



CRL.A.No.709 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

CRL.A.No.709 of 2016

1. Rajkumar
2. Rojamani ... Appellants / Accused

vs.

The State Rep.by
The Inspector of Police,
Kannakurichi Police Station,
Salem District.

Crime No.149 of 2013 ... Respondent / Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the judgment and conviction in S.C.No.114 of 2015 on the file of the Mahila Court, Salem, dated 29.08.2016 is against law and to set aside the conviction and sentence imposed by the trial Court.

For Appellant : Mr.A.Padmanaban
for Mr.K.Prabakar

For Respondent : Mr.S.Udayakumar
Govt.Advocate (Crl.Side)

JUDGMENT

This appeal is preferred against the judgment and decree dated passed in S.C.No.114 of 2015 on the file of Mahila Court, Salem on



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29.08.2016. The details of conviction and sentence are as follows:

1	Name of the Accused	1.Rajkumar 2.Rojamani
2	Name of the Complainant	Inspector of Police, Kannankurichi P.S., Salem District
3	Charges framed	Against both the accused U/s.498(A), 304(B) of IPC and Section 4 of D.P.Act.
4	Plea of accused	Pleaded not guilty
5	Finding of the Court	The accused are found guilty of the offence u/s.498(A), 304(B) of IPC and Section 4 of D.P.Act.
6	Sentence or Order	In the result, both the accused are convicted and sentenced for the offence u/s.498(A) of IPC, to undergo three years R.I., and also each accused to pay a fine of Rs.5,000/- I/d. Of payment of fine amount, 3 months S.I., to each accused and for the offence u/s.304(B) of IPC, both the accused are convicted and sentenced to undergo seven years R.I., and also each accused to pay a fine of Rs.5,000/- I/d of payment of fine amount 3 months S.I., to each accused. For the offence u/s.4 of D.P.Act., both the accused are convicted and sentenced to undergo two years R.I., and also each accused has to pay a fine of Rs.1,000/- I/d of payment of fine amount, one month S.I., to each accused. Total fine amount is Rs.22,000/-. Out of the fine amount Rs.15,000/- to be compensated to



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	PW1(the mother of deceased Radha for her mental agony agony) u/s.357(1) of Cr.P.C., Punishments to run concurrently. The period of detention already undergone by the accused persons are ordered to be set off under Section 428 of Cr.P.C.
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2. The case of the prosecution stated in brief:

2.1. The 1st and 2nd accused are husband and mother-in-law of the deceased Radha. Radha had three sisters and two brothers. All are well educated. But Radha studied upto 10th standard. The deceased Radha was given in marriage to the 1st appellant on 29.11.2009. Parents of Radha gave 7 sovereigns of gold jewels, sridhana articles in par with her three sisters. The deceased Radha and the 1st accused were blessed with one daughter aged about 2 ½ years. Both the accused harassed the deceased Radha by stating that all her sisters are well educated and she has studied only 10th standard and also told her parents that only 7 sovereigns of gold jewels was given to the deceased Radha. She was asked to demand three more sovereigns of gold jewels from her parents. Accused sent deceased Radha to her parents house for the same. Parents of the deceased Radha consoled her and sent back to her in-laws house. On 21.05.2013, at 5.00 p.m., the deceased Radha was brought by her husband Rajkumar(A1) to her parents house and 1st accused demanded



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three sovereigns of gold to the parents of his wife. Parents of the deceased Radha stated that they would give three sovereigns of gold, after their two sons complete their BE Degree Course. For that reply by the parents of the deceased Radha, the 1st accused got angry and slapped Radha and came to his house in a two wheeler.

2.2. Due to the said harassment of the 1st and the 2nd accused, with broken heart, Radha attempted to commit suicide on 21.05.2013 at 8.15 p.m. by pouring kerosene on her and set fire on herself and succumbed to the injuries on 24.05.2013 at about 3.30 p.m. at Salem Government Hospital, due to the effect of burn injuries. Since the deceased Radha died within 7 years from the date of her marriage otherwise than under normal circumstances, the accused have committed offences punishable under Section 304(B) of IPC.

2.3. On receipt of final report, Additional Mahila Court (Magistrate Court), Salem took cognizance of the case and on appearance of accused, copies of documents and statements of witnesses relied upon by the prosecution was furnished to the accused under Section 208 Cr.P.C. On committal to the Principal District Court, Salem, case in S.C.No.114 of 2015 was made over to the Mahila Court for disposal in accordance with law, as the victim happened to be a woman. The Mahila Court framed charges against both accused under Section 498(A), 304(B) of IPC and



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Section 4 of Dowry Prohibition Act.

