

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREDDIE TANTIADO Y BILLONES, ACCUSED-APPELLANT.

G.R. Nos. 92795-96. September 02, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In Criminal Cases No. 5701 and No. 5702, accused Freddie Tantiado y Billones was charged with the violation of Sections 4 and 8, respectively, of Republic Act No. 6425 (The Dangerous Drugs Act), as amended.

The accusatory portion of the Information in Criminal Case No. 5701 reads:

"That on or about the 13th day of June, 1987, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court the herein accused, without being authorized by law, did, then and there, willfully, unlawfully and feloniously sell three (3) sticks of marijuana cigarettes, which are prohibited drugs, in violation of the afore-mentioned law." [1]

while the accusatory portion of the Information in Criminal Case No. 5702 reads:

"That on or about the 13th day of June, 1987, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without being authorized by law, did, then and there, willfully, unlawfully and feloniously have in his possession and control two (2) match boxes filled with marijuana seeds and marijuana dried leaves weighing more or less fifty (50) grams which are prohibited drugs, in violation of the aforementioned law." [2]

Both informations were filed on 16 June 1987 with the Regional Trial Court (RTC) of Negros Occidental.

The two (2) cases were consolidated and assigned to Branch 45 of the said RTC.

Upon his arraignment on 18 December 1987, the accused, assisted by his counsel de oficio, Atty. Ramon Ditching, Jr., entered a plea of not guilty in both cases. [3]

During the trial, the prosecution presented two (2) members of the buy-bust team namely, Sgt. Virgilio Caro and C1C Domingo S. Bolivar, who testified as to how the buy-bust operation was conducted; it also presented P/Lt. Zenaida Sinfuego, the forensic chemist who examined the articles allegedly taken from the accused and found the same positive for marijuana. On the other hand, the accused relied merely on his own testimony for his defense.

On 22 September 1989, the trial court promulgated its decision [4] convicting the accused in Criminal Case No. 5701 but acquitting him in Criminal Case No. 5902. The dispositive portion of the decision in the first case reads:

"IN VIEW OF ALL THE FOREGOING, this Court finds that the prosecution has proved the guilt of the accused beyond reasonable doubt in Crim. Case No. 5701, without attendant circumstances, and therefore sentences him to suffer the penalty of reclusion perpetua and to pay the fine of P20,000.00 without subsidiary imprisonment in case of insolvency, with all the accessory penalties provided by law, and to pay the costs." [5]

In the second case, the dispositive portion, found pages away, reads:

"WHEREFORE, in view of all the foregoing, for lack of evidence to prove the charge of Violation of Sec. 8 of R.A. 6425, as amended, the accused Freddie Tantiado y Billones is ACQUITTED, with costs de oficio." [6]

Not satisfied with the decision in Criminal Case No. 5701, the accused appealed therefrom to this Court by filing a notice of appeal with the RTC on 13 October 1989. [7]

In its Order of 17 November 1987, [8] the trial court gave due course to the appeal but erroneously ordered the transmittal of the records of the case to the Court of Appeals, which the Clerk of Court complied with to the letter. [9] The Court of Appeals forwarded the records to this Court on 17 April 1990. [10] The Docket Section of this Court, probably misled by the transmittal of the records of the two (2) criminal cases, docketed the appeal as G.R. Nos. 92795-96. Since what is being appealed by the accused is the decision in Criminal Case No. 5701, only one (1) docket number should have been assigned to it.

The prosecution's evidence, based on the testimonies of Sgt. Virgilio Caro and C1C Domingo S. Bolivar of the Philippine Constabulary Narcotics Command (PC NARCOM), Bacolod City, and Lt. Zenaida Sinfuego, forensic chemist of the PC/INP Crime Laboratory, Iloilo City, establishes the following:

Having received information about two (2) or three (3) days prior to 13 June 1987 that a certain drug pusher was engaged in the selling of marijuana at Saturn St., Singcang, Bacolod City, PC NARCOM agents conducted a surveillance in the area; the said information was subsequently confirmed. [11] In the morning of 13 June 1987, at around 10:00 a.m., the PC NARCOM sent a team composed of 1Lt. Gualberto Medalla, Sgt. Virgilio Caro and C1C Domingo S. Bolivar to conduct a buy-bust operation in the area together with one Nestor Agudo, an alleged member of the Philippine Army, who was to act as poseur-buyer. The latter was instructed to pretend to be a drug user who wanted to buy marijuana sticks from the suspected pusher; he was told that upon receiving the said marijuana, he was supposed to tap his head. This would be the signal for the agents to move in against the suspected pusher. [12]

The team thus proceeded to the house of the accused at Saturn St., Singcang, Bacolod City; the PC NARCOM agents posted themselves outside the house while the poseur-buyer went in to purchase P9.00 worth of marijuana. After a while, the poseur-buyer went out of the house and gave the pre-arranged signal -- the tapping of his head -- to the members of the buy-bust team. Upon seeing the signal, the team swooped down into the house, introduced themselves as police authorities and placed the accused under arrest for selling marijuana. They then searched the body of the accused and allegedly recovered the ten-peso bill used in the purchase. They likewise searched his house and found two (2) match boxes full of marijuana leaves and seeds. [13]

Subsequently, when questioned as to who his source of marijuana was, the accused named a certain Jimmy Blanca of Capitol Extension, Bacolod City. The NARCOM agents, together with the accused, then proceeded to Jimmy's house in Capitol Extension; unfortunately, they were not able to locate him there. They were informed that Jimmy Blanca had gone to Punta Taytay. Thus, they proceeded to Punta Taytay where they were able to arrest him; when accosted, Jimmy had in his possession 20 grams of marijuana. Both the accused and Jimmy Blanca were then brought to the police station for investigation; while there, the accused, without the assistance of counsel, [14] executed an affidavit wherein he admitted his guilt.

The seized items were later brought to the PC/INP Crime Laboratory in Iloilo City where they were examined by Lt. Zenaida Sinfuego. After examining the three (3) marijuana cigarettes and the two (2) match boxes containing suspected marijuana seeds, she found them positive for marijuana. Her findings are contained in Chemistry Report No. D-126-87. [15]

The accused's version of the incident is summarized by the trial court as follows:

"The defense presented only one witness, the accused Freddie Tantiado, 23 years old, single and a resident of 142-C Saturn-Venus Sts., Singcang, Bacolod City. He testified that on June 13, 1987, alone (sic), in his house made of wood at Singcang, Bacolod City, C1C Domingo S. Bolivar rammed the door and when he gained entrance he fired a shot while Lt. Medalla and Sgt. Caro conducted a search, without search warrant neither (sic) did they introduce themselves. At around 10:00 o'clock accused Freddie Tantiado was brought to the headquarters and while in transit riding on (sic) a jeep the NARCOM Agents kept on asking him the source of the marijuana and he pointed to Jimmy Blanca, a resident of Capitol Extension, Bacolod City. But when they arrived there Jimmy Blanca was at Punta Taytay. So they proceeded to Punta Taytay where Jimmy Blanca was apprehended. He and Jimmy Blanca were brought to the PC Headquarters. C1C Bolivar and Sgt. Caro investigated him while Jimmy Blanca was investigated by Lt. Medalla. He was apprised of his constitutional right to be assisted by counsel but he told them that he did not know of any lawyer. Despite the fact that he had no counsel they continued on asking him in vernacular (sic) while the same was translated to English. After the investigation (he) Freddie Tantiado was told to sign the affidavit, Exh. "A", signed by Freddie Tantiado, Exh. "A-1". Later he was taken to the City Jail." [16]

In this appeal, accused assigns the following errors:

I. THE TRIAL COURT ERRED IN NOT HOLDING (sic) THE NON-PRESENTATION OF THE ALLEGED POSEUR-BUYER AS WITNESS FOR THE PROSECUTION A FATAL FLAW.

II. THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

III. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT FREDDIE TANTIADO Y BILLONES ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT." [17]

In support of the first assigned error, accused contends that the testimony of Nestor Agudo, the poseur-buyer, was necessary to the prosecution's cause because not one of the members of the buy-bust team saw what had actually transpired between him (accused) and the said poseur-buyer. The testimonies of Sgt. Caro and C1C Bolivar which pointed to the accused as having sold three (3) sticks of marijuana cigarettes to the poseur-buyer do not inspire belief for the two are not in a position to narrate what had happened in the morning of 13 June 1987. Thus, accused stresses that the poseur-buyer should have been presented as a witness to shed light on the alleged criminal transaction; he further claims that the non-presentation of said poseur-buyer gives rise to the presumption that had the latter testified, his testimony would be insufficient to support a finding of guilt. Accused also points out to the fact that the ten-peso bill (with serial number SYO 45433) allegedly used in the buy-bust operation was not presented in evidence; such a circumstance casts additional doubt on the veracity of the prosecution's version of the transaction.

Furthermore, he contends that the statement taken from him during the custodial investigation is inadmissible in evidence because it was given without the assistance of counsel; thus, paragraphs (1) and (3), Section 12, Article III of the New Constitution were violated.

In his second assignment of error, accused bewails the fact that the trial court believed the prosecution witnesses because his own testimony had lapses and inconsistencies. He asserts that as a matter of fact, the prosecution witnesses, C1C Bolivar and Sgt. Caro, gave conflicting and contradictory statements themselves: [18]

"Confronted during trial, C1C (sic) Bolivar stated that accused-appellant was with two other persons when they arrested him inside his house and that the poseur-buyer was able to buy marijuana from the accused-appellant worth P9.00, only to state later on that a P10.00 bill was recovered. (TSN, November 25, 1988 pp. 7 & 30) However, Sgt. Caro (who claimed being (sic) present during the buy-bust operation) testified

otherwise to the effect that accused-appellant was alone inside his house when they put him under arrest for selling marijuana worth P9.00 (TSN, May 11, 1988 pp. 5 & 12). On that score, their credibility as a witness (sic) is no doubt tainted, hence, undeserving even the (sic) scantiest (sic) attention."

Concluding with his last assignment of error, accused submits that his guilt was not proven beyond reasonable doubt; hence, the Constitutional presumption of innocence should prevail.

The accused should be acquitted.

In the Appellee's Brief, the Solicitor General: candidly concedes to the accused's position that the latter's guilt for the crime of unlawful sale of marijuana under Section 4, Article II of the Dangerous Drugs Act, as amended, was not sufficiently proven; agrees with the argument that the presentation of Nestor Agudo, the poseur-buyer, was necessary to establish that he (accused) sold marijuana to the said poseur-buyer; declares that the testimonies of Sgt. Caro and C1C Bolivar are merely hearsay because these two (2) did not see the actual sale itself; and acquiesces to the conclusion that the failure of the prosecution to present the poseur-buyer gives rise to the presumption that evidence willfully suppressed would be adverse if produced.

The Solicitor General further agrees with the accused's assertion that the testimony of Sgt. Caro -- to the effect that the accused was alone when arrested -- irreconcilably conflicts with the statement of C1C Bolivar, Jr. that the accused, when apprehended, was with two (2) companions and that they were smoking marijuana. This unexplained and irreconcilable conflict casts more doubt on the alleged buy-bust operation and renders the testimony of the poseur-buyer indispensable.

However, while the Solicitor General is convinced that the accused cannot be held liable for the violation of Section 4, Article II of the Dangerous Drugs Act, as amended, a conviction for the unlawful possession of prohibited drugs will, nevertheless, lie under Section 8, Article II of the said Act in view of an admission in open court that at the time he was arrested, the accused was in possession of marijuana obtained from Jimmy Blanca. The crime of unlawful possession penalized in Section 8 is necessarily included in the crime of unlawful sale penalized in Section 4.

A careful review of the evidence adduced by the Prosecution sustains the conclusion of both the accused and the Solicitor General that with respect to the alleged violation of Section 4, Article II of the Dangerous Drugs Act, the prosecution failed to discharge its burden of proving beyond reasonable doubt the guilt of the accused. And as will be shown later, neither can the latter be convicted for the lesser crime of unlawful possession defined under Section 8 of said Article. The accused, therefore, is entitled to an acquittal.

