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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment dated: 31st January, 2017

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Crl. A. No.550/2016

PAWAN @ MAMA

..... Appellant

Through

Mr.R.M.Tufail, Adv. with
Mr.Vishal Raj Sehijpal, Mr.Anwar
Ahmed Khan, Mr.Farooq Chaudhary,
Ms.Meenakshi Joshi & Ms.Astha,
Advs.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through

Ms.Sumita Kapil, Adv. with Ms.Pooja
Swami & Mr.Hanumant Sakhuja,
Advs. for the State.
Mr.Varun Goswami, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. The appellant has filed the present appeal under Section 374 of the Code of Criminal Procedure against the judgment dated 23.02.2016 by which the appellant has been convicted under Section 302/324/458 of the Indian Penal Code (hereinafter referred to as 'IPC') and also convicted under Section 27 of the Arms Act. By virtue of the order on sentence dated 27.02.2016, the appellant was sentenced to rigorous imprisonment for life and a fine of Rs.30,000/-, in default of payment of fine, to undergo simple imprisonment for 6 months for the offence punishable under Section 302 IPC. The appellant was further sentenced

to rigorous imprisonment for a period of 5 years and a fine of Rs.10,000/-, in default of payment of fine, to undergo simple imprisonment for 3 months for the offence punishable under Section 458 IPC. For the offence under Section 324 IPC, the appellant was sentenced to rigorous imprisonment for a period of 2 years and 6 months and a fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for one month. The appellant has been further sentenced to rigorous imprisonment for a period of 5 years and a fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for one month for the offence punishable under Section 27 of the Arms Act. All the sentences were ordered to run concurrently.

2. The case of the prosecution as set out by the Trial Court in the impugned judgment is as under:-

“2. Case of the prosecution is that Dinesh Kapoor (the complainant) along with his wife Seema Kapoor, his son Subham and daughter Surabhi was residing on the first floor of the house no. 124, Rajdhani Enclave, Pitam Pura Delhi (hereinafter referred to as "the said house or the scene of crime"). Elder daughter of the complainant namely Shilpa Kapoor was married. Younger brother of the complainant namely Anish Kapoor along with his family and father Jagdish Chander was residing on the ground floor of the said house; and was doing the business of cable work & had employed the accused who was working with him for the last 10 to 12 years from the date of incident i.e. 16/17.01.2008. Another younger brother of the complainant namely Rakesh Chand Kapoor alongwith his family was residing on the second floor of the said house.

3. On 16.01.2008 at about 11.30 pm, the complainant and his wife slept in their bedroom situated on first floor of the said house. Their daughter namely Surbhi Kapoor aged about 20 years, was sleeping alone in her bedroom situated at the back side of the first floor of the said house. Their son Shubham aged about 8 years had gone to sleep with children of his uncle on the

ground floor of the said house. At about 4.45 am, the complainant heard the noise (Chor Chor). Consequently, he woke up and ran towards the stair on the first floor and saw that his wife had caught hold of one person who was trying to ran away from there. He along with his wife pulled that person to the ground floor. That person had worn monkey cap on his face and had applied black colour on his eyes. That person gave a hammer blow on his head. After hearing the noise, his younger brother Anish Kapoor also came out of his room. They lifted his monkey cap and noticed that the said person was the accused. Anish Kapoor pulled blood stained one hammer and one knife from the hands of the accused. The accused had the blood stained surgical gloves in his both hands and that were also taken out. In the meantime, younger brother of the complainant Rakesh Kapoor and other family members also came there. That time, the complainant, on the asking of his wife, had gone to the bedroom of his daughter to look for her. In the meantime, Anish Kapoor made at 100 number. He noticed that Surabhi was lying on her bed and blood was oozing from her neck and stomach. He along with neighbour removed Surabhi to Maharaja Agrasen Hospital. At the hospital, Surabhi was declared brought dead.”

