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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2026
PRONOUNCED ON : .10.2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

Crl.A.No.707 of 2021
CNR: {HCMA011647082021}

Balaguru [M/43],
S/o.Panner Selvam,
No.6/8, Besanth School Road,
Triplicane,
Chennai-600 005.

..Appellant(s)

Vs

State By:
Inspector of Police,
D-3, Ice House Police Station (L & O),
Chennai-600 005.
[Crime No.188 of 2018].

..Respondent(s)

PRAYER: Criminal Appeal is filed under Section 374 of Code of Criminal Procedure, to set aside the judgment dated 15.12.2021 in S.C.No.200 of 2019 passed by the Court of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai in so far as convicting the appellant/accused under S.304(ii) of IPC and sentencing him to undergo 10 years Simple Imprisonment and imposed with a fine of Rs.1,000/- in default to undergo further period of 1 month Simple Imprisonment.

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For Appellant(s): Mr.V.Paarthiban for
Mr.Mushtaq Ahmed and Mr.M.Nallathambi,
Legal Aid Counsel

For Respondent(s): Ms.Sharada Vivek,
Additional Public Prosecutor

JUDGMENT

The appellant was convicted by judgment dated 15.12.2021 in S.C.No.200 of 2019 by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai (trial Court), and sentenced to undergo ten years of Simple Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month, for the offence under Section 304(ii) IPC. Challenging the said conviction and sentence, the appellant filed present appeal.

2.Case of the prosecution is that, on 05.07.2018, at about 5.30 p.m., near Ram Nagar Junction, the appellant went to a tea shop along with his son. At that time, the deceased made offensive remarks on the appellant's physical disability. The appellant warned the deceased not to insult him in public, which led to a verbal dual between them. Thereafter, appellant got some biscuits for his son, left his son at home, returned to the scene of occurrence with a wooden log (MO1), and attacked the deceased on the back of his head. The deceased fell down, rushed to the hospital in 108 ambulance. PW2, the paternal aunt of the deceased, a nearby food vendor present at the scene of occurrence, informed PW3 to inform PW1, the mother of the deceased. After injured was taken in

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ambulance, PW2 left the place. On receiving the information, PW1 rushed to Kasturba Gandhi Hospital, where she was informed that her son given first aid, and for further treatment referred to Rajiv Gandhi Government General Hospital, Chennai. PW1 then proceeded to the Government Hospital and found her son undergoing treatment. The respondent Police after getting information came to the hospital, but PW1 not unwilling to lodge a complaint, for the reason her son was responding well and was able to speak. Three days later, on 08.07.2018, at about 11.40 a.m., the deceased succumbed to injuries. Thereafter, PW1 approached the respondent Police and lodged complaint (Ex.P1) with PW16, the Investigating Officer.

3.On receipt of complaint (Ex.P1), PW16 registered FIR (Ex.P8) in Crime No.188 of 2018 for offence under Section 302 IPC against the appellant. PW16 visited the scene of occurrence, prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10) in presence of PW9 and PW10, examined PW1 to PW7 viz., the mother/PW1 and paternal aunt/PW2 and other persons, and recorded their statements. The statement of PW14, another eyewitness, also recorded. Since CCTV camera available near the scene of occurrence, PW11, a Technician, called to download CCTV footage in a pendrive. Thereafter, PW16 conducted inquest on the body of the deceased, prepared inquest report (Ex.P9) and sent the body for postmortem through PW15, Head Constable. Meanwhile, on receiving information about the appellant, PW16 arrested the appellant in the

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presence of PW13, recorded his confession (Ex.P6), and seized wooden log (MO1). PW12, Postmortem Doctor conducted the postmortem and issued Postmortem Certificate (Ex.P5). On completion of investigation, charge sheet filed. During trial, prosecution examined PW1 to PW16, marked Exs.P1 to P13, and produced wooden log (MO1). On the side of defence, no witnesses examined, but one defence document (Ex.D1) marked through Investigating Officer. On conclusion of trial, the trial Court convicted appellant as stated above.

