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Crl.A.No.213 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.213 of 2018

Jaganathan (a) Jagan

... Appellant

Vs.

State rep by  
Inspector of Police,  
All Women Police Station,  
East Coimbatore  
crime No.675 of 2013

... Respondent

**PRAYER:**

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, against the order passed by the learned Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore, made in Special CC.No.7 of 2017 dated 15.03.2018 convicting the appellant herein for the offences under Sections 4 & 6 of POCSO Act and sentenced to rigorous imprisonment for seven years and imposed fine sum of Rs.5,000/- in default of payment to undergo 2 month simple imprisonment and directed to pay a compensation of Rs.1,00,000/- to victim minor girl and in default of payment to undergo two years rigorous imprisonment.



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For Appellant : Mr.C.D.Johnson

For Respondent : Mr.A.Gopinath,  
Government Advocate(crl.side)

### **JUDGMENT**

This criminal appeal is directed as against the judgment passed in CC.No.7 of 2017 dated 15.03.2018 on the file of the learned Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore, thereby convicted the appellant for the offence under Sections 4 and 6 of Protection of Children from Sexual Offences( POCSO) Act, 2012

2. The case of the prosecution is that the victim was aged about 16 years. The accused and the minor victim had love affair. While being so, on 30.11.2011, when the victim was alone in the house, the accused went to her house on her birthday and presented a gift. He deceitfully made her believe that he will marry her, intentionally induced her and forcefully had penetrative sexual assault on her and continued the same and for nearly one year. Hence, the act of the accused falls under the definition of rape of a minor girl. Based on the information received from the Ramvikram Hospital, Sowripalayam, Coimbatore, the Inspector of Police, D3, Podanur Police Station, Coimbatore



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registered FIR in crime No.675 of 2013 for the offence under Section 417 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act against the accused. Thereafter, the respondent had taken up the investigation of the complaint and after examination of all the witnesses, arrested the accused and remanded to judicial custody on 06.06.2013. After completion of investigation, final report was filed for the offences under Sections 417 of IPC and 5(L) & 6 of POCSO Act against the accused. The trial court had taken cognizance for the offence under Section 417 of IPC and Sections 4 and 6 of POCSO Act, 2012.

3. In order to prove the case, prosecution had examined PW1 to PW16 and marked Ex.P1 to Ex.P19. On the side of the accused, no one was examined and no documents were marked. On perusal of the oral and material evidence, the trial court found the appellant guilty for the offence under Sections 4 and 6 of POCSO Act and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months simple imprisonment. That apart, the trial court ordered compensation to the tune of Rs.1,00,000/- in favour of the victim, in default to



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undergo two years rigorous imprisonment. Aggrieved by the same, the present criminal appeal has been filed.

4. The learned counsel for the appellant would submit that though PW1 supported the case of the prosecution, subsequently she turned hostile. PW3-mother of the victim also turned hostile. Even then, without considering the same, the trial court mechanically convicted the appellant herein. FIR was registered on 06.06.2013. However, the occurrence took place four years prior to the registration of FIR. Therefore, the appellant was falsely implicated as accused after much discussions and deliberations. First examination of PW1 revealed that she consumed cow dung powder on 03.06.2013 and the appellant was requested to marry the victim on 04.06.2013. The appellant refused and the complaint was lodged only on 06.06.2013. The victim fell in love with the appellant and compelled him to marry her. When the appellant refused to do so, a false complaint has been foisted as against the appellant. After examination of PW1, she realised and again deposed that she falsely lodged complaint. She turned hostile and her evidence was treated as hostile. On the date of lodgment of complaint, the victim was aged about 18 years and the complaint was reduced in writing and thereafter, FIR has been registered in crime No.675 of



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2013. In the said complaint, she was shown as major and as such, FIR was registered for the offence under Section 417 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act. However, the trial court without any ryme or reason, mechanically altered the charge without any justifiable ground.

