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Court : Patna

Decided On : Sep-23-1994

Judge : Nagendra Rai and I.P. Singh, JJ.

Appeal No. : Criminal Appeal No. 456 of 1992

Appellant : Mohammad Nizamuddin

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : Nagendra Rai, J. 1. The sole appellant was put on trial before 2nd Additional Sessions Judge, Bhojpur, Arrah in Session trial No. 120 of 1992 for the offence under Sections 304B, 316 and 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, who has convicted him under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life, under Section 498A and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000 and in

Judgement :

Nagendra Rai, J.

1. The sole appellant was put on trial before 2nd Additional Sessions Judge, Bhojpur, Arrah in Session trial No. 120 of 1992 for the offence under Sections

304B, 316 and 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, who has convicted him under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life, under Section 498A and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000 and in default to undergo further rigorous imprisonment for three months, under Section 316 of the Indian Penal Code and has sentenced him to undergo rigorous imprisonment for seven years and under Section 3/4 of the Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for six months. However, he has directed that all the sentences awarded against the petitioner shall run concurrently.

2. Samsad Begum alias Munni, the deceased, born from the wedlock of Abdul Salam (P.W. 1) and Tahira Begum (P.W. 7) resident of village Milki Anite, Arrah town was married to appellant Nizamuddin, resident of village Koilwar on 7.6.1987. A son was born out of the aforesaid wedlock in the year, 1988 and at (he time of the alleged murder of the deceased was carrying a pregnancy of about 7 to 8 months.

The prosecution case, in brief, is that at the time of marriage sufficient dowry was given by the father and other family members of the deceased according to their means. Even after the marriage the appellant used to demand different items as dowry, which was being fulfilled by Abdul Salam (P.W. 1) father of the girl. Two months prior to the occurrence the appellant demanded a dressing table which was also given, even then he was not satisfied. On the other hand, he used to subject the deceased to cruelty and harassment and also assaulted her. On 19.12.1989 at about 7.00 a.m. one person from village Koilwar came at the house of the father of the deceased and informed that in the preceding night at about 1.30 a.m. Samsad Begum alias Munni the deceased had died. On enquiry as to the cause of death the said person showed his ignorance. On hearing the news of death of the deceased Samsad Begum the informant namely, Md. Jamal Akhtar, brother of the deceased (P.W. 8), mother of the deceased (P.W. 7) and other went to village Koilwar. They noticed that the deceased was done to death by pressing her neck by the appellant for non-payment of dowry.

3. Md. Jamal Akhtar (P.W. 8) filed a written report (Ext. 3) before the Officer Incharge of Koilwar Police Station at 10.20 a.m. On the basis of which the formal F.I.R. (Ext. 5) was drawn up by Manmohan Prasad, Officer Incharge of Koilwar Police Station (P.W. 10).

4. The Investigating Officer visited the place of, occurrence on the same, day and found the deadbody situate in north west of the house of the appellant, He also found the ropes of different lengths and size outside the house. He prepared the seizure list (Ext. 6). He also held the inquest report over the dead body (Ext. 7). He also sent the dead body for the post-mortem examination and after receipt of the post-mortem report (Ext. 4) and after completion of the investigation, submitted the charge-sheet. After cognizance and commitment of the case, the appellant was put on trial which ended in his conviction as stated above.

5. The prosecution has examined ten witnesses in support of the case. Out of whom P.W. 1 Abdul Salam is the father of the deceased and P.W. 7 Tahira Begam is the mother of the deceased. P.W. 5 Md. Junaid Akhtar and P.W. 8 Jamal Akhtar are the brothers of the deceased. P.W. 2 Md. Sarfaraj Alam and P.W. 6 Md. Muzafar All are the cousin brother of the deceased. They have been examined by the prosecution on the point that the demand of dowry, was made by the appellant and the family of the deceased met the demand of dowry, even then the appellant subjected the deceased to cruelty and harassment. On the date of occurrence when they were informed about the death of the deceased they went and found the dead body in, the house of the appellant. They also noticed red mark on the neck of the deceased suggesting that she was done to death by pressing her neck. P.W. 3 Md. Sarfaraj Ahmad is a witness on the point that he had gone with the informant on 24.12.1989 where Md. Jamal Akhtar (P.W. 8) handed over two photo copies of the letters Ext. 1 and I/I. P.W. 4; Jalaluddin has been tendered. P.W. 9 Dr. Ajoy Kumar Verma is the doctor who held autopsy over the dead body of the deceased. P.W. 10 Manmohan Prasad, as stated above, is the Investigating Officer in this case.