4.Learned counsel for the appellant submitted that in the present case, the complaint (Ex.P1) was lodged by PW1, the mother of the deceased, three days after the occurrence. The alleged occurrence took place on 05.07.2018 at about 5.30 p.m., whereas the complaint (Ex.P1) lodged only on 08.07.2018 at about 3.00 p.m. In this case, PW1, mother of the deceased, is not an eyewitness to the occurrence. PW1 claimed that her sister-in-law/PW2 informed her about the incident and at the time of the occurrence, PW1 was at Zam Bazaar. PW1 stated that the respondent Police came to the hospital and since her son was speaking and responding well, she was not willing to lodge a complaint at that time. It was only after his death, three days later, she lodged the complaint (Ex.P1). The explanation given for the delay in lodging the complaint is unbelievable. The deceased was a notorious person having cases against him and he was also a drunkard having enemies. Since the deceased found on the

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floor with injuries, the appellant hails from the same area, previously had a fight, has been falsely implicated.

5.Learned counsel further submitted that PW8, brother of the deceased confirmed that the deceased was a notorious person against whom several criminal cases were pending and he had been to jail on several occasions and he was habituated to consuming alcohol and ganja. PW8 further stated that on one occasion, the deceased attacked the Police, resulting in registration of criminal case against him. According to the defence, the deceased had several enemies, and the appellant falsely implicated in the case merely because he happened to be present at the scene of occurrence. He further submitted that the presence of PW2, paternal aunt of the deceased, at the scene of occurrence was highly doubtful. PW2 deposed that the deceased was having tea at the tea shop run by PW5. But PW5's evidence is otherwise. In the Accident Register (Ex.P11), it is recorded that the deceased was under the influence of alcohol and found drowsy. PW2 stated that she informed her sister-in-law/PW1 about the incident and thereafter returned home. PW2 neither accompanied the injured to the hospital nor visited him for two days. PW2 further stated that the respondent police arrived at the scene of occurrence within half hour. PW3, who was running a small tiffin centre near the scene of occurrence, deposed that she was cutting vegetables inside her shop when she heard a noise and on coming outside, she saw the deceased lying on the ground. PW3 called 108 ambulance

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using PW2's phone and thereafter went back inside her shop. Thus, according to the learned counsel, the presence of PW2 at the scene of occurrence was doubtful when PW3 was admittedly not an eyewitness to the occurrence.

6.He further submitted that PW4 and PW5, a neighbour and owner of the tea shop, projected as eyewitnesses, both not supported the prosecution case. PW6 and PW7 were the other two witnesses projected as eyewitnesses. Though both of them stated that they were present at the tea shop and saw the appellant attacking the deceased with wooden log (MO1), it is strange that after the incident both returned home without informing the police or anyone about the occurrence. They informed the attack three days later when the respondent police questioned them. Further, both witnesses admit that they were unsure whether the attack directed from the front or the back of the deceased, unable to provide any specific details about the wooden log used in the attack. PW8, brother of the deceased, confirmed that he was informed about the incident only on the next morning and thereafter went to the hospital to see his brother. PW9 and PW10 are witnesses to the Observation Mahazar (Ex.P2) and the Rough Sketch (Ex.P10) and they are got-up witnesses. Though PW9 & PW10 stated that the Police came to the scene, prepared handwritten Observation Mahazar and Rough Sketch in their presence, and obtained their signatures, the Observation Mahazar (Ex.P2) was a computer-typed printout. PW10 admitted that he did not know the contents of the document and he merely signed it.

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7.Learned counsel further submitted that, according to PW11, Technician, he went to Ram Nagar Junction on the request of Police and copied the CCTV footage from the digital video recorder (DVR) for the period between 16.20 hours and 16.29 hours on 05.07.2018. PW11 subsequently transferred the footage to a pen drive and handed it over to the police. It was contended that the pen drive contained secondary evidence and there was no evidence regarding ownership of the CCTV camera, the identity of its owner, or whether the CCTV camera and DVR were in working condition in the normal course, without any intervention. PW11, a complete stranger to the occurrence, collected the footage at the instance of the Police, hence, the certificate issued under Section 65B of Indian Evidence Act (Ex.P4) not valid. Added to it, CCTV footage not sent to a forensic expert for examination of its contents. PW12, Postmortem Doctor conducted autopsy and issued postmortem report (Ex.P5), in which six injuries recorded. According to the projected eyewitnesses, the appellant attacked the deceased only once with wooden log on the forehead. However, apart from the injuries to the skull, injuries also noted on the front of the left foot, front of the left knee, root of the nose, back of the left hand, outer aspect of the left knee, and the left elbow, right parietal region and the left posterior parietal region. In view of the above, the injuries sustained by the deceased could not be caused by a single blow and the evidence of projected eyewitnesses consequently unreliable. Thus, the ocular evidence was inconsistent with the medical evidence.