The Prosecution's fatal mistake lies in its failure to call to the witness stand the poseur-buyer. We are thus confronted with a situation where the success of the prosecution depends entirely upon the testimony of the poseur-buyer because (a) the PC NARCOM agents who planned and implemented the buy-bust operation did not actually witness the alleged transaction between the poseur-buyer and the accused which purportedly took place inside the latter's house and beyond the view of the agents; (b) there is absolutely no evidence to show when and how the poseur-buyer allegedly delivered or turned over to the NARCOM agents the three (3) marijuana sticks allegedly bought from the accused for P9.00; and (c) the so-called buy-bust money was not pre-marked, identified by any witness and offered in evidence; the same is only mentioned in the receipt of property seized (Exh. "C").

That the NARCOM agents were not able to observe the poseur-buyer and the accused when the purported transaction took place is admitted by agent Bolivar, thus:

"FISCAL CUÑADA:

x x x

Q Do I understand from your answer that when the agent [meaning, poseur-buyer] made the purchase he was visible to you?

A No, sir. It was inside the house but we were posted near the house where the suspect was staying.

Q Upon seeing the pre-arranged signal, what did you do?

A We immediately came to the house where the suspect was staying."[19]

Both Caro and Bolivar failed to reveal in their respective testimonies how they were able to obtain possession of the three (3) sticks of marijuana cigarettes. This is, in all probability, due to the fact that the prosecuting fiscal, either by sheer negligence or inadvertence, failed to ask the said witnesses questions relating thereto. While it appears that the poseur-buyer, for security reasons,[20] left the scene of the buy-bust operation immediately after the arrest, information as to what he did after giving the pre-arranged signal but before leaving was not elicited from him. This gap in the prosecution's evidence has thus added more doubt to an already inconclusive finding with respect to the cause of the accused's arrest. While during direct examination, Caro testified that the accused was arrested for selling three (3) sticks of marijuana cigarettes, thus:

"COURT:

Q Why did you arrest him?

A (Witness) We arrested Freddie Tantiado because he was selling 3 sticks of marijuana to our pusher (sic) buyer."[21]

On cross-examination, he declared that the accused was arrested for selling marijuana leaves, thus:

"ATTY. DITCHING, JR.:

Q What was the reason why you arrested the suspect?

A He was actually selling marijuana leaves."[22]

Compounding the weakness of the prosecution's evidence on this point is Bolivar's candid admission during cross-examination that based on the information given by the poseur-buyer, he merely presumed or concluded that the three (3) marijuana sticks and the 50 grams of marijuana leaves in two (2) match boxes belonged to the accused. Thus:

"ATTY. DITCHING:

Q And you also stated before that you presumed that the three sticks of marijuana and the 50 grams of marijuana leaves in two match boxes belonged to the accused, is that right?

A Because of the information given to us by our agent that he bought the sticks of marijuana from the accused so we can conclude (sic) that those (sic) marijuana belonged to him."[23]

In view of the NARCOM agents' failure to witness the alleged transaction between their poseur-buyer and the accused, which thus renders their testimonies in respect thereto as hearsay, and the inability of the prosecution to establish when and how the agents obtained possession of the three (3) sticks of marijuana cigarettes from the poseur-buyer, the testimony of the poseur-buyer becomes significantly material and indispensable; therefore, the same should not be considered as merely cumulative or corroborative evidence. Without such testimony, it is inconceivable that the prosecution would be able to discharge its burden of rebutting the presumption of innocence which every accused enjoys under the Bill of Rights in our Constitution. Otherwise stated, the alleged sale of the three (3) sticks of marijuana cannot be established without the testimony of the poseur-buyer. Thus, the

instant case presents a situation which is to be viewed as an exception to the general rule that the non-presentation of the poseur-buyer is not essential for the conviction of the accused if the testimony of the former is merely cumulative or corroborative.[24]

In *People vs. Olaes*,[25] this Court held:

"Secondly, this case exemplifies the instance where the non-presentation of the supposed poseur-buyer is fatal to the prosecution's case. The records show that the alleged sales transaction took place inside the house of appellant. In other words, the transaction was supposedly witnessed only by the poseur-buyer, Manuelito Bernardo. Only he has personal knowledge of such transaction which is the subject matter of this prosecution. In *People vs. Ramos*, (186 SCRA 184, [1990]) where the alleged informant and poseur-buyer was one and the same person, we stressed that without the testimony of said poseur-buyer, there is no convincing evidence pointing to the accused having sold marijuana. In this case, the police officers did not see the actual sale of marijuana. For the culprit to be convicted, the element of sale must be unequivocally established. Yet, the alleged poseur-buyer in the 'buy-bust' operation, the only one who allegedly dealt directly with appellant in the purchase of marijuana, was not presented at all at the trial. Under such circumstances, we have repeatedly held that the failure of the prosecution to present the alleged buyer was a fatal blow to the case against the accused."

There is also merit in the accused's contention that the buy-bust money should have been presented in evidence. In the absence of an eyewitness to the sale of the three (3) sticks of marijuana cigarettes, the identification and submission in evidence of the buy-bust money was necessary, if not indispensable, to prove, even if only circumstantially, the fact of sale. In previous cases, this Court ruled that the prosecution need not present in evidence the buy-bust money if the sale of the prohibited drug had been adequately proven by other independent evidence.[26]

There is no need to discuss the accused's final plea under the first assigned error that his affidavit, made without the assistance of counsel during custodial interrogation, is inadmissible in evidence as the trial court, correctly rejected the same. Indeed, it was taken in violation of his right to be informed of his right to remain silent and his right to have competent and independent counsel which are both guaranteed under Section 12(1), Article III of the 1987 Constitution.[27]

The Solicitor General, however, maintains that although the accused cannot be convicted for the unlawful sale of the sticks of marijuana cigarettes under Section 4, Article II of the Dangerous Drugs Act, he can be held liable for and be convicted of the unlawful possession thereof under Section 8 of said Article because he admitted such possession during cross-examination. We are unable to agree with the Solicitor General. The contention presupposes the existence of sufficient evidence on record to show that the three (3) sticks of marijuana cigarettes came from the accused. As had been earlier discussed, NARCOM agents Caro and Bolivar did not witness the transaction between the poseur-buyer and the accused; hence, they could not have seen the delivery of the marijuana to the poseur-buyer. Furthermore, both agents did not state that the poseur-buyer turned the three (3) sticks of marijuana cigarettes over to them; as a matter of fact, there was palpable confusion on their part as to whether they arrested the accused for possession of the cigarette sticks or of marijuana leaves.

The so-called admission by the accused on cross-examination is found in the transcript and reads as follows:

"FISCAL GARCIA:

Q Now, you said that after you were arrested and brought to the PU and (sic) you rode in the PU and you passed by Capitol Extension to the (sic) house of Jimmy Blanca, is that correct?

A Yes, Sir.

Q Do you know why you passed by the house of Jimmy Blanca at Capitol Extension?

A Because they asked me to pin-point from (sic) whom I got the marijuana.

Q In other words, you were the one who told the NARCOM (sic) agents that you got the marijuana from the house of Jimmy Blanca?

A Yes, Sir.

x x x

Q In other words, it is clear now that you were not alone and you have (sic) companions namely: Celso Britaña and Placido Jabian?

A Yes, Sir.

x x x

Q Is it not a fact that you talked to your friends and you and your friends were smoking some marijuana cigarettes?

x x x

A (witness) Yes, Sir.”[28]

It cannot be concluded from the cited portion that the accused admitted possession of the three (3) sticks of marijuana cigarettes. All that he specifically admitted is that (1) he procured marijuana and (2) smoked the same. The cross-examiner failed to establish that the three (3) sticks corresponded to the marijuana which he obtained. Also, while his smoking thereof proves possession and use, the same cannot remotely refer to the three (3) sticks as these were not even proven to have been partially used by a smoker. Moreover, if it could be shown that accused was smoking a different stick, with more reason that he cannot be convicted therefor because he was not charged for that.