The defence has also examined eight witnesses. D.W. 1 is Md. Issah who had stated that he mediated the marriage of the deceased and the appellant and at the

time of the marriage no demand of dowry was made. D.W. 2 Md. Sahbub, D.W. 3 Sanjay Kumar Choudhary and D.W. 4 Hasina Khatoon are the neighboured of the appellant and they are witnesses on the point that in between the night of 19th December, 1989 at about 2.00 a.m. they heard hulla from the house of. the appellant. They went there and found the deadbody of the deceased hanging from the wooden log (Dharans) and a table was also kept in the said room. They with the help of other villagers cut the rope and found that the deceased had died. D.W. 6 Md. Shamim Akhtar has proved the Cash memo granted by the proprietor of one Bhojpur Electronics (Ext. p). D.W. 7 Kailash Pd. Gupta has proved the insurance policy of the appellant where the deceased has been shown as nominee. D.W. 5 Saleha Anjum is own sister of the appellant and she has produced several letters written by the appellant to the deceased (Ext. C series) D.W 8 Md. Irriran Ali has proved the identity card of the deceased to show that she was admitted in H.D. Jain College, Arrah.

6. Learned senior counsel for the appellant Mr. Rajendra Singh has also contended that the prosecution has failed to prove the ingredients of offence under Section 304B against the appellant. In this connection he contended that the prosecution has failed to prove that a demand of dowry was made by the appellant as the evidence on the point of demand of articles is discrepant and not worth reliance. He also contended that there is nothing on the record to show that soon before her death she was subjected to cruelty or harassment for or in connection with any demand of dowry. He also contended that the prosecution has failed to prove any of the offences alleged against the appellant.

7. Section 304B was inserted by the Dowry Prohibition (Amendment) Act, 1986 and the essential requirements of the aforesaid section are as follows:

(a) The death should have been caused within seven years of the marriage of the deceased.

(b) The death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances.

(c) The deceased should have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death.

(d) The cruelty and harassment should be for, or in connection with any demand of dowry.

Section 113B of the Evidence Act was also inserted by the aforesaid Amendment Act. The said provision raises a presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

8. In the present case so far as the marriage of the deceased with the appellant is concerned it is admitted position that she was married in 1987. The deceased died on 19.12.1989 and thus such the death occurred within seven years of the marriage.

9. The next question to be considered is as to whether the deceased died in a circumstance other than normal circumstances. According to the prosecution she was done to death by the accused by pressing her neck whereas according to the defence version she committed suicide by hanging herself. The evidence of P.Ws 1, 2, 4, 5, 6 and 7 is that after having informed about the death of the deceased they went to the house of the appellant and found the deadbody in one of the rooms of his house. They noticed red mark on the neck of the deceased suggesting that she was done to death by pressing her neck.

P.W. 9 Dr. Manoj Kumar Verma held the post-mortem examination on 19th December, 1989 at 2.30 p.m. and found two injuries:

(1) Blackish depressed mark i.e., ligature mark around the upper neck with economised margin about 3/4.

(2) Face petechial haemorrhage seen and conjunctive eye conjunctivitis, conjunctured, pupil dilated, lip blue, blood foam dried in the angle of mouth and nose.