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8.Learned counsel further submitted that PW13, witness to arrest and confession (Ex.P6), admitted that the confession was handwritten, whereas the document was, in fact, computer-typed. PW13further admitted that he did not know contents of Ex.P6 and merely signed the document. PW13 further confirmed that he was a relative of the deceased and spoke about the deceased's involvement in several previous criminal cases.

9.He further submitted that PW14, another projected eyewitness to the occurrence, stated that he went to the tea shop of PW5, where he saw the deceased near the public toilet. The appellant arrived there with his son and had a quarrel. Thereafter, appellant went back home and brought MO1, and attacked the deceased. PW14 not identified the appellant in the dock. On the contrary, throughout his testimony, PW14 referred to the person who quarrelled and attacked the deceased as one Balamurugan. The appellant's name was Balaguru, son of Panneerselvam and not Balamurugan. The prosecution neither got clarified from PW14 during his examination nor produced any material to show appellant, Balaguru, was also known and called as Balamurugan.

10.He further submitted that PW16, Investigating Officer, admitted that he received the complaint (Ex.P1) from PW1 only on 08.07.2018 at about 11.30 a.m., visited the scene of occurrence at about 06.30 p.m. on the same day, prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10). According

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to PW16, he first conducted inquest and thereafter visited the scene of occurrence. PW16 arrested the appellant at about 08.00 p.m. on the same day. PW16 admitted that no complaint lodged by PW1 immediately after the attack on 05.07.2018. In fact, PW1 confirmed that when the respondent Police visited the hospital and sought a complaint, she refused to lodge the complaint, which is the explanation given for the delay. PW16 also confirmed that information had been received from the Government Hospital on 05.07.2018.

11.Learned counsel further submitted that Ex.D1, which marked through the Investigating Officer, recorded the cause of the incident as a road traffic accident (RTA), indicating that the deceased died as a result of a road traffic accident. Thus, the deceased was a person with several criminal cases against him and attacked the Police on one occasion and had several enemies. According to the defence, the appellant made as scapegoat in the present case. The prosecution failed to establish its case beyond all reasonable doubt. The finding of the trial Court that the deceased picked a quarrel with the appellant and the appellant, in a fit of rage and anger, attacked the deceased, thereby warranting his conviction under Section 304(ii) IPC, is unsustainable. Hence, the appellant to be acquitted and the appeal to be allowed.

12.Learned Additional Public Prosecutor strongly opposed the contentions raised by the appellant and submitted that the appellant and the

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deceased hailed from the same locality and were known to each other. On 05.07.2018, at about 5.30 p.m., the appellant went to purchase some biscuits for his son. At that time, the deceased, who was standing nearby, insulted and body-shamed the appellant by making derogatory remarks about his limb. The appellant became furious. As his son was with him, he took his son home, left him there, and thereafter returned to the scene of occurrence with the wooden log (MO1), questioned the deceased and attacked him with wooden log. The attack witnessed by PW2, paternal aunt of the deceased, who came there to purchase milk. PW3, running a tiffin centre nearby, was cutting vegetables inside her shop when she heard the noise, came out, saw the deceased lying on the road. PW2 gave her phone to PW3 and asked her to inform PW1, the mother of the deceased, who was at Zam Bazaar at that time. By then, 108 ambulance arrived to the scene and took injured to Kasturba Gandhi Hospital, where Dr.Rajitha gave first aid and issued Accident Register (Ex.P11). Thereafter, the injured referred to Rajiv Gandhi Government General Hospital, Chennai. On receiving information, PW1 rushed to Kasturba Gandhi Hospital and thereafter went to Rajiv Gandhi Government General Hospital, Chennai.