3. After completion of investigation, charge sheet for the offence under Section 302/307/354/457/458/459 IPC and under Section 27 of the Arms Act was filed. The prosecution in all has examined 40 witnesses. No evidence was led by the defence. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant pleaded not guilty and claimed to be tried.
4. Mr.Tufail, learned counsel for the appellant submits that the judgment of the Trial Court is based on conjectures and surmises and the judgment has been passed with a preconceived mind. Counsel contends that the Trial Court has failed to appreciate the various loopholes in the story of the prosecution.
5. The counsel for the appellant further contends that the Trial Court has

ignored material contradictions in the testimonies of the witnesses. It is submitted by Mr. Tufail that the Trial Court has failed to take into account that the case of the prosecution solely rests on the testimonies of close family members and thus, the prosecution has failed to establish its case. It is also a case of the appellant that the independent public witnesses were not joined by the police during investigation which would show that the case of the prosecution is false.

6. It is also being contended by the counsel for the appellant that the appellant was not confronted with relevant questions during recording of his statement under Section 313 of the Code of Criminal Procedure.
7. The counsel for the appellant submits that the appellant has been falsely implicated in the present matter. The investigation was biased and the testimonies of the close family members were treated as gospel truth. It is also submitted that the prosecution has failed to establish the motive, as there is nothing on record to suggest that the deceased was physically assaulted, neither there is any evidence on record that the appellant had an evil eye on the deceased.
8. Mr. Tufail contends that the witnesses in this case are tutored and their evidence is not reliable and trustworthy. It is also contended that the Trial Court has failed to appreciate that the case is one of honour killing and the appellant has been falsely implicated. Counsel contends that the relevant materials which would have conclusively absolved the appellant were not seized by the police.
9. On the converse, learned counsel for the State submits that the State has been able to prove this case beyond any shadow of doubt. The appellant was caught and arrested at the spot of the incident which is evident upon the arrest memo. Counsel also contends that the appellant

was nabbed by the family members of the deceased. Strong reliance is placed on the testimony of independent witness PW34 Rajesh Goel who has testified that on hearing noise (shor), he had reached the spot and found that the family members being PW1 Dinesh Kapoor (father of the deceased), PW31 Anish Kapoor (uncle of the deceased and brother of PW1) and also PW23 Rakesh Chand Kapoor (uncle of the deceased and brother of PW1) had pinned down the appellant. The independent witness has further testified that the injured persons being PW1 (father of the deceased) and the deceased were removed to the hospital in the car of PW34 Rajesh Goel. However, another injured PW30 Seema Kapoor (mother of the deceased) was removed in the CATS ambulance.

10. Counsel for the State submits that the weapon of offence, i.e. the knife and hammer containing blood which were used in the commission of the offence were seized from the spot duly connects appellant with the crime. Additionally, Tape, surgical gloves, clothes were also recovered from the spot of incident.
11. Counsel further contends that the prosecution has been able to prove its case on the basis of oral evidence and also on scientific evidence. FSL report clearly points out that the blood group of the deceased “B” matched with the blood on the knife and hammer and also from the clothes of the appellant herein. Counsel also contends that the motive stands proved in view of the consistent stand of the mother which was taken one day after the incident in her statement under Section 161 of the Code of Criminal Procedure and reiterated in the statement made by her in Court. Counsel also contends that the argument with regard to the honour killing is a mere afterthought, as no such defence was raised

by the appellant in his statement under Section 313 of the Code of Criminal Procedure.