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3. The learned counsel for the appellant/accused vehemently argued that the conviction was passed based on the dying declaration. It is settled law that conviction can be based on dying declaration, if it is trust worthy inspiring confidence and free from tutoring or brought on imagination. It is his further argument that there are two dying declarations of the deceased. One is her complaint statement and the another one is the statement recorded by the Judicial Magistrate while she was in the hospital.

4. The learned counsel for the appellant further contended that if there are plurality of dying declaration, they get weightage, only if it is found to be voluntary reliable and made in a fit state of mind. It is further argued that in the dying declaration, the 2nd accused was not implicated. In the First Information Report also, nowhere name of the 2nd accused is mentioned. The learned counsel for the appellant vehemently argued that contrary to the above said details in the dying declaration which was given before the Judicial Magistrate, the deceased Radha has implicated her husband as well as her mother-in-law that she was subjected to dowry harassment at the hands of both. He drew the attention of this Court that in



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dying declaration/Ex.P17 which was given before the Judicial Magistrate, the deceased has not mentioned that she was taken to her parents house with her husband on 21.05.2013. Rather she has stated that she went alone and asked for jewels. In respect of the said arguments, the learned counsel for the appellant Mr.A.Padmanaban referred to the following judgments:

i) Abhishek Sharma v. State (Govt. of NCT of Delhi) in Crl.A.No.1473 of 2011 dated 18.10.2023.

ii) Amol Singh v. State of Madhya Pradesh [2008 (2) SCC Crl.637.

5. Per contra, the learned Government Advocate Mr.S.Udaya Kumar strenuously argued that it is proved through medical evidence that the statements of the deceased were recorded when the deceased Radha was in a fit state of mind. The statements of the deceased Radha is supported by her father and mother. Mrs.Prabha/PW10 has stated that on 21.05.2013, she saw the 1st accused came to PW1's house with his wife. It is his further argument that the evidence of PW1 is corroborated by the evidence of PW2. Learned Government Advocate further contended that the evidence of Mythili/PW3 and the evidence of Manikkavasakam/PW8 have further strengthened the prosecution case and based on the oral evidence of the above said witnesses coupled with dying declaration, the trial Court has convicted both the accused. As it is a well reasoned order,



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he pleaded to confirm the conviction and sentence.

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6. On appearance of accused, the substances of charges put-forth against them were explained to them and they pleaded not guilty.

7. To substantiate the charges, the prosecution examined 16 witnesses. 21 documents and 4 Material Objects were marked. On the defence side one witness was examined.

8. PW1 and PW2 are the mother and father of the deceased. PW3 and PW8 are siblings of the deceased Radha. PW4-Dr.A.Ramani Sekar is the Medical Officer of Government Hospital, Salem, who admitted the deceased Radha as inpatient soon after the occurrence. PW5 Dr.Swamynathan certified that the patient was in a fit state of mind to give dying declaration soon before the commencement of dying declaration and till the dying declaration was recorded in full. Dr.Gokularamanan/PW6, Medical Officer, who conducted autopsy on the body of the deceased Radha. M.Chinnadurai/PW7, Special Sub-Inspector of Police, when he was officiating as the Head Constable of Kannangurichi Police Station, identified the dead body to the Doctor who conducted autopsy and handed over the body of deceased Radha to the relatives. Murugan/PW9 is the



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Observation Magazar witness. Prabha/PW10 is neighbour of PW1 and PW11 is the neighbour of accused. PW12 is the Sub-Inspector of Police registered First Information Report. PW13-Mrs.N.Vijayalakshmi, Judicial Magistrate, No.4, Salem, recorded the dying declaration of the deceased Radha. PW14-Mr.Sathish-Revenue Divisional Officer(R.D.O.), conducted enquiry and filed his report. PW15-Muralidharan who is the relative of PW2, who spoke about the issues between the deceased Radha and the accused. PW16-Mr.Udayakumar is the Investigation Officer and laid charge sheet against the accused.