13.She further submitted that the respondent Police, on receiving information about the incident, went to Rajiv Gandhi Government General Hospital, Chennai and requested PW1 to lodge complaint. However, PW1 informed them that her son was speaking responding to treatment and she was

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not inclined to lodge complaint at that stage. Consequently, the Police returned without recording her complaint. Three days later, on 08.07.2018, at about 11.40 a.m., the deceased succumbed to his injuries. The death recorded in the death report dated 08.07.2018 at 11.40 p.m. (Ex.D1). Thereafter, PW1 approached the respondent Police station and lodged complaint (Ex.P1) with PW16, Investigating Officer. On receipt of the complaint (Ex.P1), PW16 registered FIR (Ex.P8), visited scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P10), conducted inquest over the body of the deceased, prepared inquest report (Ex.P9), sent the body for post-mortem through PW15, Head Constable, who identified the body to PW12, postmortem doctor. PW12 conducted autopsy and issued Postmortem Report (Ex.P5), confirming that the deceased died due to the head injuries sustained by him. Thereafter, the appellant was arrested on the same day, and his confession statement was recorded (Ex.P6). Pursuant to the confession, wooden log (MO1) seized. On receipt of toxicology report (Ex.P12) and serology report (Ex.P13), charge sheet filed before the trial Court. During trial, prosecution examined PW1 to PW16, marked Exs.P1 to P13, and produced MO1. On the evidence and materials on record, the trial Court finding that the deceased provoked the appellant and picked a quarrel with him, and the appellant inflicted a single blow on the deceased, convicted the appellant for offence under Section 304(ii) IPC. The trial Court duly considered the evidence and materials on record and rightly convicted the appellant. Hence, the impugned judgment of conviction

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and sentence does not warrant any interference by this Court and the appeal to be dismissed.

14.Considering the submissions and on perusal of the materials, it is seen that the deceased had criminal antecedents. The evidence of PW8, brother of the deceased, and other witnesses from the locality confirm the deceased was in the habit of consuming alcohol and ganja, frequently picked quarrels with others, and involved in disputes with the Police, resulting in his arrest and imprisonment on earlier occasions. The criminal antecedents of the deceased, by themselves, cannot establish the innocence of the appellant or discredit the prosecution case. The prosecution evidence must be assessed independently to determine whether the appellant's guilt has been established beyond reasonable doubt. In this background, it is to be seen that the occurrence took place on 05.07.2018 at about 5.30 p.m., when the appellant went to purchase biscuits for his son from the tea shop. At that time, the deceased, who was standing near the tea shop, insulted the appellant by making offensive remarks about his physical disability. The appellant thereafter took his son back home, returned to the scene of occurrence with a wooden log (MO1), and attacked the deceased on his head.

15.The evidence of PW2 is that the deceased was standing with his back when the appellant assaulted him from behind. PW3 is also projected as a

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witness to the occurrence. However, the evidence of PW3 is that PW2 shouted somebody assaulted the deceased and she came out, saw injured on the floor and requested PW3 to call 108 ambulance. PW3 using the mobile phone of PW2, contacted 108 ambulance. Thus, PW3's evidence does not establish that she witnessed the occurrence proper. Her testimony is relevant to the events immediately following the occurrence, but it does not independently corroborate the identity of the assailant or the manner in which the assault was committed. PW2 further stated that, though the deceased was her brother's son, but PW2 not accompanied the injured to the hospital. PW2 claims she returned home and went to the Government Hospital to enquire the injured two days later. PW2 stated that the Police arrived at the scene of occurrence within half an hour, questioned her, and thereafter she left the place. Her evidence regarding the weapon is contradictory to material object produced before the Court. According to PW2, the weapon was a wooden reaper, whereas MO1 is a wooden log. These circumstances raise doubts regarding the reliability of her testimony. Her evidence, when considered as a whole, appears to contain material inconsistencies and embellishments.

16.PW3's evidence establishes that she came out of her shop after hearing a noise and found the deceased lying on the road. She has not witnessed the occurrence proper. PW4 and PW5, projected eyewitnesses and a local resident and owner of tea shop, not supported the prosecution case. PW6 and PW7,

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hearsay van drivers, claimed that they witnessed appellant attacking the deceased with a wooden log, but unable to furnish material details regarding the assault. Both witnesses admit that they not informed the Police or anyone about the incident till the Police questioned them three days later on 08.07.2018. Though the mere failure of a witness to report an incident immediately does not, by itself, render the testimony unreliable, the unexplained silence of these witnesses, when considered along with their inability to provide details of the occurrence and the other discrepancies in the prosecution evidence, assumes significance in assessing their credibility.

