

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal No.1311 of 2010

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

This appeal under Section 374(2) CrPC is directed against the judgment dated 06.10.2010 of the learned I Additional Sessions Judge, Khammam in S.C.No.274 of 2010. By the said judgment, the learned Additional Sessions Judge found the appellants/ A1 to A3 guilty of the offence punishable under Section 302 IPC and sentenced them to undergo Rigorous Imprisonment for life and pay a fine of Rs.500/- each and undergo simple imprisonment for one month each in default thereof. The learned Sessions Judge also found A1 to A3 guilty of the offence punishable under Section 392 IPC and sentenced them to undergo rigorous imprisonment for ten years each and pay a fine of Rs.500/- each and to suffer simple imprisonment for one month each in default thereof.

2. We have heard the submissions of the learned counsel appearing for the appellants/A1 to A3 and the learned Public Prosecutor appearing for the respondent/ State.

3. After furnishing the documents to the accused as contemplated under Section 207 CrPC, the learned Additional Judicial Magistrate of First Class, Sathupalli, committed the case to the Session division, Khammam, *vide* orders in PRC.No.103 of 2009. The learned Additional Sessions Judge framed charges under Section 302 and 392 IPC against the accused and examined them. The accused pleaded not guilty to the charges framed against them and claimed to be tried. At trial, the prosecution examined PWs1 to 18 and exhibited Exhibits P1 to P12 and marked MOs1 to 5. No oral evidence was adduced on the side of the accused. However, Exhibit D1 was marked.

4. The first short but important question is as to whether the deceased, Saleem, met with a homicidal death. PW16, the Medical Officer of Sattupally Community Health centre, conducted autopsy over the putrefied dead body of the deceased. His evidence and the content of Exhibit P9, Post Mortem Examination Report, disclose that there was a depression over the occipital region of the body and that on the opening of the scalp and the skull, fracture of occipital bone and fracture of base of skull were found and that the deceased died due to ante mortem head injuries, which are grievous and which could be caused by a blunt object. PW16 was not cross examined and the defence of the accused is that they are not responsible for the death of the deceased and that a false case was foisted against them. Hence, it can safely be held that the deceased met with a homicidal death.

5. The case of the prosecution with regard to the complicity of the accused as unfolded by the evidence brought on record and which needs evaluation in this appeal, in brief, is as follows:

Sk.Saheena, PW4, is the wife of the deceased, Saleem. The deceased used to work as a driver on the lorry bearing registration No.AP-20-W-7721 of which PW6, Burra Venkateswarlu, is the owner. The deceased engaged the services of A1 as a cleaner on the said lorry. On 31.01.2009, the deceased along with A1 went on the aforesaid lorry to Mandapet for unloading paddy, which was loaded into the lorry at Eruturunagaram. On 02.02.2009, the deceased informed PW4, his wife, on phone that the paddy bags were unloaded at Tupakulagudem and that he was further going along with A1 to Mandapet for unloading paddy. He further informed her that after unloading the paddy he would go to Lingapalem for unloading Eucalyptus wood and asked her to go over to Manuguru. When PW4 stated to him in reply that she was unwell, he informed her that he would take her to a Doctor at Manuguru. After unloading paddy at Mandapet, the deceased informed PW6, the owner, that he collected hire charges of Rs.14,000/- and that he was further going to Ankapalem village for taking Eucalyptus wood load.

