

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1094 of 2016**

Arising Out of PS. Case No.-19 Year-2015 Thana- HATHAURI District- Muzaffarpur

Sundar Devi @ Sunar Devi Wife of Lakhindra Sahani, Resident of Village-
Pakari Barkhurdar, P.S. - Hathauri, District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Surya Nilambari, *Amicus Curiae*
For the Respondent/s : Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 08-07-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 19.08.2016 and order of sentence dated 26.08.2016, whereby the convict appellant has been convicted u/S- 302 of the Indian Penal Code (hereinafter referred to as I.P.C.), and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 5000/- (five thousand) and, in the event of default in payment of fine, to undergo further S.I. for 15 days.

2. When the matter was called out on 03.07.2024, learned counsel for the appellant Mr. Parwej Khan submitted



that he has already handed over the papers back to the concerned briefing advocate and now he is no longer appearing in the appeal. In fact, he is not having any papers.

3. It is relevant to note that the present appeal is pending since the year 2016 and appellant is in custody since 29.03.2015. We, therefore, requested Ms. Surya Nilambari to assist the Court and, with her consent, she was appointed as *Amicus Curiae*. On her request, the matter was adjourned for today.

4. Heard Ms. Surya Nilambari, learned *Amicus Curiae* for the appellant and Mr. Bipin Kumar, learned A.P.P. for the respondent-State.

5. The brief facts leading to the filing of the present appeal are as under:

“On 29.03.2015 at about 07:00 a.m. the informant’s daughter-in-law Sushila Devi, W/o- Hari Sahni, got busy in household chores after massaging her baby with oil and putting her to sleep before the door. After half an hour, the baby started crying upon which she rushed to the baby and saw that Sundar Devi, W/o- Lakhindra Sahni, R/o- Pakri Barkhurdar, P.S. Hathauri, Distt.- Mujaffarpur was strangulating the child with both of her hands. When she



reached near the baby, the accused pushed her aside and fled away towards her house. When she started crying, many villagers came there, ran after Sundar Devi and caught her red handed.”

6. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 428 of 2015.

7. Ms. Surya Nilambari, learned *Amicus Curiae* would mainly submit that the present is a case of false implication of the appellant because of the fact that the witnesses are on inimical terms with the appellant herein. Learned *Amicus Curiae* referred the evidence led by the prosecution and thereafter pointed out that the appellant filed three cases against the Sanjay Sahani (P.W. 3). It is further submitted that out of three cases, P.W. 3 was convicted in two cases. It is further submitted that the case was also lodged against some of the prosecution witnesses, as a result of which



the appellant has been falsely implicated in the incident in question. Learned *Amicus Curiae* thereafter contended that, in fact, P.W. 2 Sushila Devi is not an eye-witness to the incident in question despite which she was projected as an eye-witness. It is further submitted that the other prosecution-witnesses have also not seen the incident in question. The said fact can be revealed from the evidence.

8. Learned *Amicus Curiae* would further submit that the deceased was a child, aged about four months and it is not possible for him to cry for help when his wind-pipe is compressed. She further submitted that as per P.W. 2, the so-called eye-witness, she had first of all heard the cry of the child and upon hearing the cry she reached the place. At that time, she found the appellant pressing the neck of the child. However, the story narrated by the mother of the child, i.e. P.W. 2, may not be believed by this Hon'ble Court. At this stage, learned *Amicus Curiae* has referred to Modi A Textbook of Medical Jurisprudence and Toxicology (27th Edition), Chapter-20, page-578, para-20.3.3 which reads as under:

“ 20.3.3. Symptoms

If the windpipe is compressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance,



becomes insensible, and may die instantly. If the windpipe is not completely closed, the face becomes cyanosed, bleeding occurs from the mouth, nostrils and ears, the hands are clenched, and convulsions precede delayed death. As in hanging, insensibility is very rapid, and death is quite painless.”