On dissection he found following internal appearances:

- (1) Extra vasation of blood in the subcutaneous tissue under legature mark.
- (2) Platysma muscle lacerated blood extra variation.
- (3) Carotid Artery-laceration of teeth with fusion of blood into their walls.
- (4) Cornua thyroid bone fractured thyrohyoid membrane ruptured.
- (5) Larynx and trachea constricted.
- (6) Lungs constricted.
- (7) Heart right side full dark fluid blood, left side empty.
- (8) Abdomen-stomach empty and constricted, liver-spleen and kidney all are, constricted, intestine constricted, Urinary bladder about 1 ounce of urine was present.

He further found the deceased was pregnant and carrying a baby. According to him the asphyxiation of mother and baby was due to strangulation and the injury found on the person of the deceased was sufficient to cause death of the mother and the child. In cross-examination he has stated that the presence of legature mark may be due to hanging but this legature mark on the deceased was not of hanging, the depression on the legature means it was pressed and the muscle remained pressed, on a living body if pressure is applied then the muscle will come back to the original shape but in a dead muscle it is not possible it remains depressed. Thus from the evidence of the doctor it is clear that legature mark around upper neck of the deceased was found and she died due to strangulation which was not possible by hanging. Thus, it is clear that the death of the deceased was not in a normal course and it was in circumstances other than a normal circumstance and thus the prosecution has been believable to prove the second ingredients of offence under Section 304B of the Indian Penal Code also.

10. The prosecution evidence on the demand of dowry and subjecting the deceased to cruelty and harassment for non-payment of it consists of the evidence of P.Ws 1,2,5,6,7 and 8. In the F.I.R. it was alleged by the brother of the deceased P.W.8 that the appellant used to demand different articles as a dowry which was met by his father. Two months prior to the occurrence the appellant demanded a

dressings table which was also given to him then he was not satisfied and he used to assault the deceased in connection with the demand of dowry. P.W. 1 is the father of the deceased. He has stated about the marriage of her daughter with the appellant. He has stated that his daughter came to his house two times after the marriage and she used to narrate that her husband and mother-in-law used to abuse her in different ways for not getting sufficient dowry. Thereafter, he gave dressings table, watch and one thousand rupees to the appellant as dowry even then the appellant was demanding scooter and he was harassing the deceased in different ways for not fulfilling the demand of dowry. Whenever, his family members visited the deceased in-law's house she requested them to meet the demand of the appellant as he has made her life miserable. He has also proved two letters written by the deceased i.e. Ext 1 and 1/1. According to htm, when a person informed him about the death of her daughter on 19.12.1989, he enquired from the said person for the cause of death but that person did not say anything. Thereafter, he went to the house of the appellant on a motor cycle with his nephew and thereafter his other family members also came there and saw the deadbody of the deceased lying in a room and noticed a red colour mark on the neck suggesting she was done to death by pressing her neck. It was submitted that the evidence of this witness is not reliable on the ground that, in his earlier statement before the police the witness has not stated that during the second visit of his daughter, to his house she had complained of cruelty and harassment at the hands of the appellant for not meeting the demand of dowry. It is difficult to reject the evidence of this witness on this ground as in his earlier statement, as appear from the statement of P.W, 10, he has stated that his son-in-law was demanding the dressings table and scooter. The evidence of this witness on the point of demand of dowry and the disclosure made by the deceased that she was subjected to cruelty and harassment is reliable one.

P.W. 7 the wife of P.W. 1 and the mother of the deceased, has stated that after the marriage of her daughter the mother-in-law and the appellant were demanding dressings table and scooter as a dowry. They also demanded silver utensils and silver moon and she met the aforesaid demand even then the mother-in-law of the deceased was demanding dressings table and scooter, otherwise the appellant would be married with another lady. She has also stated that dressings table was

given to the appellant. In cross-examination she has admitted that twice he had visited the house of the appellant. First, at the time of 'Chheka Ceremony' and second time when she had gone with silver utensils and silver moon. She had also stated that the silver utensils were given to the appellant because of threat given by him. Other articles were also given because of threat of the appellant. Her family members had also become ready to give scooter due to threat given by the appellant. According to learned*counsel for the appellant the evidence of thi3 witness falsifies the prosecution case as according to her evidence mother of the appellant demanded the diessing table and the scooter and not the appellant. It is difficult to accept the aforesaid submission for the reason that she had made a statement that the demand of dowry of dressing table and scooter was made by the appellant as well as his mother and at one place she has stated only that mother of the appellant demanded the same. Her evidence as a whole on the point of demand of dowry inspire confidence.