Later, when PW6 telephoned to the deceased at 12:00 noon, he further informed that it will take one hour for loading Eucalyptus wood. Again at about 02:00 P.M he informed PW6 that wood was loaded in the lorry and that he was proceeding to Sarapaka BPL factory. Thereafter, PW6 could not contact the deceased as on his calling the deceased he got a response that the cell phone of the deceased was switched off. On the next day, 03.02.2009, PW6 went to PW4 and enquired about the whereabouts of the deceased, her husband. Then she informed him that she also did not receive any telephone calls from her husband. Hence, PW6 advised her to make enquiries about the whereabouts of the deceased. So, PW4 telephoned to PW5, the younger brother of the deceased. He informed PW4 that the deceased already informed him that A1, the cleaner of the lorry, threatened to kill him, the deceased, and that to his query as to who was by his side, the deceased replied stating that A3, Gottam Yakub Reddy, was with him and that on that he informed the deceased not to be afraid as A3 was also by his side and that they can look into the matter after his return and that thereafter the deceased did not contact him on phone. PW5 having so informed PW4 on phone, went to her place on the next day morning and informed her about the apprehensions expressed by the deceased. During the said conversation, PW4 informed PW5 that the deceased was having disputes with A2, Thamalampudi Venkat Reddy, and A3 with regard to lorry finance. PW4 suspected that A2 and A3 might have done something to her husband with the help of A1. While so, on 10.02.2009, PW4, PW5 and others saw a news item along with a photo of the dead body in the newspaper and identified the dead body as that of the deceased. Thereafter, PW4 and PW5 went to Dammapet Police Station. PW4 saw the wearing apparel of the deceased, which were seized by the police at the time of inquest, besides a wrist watch, belt and photo of the deceased and identified those clothes, belt and watch as belonging to her deceased husband. According to her, her husband was also wearing half a tula gold ring. Therefore, she lodged a report, Exhibit P2, with the police on 10.02.2009.

5.1 Before the said news item with the photograph of the dead body of the deceased was published in the newspaper, PW3, Potta Chalapathi Rao, having noticed a dead body of a male person at Arlapenta sivaru Reserve Forest on 08.02.2009 informed of the same to PW1, Kuram Butchibabu, VRO, Ankampalem. PW2, Kuram Raju, also noticed the dead body of the deceased lying at Ankampalem reserve forest. On such information, PW1 went to that place on the night of that day and noticed an unidentified dead body of a 35 year old male person in a putrefied condition. On the next day, 09.02.2009, he lodged a report, Exhibit P1, with the Station House Officer, Dammamet Police Station. Based on Exhibit P1, the ASI of Police, Dammamet P.S., PW18, registered a Crime under Section 174 CrPC and issued FIR, Exhibit P12. However, after PW4 lodged Exhibit P2, report, on 10.02.2009, in the circumstances aforesaid, PW18 altered the Sections of law to 302 and 392 IPC *vide* alteration memo, Exhibit P10, and examined PW4 and recorded her statement. PW17, the CI of Police, took over investigation and conducted investigation and laid the charge sheet.

5.2 Thus, the evidence discloses that on noticing of an unidentified dead body of a male person by PWs2 and 3 at Arlapenta forest and on their information, PW1 lodged Exhibit P1, report, with police and then the Crime was registered initially under Section 174 CrPC and that a news item with photograph of dead body of the deceased was published in news paper and that on seeing the same PW4 and PW5, who are the wife and the brother of the deceased, approached the police and identified the found dead body as that of the deceased; then PW4 lodged Exhibit P2, report, as she and PW5 suspected that A1 to A3 are responsible for the murder of the deceased. After PW17, the CI of Police, has taken over investigation, he verified the investigation done thus far by PW18, the ASI of Police, who registered the crime. Having found it to be on correct lines, he secured the presence of PW5, the brother of the deceased, LW11, Sk.Ahmed, and PW6 and examined them and recorded their statements. On 25.03.2009, he apprehended A2 and A3 near VKDV college, Ashwaraopet, and secured the

presence of mediators PW15, Patan Jalal, and LW23, B. Vijay Kumar, and recorded the disclosure statements of A2 and A3 in their presence and recovered cash in sums of Rs.3,200/- and Rs.2,800/- respectively from A2 and A3. Further, on the disclosure statements of A2 and A3 and their lead, PW17, PW15 and LW23, Vijay Kumar, along with A2 and A3, went to Vengamamba Auto Mechanical works at Vijayawada Auto Nagar and seized, under the cover of Exhibit P8, Panchanama, the Lorry, MO4, which was shown by A2 and A3 to the police.

5.3 Thereafter, PW17 examined PWs7 to 11.

5.4 PW7, M. Sreenivas, who is a resident of Bayyannagudem of West Godavari District and who was a clerk under one V. Subba Rao, a Eucalyptus wood contractor, testified that the deceased, who is the driver of the MO4-lorry approached him on 02.02.2009 at about 06:00 A.M., along with A1 to A3 and that the deceased introduced A1 as his lorry cleaner and A2 and A3 as his friends and that while eucalyptus wood was being loaded into the lorry, A1 was cooking food and A2 and A3 were consuming liquor and that at that time A1 quarrelled with the deceased and that A2 and A3, who were by his side, were watching and that thereafter he (PW7) went away and that after loading the wood into the lorry, the deceased and the accused went away in the lorry.