4.1 He further submitted that the crucial witness in this case who is the mother of the victim was examined as PW3 and she also turned hostile. She did not support the case of the prosecution. The victim was initially admitted in Vellalore Maidainaum Sasikala Hospital and she was treated for consuming poison. Thereafter, she was discharged from the hospital and no case was registered against the victim for attempting to commit suicide or no case was registered as against the appellant for the present case. Thereafter, she herself admitted into Ramvikram Hospital in Sowripalayam, Coimbatore District and on her statement, FIR has been registered, that too for the offences under Sections 417 of IPC and 4 of Tamilnadu Prohibition of Harassment of Women Act. He further submitted that the appellant was a school drop out student and he never indulged in such activities as alleged by the prosecution. Only because the victim fell in love with the appellant and when the appellant refused to get marry the victim, the present complaint has been foisted as against the



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appellant. In fact, she was major even at the time of occurrence. Even assuming that they had physical relationship, it was only consensual and no offence is made out under the POCSO Act since she attained majority. Therefore, the entire conviction is baseless and the appellant is liable to be acquitted.

4.2 The learned counsel for the appellant further submitted that the victim failed in her +2 examination and immediately after the result, she attempted to commit suicide by consuming cow dung powder. Therefore, the victim never attempted to commit suicide for the reason that the appellant refused to get marry after having been had physical relationship. She attempted to commit suicide only because of her failure in her +2 examination and immediately after putting the result, she consumed cow dung powder and admitted into hospital. In fact, originally she was admitted in the Vellalore Maidainaum Sasikala Hospital where she never made any statement as if the appellant refused to get marry after having physical relationship.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that in order to prove the case, the prosecution examined PW1 to PW16 and marked Ex.P1 to Ex.P19. The victim



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was examined as PW1 and her father was examined as PW2. Both the witnesses corroborated each other and though PW3-mother of the victim turned hostile when she was examined on 22.09.2017, after examination of PW1 and PW2, on 17.07.2017 there was some settlement between both the parties. Therefore, PW3 turned hostile and failed to support the case of the prosecution. Though PW3 failed to support the case of the prosecution, evidence of PW1 and PW2 clearly proved the case of the prosecution. Though PW1 in her further examination failed to support the case of the prosecution, the trial court rightly considered her first deposition and convicted the appellant.

5.1 He further submitted that in order to prove her age, PW7 was examined who was the Headmaster of the School of the victim. He issued transfer certificate which was marked as Ex.P4 and bonafide certificate which was marked as Ex.P5 to prove the age of the victim. Therefore, the prosecution clearly proved the case and the trial court rightly convicted the appellant. The victim after consumption of cow dung powder, she was admitted into Vellalore Maidainaum Sasikala Hospital and she was referred to Ramvikram Hospital, there her statement was recorded and informed to the Inspector of Police, D3, Podanur Police Station and registered FIR in crime No.675 of 2013 for the



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offence under Section 417 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act. Thereafter, investigation was done by the respondent and altered the offence and filed final report for the offence under Section 417 of IPC and Sections 5(L) and 6 of POCSO Act. Therefore, he prayed for dismissal of the appeal.

6. Heard, Mr.C.D.Johnson, the learned counsel for the appellant and Mr.A.Gopinath, the learned Government Advocate (crl.side) appearing for the respondent / police.

7. The victim was examined as PW1. Her father was examined as PW2 and her mother was examined as PW3. PW1 deposed that when she was studying +2 in the year 2013, she was running eighteenth year. She knows the appellant and they had acquaintance with each other and they fell in love. While being so on 30.11.2011, when the victim was alone in her house on her birthday, the appellant went to her house and presented a gift. Thereafter, he deceitfully made her believe that he will marry her, intentionally induced her and forcefully had sexual intercourse with her. It was also continued for nearly one year. While being so, when the victim asked the appellant to marry her, he



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refused to marry her and as such, she consumed cow dung powder to commit suicide. Immediately, she was admitted into Ramvikram Hospital at Sowripalayam, Coimbatore and she was treated as an in-patient. On the intimation from the hospital, the police personnel from D3, Podanur Police Station, Coimbatore recorded her statement and registered FIR in crime No.675 of 2013 for the offence Sections 417 of IPC and 4 of Tamilnadu Prohibition of Harassment of Women Act. Thereafter, the respondent had taken up investigation and after completion of investigation filed final report under Sections 417 of IPC and 5(L) and 6 of POCSO Act against the appellant herein.