P.W. 5 Md. Juriaid Akhtar is the brother of the deceased, He has also stated that whenever he visited his sister she used to tell him to meet the demand of dowry otherwise the appellant and his family members would kill her. She also used to state that she was subjected to abuses and assault for not fulfilling of dowry. He has also stated that the appellant and has family members were demanding the dressing table and the scooter. His sister used to write letter asking his family to meet the demands of dowry. No doubt, in cross-examination he has stated that he had not stated about the demand of dowry as well as harassment to his sister to others but on this ground alone his evidence cannot be rejected.

Informant P.W. 8 and two of his cousins, namely, P.W. 2 and 6 have also supported the demand of dowry by the appellant and the harassment caused to the deceased for not fulfilment of the dowry. Learned Counsel for Uie appellant could not point out.any infirmity in their evidence on the aforesaid point. Thus, the oral evidence on behalf of the prosecution proves that a demand of dowry was made by the appellant and his mother time to time and the family members of the deceased met most of the demands. Just two months prior to the occurrence a dressing table was supplied to the appellant. The appellant was pressing for a scooter. The father of the deceased had also promised to meet the aforesaid

demand. The evidence also shows that the lady was subjected to cruelty and harassment and she has narrated the aforesaid fact to her parents and brothers.

11. Learned Counsel for the appellant contended that the prosecution story that before her death the appellant was demanding scooter and because of non-fulfilment of the said demand she was done to death is falsified by the fact that no such case was made in the F.I.R. No doubt, in the F.I.R. it was not specifically stated that a demand of scooter was also made by the appellant but it was clearly stated that two months prior to the occurrence a dressing table was given to the appellant even then he was not satisfied and for dowry he used to assault and harass the deceased. The F.I.R. is not an encyclopedia in the sense that meticulous details should be given in the F.I.R. Its object is to set the criminal law in motion. In view of the aforesaid statement in the F.I.R. that the appellant was demanding dowry even after supply of dressing table the omission to mention specifically the demand of scooter in the F.I.R. is not such a vital omission as to affect the substratum of the prosecution case. The witnesses have consistently said about the demand of scooter and their evidence is consistent on this point and in that view of the matter the prosecution case cannot be thrown out for the aforesaid omission.

12. Apart from oral evidence the prosecution has brought two letters alleged to have been written by the deceased to her father requesting him to meet the demand of dowry. In one of the letters dated 27.8.1987 she requested her father to give dressing table even if he has to take loan for that. She has stated therein that the appellant used to abuse her. She has further stated that since her marriage she is in a pitiable condition. In the other letter Ext. 1/1 she has stated that the appellant used to tell her that she should be kept like a servant. She has further stated that the appellant is proud of his money and thinks that no body can do anything against him whatever he will do. She never dreamed that she has to face such a bad situation. The contents of these two letters show beyond doubt that the appellant was harassing the deceased in different ways for fulfilment of demand of dowry as such the ocular testimony of the witnesses is supported by the content of the aforesaid letters. However, learned Counsel for the appellant contended that these two letters cannot be taken into consideration for the reason that in the

examination of the appellant under Section 313; Cr.P.C. no question was put to the accused with regard to these letters and as such the aforesaid two letters cannot be taken into consideration against the appellant and have to be ignored altogether as the appellant has no chance to explain the circumstances appearing against him. In this connection he relied upon a judgment of the Supreme Court in the case of Sharad Birdhichand Sharda v. The State of Maharashtra AIR 1994 SC 1622 wherein it was held that unless the circumstances appearing against the accused are put to him in his examination under Section 313, Cr.P.C. the same cannot be used against him.