9. It is pointed out by the learned *Amicus Curiae* appearing for the appellant that, as observed hereinabove, when the windpipe is compressed, it is not possible for any person to cry for help and, in the present case, the deceased was a child, aged about four months only and, therefore, it was not possible for him to cry for help.

10. Learned *Amicus Curiae* would thereafter contend that, as per the case of the prosecution, the child died immediately and he was not even taken to hospital. It is further submitted that, surprisingly, written application was kept ready beforehand and when the police reached the place of occurrence, the said written complaint was given to the police which was subsequently registered as an F.I.R.

11. On the point of evidentiary value of the deposition of prosecution-witnesses being near relatives and interested witnesses, learned *Amicus Curiae* has placed reliance upon para-15 of the judgment of Hon’ble Supreme Court in the case of **Sahib Singh Vs. State of Haryana**,



reported in **(1997) 7 SCC 231**. Para-15 of the judgment reads as under:

“15. The contention that the prosecution had relied only upon witnesses who are family members of the deceased and are thus highly interested cannot, by itself, be a ground to reject their statements. Witnesses who are related to the deceased are as competent to depose the facts as any other witness. Mere relationship does not disqualify a witness. If the incident had taken place at a time or under such circumstances that there was no possibility of any other person being present at the spot, except those who were related to the deceased, those persons, namely, persons related to the deceased, will be competent to depose the facts seen by them. Even if the possibility of independent witnesses being present is not ruled out, the witnesses related to the deceased would still be competent witnesses. All that has to be shown is that the witnesses were stating the truth. The Court itself, in order to find out whether what they had stated was true or not would scrutinise their evidence with care and caution. In *Kartik Malhar v. State of Bihar* [(1996) 1 SCC 614 : 1996 SCC (Cri) 188 : 1996 Cri LJ 889] decided by a Bench of this Court of which one of us (Saghir Ahmad, J.) was a member, it was held: (SCC p. 621, para 15)

“15. ... a close relative who is a natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason.”

12. Learned *Amicus Curiae* further submitted that while recording the statement of the appellant accused under



Section-313 Cr.P.C. all the incriminating circumstances/ evidence were not put to her and, therefore, on this ground also, the impugned judgment and order are required to be quashed and set aside.

13. Learned *Amicus Curiae*, therefore, urged that when the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the present appeal be allowed and thereby the impugned judgment of conviction and order of sentence be quashed and set aside.

14. On the other hand, learned Additional Public Prosecutor Mr. Bipin Kumar has opposed the present appeal. Mainly it has been contended by learned A.P.P. that P.W. 2, mother of the deceased child, is the eye-witness. She had, in fact, seen the appellant pressing the neck of the child when she reached immediately at the place of occurrence after hearing the cry of the child. Thereafter, the conduct of the appellant is also required to be examined by this Court. It is submitted that the appellant tried to flee away from the place. However, when P.W. 2 raised alarm for help, the other witnesses immediately came to the place of incident and the appellant was caught from the spot. Police was immediately called and thereafter the police arrested the appellant and she was produced before the



Magistrate Court. It is further submitted that all the prosecution-witnesses have supported the version of P.W. 2, the eye-witness. It is also contended that the medical evidence also supports the version of the eye-witness and, therefore, the prosecution has proved the case against the appellant beyond reasonable doubt. As such, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. Learned A.P.P., therefore, urged that the present appeal be dismissed and the judgment and order passed by the learned Trial Court be affirmed.

15. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

16. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

17. Before the Trial Court, prosecution examined 9 witnesses.

18. P.W. 1 Chhathu Sahani has mainly stated in his examination-in-chief that the incident took place six months ago at 07:00 a.m. He had returned to his door after



obeying the call of nature. On hearing the hue and cry, he reached the place of occurrence and saw that Sundar Devi strangulated the 4 month baby Shubham causing his death. The mother of the child tried to catch Sundar Devi, but she pushed her aside and fled away. After covering a short distance, she fell down and was apprehended. Thereafter the officer-in-charge of the concerned police station reached there and she confessed her guilt before him stating that she has killed Shubham by strangulating him. He has further stated that Sundar Devi killed the baby due to family dispute. She had earlier poisoned her own mother to death.