9. It is the evidence of PW1- deceased Radha's mother that on 21.05.2013 at about 5.00 p.m., her daughter Radha and the 1st accused Rajkumar came in a motor cycle to their home. His son-in-law demanded her for 3 sovereigns of jewels as her daughter Radha was not a literate. For which, she expressed inability and promised him to give in future as their sons were studying. When she was answering to him negatively for the demand made by the 1st accused, he assaulted his wife-deceased Radha and 1st accused dragged her and went away. It is her further evidence that the 1st accused used to harass her daughter to get gold jewels from them. On the same day, at about 8 p.m., a phone call was received and it was attended by her daughter Mythili-PW3 and the



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1st accused told her that her sister doused herself in kerosene and set herself ablaze. She has also stated that the 1st accused-Rajkumar and his mother, the 2nd accused tortured her daughter. During her cross-examination, when a question was posed to PW1 to the effect that her deceased daughter demanded for 3 sovereigns of jewels from her and she has answered that only her son-in-law / 1st accused demanded the same to her. PW1 has further stated that when they went and saw her daughter, she was not conscious and murmuring. On the other hand, she has stated that when she was asked why did she do like that, she has answered that she was tortured.

10. It has come on record through the evidence of PW2-Deiva sigamani, father of the deceased Radha that his daughter Radha was being harassed to get 3 sovereigns of jewels from him and PW1. The 1st accused used to send his daughter to them in order to get the jewels. When she ever came home, she would be given Rs.2,000/- or Rs.3,000/- and she would send the deceased Radha to her matrimonial home. As the accused was harassing his daughter, he told the village head man Mr.Murali and he gave assurance that he would talk to him and decide. On 21.05.2013, at about 5.00 p.m., the 1st accused went to PW2's house along with the deceased Radha and demanded to give jewels to his wife.



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For which, PW2 answered that as his son was studying B.E., Degree Course, and after a year, he would get a job, and he promised to give him the jewels.

11. It is his further evidence that evening by 7.00 or 8.00 p.m., a phone call was received that his daughter poured kerosene on herself and set fire on herself. He would further state that as his daughter was continuously harassed by demanding jewels, his daughter committed suicide. He has added that when the 1st accused had come to his house, he slapped his daughter and he told him "அடிக்காதீர்கள் பின்னிட்டு நகை செய்கிறோம்". During the cross-examination of PW2, he has reiterated that on 21.05.2013, only his son-in-law, the 1st accused demanded jewels.

12. It is the evidence of PW3-Mythili who is sister of the deceased that she came to her parents house at 5.00 p.m., on 21.05.2013, after attending her examination. When she enquired to her father, he told her that the 1st accused along with the deceased Radha had come to her father's home for demanding 3 sovereigns of gold jewels.

13. PW8-Manikkavasagam, brother of the deceased Radha has



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corroborated the evidence of PW1.

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14. PW4-Dr.A.Ramanisekar by whom, the victim was seen at the first instance, after the occurrence, it is his evidence that on 21.05.2013 at about 9.20 p.m., when he was in the Emergency Ward at Government Hospital, Salem, Radha aged about 26 years was brought by her husband stating that the said burn injuries are sustained by her by self immolation on same day at about 8.15 p.m. During his cross-examination, he has stated that as the health condition of the victim was very bad, as she was brought with 95% injuries, he did not enquire the victim about the history of the case.

15. Through the evidence of PW5-Dr.Swaminathan, who is the Medical Officer of Salem Government Hospital, it has come on record that during the recording of dying declaration before commencing the same, and throughout the recording of dying declaration, he would state that the victim Radha was conscious oriented and in a fit state of mind.

16. PW6-Dr.Gokularamanan has conducted autopsy on the body of the deceased Radha.



17. PW10-Prabha would depose that before 2 years, 1st

accused and his wife Radha had come to PW2's house and they were quarreling. She did not know for what reason they were quarreling with PW1. PW1 told her that the 1st accused did beat his wife Radha and took her along with him and she saw them going in a vehicle.

18. It is the evidence of PW11-Kavitha who was the neighbour of the accused that at about 8.00 p.m., when she was talking with the 2nd accused, Radha came out with flames and the 2nd accused called her son. As the 1st accused could not come out from bathroom as the bathroom was locked from outside, she went and opened the bathroom door. It is her evidence that she poured water on the deceased Radha.

19. The Investigating Officer-PW12 Tr.Nepolian took up the case for investigation, after recording the complaint statement of deceased Radha (FIR-Ex.P12), he visited the scene of occurrence at about 10.00 a.m., and prepared Observation Magazar/Ex.P9 and Rough Sketch/Ex.P13 in the presence of Mr.Mahendran and Murugan and seized the partly burnt night wear of the deceased Radha, kerosene cane, match box under seizure magari. He examined witnesses Radha, Meenakshi, Kavitha, Mahendran and Murugan and recorded their statements. By 3.00 p.m., 1st



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accused was arrested and sent for judicial custody. On 24.05.2013, at early hours at 3.30 a.m., Radha who was under treatment, died. Upon receipt of the death intimation, case was altered to Section 498(A) IPC r/w. 4 of Dowry Prohibition Act, 1961 and under 304(B) of IPC.