13. Section 313, Cr.P.C. requires that the accused must be specifically informed of the incriminating evidence of circumstances brought on the record by the prosecution with a view to afford him an opportunity to offer an explanation. The said section imposes a heavy duty on the Court that the evidence or circumstances appearing against the accused should be put to him and his answer is recorded. The failure to put the circumstance or the evidence against the accused under Section 313, Cr.P.C. is a serious lacuna and unless the prosecution shows that no prejudice has been caused to the accused because of the same the aforesaid circumstances or the evidence has to be excluded from consideration. In the present 'case from the examination of the accused under Section 313, Cr.P.C. it appears that the contents of the two letters have not been put to the accused in his examination under Section 313, Cr.P.C. However, the question that appellant was demanding dowry in the shape of scooter etc. and for the said reason he used to harass and assault the deceased has been put to the appellant in his examination. In my view, in such a situation though no specific question with regard to contents of the letters was put to the appellant in his examination, no prejudice has been caused to him on this ground. However, even if the submission advanced on behalf of the appellant is accepted that these two letters should be kept out of consideration, the same would not make any difference. For the simple reason that there is consistent evidence of six witnesses, namely PWs. 1,2,5,6,7 and 8 on the point that the deceased was subjected to cruelty and harassment for non-fulfilment of the demand of dowry.

14. Learned Counsel for the appellant further contended, that in this case the prosecution has failed to prove that soon before her death she was subjected to cruelty and harassment by the appellant for or in connection with demand of dowry. The prosecution evidence only shows that she was subjected to cruelty and harassment much prior to her death. In other words, deceased was not subjected to cruelty and harassment soon before her death. I am unable to agree with the aforesaid submission for the reasons stated hereunder. The word cruelty has not been defined under Section 304B of the Indian Penal Code but the same has been defined in the explanation to Section 498A of the Indian Penal Code, which runs as follows:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

From the aforesaid definition it is clear that any conduct on the part of the husband or relative of the husband subjecting the woman to commit suicide or to cause grave injury etc. to the woman or her harassment with a view to coerce her or any person related to her to meet the unlawful demand for any property or valuable security or any person related to her to meet such demands amounts to cruelty. In the present case, the evidence on the record clearly shows that the deceased as well as her family members were harassed and tortured to meet the demand of dowry soon before her death.

15. Learned Counsel for the appellant contended that the prosecution has not proved that harassment and cruelty was subjected to the deceased for or in connection with a demand for dowry as the demand in the case does not fall within the definition of dowry as defined under Section 2(1) of the Dowry Prohibition Act. In my view, the said submission is without any substance for the reason that the definition of dowry given under Section 2(1) of the Dowry Act provides inter alia

that if any property or valuable security given or agreed to be given either directly or indirectly by either party to the marriage or their parents or before or after the marriage as consideration, for marriage the same would amount to dowry. The evidence consistently shows that soon after the marriage when the deceased came to her father's place the demand of dowry was made by the appellant from her family. The family members of the deceased met the demand even then the appellant 'continued to demand further items as dowry. The evidence on the record in my view, fully satisfies the requirement of definition of dowry as given under Section 2(1) of the Dowry Prohibition Act, Thus, the evidence adduced by the prosecution proves all the ingredients of Section 304B against the appellant.

16. Section 113B of the Evidence Act raises a presumption as to the dowry death, which runs as follows:

When the question is whether a person has committed the dowry, ieath of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

According to the aforesaid section' if soon before her death a woman was subjected to cruelty or harassment for or in connection with any demand for dowry then the Court shall presume that the person subjecting her to cruelty and harassment has committed the dowry death. In this case the prosecution has proved all the ingredients of the aforesaid section and as such it shall be presumed that the appellant has committed the dowry death.