18.1. In his cross-examination, he has stated that he has deposed as an eye-witness and not on being tutored. He has further stated that Sundar Devi had lodged Complaint Case No. 63 of 2007 against him, Sanjay Sahani, Manoj Sahani, Rani Kumari, Hanslal Sahani and Jattu Sahani in which they were convicted, against which the appeal filed by them is pending. Before that Sundar Devi had also filed Complaint Case No. 2800 of 2005 against the aforesaid accused in which also they were convicted and appeal filed against the same is also pending. He has denied to have given false deposition due to previous enmity.



19. P.W. 2 Sushila Devi has stated in her examination-in-chief that the deceased Shubham Kumar was her son. The incident took place six months ago. At 07:00 a.m., she had put Shubham Kumar to sleep on the *verandah* and gone to grind spices. When she heard the child crying, she rushed to the child and saw that Sundar Devi was pressing the neck of her child (son). She tried to catch her, but she (Sundar Devi) pushed her aside and fled away. When she shouted, her mother-in-law, father-in-law and 5-7 others together chased and caught her. Sundar Devi confessed to have killed Shubham by pressing his neck. Police had also come at the place of incident and *post mortem* of the deceased child was conducted. Before this, Sundar Devi had also killed her own mother and her own child. She identifies Sundar Devi, present in the dock.

19.1. In her cross-examination, she has stated that there is no house between the place where she had put her child to sleep after breast-feeding and the courtyard. It took her half an hour to grind spices and she did not return to look after the child until she heard the cries of her baby. The field where her mother-in-law and father-in-law were at work is situated at a distance of 1-2 *laggis*. She went to the child, when the child cried and on her cry her mother-in-law, father-in-law and



others came there. It was she who first saw Sundar Devi whereafter her mother-in-law, father-in-law and others came there. She detailed the incident to them after five minutes in presence of village people. Sundar Devi was caught by Hanslal Sahani and Amarjeet Sahani. Sundar Devi was kept tied up and not beaten, whereafter the police came. Sundar Devi is her *Fua* in relation. She is not aware of any land dispute going on with her. She is neither aware of Case No. 63/07 filed by Sundar Devi nor does she know whether her mother-in-law and father-in-law are accused in the said case or not. She does not know whether her mother-in-law and father-in-law have been convicted in Complaint Case No. 2800 of 2005. About a year ago, a quarrel had taken place between her and Sundar Devi as she (Sundar Devi) had abused her, but no case was filed with regard to the said incident. She has denied the suggestion that her son's death was an act of God and Sundar Devi was falsely implicated in the present case by hatching a conspiracy due to previous enmity.

20. P.W. 3 Sanjay Sahani is a hear-say witness. He has supported the sequence of events as stated by other witnesses. He has added that the grandfather of the child, namely Hanslal filed a case by submitting a written



application. He has identified the accused, present in the dock. He has not stated anything about the present incident in his cross-examination.

21. P.W. 4 Hanslal Sahani has stated in his examination-in-chief that he is the informant in this case. The incident took place about a year ago. On the date of incident his daughter-in-law put her child to sleep in the *Verandah* after applying oil and went to cook. When the child cried, she came there and saw Sundar Devi pressing the neck of the child with both of her hands. When his daughter-in-law caught Sundar Devi, she pushed her aside and fled away. On this, his daughter-in-law started shouting and crying upon which he and other nearby residents gathered around and caught her. The child had died instantaneously. He identifies Sundar Devi who is a co-villager. Police had also reached there. A written application in this regard was submitted upon which he had put his thumb impression.

