niya ako na parang ginagawa ng mag-asawa.

T:

Ano naman ang pakakaunawa mo sa sinasabi mo na ginagawa ng mag-asawa?

S:

Pinapasok po ni papa ang titi niya sa pekpek ko.

T:

Ano naman ang nararamdaman mo pagpinapasok ng papa mo ang titi niya sa pekpek mo?

S:

Masakit po.

T:

Ilang beses na ba ito ginawa ng papa mo sa pagpasok ng titi niya sa pekpek mo?

S:

Simula po nuong August hanggang October 1996 mga lima o anim na beses po pinasok ni papa ang titi niya sa pekpek ko . . . [21]

But she said that one night in November 1996, accused-appellant abused her in the sala of their house even as everyone, except accused-appellant and she, was asleep. Thus she testified:

FISCAL CONOS:

Now, miss witness, sometime on the second week of November 1996 do you remember of any unusual incident that took place inside your house?

WITNESS:

Yes, Ma'am.

FISCAL CONOS:

What was that unusual incident that took place inside your house?

COURT:

What date is this Fiscal, November 2?

FISCAL CONOS:

Not necessarily, Your Honor, but the second week of November. This Criminal Case No. 97-1577-MK.

COURT:

So, the witness may answer.

WITNESS:

"INANO PO AKO NG PAPA KO."

FISCAL CONOS:

What do you mean by "inano po ako ng papa ko"?

WITNESS:

"GINAPANG PO."

FISCLA CONOS:

When you said "ginapang po ako ng papa ko," what do you mean by that?

WITNESS:

"PINATUNGAN PO NIYA AKO."

FISCAL CONOS:

Aside from that, miss witness, what else do you remember happened on the second week of November 1996?

WITNESS:

"INANO PO NIYA ANG KAMAY NIYA SA ARI KO."

FISCAL CONOS:

What do you mean by that "inano po niya ang kamay niya sa ari ko"?

WITNESS:

"HINAWAKAN PO NIYA IYUNG ARI KO."

FISCAL CONOS:

Aside from the accused touching your private part, "ari," what else did the accused do to you, if any?

WITNESS:

"HINAWAKAN PO NIYA IYUNG DEDE KO."

FISCAL CONOS:

Now, what else did the accused do to you aside from touching your breast, touching your private part, what else did the accused do to you on the second week of November 1996?

WITNESS:

"PINATUNGAN PO NIYA AKO."

FISCAL CONOS:

Aside from that, miss witness, the accused lying on top of you, what else did the accused do to you if you remember?

WITNESS:

"PINASOK PO NIYA IYUNG KAMAY NIYA SA ARI KO."

FISCAL CONOS:

When you said "pinasok po niya iyung kamay niya sa ari ko", what do you mean by that?

WITNESS:

"IYUN PONG KAMAY NIYA PINASOK NIYA SA ARI KO."

FISCAL CONOS:

What part of his hand was inserted in your private part, if you remember?

WITNESS:

"DALIRI PO." [22]

FISCAL CONOS:

Where do you sleep?

WITNESS:

At the sala, Ma'am.

FISCAL CONOS:

Where did this incident happen?

WITNESS:

At the sala, Ma'am.[23]

There is thus no inconsistency between her sworn statement and her testimony in court as to the place of the commission of the crime.

As to the other alleged inconsistencies in Joanna's testimony, we have already held that errorless testimonies cannot be expected from victims of sex crimes as they might, in fact, be trying to erase from their memory the details of their harrowing experience.[24] But as long as the testimony in the main coincides on material points, minor inconsistencies can affect neither the witnesses' credibility nor the veracity of their testimonies.[25] In Joanna's case, although she contradicted herself as to the place where accused-appellant slept, the point is that as both accused-appellant and her mother Nimfa testified, the entire family sleep in the sala.[26] Indeed, the evaluation of the credibility of witnesses is best performed by the trial judge who had the opportunity to observe the witnesses' demeanor during the trial. Thus, his findings on their credibility are given the highest degree of respect and will not be disturbed on appeal unless it is shown that the trial judge overlooked circumstances of substance which might have affected the result of the case.[27] Substantial matters, in criminal cases, refer to facts which are constitutive of the crime charged.[28] In any event, Joanna was never confronted with her prior inconsistent statements and given a chance to explain the alleged contradictions as required by Rule 132, §13. Thus, accused-appellant should not now be allowed to raise this matter on appeal.[29] Accused-appellant says that Joanna's claim that he abused her in the sala not only once but also on several other occasions is highly improbable because his wife Nimfa and their other children also sleep in the sala. As we have observed, however, lust is no respecter of time and place. If rape can be committed in places where people congregate, even in the same room where other members of the family are sleeping,[30] there is less reason to believe that other people sleeping in the same room can serve as a deterrent for the commission of lascivious acts.