8. The statement recorded from the victim was marked as Ex.P1 and it was reduced in writing, in which she made her signature. Her father was examined as PW2 and he also reiterated the evidence of PW1 and corroborated the same. He deposed that the victim was initially admitted in the Vellalore Maidainaum Sasikala Hospital and again she was taken to Ramvikram Hospital for further treatment. In the Vellalore Maidainaum Sasikala Hospital, she was given only first aid i.e. bowel wash and immediately she was taken to Ramvikram Hospital. Her mother was examined as PW3. She deposed that the victim failed in her +2 public examination and as such, she consumed poison.



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Therefore, she failed to support the case of the prosecution. Her witness was treated as hostile and the prosecution cross examined her. It is seen that PW1 and PW2 were examined on 17.07.2017 and they categorically deposed in support of the case of the prosecution. There seems that there was settlement between the victim family and the appellant family. Therefore, PW1 was recalled on her own petition and she deposed that she lodged complaint as if the appellant had cheated her after physical relationship due to anxiety. He never cheated her and they had no physical relationship.

9. Insofar as the age of the victim is concerned, Government Higher Secondary School, Vellalore Headmaster was examined as PW7. During his deposition, he stated that the victim's date of birth was 30.11.1995 and he issued transfer certificate which was marked as Ex.P4 and the bonafide certificate which was marked as Ex.P5. Ex.P4 and P5 revealed that the victim was minor on 06.06.2013. Therefore, on the date of occurrence, she was minor. She was treated as child and the stringent provision under Sections 5(L) and 6 of POCSO Act is clearly applied against the appellant. The consent of the victim was being immaterial under POCSO Act. Doctor, who examined the victim was examined as PW9. He deposed that on 19.08.2013, the victim was



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brought to the hospital and told that she was in physical relationship with a known person for nearly one year. No injury found on any part of the body. Her hymen was not intact and her vagina very well admitted two fingers. No spermatozoa was found in her vaginal smear and no semen found on pubic hair. The accident register was marked as Ex.P10. Thus, it is clear that the vicim had physical relationship with the appellant and she was cheated by the appellant and all of sudden he refused to marry her. Therefore, she consumed cow dung powder and she was admitted into the hospital. The appellant deceitfully made her believe that he will marry her, intentionally induced her and had forceful intercourse with her. He continued the same act for nearly one year. Therefore, the prosecution by clinching evidence proved the charge against the appellant.

10. The learned counsel for the appellant vehemently contended that at the time of alleged physical relationship, she had completed 18 years of age and she consented for physical relationship. The prosecution clearly proved that at the time of occurrence, she was minor and appellant deceitfully made her believe that he will marry her, intentionally induced her and had forceful physical relationship. Therefore, the question of consensual sex becomes immaterial. Further, immediately after consumption of cow dung powder, she



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was taken to Vellalore Maidainaum Sasikala Hospital and she was given first aid by washing her bowel. Immediately, she was taken to Ramvikram Hospital.

Therefore, Inspector of Police, D3, Podanur Police Station was informed and after recording her statement, FIR has been registered. Therefore, there is no delay on the part of the victim or on the part of the respondent in registering FIR.

11. Though the victim subsequently failed to support the case of the prosecution, her evidence does not suffer from any infirmity and the probable factors do not render it unworthy of credence. That apart, corroboration is not the *sine qua non* for a conviction in a rape case. Therefore, conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmity or improbabilities, which render it unworthy of credence. The Hon'ble Supreme Court of India held in the case of ***Mohd. Imran Khan Vs. State Government (NCT of Delhi)*** reported in **(2011) 10 SCC 192**, wherein the Hon'ble Supreme Court of India held that it is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury.