21.1. In his cross-examination, he has stated that Sundar Devi had filed 5-7 cases against him. In Complaint Case Nos. 2800/2005 and 63/2007 he and other prosecution witnesses of this case have been convicted, against which appeal is pending. Complaint Case No. 2804/2010 is pending



in which he and other prosecution witnesses are accused. Hathauri P.S. Case No. 103 of 2014 (Sundar Devi Vs. Hari Singh & Ors.) is also pending in which he and other witnesses are accused. Accused of this case Sundar Devi is his own cousin sister. She has settled in her father's house. He and others had tried to driver her out of the village, but she did not leave the place. Police personnel (12 in number) were present at the place of occurrence when she was chased. Sundar Devi was arrested after 2-3 hours by the S.H.O. Before Sundar Devi was arrested, a discussion had taken place between him and other witnesses of this case such as Chhathu Sahani, Sanjay Sahani and Sushila Devi. Chhathu Sahani and Sanjay Sahani have been convicted in the past. He has denied the suggestion that Sundar Devi has been falsely implicated in this case with a view to grab her land and drive her out of the village. He has also denied to have given false deposition.

22. P.W. 5 Indrajeet Sahani is also a hear-say witness. He has stated in his examination-in-chief that at the time of incident, he was working in his farm. He came to know from others that Sundar Devi had killed the son of Hari Sahani by pressing his neck. He identifies accused Sundar Devi, present in the dock.



22.1. In his cross-examination, he has admitted to have deposed as informed by others and he has not witnessed the incident with his own eyes. He added that the child allegedly killed was keeping poor health.

23. P.W. 6 Banslal Sahani has stated in his examination-in-chief that the incident took place two years ago at 07:00 a.m. At the relevant time, he was in his house. On hearing the cry of the child, he came out of his house and saw that Sundar Devi was pressing the neck of Hari Sahani's son, aged about four and a half years. When the mother of the child raised alarm, he and others rushed to the place. At this, Sundar Devi started fleeing away, but she was caught by Chhathu Sahani and others. Earlier to this also, she had killed the child of Hanslal Sahani. He has further stated that on being caught, she confessed to have killed the child. He identifies Sundar Devi.

23.1. In his cross-examination, he has stated that Sundar Devi is his sister in relation and she has settled in her parental house against their will. Ever since the lifetime of the father initiatives were taken to drive her out from the village, but she did not leave the village. In the case lodged by Sundar Devi, the informant of this case and other witnesses stand



convicted. He has further stated that he had seen Sundar Devi killing the child with his own eyes. He has denied that the child was ill from before. He has denied to have given false deposition and that the accused Sundar Devi has been falsely implicated in this case due to previous enmity with an intention to drive her out of the village and that the child had died due to prolonged illness.

24. P.W. 7 Vishwanath Sahani has stated in his examination-in-chief that Darogaji had prepared the inquest report of Shubham Kumar, son of Hari Sahani at 11:23 hours on 29.03.2015 after coming to the village, upon which he had put his signature as a witness. Sanjeev Kumar had also put his signature on the same in his presence. He identifies both the signatures and the same was marked as Ext.-1. A written application detailing the incident was handed over to Darogaji by Hanslal Sahani after putting his thumb impression on it. The said application was drafted by co-villager Sanjay Sahani, son of Shankar Sahani. He identifies the handwriting of Sanjay Sahani on the application. The same was marked Ext. 2.

24.1. In his cross-examination, he has stated that the page on which he has identified his signature was drafted in his presence. He does not know the contents of the same and



the number of columns. No one else had put his signature on the paper. He had put his signature at one page only. He cannot tell the date and time of signing the document. He has denied the suggestion of falsely deposing.