5.5 PW8, G.Seetharamulu, a watchman of a rice mill in Veluru village of Burgampadu mandal, deposed that at about one and a half years prior to his giving evidence, on one day at about 09:00 P.M, A1 to A3 came to his rice mill with a load of eucalyptus wood in a lorry and that A2 informed him that finance people are approaching them and as such they will unload eucalyptus wood at the rice mill and subsequently take it back and that at that time A1 and A3 were present in the cabin of the lorry and that on his questioning they disclosed their identities and that thereafter he permitted for unloading of the wood at the rice

mill and that afterwards the wood was unloaded and that thereafter A1 to A3 went away with lorry but did not turn up to collect the wood.

5.6 PW9, Chintha Satyanarayana, who was a driver of a lorry bearing registration No.AP 11 V 2259 deposed that he went to the rice mill near Burgampadu for loading paddy husk, which takes two days time, and that he was carrying coolies for loading husk into his said lorry and that the work of loading husk was stopped due to power failure and that he and the coolies slept at the rice mill and that after the accused came with the lorry bearing registration No.AP 20 W 7721 to the rice mill, PW8 woke him up and informed him that a lorry came to the rice mill and that eucalyptus wood load in the lorry was to be unloaded from the said lorry and that he was asked to provide coolies for unloading the wood and that accordingly he provided the coolies, who were earlier engaged to load the husk, for unloading the wood and that after unloading eucalyptus wood from the lorry, A1 to A3 went away and that subsequently he did not see A1 to A3.

5.7 PW10, O. Satyanarayana, a coolie on the lorry of PW9, testified that he along with other coolies unloaded eucalyptus wood from lorry bearing No.AP-20-W-7721 and that at that time he saw A1 to A3 and that he and the other coolies were engaged by PW9, to load husk into his lorry and that they stopped loading husk due to failure of electricity on that night and that when A1 to A3 approached them, he and the other coolies at the request of A2 and that of PW9 made in the presence of A1 to A3 unloaded the eucalyptus wood from the lorry brought by A1 to A3 and that after unloading A1 to A3 paid their charges of Rs.1,100/- and went away .

5.8 PW11, G. Bhaskar Rao, who was running the work shop under the name and style of Vengamamba Mechanical work shop at Autonagar, Vijayawada, deposed that he is having acquaintance with A2, as A2 was getting his lorry repaired through another mechanic at the work shop and that on one day A1 to A3 brought one lorry to the work shop and that the last digits of the number of

the said lorry are 7721 and that A1 to A3 requested him to attend to minor repairs of the said lorry and change the colour of the lorry and that he attended to the repairs of the lorry as he was having acquaintance with A2 and that some days thereafter police came and seized the lorry which was brought by A1 to A3 for repairs and change of colour.

5.9 PW17 deposed that on reliable information he arrested A2 and A3 near VKDV college, Ashwaraopet, and secured the presence of mediators PW15, Patan Jalal and LW 23, Vijay Kumar, and that in their presence disclosure statements were made by A2 and A3 and that he seized cash in sums of Rs.3,200/- and Rs.2,800/- respectively from A2 and A3 and that on A2 and A3 leading him and PW15 and LW23, Vijay Kumar, they all went to Vengamamba Auto Mechanical works at Vijayawada Auto Nagar and seized, under the cover of Exhibit P8, Panchanama, the Lorry, MO4, which was shown by A2 and A3. He further deposed that after completion of investigation, charge sheet was filed showing that A1 was absconding and that later, while proceedings for committal were pending, A1 was arrested and was remanded to judicial custody.

6. From the above evidence it is clear that there are no direct witnesses to the incident of murder of the deceased, Saleem. Hence, the prosecution relies upon circumstantial evidence.