Joanna's failure to raise an alarm cannot be taken against her. As we have said before, the law does not impose upon the victim of sexual assault the burden of proving resistance. Moreover, reactions to such assaults are unpredictable as people respond to violence differently.[31] Although accused-appellant was not armed in committing sexual abuse against his daughter, his moral ascendancy over her was a sufficient substitute for the use of force or intimidation.[32]

Accused-appellant also adverts to the delay of seven months before Joanna reported the numerous incidents of abuse to her relatives and friends, thus allegedly placing her credibility in doubt. Accused-appellant contends that a woman who has been violated would normally do anything in her power to bring the culprit to justice once the threat to her has been removed, but that here, Joanna kept quiet and even refused to tell her mother about the alleged abuses committed against her (Joanna).

We do not agree with accused-appellant. The delay in reporting of rape and other sexual assaults does not imply that the charge is not true. This Court has taken judicial notice of the fact that most victims of sex crimes, especially Filipinas, are reluctant to reveal to the world their harrowing experiences and prefer to bear the ignominy and pain silently, rather than expose their shame.[33] In addition, although Joanna did not tell her mother her misfortune, she in fact did so to her friends, as a result of which the Bantay Bata ABS-CBN Foundation and Joanna's school principal took a hand in her case, in the process informing her mother of accused-appellant's abuse. If Joanna failed to report the incidents to her mother, it was because she feared she would not be believed. Indeed, as it turned out, instead of supporting her, her mother Nimfa testified in favor of accused-appellant.[34] Joanna had to rely on the sympathy of other people and live under the protection of the Department of Social Welfare and Development (DSWD) at Marillac Hills.[35]

Above all, it is unthinkable for a daughter, especially one so young as Joanna, to falsely accuse her own father if it were not true she has been molested.[36]

Second. Accused-appellant argues that relationship should not be considered a qualifying circumstance as this was never alleged in the informations. Under R.A. No. 7610, §31(c), however, relationship is not a qualifying but only an ordinary generic aggravating circumstances and, therefore, although it was not alleged in the information can nevertheless be taken into account in fixing the penalty for the crime because it was proven. Accused-appellant fails to distinguish a generic aggravating circumstance from a qualifying circumstance. A generic aggravating circumstance provides for the imposition of the prescribed penalty in its maximum period, while a qualifying circumstance changes the nature of the crime.[37]

Now, the pertinent provisions of R.A. No. 7610 state:

ARTICLE III

Child Prostitution and Other Sexual Abuse

SECTION 5. Child Prostitution and Other Sexual Abuse. $\frac{3}{4}$ Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

....

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, that when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

....

ARTICLE XII

Common Penal Provisions

SECTION 31. Common Penal Provisions --

....

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

It is clear from the above, that the nature of the crime does not change when the circumstance of relationship is present. The law simply provides that the penalty prescribed should be imposed in its maximum period when such circumstance is present, thus making the circumstance of relationship merely a generic aggravating circumstance. The trial court, therefore, correctly sentenced accused-appellant to suffer the penalty of reclusion perpetua for each count of lascivious conduct committed against his daughter.

The trial court was correct in imposing a fine of P20,000.00 as cash fund to be administered by the Department of Social Welfare and Development (DSWD) for the rehabilitation of Joanna for each count of lascivious act committed by accused-appellant, pursuant to Art. XII, §31(f) of R.A. No. 7610.

It was also correct in imposing the penalty of reclusion perpetua in Crim. Case No. 97-1551-MK. However, it erred in imposing the straight penalty of reclusion perpetua in Crim. Case No. 97-1577-MK, because the lascivious act in that case was committed in the second week of November 1996 when Joanna was only 11 years old. Pursuant to Art. III, §5(b), as above quoted, the penalty to be imposed should be reclusion temporal in its medium period. There being one aggravating circumstance, the penalty should be in its maximum period. Applying the Indeterminate Sentence Law, in relation to Art. 65 of the Revised Penal Code, accused-appellant should be sentenced to an indeterminate penalty the minimum of which is within the range of the penalty next lower in degree, i.e., reclusion temporal minimum and the maximum of which is the maximum of reclusion temporal medium.

Moreover, moral damages in the amount of P50,000.00 should be awarded to Joanna for the acts committed by accused-appellant in the second week of November 1996 when she was only 11 years old and in February 12, 1997 when she was 12 years of age.[38] WHEREFORE, the decision of the Regional Trial Court, Branch 273, Marikina City, is AFFIRMED with MODIFICATION as follows:

(1) In Crim. Case No. 97-1551-MK, accused-appellant is also ordered to pay complainant the amount of P50,000.00 as moral damages.