25. P.W. 8 Dr. Vijay Kr. Prasad has stated in his examination-in-chief that on 29.3.15 he was posted as Professor and Head. Deptt. of Forensic Medicine, S.K. Medical & College, Muzaffarpur. On that day he had done *postmortem* of dead body of Subham Kumar, aged about 4 months, S/o Hari Sahani, Village-Pakari Barkhuda, P.S.-Hathauri, Distt. Muz. The dead body identified by the Chowkidar 8/15 Ram Chandra Pandit. Average body built *rigour mortis* present on upper part of the body. No any antemortem external injury were found. On the dissections of the neck subcutaneous tissue and muscle of the neck was lacerated. Trachea was congested with fracture of tracheal ring with blood clot. Fracture 4th and 5th cervical vertebra. All internal abdominal viscera were congested. He has opined that the deceased died due to asphyxia as a result of ante-mortem strangulation by twisting of the neck. Time since death:- Within two to twelve hours. He has identified the postmortem report to be prepared by him in his pen and signature, which is marked as Ext. 3.



25.1. In his cross-examination, he has stated that the human body can be distinguished between right and left part. For twisting any portion of the body direction is required either left or right. He has not mentioned in the postmortem report whether the twisting of the neck was of right side or the left side. He has stated that the same injury will be found by twisting or pressing of neck over human body. He has also stated that time since death 2-12 hours has been calculated by presence of rigour mortis on the body. He has denied the suggestion that the postmortem report which has been given is not within the forensic medicine science.”

26. P.W. 9 Baleshwar Prasad Yadav has stated in his examination-in-chief that on 29.03.2015, he was posted as S.H.O. of Hathauri Police Station. He got an information that in village Pakri Barkhurdar, a lady has killed a child. Upon such information, he along with two A.S.I's. and police force proceeded for the place of occurrence. At the place of occurrence, Hanslal Sahani handed over a written complaint. On that basis, he prepared the inquest report of Shubham Kumar through carbon process, took the signatures of two witnesses and put his signature. He identifies the inquest report and the same was marked Ext.-4. After that he recorded the



statement of the informant and visited the place of occurrence. The place of occurrence is the east-facing hutment of Hanslal Sahani in village Pakri Barkhurdar. The main entrance is without doors. Inside the main entrance, there is a *verandah* where the child was lying on a wooden cot. It was informed that the child was killed while asleep by the accused by pressing his neck. He recorded the statement of witness Sushila Devi. On his requisition, lady constable Anju Devi was deputed. On her arrival, arrest memo was prepared by him upon which the thumb impression of accused Sundar Devi was obtained. He and two other witnesses also put their signatures on the same. He has identified the arrest memo to be in his pen and signature upon which the same was marked as Ext.-5. He has stated that it is relevant to mention that when the written complaint was submitted by the informant, he forwarded the same to the police station for registering the F.I.R. and he himself took the charge of investigation of this case. He had paginated the written complaint in his pen and signature which he identifies (Ext.-6). The formal F.I.R. of this case was prepared by the clerk of the police station, namely Collector Singh, upon which he had put his signature at two places. He identifies the formal F.I.R. (Ext.-7). He also identifies the



accused, present in the dock.

26.1. In his cross-examination he has stated that in para-11 of the case diary he has written that someone informed him about the incident on his official mobile phone. He has not mentioned in para-11 that Hanslal Sahani had given such information. He has further stated that the written complaint was not drafted in his presence rather it was handed over to him at the place of occurrence. After duly sending the written complaint to the police station, he took custody of the dead body and prepared the inquest report. He did not raid the house of the accused. The accused was arrested on being handed over by the nearby residents. It took one to one and a half hours to arrest the accused as she was arrested by lady constable Anju Devi after she came from the police station to the place of occurrence. He has stated that the statement of the lady constable Anju Devi has not been recorded in the case diary. He had not taken the statement of the accused Sundar Devi. He has denied the suggestion that he has conducted a faulty investigation with a prejudiced mind and that he has submitted a false charge-sheet against the accused.

27. From the evidence led by the prosecution, it transpires that P.W. 2 is the mother of the deceased child and



she is an eye-witness to the incident in question. She has specifically stated in her examination-in-chief that the deceased Shubham Kumar was her son. The incident took place six months ago. At 07:00 a.m., she had put Shubham Kumar to sleep on the *verandah* and gone to grind spices. When she heard the child crying, she rushed to the child and saw that Sundar Devi was pressing the neck of her child (son). She tried to catch her, but she (Sundar Devi) pushed her aside and fled away. When she shouted, her mother-in-law, father-in-law and 5-7 others together chased and caught her. Sundar Devi confessed to have killed Shubham by pressing his neck.