12. Counsel also contends that the onus stands shifted on the appellant to explain his presence in the odd hours of the morning at the spot of incident and the appellant has failed to discharge this onus either in the statement under Section 313 of the Code of Criminal Procedure or by means of any defence evidence. Counsel contends that the presence of the appellant at the spot of incident has been conclusively established by the prosecution and the defence has failed to render any plausible explanation in this regard. Counsel also contends that the weapon of offence used has been proved by PW6 Dr. K. Goel who has testified that the cut throat injury 7.5 cm x 2 cm on the neck was caused by a sharp cutting edged weapon and injury No.6 was caused by a blunt object. It is contended that during examination he had opined that the injuries No.1 to 5 which were mentioned in the post-mortem report were possible by the knife marked as Ex.1 which was produced and injury No.6 being caused by use of hammer marked as Ex.2 could not be ruled out.
13. Counsel also submits that a call was made to the PCR from Anish Kapoor at 5.02 a.m. which was evident upon the evidence of PW10 HC Amar Pal Singh. The PCR Form Ex.PW10/A is relied upon to show that when the PCR reached the spot of the incident at 5.25 a.m., Pawan (appellant herein) was found at the spot. Counsel also contends that the motive is also proved by the fact that the appellant had painted his face black knowingly fully well that he would be recognized by the occupants of the house, as he had worked with the uncle of the deceased for more than 12 years. The counsel submits that the appellant

was wearing a monkey cap to conceal his identity.

14. We have heard learned counsel for the parties and considered their rival submissions and perused the impugned judgment as well as the material available on record. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses, more particularly the testimonies of PW30 Seema Kapoor (mother of the deceased), PW1 Dinesh Kapoor (complainant), PW34 Rajesh Goel (neighbour of PW1).
15. PW30 Seema Kapoor (mother of the deceased) in her examination-in-chief deposed that her daughter Surbhi (the deceased) was undergoing training for Air Hostess. On the fateful night of 16.01.2008, the deceased was sleeping in her room at the back side of the first floor while she along with her husband, PW1 Dinesh Kapoor was sleeping in the front room on the same floor. Her son was sleeping on the ground floor with the children of her brother-in-law, PW31 Anish Kapoor. At about 4.30-4.45 am, she woke up after hearing the noise of television which was on as the children had fixed the same on timer. She switched off TV and thereafter went to the bathroom where she heard the noise of water pump as it was on. She got surprised after hearing the same. She went to the balcony at the back side of the first floor and saw that back door towards the balcony was slightly opened. She switched off the water pump as button was in the balcony. When she again came inside the room and was closing the door of the balcony as there was no light in the room as tube light was fused. Suddenly, one person came from behind and put his hand on her mouth, the hands had gloves. She tried to save herself but that person gave a knife blow on her right hand. She cried but that person gave a hammer blow on her head upon which

she fallen down near the door and that person gave two more hammer blows on her head and ran towards the stairs. Thereafter, she shouted and apprehended that person. In the meantime, PW1 Dinesh Kapoor (father of the deceased) came there and apprehended that person. The appellant also gave one hammer blow on the head of PW1. The appellant was wearing a monkey cap on his head and had applied black colour near his eyes and was wearing gloves in his both hands and a jacket. In the meantime, PW31 Anish Kapoor (brother-in-law of PW30) also came there. They pulled his monkey cap and saw that it was the appellant who was working with PW31 for the last 12 years. In the meantime, PW23 Rakesh Chand Kapoor (second brother-in-law of PW30) along with his family members came on the ground floor. Since the deceased was not there, she asked PW1 Dinesh Kapoor to look for her. PW1 Dinesh Kapoor went towards the room of the deceased and came back and informed that the deceased Surbhi was seriously injured in her room and there was lot of blood on her bed. Her brother-in-law PW31 Anish Kapoor took the hammer and knife from the hands of the appellant and made a police call. In the meantime, neighbours also reached there. The deceased was taken to Maharaja Agarsen hospital in a car of her neighbour by PW1 Dinesh Kapoor and PW35 Kiran Kapoor (husband's younger brother's wife). PW30 Seema Kapoor next deposed that she was taken to hospital along with PW23 Rakesh Chand Kapoor in CATS ambulance. At hospital, she came to know that the deceased had expired.