(2) In Crim. Case No. 97-1577-MK, accused-appellant is hereby sentenced to an indeterminate penalty the minimum of which is fourteen (14) years and eight (8) months of reclusion temporal minimum and the maximum of which is seventeen (17) years and four (4) months of reclusion temporal medium, and is also ordered to pay complainant the amount of P50,000.00 as moral damages.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Olga Palanca-Enriquez.

[2] Also spelled "Joana" in the Records.

[3] Records (Crim. Case No. 97-1551-MK), p. 2.

[4] Records (Crim. Case No. 97-1577-MK), p. 2.

[5] Records, (Crim. Case No. 97-1551-MK), p. 26; Records, (Crim. Case No. 97-1577-MK), p. 17.

[6] TSN (Joanna Marie Jimenez), pp. 1-29, Nov. 25, 1997; TSN (Joanna Marie Jimenez), pp. 1-14, Jan. 6, 1998; TSN (Joanna Marie Jimenez), pp. 1-23, Jan. 27, 1998.

[7] TSN (SPO1 Lucymay Robles), pp. 1-16, March 2, 1998.

[8] TSN (Rowena Robles), pp. 1-25, June 1, 1998.

[9] Records (Crim. Case No. 97-1577-MK), p. 134.

[10] TSN (Joanna Jimenez), p. 15-17, Nov. 25, 1997; TSN (Jaime Jimenez), pp. 6-7, 11-12, Aug. 13, 1998; TSN (Nimfa Jimenez), pp. 7-8, Sept. 21, 1998.

- [11] Records (Crim. Case No. 97-1551-MK), p. 11; TSN (Joanna Jimenez), p. 21, Nov. 25, 1997.
- [12] TSN (Jaime Jimenez), p. 15, Aug. 13, 1998.
- [13] TSN (Joanna Jimenez), pp. 7-19, Nov. 25, 1997.
- [14] *Id.*, pp. 22-24.
- [15] TSN (Joanna Jimenez), pp. 10-11, Jan. 6, 1998; Records (Crim. Case No. 97-1551-MK), p. 11.
- [16] Records (Crim. Case No. 97-1577-MK), p. 131.
- [17] TSN (Jaime Jimenez), pp. 11-12, Aug. 13, 1998.
- [18] TSN (Nimfa Jimenez), pp. 8-10, Sept. 21, 1998.
- [19] Decision, pp. 14-15; Rollo, pp. 32-33.
- [20] Brief for the Accused-Appellant, p. 1; *id.*, p. 53.
- [21] Records (Crim. Case No. 97-1577-MK), p. 133. (Emphasis added)
- [22] TSN (Joanna Marie Jimenez), pp. 7-11, Nov. 25, 1997. (Emphasis added)
- [23] *Id.*, p. 16. (Emphasis added)
- [24] *People v. Mengote*, 305 SCRA 380 (1999); *People v. Palma*, 308 SCRA 466 (1999).
- [25] *Antonio v. Court of Appeals*, 273 SCRA 328 (1997).
- [26] TSN (Jaime Jimenez), pp. 11-12, Aug. 13, 1997; TSN (Nimfa Jimenez), p. 7, Sept. 21, 1998.
- [27] *People v. Amazan*, G. R. No. 136251, 138606, & 138607, Jan. 16, 2001; *People v. Tan*, 315 SCRA 375 (1999); *People v. Accion*, 312 SCRA 250 (1999).
- [28] *People v. Calma*, 295 SCRA 629 (1998).
- [29] *People v. Campaner*, G. R. Nos. 130500 and 143834, July 26, 2000.
- [30] *People v. Perez*, 319 SCRA 622 (1999).
- [31] *People v. Lampaza*, 319 SCRA 112 (1999).
- [32] *People v. Flores*, 320 SCRA 560 (1999).
- [33] *People v. Geromo*, 321 SCRA 355 (1999).
- [34] TSN (Nimfa Jimenez), pp. 1-53, Sept. 21, 1998.
- [35] TSN (Joanna Marie Jimenez), pp. 6-7, Nov. 25, 1997.
- [36] *People v. Calma*, *supra*.
- [37] *People v. Mendoza*, G. R. No. 133382, March 9, 2000; *People v. Ramos*, 296 SCRA 559 (1998).
- [38] *People v. Larin*, 297 SCRA 309 (1998); *People v. Calma*, *supra*.

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