7. Dealing with the essential circumstances borne out by the evidence adverted to supra, it is to be first noted that the evidence of PW6, the owner of the lorry, coupled with the evidence of PW5, the brother of the deceased, would reflect that on 31.01.2009 when the deceased left with his lorry with a load of paddy, A1, the cleaner engaged by him was with him. The evidence of PW4, the wife of the deceased, also would disclose that after the deceased left with the lorry he contacted her on phone and informed her about his movements with the lorry and told her to come over to Manuguru and that he would show her to a doctor as she complained that she was unwell. The evidence of PW6, the owner of the

lorry, sufficiently corroborates the version of PWs 4 and 5 that when the deceased left with his lorry with a load of paddy, A1, the cleaner was with him. The evidence of PW5 discloses that the deceased informed him that A1 threatened to kill him and that by that time A3 was by the side of the deceased and that therefore he assured that the deceased need not fear because A3 was by his side and that they can look into the matter after return of the deceased. Evidence of PW6, the owner of the lorry, discloses that the deceased was also in contact with him on phone and that the deceased was informing him the movements of the lorry from time to time. However, on the deceased not answering the phone calls of PW6 and on PW6 getting a response that the phone of the deceased was switched off, he went to PW4 to inform the same and came to know from her that the deceased did not call her either after 02.02.2009. Hence, he informed PW4 to enquire about the whereabouts of her husband. Then PW4 contacted PW5, her husband's brother. He informed PW4 that the deceased already informed him that A1, the cleaner of the lorry, threatened to kill the deceased, and that to his query as to who was by his side, the deceased replied stating that A3 was with him and that on that he informed the deceased not to be afraid as A3 was also by his side and that they can look into the matter after his return and that thereafter the deceased did not contact him on phone. PW5 having so informed PW4 on phone, went to her place on the next day morning and informed her about the apprehensions expressed by the deceased. During the said conversation, PW4 informed PW5 that the deceased was having disputes with A2 and A3 with regard to lorry finance. The evidence of PW7, who was working as a clerk under a eucalyptus wood contractor, reflects that the deceased and A1 to A3 approached him on 02.02.2009 at about 06:00 A.M for taking eucalyptus wood load and that the deceased introduced A1 as his cleaner and A2 & A3 as his friends and that at the time of loading of Eucalyptus wood into the lorry, A1 had a quarrel with the deceased in the presence of A2 and A3 and that after loading eucalyptus wood, the deceased and A1 to A3 went away on the lorry. Thus, the evidence thus far discloses that A1 to A3 were in the company of the deceased till the Eucalyptus

wood was loaded into the lorry. The above evidence on a cautious scrutiny sufficiently establishes that the deceased was last seen in the company of the accused 1 to 3. After the deceased and A1 to A3, who were last seen together, went away with the lorry loaded with eucalyptus wood, A1 to A3 only arrived at the rice mill at Veluru village near Burgampadu with the lorry loaded with eucalyptus wood is unmistakably manifest from the evidence of PWs8 to 10, which was referred to supra. The evidence of PWs8 to 10 would show that A1 to A3 alone came to the rice mill and got unloaded the wood with the permission of PW8 by stating that some finance people are approaching them and that they would collect the wood later but did not turn up later to recollect the wood. The aforestated evidence establishes not only the motive for the accused to do away with the life of the deceased but also the fact that the deceased was last seen by PW 7 in the company of A1 to A3 when the eucalyptus wood was loaded into the lorry on 02.02.2009 from morning till afternoon, but was missing when the lorry was brought by A1 to A3 to the rice mill for unloading the load of eucalyptus wood. Later, on 08.02.2009, the dead body of the deceased was noticed by PWs 1 to 3 as already noted.

8. On the arrest of A2 and A3 by PW17, the CI of Police, a disclosure statement was made by them and that disclosure led to the discovery of fact namely the availability of the lorry, MO4, at Vengamamba work shop at Vijayawada Auto Nagar. The evidence of PW15, the mediator, in whose presence the lorry was seized by the police pursuant to the disclosure statement of A2 and A3 amply establishes the said fact. Further, PW11, the mechanic also deposed that he has prior acquaintance with A2 and that when A1 to A3 brought the crime lorry and made a request to make minor repairs and change the colour he attended to the repairs and changed the colour of the lorry and that later police seized it from the work shop.

9. Before we proceed further, it is necessary to deal with the contentions of the learned counsel for the accused to consider whether there is any frailty in the

case of the prosecution or inherent deficiency in the evidence and to find out the truthfulness or otherwise of the case of the prosecution.