16. PW30 further deposed that her brother-in-law PW31 Anish Kapoor was running a cable network under the name of Dimple Cable Network at the ground floor and the appellant was his employee for the last 12 years and they had complete faith in him and he also used to do the

house work and drove their vehicle as per need. PW30 next deposed that 5-6 months prior to the incident; the deceased told her that intentions of the appellant were not good as he wanted to make friendship with her. At that time, she scolded the appellant and told him that he was their family member and had seen the deceased since childhood. Pursuant to her scolding, the appellant assured her that he would not repeat the same in future. It was further deposed by PW30 that 25-30 days prior to the incident, the deceased told her that the appellant again tried to make friendship with her. She scolded the appellant and threatened him that she would complain to her husband PW1 Dinesh Kapoor and brother-in-law PW31. The appellant fell down on her feet and assured that he would not repeat the same in future. On 16.01.2008, the appellant came to work and was present up to 5.30 pm in the said house. PW30 categorically deposed that on the fateful night of 16/17.01.08, the appellant entered in her house and committed murder of her daughter and also attacked her and PW1 Dinesh Kapoor. It was deposed by PW31 that at the time of incident, she was wearing a night gown which was seized vide seizure memo Ex. PW30/A.

17. PW1 Dinesh Kapoor (father of the deceased) deposed on similar lines as deposed by PW30. PW1 deposed in his examination-in-chief that when he heard the cries of her wife, he got up and rushed towards the stairs as he had seen that his wife was holding a person with great difficulty. The face of that person was covered. Thereafter, he also caught hold of that person. That person gave a hammer blow while he was holding him and dragged him and his wife to the ground floor. His brother PW31 Anish Kapoor also reached and grabbed that person and snatched a blood stained knife and hammer from the hands of the said

person. After removing the monkey cap of the person, he was identified as the appellant herein who was working with his brother PW31 for the last 10/12 years. With regard to the weapon of offence, PW1 identified one knife Ex. P1, one hammer Ex. P2, monkey cap of blue colour Ex. P3, pair of rubber gloves Ex. P4, blood stained bed sheet Ex. P5 and pillow cover Ex. P6 which were on the bed of the deceased, blood stained night gown of her wife, Ex. P7, clothes of the deceased i.e. one jacket of pink colour, one lady top, one pajama, one another pajama and one underwear of the deceased which were identified by PW1 as Ex. P8. He also identified the jacket, pant, pajama and T-shirt worn by the appellant at the time of incident as Ex. P9.

18. In the facts and circumstances of the case in hand, the testimony of the neighbour PW34 Rajesh Goel assumes importance who in his examination-in-chief deposed that on 17.01.2008 at about 4.30-5.00 am, he heard the noise from the house No. 124 and saw that some people were standing outside the said house. Once he came out, he saw PW1 Dinesh Kapoor, PW31 Anish Kapoor and PW23 Rakesh Chand Kapoor had caught hold of the appellant. PW1 Dinesh and PW30 Seema (mother of the deceased) were bleeding. Everybody was asking about the deceased. They rushed to the room of the deceased and PW1 Dinesh firstly entered the room and tried to lift the body of the deceased but he could not. The deceased was bleeding from neck and her clothes were smeared with blood. It was also deposed by PW34 that he brought his car and removed the deceased to the hospital along with PW1 Dinesh and PW35 Kiran Kapoor (wife of PW23 Rakesh Kapoor).
19. On similar lines, the testimonies of PW31 Anish Kapoor, PW23 Rakesh Chand Kapoor and PW35 Kiran Kapoor remained consistent as

to the presence of the appellant at the spot and corroborated the case of the prosecution on all material aspects. There are no discrepancies in their statements about the presence of the appellant on the fateful night. They all spoke in one voice that it was appellant who was armed with the weapon of offence and was arrested from the spot.