28. It is further revealed from the record that the informant, who is the father-in-law of P.W. 2, also immediately reached at the place of incident and also saw the occurrence in question. The other witnesses also gathered around the place. From the deposition given by the prosecution-witnesses, it is revealed that P.W. 2 is the eye-witness and other witnesses also reached at the place of incident immediately and the appellant accused was caught while she was trying to flee away from the place. It is relevant to note that it is the specific case of the informant that when the accused was caught, she had admitted her guilt and never



stated before the village people or the police, who came at the place, that she is innocent and she has been falsely implicated. Even while giving her statement under Section-313 of Cr.P.C. before the Court, the appellant accused did not take the said defence and, therefore, merely because the appellant had filed some cases against the informant and others and some of the prosecution-witnesses have been convicted therein, it cannot be said that in the present case the appellant has been falsely implicated as it is a settled proposition of law that enmity cuts both ways.

29. From the deposition of P.W. 2, mother of the deceased child, it can be said that her deposition is fully trustworthy and the said witness can be termed as a 'sterling witness'. Therefore, relying upon the deposition given by the solitary eye-witness only, without any corroboration, conviction can be recorded, if the deposition given by the said sterling witness is found to be trustworthy.

29.1. In the present case, from the deposition given by P.W. 2, we are of the view that the said witness can be termed as a 'sterling witness'. Further, in the present case, the medical evidence also corroborates the version given by P.W. 2, the eye-witness.



29.2. Further, it is the specific case of the mother of the child that she heard the cry of her child and, therefore, she rushed to the place and witnessed the appellant pressing the neck. Thus, in view of the evidence of P.W. 2, reliance place by the learned *Amicus Curiae* on Modi A Textbook of Medical Jurisprudence and Toxicology (27th Edition), Chapter-20, page-578, para-20.3.3 is misconceived. Further, the medical evidence also suggests that the death was caused due to ante mortem strangulation causing fracture of 4th and 5th cervical vertebra. Thus, we are of the view that the medical evidence also supports the version of P.W. 2, eye-witness.

30. We have also examined the judgement of Hon'ble Supreme Court in the case of Sahib Singh (supra) relied upon by the learned *Amicus Curiae*. We cannot dispute the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decision. We have scrutinized the depositions of the prosecution-witnesses, who are near relatives. However, as observed hereinabove, we are of the considered view that the depositions of the prosecution-witnesses can be said to be trustworthy and when the medical evidence also supports the version of the eye-witness, we are



of the view that no error has been committed by the Trial Court in passing the impugned judgment and order.

31. Merely because the written complaint was given to the police, doubt cannot be raised with regard to the story of the prosecution and, more particularly, when the appellant was caught from the spot while trying to flee away from the place of incident. It is required to be noted that the F.I.R. was immediately lodged and after recording the formal F.I.R., the inquest report was prepared and the investigating officer has carried out the investigation.

32. Looking to the above facts and circumstances, on carefully examining the evidence on record, appreciating the contentions advanced as also the reasoning recorded by the Trial Court while passing the impugned judgment and order, we are of the view that the prosecution has proved the case against the appellant/accused beyond reasonable doubt. As such, the Trial Court has rightly recorded the impugned judgment of conviction and order of sentence and, therefore, no case is made out for interference with the impugned judgment and order.

33. Accordingly, the appeal stands dismissed.

34. Before parting with the appeal, we record our



appreciation for the able assistance rendered by Ms. Surya Nilambari, learned *Amicus Curiae*.

34.1. The Patna High Court Legal Services Committee is, hereby, directed to pay ₹ 5000/- (Rupees Five Thousand) to Ms. Surya Nilambari, learned *Amicus Curiae* as consolidated fee for the services rendered by her.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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