9.1 She forcefully contended that the cell phone of the deceased was not seized though it is testified by PW4, PW5 and PW6 that they spoke to deceased on telephone after he left with the lorry along with A1, the cleaner, and that no investigation was done in that regard and that even the call data was not collected from the service provider to show that the deceased had conversations with the said witnesses just before his alleged disappearance while in the company of the accused. She would next contend that though the deceased allegedly informed PW5, the younger brother of the deceased, that A1 threatened to kill him and that later PW6, the owner of the lorry, informed PW4, the wife of the deceased, that the whereabouts of the deceased are not known, still no report was lodged by PW4 till a news paper item appeared with the photo of the dead body of the deceased and that the said fact shows that the accused are falsely implicated after deliberations. She would also contend that though the Sections of law are altered after PW4 lodged the report, Exhibit P2, the investigating officer did not conduct any investigation and promptly record the statements of PWs7 to 10 and that their statements were recorded belatedly on 26.03.2009 and that the said delay in recording of the statements of PWs 7 to 10 is an indicia that they are implanted witnesses and hence, the testimonies of PWs7 to 10 are untrustworthy and cannot be relied upon. She would point out that when there is information already with PWs4, 5 and 6 about the movement of the lorry and the interactions with PWs 7 to 10, the police officer ought to have examined the said witnesses at the earliest opportunity i.e., even before the alleged arrest of the accused 2 and 3 but none of the witnesses amongst PWs7 to 10 were examined till the arrest of A2 and A3 on 25.03.2009 and that the said fact would lead to only one inference that the said witnesses are implanted after deliberations and the case of the prosecution is tainted and embroidered.

9.2 The first set of the said contentions which deal with trivial issues do not shake the evidence to render it unworthy of belief. Merely on account of lapses of the police officer and the defects in conducting investigation with regard to non seizure of the cell phone of the deceased and non collection of call data, the prosecution case based on the circumstances conclusively established cannot be thrown out. Further, non lodging of a complaint by either PW4, the wife of the deceased, or PW5, the younger brother of the deceased, about the missing of the deceased, till they saw the news item is also not fatal in view of the testimony of PW5 that on hearing from the deceased that A1 is threatening to kill him and that A3 was already by his side by that time, he assured the deceased not to be afraid and also stated to the deceased that they can look into the matter after his return. As rightly submitted by the learned Public Prosecutor it is not uncommon for lorry drivers to not contact their family members for some days during their trips to distant places for lack of cell phone signal or expiry of charged prepaid cell phone card during transit and for other reasons and that therefore the family members who are used to such situations wait for some reasonable time but do not generally rush to lodge complaints with the police. Coming to the non examination of PWs 7 to 10 till the arrest of A2 and A3, it is to be noted that according to the version of PW6, the owner of the vehicle, the deceased informed him that he was going to Ankapalem village for taking eucalyptus load but the evidence of PW7, the clerk, under the eucalyptus contractor reflects that he is a resident of Bayyannagudem village. Thus, there is no evidence to support the version of the defence that the deceased went to the place he mentioned to PW6 on phone for loading eucalyptus wood into the lorry. Further, after loading eucalyptus wood into the lorry there was no telephone connection between the deceased on one hand and PWs 4 to 6 on the other as the deceased did not either make calls or answer the calls made to his cell phone and the response PW6 got was that the cell phone of the deceased was switched off. Be it noted that there is no prior information to PWs 4 to 6 from the deceased about A1 to A3 taking the lorry with Eucalyptus wood to the rice mill at Veluru village where they had

interaction with PWs8 to 10. Hence, till the accused were apprehended there is no information to the police about the accused interacting with PWs 7 to 10. Therefore, there was no possibility for the investigating officer to know about PW7, a resident of Bayyannagudem coming into contact with the deceased and the accused at the time of loading of Eucalyptus wood into the lorry and about the interactions which the accused alone later had with PWs 8 to 10 and their role till the arrest of the accused and the disclosure statements made by the accused in the presence of the panch witnesses. Hence, the contention that there was delay in the recording of the statements of the independent witnesses needs no countenance being devoid of merit. In any view of the matter, when the evidence of the said totally independent witnesses, who had no reason to speak against the accused, is convincing and does not admit any doubt, their evidence, which inspires confidence, cannot be discarded on the ground of mere delay in recording their statements by the police.