17. The learned Counsel for the appellant contended that the appellant by adducing evidence has proved that the death took place in a different manner. In this connection, he relied upon the evidence of the defence witnesses examined in this case. Let us consider the defence witnesses to find out as to whether their evidence is worth acceptance. D.W. 1 is witness on the point that he arranged the marriage of the appellant with the deceased and for the marriage no demand of dowry was made from the side of the appellant. In the examination-in-chief this witness has stated that he cannot say as to the relationship between the deceased

and her husband and in-laws. D.W. 2 has stated that he is neighbour of the appellant. On the date of occurrence he was at his house at about 2.00 a.m. He heard cry of the appellant and rushed there and found one table in the room and the deadbody of the deceased was hanging. The plastic rope was tied around her neck connected with a piece of wooden log (Dharan). This witness in cross-examination has admitted that 10 to 12 persons had come in the house but he did not know the name of any person though the same were resident of his own Mohalla. According to him he has further stated that he did not disclose the aforesaid fact to any person in his village and for the first time has stated this fact in the Court. In such situation, it is difficult to accept the evidence of this witness. D.W. 3 has also stated the same thing as stated by D.W. 2. He has further stated that he has asked by the appellant in the morning to inform about the death of the deceased to her parents and other family members and thereafter he went to the village Milki Anite Arrah and told about the death of the deceased to one person meaning thereby father of the deceased. This witness in cross-examination has stated that for the first he has deposed about the said fact in the Court. He has further stated that earlier he had never visited the father's place of the deceased. He has also stated, that he was not identifying the person to whom he told about the death of the deceased in the village Milki Anite. He has also admitted that he did not tell to the said person that the deceased died after hanging herself. He also admitted that he cannot give any description of the place in village Milki Anite where he had gone to inform about the death of the deceased. Thus, the statements made by this witness in cross-examination falsify the assertion that he has informed the father of the deceased. D.W. 4 has also stated that on hulla she went there and found the deadbody of the deceased hanging and a table was there. She has stated in cross-examination that on hulla 10 to 12 persons came but she could not name even one person amongst them. For the first time she has stated about the said fact in the Court. The evidence of D.Ws. 2, 3 and 4 that they found the deceased hanging and a table was in the room is falsified by the evidence of P.W. 10 who did not find any table in the room. Thus, on the basis of the aforesaid evidence of D.Ws., it cannot be said that the deceased died by hanging herself.

Thus, the evidence of the defence witnesses does not inspire confidence and they have failed to prove that the deceased committed suicide by hanging herself. If the deceased committed suicide by hanging herself then the appellant should have informed the police which is at a distance of 1 Km. Non-information to the police as well as non-information to the family members of the deceased is a circumstance against the appellant. Thus, after having given my thoughtful consideration, I am of the view that the prosecution has fully established the offence under Section 304B of the Indian Penal Code against the appellant.

18. The deceased was carrying a pregnancy of about 7 to 8 months and the postmortem report also shows that baby died due to asphyxia as a result of strangulation and as such ingredients of Section 316 of the Indian Penal Code has also been proved in this case. The deceased was subjected to cruelty and harassment and as such the offence under Section 498A of the Indian Penal Code has been fully proved against the appellant. Thus, the trial Court has rightly convicted the appellant under the aforesaid sections. The prosecution has also proved the ingredients of offence under Sections 3 and 4 of the Dowry Prohibition Act.

19. So far as this sentence concerned the trial Court has awarded the sentence of life imprisonment under Section 304 of the Indian Penal Code. The evidence on the record shows that the deceased was having a child of one year at the time of her death. The appellant is the only bread-winner in the family. There are old parents and a small child in the family, There is no one to look after them. After having given my anxious consideration to the aforesaid aspects, I am of the view that the sentence of ten years rigorous imprisonment in the facts and circumstances would be an appropriate sentence in this case. Accordingly, the sentence of life imprisonment is reduced to a sentence of 10 years under Section 304B of the Indian Penal Code. As appellant has already been convicted and sentenced under Section 304B of the Indian Penal Code, no separate sentence under Section 498 is awarded to the appellant. The sentence awarded under Section 316 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, in my view, is not excessive and the same is upheld. However, the sentences are ordered to be run concurrently.

20. In the result, the appeal is dismissed with modification in the sentence, as mentioned above.

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