True, there may be enough basis for the NARCOM agents to suspect that the accused is either a pusher or a user.

However, the inefficient, if not bungled, implementation of a poorly prepared buy-bust plan, coupled with the failure of the prosecution to present a vital witness who could have cured the fatal flaw in its evidence, ensured the acquittal of the accused. It may also be true that the evidence for the accused is weak. Nonetheless, if the evidence for the prosecution does not meet the quantum of proof required for a conviction, i.e., proof beyond reasonable doubt, the weakness of the accused's evidence is totally irrelevant for, as a matter of fact, he is not even called upon to offer the evidence in his behalf. The prosecution must rely on the strength of its evidence and not on the weakness of the evidence for the defense[29] for an accusation is not, in the light of the Constitutional presumption of innocence, synonymous with guilt.[30]

Because of its ineptitude, the Government has again lost a case in the fight against drug pushers and users. It is then timely to exhort the law enforcement agencies, especially those assigned to enforce the Dangerous Drugs Act, to carefully prepare their plans for buy-bust operations and to efficiently and effectively carry them out, ever mindful of the possibility that their blunders may not only frustrate the efforts to eradicate the drug menace but worse, embolden drug lords, pushers or users into defying the authorities. The drug problem has reached harrowing proportions. It has broken the lives, shattered the hopes and destroyed the future of thousands of our young citizens. Society can hardly excuse such blunders in the relentless war against the menace.

To the prosecuting arm of the Government, We reiterate what this Court had said in *People vs. Esquivel*: [31]

"In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state."

WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the decision in Criminal Case No. 5701 of Branch 45 of the Regional Trial Court of Negros Occidental is hereby REVERSED and accused Freddie Tantiado y Billones is hereby ACQUITTED of the crime charged therein.

No pronouncements as to costs.

SO ORDERED.

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

Feliciano, J., on official leave.

[1] Original Records, 1.

[2] Original Records, 172-173 (as quoted in the decision of the trial court).

[3] Id., 7.

[4] Original Records, 173-174. Per Judge Simplicia S. Medina.

[5] Id., 180-181.

[6] Id., 184.

[7] Id., 185.

[8] Id., 189.

[9] Rollo, 2.

[10] Rollo, 1.

[11] TSN, 25 November 1988, 6-7.

[12] Id., 7-8, 29; TSN, 11 May 1988, 16-17.

[13] TSN, 11 May 1988, 5; TSN, 25 November 1988, 9-10.

[14] Id., 5-7; Id., 14-17.

[15] TSN, 28 February 1989, 4, 6.

[16] Rollo, 19.

[17] Appellant's Brief, 1; Rollo, 44.

[18] Appellant's Brief, 10; Rollo, 44.

[19] TSN, 25 November 1988, 8-9.

[20] TSN, 11 May 1988, 13.

[21] TSN, 11 May 1988, 4.

[22] Id., 12.

[23] TSN, 25 November 1988, 31.

[24] People vs. Capulong, 160 SCRA 533 [1988]; People vs. Andiza, 164 SCRA 642 [1988]; People vs. Tangliben, 184 SCRA 220 [1990]; People vs. Consuelo, 184 SCRA 402 [1990]; People vs. Olaes, 188 SCRA 91 [1990]; People vs. Bati, 189 SCRA 97 [1990]; People vs. Fernandez, G.R. No. 86495, 13 May 1992.

[25] Supra.

[26] People vs. Sanchez, 173 SCRA 305 [1989]; People vs. Mangusan, 189 SCRA 624 [1990]; People vs. Alerta, Jr., 198 SCRA 656 [1991].

[27] People vs. Gonzales, 189 SCRA 343 [1990].

[28] TSN, 23 June 1989, 11-13.

[29] People vs. Bagano, 181 SCRA 747 [1990].

[30] People vs. Dramayo, 42 SCRA 59 [1971]; People vs. Pido, 200 SCRA 45 [1991].

[31] 82 Phil. 453, 459 [1948].

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