20. PW13-N.Vijayalakshmi, the then Judicial Magistrate-No.4, Salem, has stated that on 21.05.2013, at about 11.15 p.m., as per the intimation obtained from the hospital, she proceeded to Salem Government Hospital to the women burn injury ward. It is discernible from her evidence that dying declaration of deceased Radha was recorded after proper certification by Dr.Swaminathan to the effect that she was conscious and in a fit state of mind to give statement.

21. It is the evidence of PW14 Mr.R.Sathish (R.D.O.) that on 24.05.2013, he conducted enquiry in front of the mortuary and conducted inquest in the presence of family members of the deceased Radha and the Panchayatars. It is the evidence of PW16-Mr.J.Udayakumar, Investigating Officer that on 24.05.2013, he visited the scene of occurrence, drew Rough Sketch and prepared Observation Magazar in the presence of Murugan and Mahendran. He examined the deceased Radha who was in the hospital, and also witnesses Meenatchi, Deivasigamani, Mythili,



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Manickavasagam, Sathyamoorthi, Devi and recorded their statements. He also enquired Dr.Ramanisekar and recorded his statement. He also examined Dr.Sangeetha who conducted autopsy on the body of the deceased Radha and Dr.Gokularamanan and obtained post-mortem certificate. He prepared Alteration Report. Viscera collected during the post-mortem was caused to be sent for chemical examination.

22. He examined Dr.Sangeetha and Dr.Gokularamanan and Dr.Swaminathan. After obtaining all the records, he filed charge sheet under Section 498A r/w. Section 4 of D.P.Act., and under Section 304(B) of IPC against the 1st and 2nd accused.

23. A known person to the accused one Boopalan was examined as DW1. It is his evidence that Radha demanded 3 sovereigns of jewels from her parents, was denied by her parents and they shouted at her.

24. Admittedly, as pointed by the learned counsel for the appellants Mr.A.Padmanaban that there are two dying declarations, one is complaint statement of the deceased Radha(Ex.P11) and another dying declaration is Ex.P17 which was recorded by the learned Judicial Magistrate No.4, Salem., on 21.05.2013. Whereas Ex.P11/complaint statement was



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recorded on 23.05.2013.

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25. In *Abhishek Sharma v. State (Govt. of NCT of Delhi)* in Crl.A.No.1473 of 2011 dated 18.10.2023, the Hon'ble Supreme Court has held that it is an established principle that a dying declaration, if it is free from tutoring, prompting, etc., can form the sole basis for conviction.

26. Ex.P17 is the dying declaration recorded by the learned Judicial Magistrate. The details of dying declaration is extracted hereunder:

"கடந்த 20 நாளைக்கு முன்னால் என் மாமியார் ரோஜாமணியும் என் வீட்டுக்காரரும் சேர்ந்து என் அம்மா வீட்டில் நகை வாங்கி வரும்படி அடித்தார்கள். நான்போய் அம்மாவிடம் நகை கேட்டபோது டைம் கேட்டார். இதனை நான் என் மாமியாரிடமும் வீட்டுக்காரரிடமும் சொன்னேன். இன்று நான் நகை வாங்கி வராததால் என் மாமியார் ரோஜாமணியும் கணவர் ராஜ்குமாரும் சேர்ந்து என்னை கண்டபடி அசிங்கமாக திட்டி அடித்தார்கள். அதனால் மனசு உடைஞ்சு இன்று இரவு 8 மணி அளவில் என் வீட்டுக்காரர் வீட்டில் நானே மண்ணெண்ணையை உடம்பில் ஊத்தி நெருப்பு வச்சகிட்டேன். வேற ஒன்றுமில்லை."



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27. The substance of the prosecution case is that on 21.05.2013, at about 5 p.m., the 1st accused went along with deceased Radha in a two wheeler to his father-in-law's residence, where he demanded 3 sovereigns of jewels from PW1 and PW2. The said demand of 1st accused was said to have been denied by PW2. 1st accused was alleged to have slapped his wife—deceased Radha. He immediately, came to his house with his wife and by 8.00 p.m., his wife notwithstanding the atrocities made by the accused said to have douzsed herself in kerosene and set herself ablaze.