9.3 Coming to the other contentions advanced on behalf of the accused, what is to be noted is that this court did not place any reliance on extra judicial confessions said to have been made by the accused. Therefore, the decisions in *Balbir Singh v. State of Punjab*¹ and *Pancho v. State of Haryana*² wherein it was held that extra judicial confession is a weak piece of evidence and ordinarily is not accepted without independent corroboration are not helpful to the accused. Further, the decision in *Rambilas and others v. State of M.P*³ wherein it was held that recovery of certain incriminating articles at the instance of the appellants under Section 27 of the Evidence Act cannot form the basis of conviction is also of no avail as in the case on hand, this Court relied upon the chain of circumstances that are well established by reliable evidence but not solely on the recovery of MO4, lorry, at the instance of the appellants and the disclosure of the facts made by them.

¹ AIR 1999 SC 3227

² 2012 (2) ALT (Crl) 226 SC

³ 1997 SCC (cri) 1222

9.4 The learned counsel for the accused next pointed out that the deceased was allegedly seen in the company of the accused on 02.02.2009 and that the dead body of the deceased was first found near NSP canal on 08.02.2009 and that in view of the very long time gap between the two events, the last seen theory is not sufficient to prove the guilt of the accused. In support of the said contention, the decisions in *Gotte Peddulu v. State of A.P*⁴ and *Santhavarapu Venkateshwarlu and others v. State of A.P*⁵ are relied upon. Nevertheless, in the case on hand, the consistent and lucid evidence of PWs7 to 10, who are independent witnesses, sufficiently proved that the deceased was last seen in the company of A1 to A3 till his disappearance within less than 24 hours thereafter. Further, in the case on hand, apart from the last seen theory, the motive, the recovery/discovery of MO4, lorry, at the instance of A2 and A3 and pursuant to their disclosure statements are also established as required under law. In the light of the evidence, which is satisfactory and inspires confidence, we are not impressed with any of the contentions advanced on behalf of the accused.

10. One of the vital circumstances established is recovery of the Lorry, MO4, at the instance of the accused and pursuant to their disclosure statements. Since it is established beyond reasonable doubt that A1 is the cleaner on MO4-lorry on which the deceased was the driver and that he accompanied the deceased on 31.01.2009, when he left along with the lorry loaded with paddy at Eruturnagaram, and that A2 and A3 were also with them and that the deceased was last seen in the company of A1 to A3, it is for A1 to A3 to explain as to what happened to the deceased and as to how they got the possession of the lorry with Eucalyptus wood load to the exclusion of the deceased and as to why they first took the lorry to the rice mill for unloading the said wood and later to the workshop at Auto Nagar for minor repairs and change of its colour. However, no explanation whatsoever was forthcoming from the accused. This significant

⁴ 2006 (3) ALT (Crl) 387 (DB)(AP)

⁵ 2008 (2) ALT (Crl) 265 (DB)(AP)

aspect which puts the prosecution case beyond pale of any reasonable doubt sufficiently establishes the complicity of the accused.

11. The circumstances that are convincingly established by reliable and cogent evidence when considered cumulatively are conclusive in nature and constitute an unbroken chain of circumstances which unerringly point out to the complicity of the accused more particularly in the absence of any explanation from the accused. The said established circumstances are consistent only with the hypothesis of the guilt of the accused; and, in our considered view, they exclude every hypothesis but the one proposed to be proved and establish beyond reasonable doubt that the accused are responsible for the murder of the deceased.

12. Having thus analysed the evidence critically, we are of the considered view that the evidence brought on record is adequate to come to a safe conclusion that the prosecution established the guilt of the accused beyond reasonable doubt in respect of the offences with which they are charged and that the learned Additional Sessions Judge is justified in finding the accused guilty and convicting them. Accordingly, we confirm the convictions recorded and the sentences imposed against the appellants/accused in S.C.No.274 of 2010 on the file of the Court of the learned I Additional Sessions Judge, Khammam.

13. In the result, the Criminal Appeal is dismissed.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

27.09.2016
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