20. Besides the above public witnesses, PW3 HC Jai Prakash proved copy of DD No. 8-A which is Ex.PW3/A. PW10 HC Amar Pal Singh has proved PCR Form, copy of which is Ex.PW10/A. PW8 ASI Sunita Dutta proved the copy of FIR which is Ex.PW8/A and endorsement on rukka Ex.PW8/B.
21. The presence of PW1 Dinesh Kapoor and PW30 Seema Kapoor at the spot is not in controversy. They sustained injuries in the incident which is evident from their MLC's Ex. PW2/A and Ex. PW2/C respectively. Undoubtedly, Injuries on the person of a witness ensure his presence at the time and place of the occurrence and the evidence has a ring of truth. Being an injured witness, his testimony inspires more confidence. Minor contradictions/improvements on trivial matters cannot render an injured witness's deposition untrustworthy. The law on this aspect has been discussed in the judgment *State of Uttar Pradesh Vs. Naresh and Ors.* reported at (2011) 4 SCC 324 wherein the Hon'ble Supreme Court held as under:

“27. The evidence of an injured witness must be given due weight age being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the

testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

In the absence of any prior enmity, all these witnesses are not expected to tell a lie to screen the actual culprit. Moreover, the case of the prosecution was duly corroborated by the testimony of the independent witness PW34 Rajesh Goel (neighbour of PW1).

Medical Evidence:

22. As per the post mortem report, Ex.PW6/A prepared by PW6 Dr. K. Goel, CMO BJRM Hospital, the following injuries were found on the body of the deceased:

“i) Incised wound about 1 inch long of left side of lower lip in its full thickness.

ii) Cut throat injury 7.5 cm x 2 cm transversally placed of left side neck about 5 cm below left ear extending from mid line front of neck and about 2 cm above apple of adam. About 3 cm long tailing seen in the form of scratch extending from medial end of wound towards right side neck. On exploration, the underlying tissues were cleanly cut. Left sided blood vessels were cleanly and completely severed with massive clots inside the wound and surround issues. Rest of the neck structure were intact.

iii) Incised wound 1 cm x 0.25 cm muscle deep just below lateral end of injury no. 2.

iv) Three incised wounds muscle deep only over left iliac fossa quadrant of sizes 2 x .5 cm, 2.5 x .5 cm and 1.5 x .5 cm.

v) Incised wound 4 x .5 cm over antero-medial aspect of right ring finger proximal phalynx, 1.5 x 0.25 cm in left first

web space.

vi) Three laceration each about 2.5 cm long in total area 4 x 3 cm over left parieto-occipital reasons.”

PW6 Dr. Goel deposed that the injuries No. 1 to 5 were caused by sharp edged weapon and injury No.6 was caused by blunt object. A bare reading of the postmortem report Ex.PW6/A clearly suggest that the cause of death was hemorrhagic shock consequent upon injury on neck vessel which resulted due to sharp cutting edged weapon and the cut throat injury was sufficient to cause death in the ordinary course of nature. The subsequent opinion with respect to weapon of offence, which is Ex. PW6/C reflects that the injuries No.1 to 5 which were mentioned in the post-mortem report were possible by the knife marked as Ex.1 which was produced and injury No.6 being caused by use of hammer marked as Ex.2 could not be ruled out.

23. As per the FSL report Ex. PW7/A, blood was found on the knife Ex.1, clothes of the appellant (including banian, pants etc.) which are Ex.6c, Ex.6d and Ex.6e respectively, a pair of gloves i.e. Ex.3a, monkey cap Ex. 3b human. Similarly, on bed-sheet Ex. 5A human blood was found. Vide serological report Ex. PW7/B, blood group ‘B’ of the deceased has been matched on the above said Exhibits. So far as the hammer Ex.2 is concerned, the same also contained the human blood but the blood group could not be detected.
24. As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. However, the learned Trial Court in paragraph 102 and 103 dealt the motive to commit the offence which read as under:

“102. In view of the foregoing discussions, it can be held that on one hand, PW30 remained consistent as to the period when the deceased informed her about the offer for friendship made by the accused to her on two occasions and her objections to the same to the accused. PW1, PW30 and PW31 also remained consistent and corroborated each other to the fact that prior to 17.01.2008, PW1 and PW31 were not aware of any such offer made by the accused to the deceased. Since PW1 and PW31 were not aware of the said relationship prior to 17.01.2008 there was no occasion for them to enter into a conspiracy to eliminate the deceased or to falsely implicate the accused in the present case. On the other hand, the accused has failed to prove that in the intervening night of 16th-17th.01.2008 the deceased called him at the spot on the ground that her family members were manhandling her. Therefore, it stands proved that the accused had the motive to commit the offence.