28. Had it been the prime reason for her that she should have mentioned the details to the Judicial Magistrate while recording the dying declaration. It is not the prosecution case that 20 days before the occurrence, at the instance of 1st and 2nd accused, she was beaten up in order to get the jewels from her parents. Therefore, having carefully perused the evidence of PW1(mother of the deceased Radha) and PW2(father of the deceased Radha), PW3(sister) and PW8(brother of the deceased) that it is not safe to rely upon the said dying declaration.

29. That apart, it is relevant to note that the complaint statement was only recorded on 23.05.2013 at 9.00 a.m. It is the evidence of the family members of the deceased Radha and the independent witnesses that she



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was not in a position to talk from 22.05.2013 onwards. But, the statement which runs to one and half page was recorded by the Police is totally unbelievable. The reason being that the victim sustained 95% burn injuries. After two days from the date of occurrence, whether she was conscious oriented and was in a fit state of mind are put in question. There is no answer for that from the prosecution side. In the complaint statement/ Ex.P11, which has been narrated that 1st accused demanded 3 sovereigns of jewels and often he was quarrelling and she would be sent to her parents home and after some time she came back to her matrimonial home.

30. It is the common understanding that if the husband beats wife, that too in front of the parents of the wife, immediately, soon after beating she went along with her husband is unbelievable. PW1 and PW2 mother and father of the deceased Radha have uniformly stated that the 1st accused came to their home with his wife Radha and after PW2 expressed his inability to give 3 sovereigns of jewels, 1st accused slapped his wife. This is said to be an important negative event. But, Mythili, PW3 and PW8-Manickavasagam who are the sister and brother of the deceased Radha have nowhere spoken about this details. The details found in Ex.P17 dying declaration are totally absent in Ex.P11 complaint statement.



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A close perusal of Ex.P11 complaint statement, after the demand for dowry said to have been made by the 1st accused, the statement reads

that "இதற்கு மேல் என் கணவர் என்னை அடித்து கொடுமை படுத்துவார் என்று நினைத்து மனம் வருந்தி பூஜை அறையில் இருந்த மண்ணெண்ணையை பற்ற வைத்துக்கொண்டேன். Ex.P17 dying declaration details was nowhere spoken out by PW1, PW2, PW3 and PW8.

31. The details found in the complaint statement have not been spoken about by the family members. In ***Ashabai and another v. State of Maharashtra, [2013(2)SCC 224]***, the Hon'ble Supreme Court observed that :

"15. When there are multiple dying declaration, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other."

Law is well settled that dying declaration recorded by the learned Judicial Magistrate is always placed on a high pedestal.

32. In this regard, it is relevant to look into the observations made by the Hon'ble Supreme Court in the Judgment of ***Lakhan v. State of***



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Madhya Pradesh reported in **(2010) 8 SCC 514**. It has been observed that:

"21. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

33. This Court is conscious of the fact that the statements of the deceased shall have to be scrutinized on its own merits. I am of the considered view that the statements made by the deceased to the Police/Ex.P11 and the Judicial Magistrate/Ex.P17 are total inconsistent and they turnout to be not reconcilable. The contents are totally repugnant to one another. For that the deceased cannot be blamed as she has reached heavenly abode. It is the evidence of PW3 that she was the person who was with deceased Radha till her last breath. Based on the above said glaring inconsistency, it is not possible to conclude that the



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complaint statement is a voluntary one. The complaint statement is put on so much of doubt on the question of consistency. Based on the aforesaid discussions. I am of the considered view that two dying declarations are totally inconsistent to one another and therefore, the credibility of complaint statement is doubtful. In addition to the above said details, the recording of complaint statement after two days from the date of occurrence (complaint statement was recorded on 23.05.2013 from the person who sustained 95% burn injuries). It is the evidence of family members and the independent witness that she was not conscious from 22.05.2013 onwards. Therefore, based on the aforesaid discussion, it is concluded that the complaint statement suffers from credit worthiness for want of corroboration in full. Therefore, it cannot be concluded that the charges have been proved against the accused beyond reasonable doubt. Since the very base of the case complaint statement is so shaky.

34. In the result, this Criminal Appeal stands allowed and the conviction and sentence passed by the trial Court stand set aside and the trial Court shall refund the fine amount paid if any and cancel the bail bond.

26.03.2024



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Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
ssn

R.KALAIMATHI, J.,

ssn

To:

1. The Mahila Court,
Salem,
2. The Public Prosecutor,
High Court, Madras.

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