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Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. Further, the Evidence Act does not say that the victim's evidence cannot be accepted unless it is corroborated in material particulars. On perusal of the evidence on record and the totality of the circumstances of the case, disclose that the victim does not have a strong motive to falsely involve the appellant charged here. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is now settled that for an offence under the stringent provisions of POCSO Act, the testimony of the victim needs no corroboration.

12. The learned counsel for the appellant vehemently contended that PW1 and PW3 turned hostile and failed to support the case of the prosecution. Though PW1 subsequently deposed that the appellant had not cheated her and there was no physical relationship between them, she categorically deposed on 17.07.2017 that she fell in love and on the pretext of marriage, he committed penetrative sexual assault on her. After period of eight months, she again comes



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forward to depose that there was no such occurrence and the appellant had not cheated her. It is nothing but there was some settlement between them and she was compelled to depose to support the case of the appellant. PW2 who is the father of the victim clearly deposed and reiterated the evidence of PW1 and supported the case of the prosecution. Therefore, the trial court rightly held that it does not mean that her earlier statement given under oath has to be through away in the wind. Therefore, the subsequent deposition would not vitiate the case of the prosecution.

13. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Ganesan Vs. State rep. by its Inspector of Police*** reported in ***(2020) 10 SCC 573*** wherein, the Hon'ble Supreme Court of India has held as follows:

*10.1 Whether, in the case involving sexual harassment, molestation etc., can there be conviction on the sole evidence of the prosecutrix, in the case of Vijay alias Chinee (supra), it is observed in paragraphs 9 to 14 as under:*

*“9. In **State of Maharashtra v. Chandraprakash Kewalchand Jain**, (1990) 1 SCC 550 this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime*



*but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)*

*"16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. [The Evidence Act](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under [Section 118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the [Evidence Act](#) similar to Illustration (b) to [Section 114](#) which requires it to look for corroboration. If for some reason the*



*court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."*

*10. In State of U.P. v. Pappu, (2005) 3 SCC 594 this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused.*



*This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)*

*"12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."*

*11. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the*



*court is dutybound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 39496 & 403, paras 8 & 21)*

*"8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to*



*discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...*



21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations." (emphasis in original)

12. *In State of Orissa v. Thakara Besra*, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the



*entire case and in such cases, nonexamination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.*

*13. In State of H.P. v. Raghubir Singh, (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. (2010) 2 SCC 9 placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan, AIR 1952 SC 54.*

*14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix." (Emphasis supplied)*



10.2 In the case of *Krishan Kumar Malik v. State of Haryana* (2011) 7 SCC 130, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

14. Thus it is clear that there can be conviction on the sole testimony of the prosecutrix. If the court is not satisfied with the evidence of the prosecutrix, it can look into other evidence. Further, a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. The statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

15. Therefore, in the facts and circumstances of the case, the trial court has not committed any error in convicting the appellant relying upon the evidence of PW1 and PW2. Hence, considering the object and purpose of POCSO Act, 2012 and considering the evidence on record, the trial court



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rightly convicted the appellant for the offence under Sections 4 and 6 of POCSO Act and sentenced to undergo seven years rigorous imprisonment with fine of Rs.5,000/- along with compensation of Rs.1,00,000/- payable by the appellant to the victim.

16. For the reasons given above, the present appeal is liable to be dismissed. Accordingly, this criminal appeal is dismissed.

14.10.2022

Speaking/non-speaking

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Internet : Yes

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**G.K.ILANTHIRAIYAN, J.**

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To

- 1.The learned Sessions Judge,  
Mahalir Neethimandram (Mahila Court),  
Coimbatore
- 2.Inspector of Police,  
All Women Police Station,  
East Coimbatore
- 3.The Public Prosecutor,  
High Court of Madras

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