103. Counsel for the accused pleaded that according to the prosecution, on 16.01.2008, PW1 scolded the accused and the accused decided to take the revenge from him. If that was so, then, the accused should have caused hurt to PW31, his wife or the children but not the deceased. Main case of the prosecution is rested on the motive that the accused had evil eye on the deceased. The prosecution took the said plea as an additional motive for the accused to commit the crime. As held above, the said motive stands proved. Therefore, the said plea of no consequence.”

25. It is evident from the cross-examination of PW30 Seema Kapoor that 5-6 months prior to the incident, the deceased complained to her that intentions of the appellant were not good as he wanted to make friendship with her. At that time, she scolded the appellant and told him that he was their family member and had seen the deceased since childhood. Pursuant thereto, the appellant assured that he would not repeat the same in future. PW30 further stated that 25-30 days prior to the incident, the deceased told her that the appellant again tried to make friendship with her. She again scolded the appellant and threatened him

that she would complain to PW1 Dinesh Kapoor and PW31 Anish Kapoor. In response to it, the appellant fell down on her feet and assured that he would not repeat the same in future. In view of the observation made by the learned Trial Court, we find that the appellant had an evil eye on the deceased which was proved by the prosecution as an immediate impelling motive on the part of the appellant to commit the murder of the deceased Surbhi. Furthermore, motive is also proved by the fact that the appellant had painted his face black knowingly fully well that he would be recognized by the occupants of the house, as he had worked with the uncle of the deceased for more than 12 years. We also find the ocular evidence led in support of the prosecution case is wholly reliable and see no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of crime is not of any significance.

26. In the present case, to ascertain the culpability of the appellant, the prosecution has produced convincing evidence to establish his guilt beyond reasonable doubt. It is on record that the appellant was named in the complaint made by PW1 Dinesh Kapoor (complainant) to the police officials, which formed the basis of rukka (Ex.PW1/A) and FIR (Ex.PW8/A). Also, PW1 Dinesh Kapoor in his earliest version given to the police named the appellant in inflicting injuries to him with a hammer while grabbing the appellant at the stairs of the first floor. He further stated that the appellant caused injuries to him as well as to his wife. Since the FIR was registered promptly within four hours without any delay, there was no possibility of manipulation of a false story. While appearing as PW1, the complainant proved the version given by him to the police without variation and deposed that the appellant was armed with a knife and a hammer which was snatched by PW31 Anish

Kapoor and was seized from the spot. He further stated that the appellant gave a blow with the hammer on his body and also gave knife blow on body of her wife. Despite lengthy cross-examination, the counsel for the appellant failed to elicit any contradiction or discrepancy regarding the sequence of events and the version stated by him. All the material facts deposed in examination-in-chief remained unshaken. The appellant did not deny his presence at the spot in his statement under Section 313 of the Code of Criminal Procedure. No ulterior motive was proved to the prosecution witnesses for falsely implicating the appellant in the incident. The presence of the appellant at the spot has been further corroborated vide his arrest memo Ex. PW31/K. We have found that the ocular testimonies of all the above mentioned eyewitnesses are in consonance with the medical evidence and there is no conflict whatsoever between the two. Furthermore, presence of PW34 Rajesh Goel, who was the neighbour and his presence at the spot was quite natural and probable as he was the resident of the house in front of which the incident took place strongly corroborated the incident.

27. In the light of above discussion, we are of the view that there is no infirmity in the judgment of the Trial Court by which the appellant was convicted under Section 302/324/458 IPC and under Section 25 of the Arms Act. The findings of the Trial Court against the appellant are therefore confirmed.
28. The appeal is dismissed accordingly.

29. Trial Court Record be sent back along with a copy of this order.

G.S.SISTANI, J.

VINOD GOEL, J.

JANUARY 31, 2017

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