17.PW16, Investigating Officer, admitted that the statements of the witnesses forwarded to the Court only on 29.04.2019. Thus, the statements reached the Court after a considerable delay and not forwarded contemporaneously during the investigation. The delay in forwarding the statements is a circumstance that requires scrutiny, particularly in view of the doubts raised regarding the presence and credibility of the projected eyewitnesses. In the present case, the delay, when considered along with the material inconsistencies in the evidence of the witnesses, gives rise to doubts regarding the manner in which their statements recorded and the genuineness of their claim to have witnessed the occurrence.

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18.PW14 another witness projected as eyewitness, stated that PW2 came to the scene of occurrence and called 108 ambulance. However, his presence at the scene is also doubtful. PW14 stated that PW2 appeared to be between 35 and 40 years of age at the time of the occurrence, whereas her age was approximately 67 years. Further, PW14 admitted that he was unable to furnish any details about the person whom he identified as Balamurugan and his son. Throughout his evidence, he referred to the assailant as Balamurugan and not Balaguru, the name of the appellant. He also failed to identify the appellant in the dock. The prosecution neither sought any clarification from PW14 regarding the identity of the assailant nor produced any material to establish that the appellant, Balaguru, was also known and called as Balamurugan. The failure to establish the identity of the person referred by PW14 assumes significance because the identification of the appellant as the assailant is a foundational fact in the prosecution case. In the absence of reliable identification evidence or other convincing material connecting the appellant with the person described by PW14, his testimony cannot be relied upon to establish the appellant's identity as the assailant.

19.In the present case, the projected eyewitnesses stated that the appellant attacked the deceased with wooden log (MO1) and inflicted single blow. However, their evidence differ regarding the manner in which the assault committed. PW2 stated that the blow inflicted from behind, whereas PW6 and

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PW7 stated that the appellant hit the deceased on the head with the wooden log and thereafter left the scene. PW14 also stated that the deceased was assaulted on the head. PW12, the postmortem doctor, conducted autopsy and issued Post-mortem Certificate (Ex.P5). In Ex.P5, it is recorded that apart from the injuries to the skull, other injuries noted on the front of the left foot, front of the left knee, root of the nose, back of the left hand, outer aspect of the left knee, and the left elbow, right parietal region and the left posterior parietal region. The presence of multiple injuries in different parts of the body requires consideration with the evidence of eyewitnesses who all categorically stated it is a case of single blow. The medical evidence must be considered whether corroborative with the ocular evidence. In the present case, the prosecution evidence, as discussed above, does not satisfactorily reconcile the discrepancies between the evidence of eyewitnesses and the injuries recorded in Ex.P5. This circumstance further creates serious and more doubt in accepting the prosecution version without independent and reliable corroboration.

20.In this case, the prosecution attempted to establish its case through electronic evidence by marking the pendrive (Ex.P3) and the certificate under Section 65-B of Indian Evidence Act (Ex.P4) through PW11. However, questions arise regarding the manner in which the CCTV footage was obtained, the source of the recording, and the evidentiary foundation for its admissibility. The mere fact that the footage was copied in a pendrive does not render the

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electronic evidence inadmissible. Its admissibility and evidentiary value must be assessed with the applicable law governing electronic records, including the requirements relating to the certificate and the authenticity and integrity of the recording. In the present case, the prosecution evidence does not satisfactorily establish how the CCTV footage independently identifies the appellant as the person who assaulted the deceased with MO1. Hence, the footage cannot be treated as conclusive proof of the appellant's identity or the manner of assault without proper assessment of its contents and evidentiary foundation. The trial Court placed considerable reliance on the evidence of PW2 and PW14 in arriving at its conclusion regarding the occurrence. But for the reasons discussed above, the presence and credibility of both witnesses are doubtful. The testimony of PW3 does not establish the actual assault, PW4 and PW5 not supported the prosecution case, and the evidence of PW6 and PW7 suffers from material deficiencies. PW14 gives contradictory version and failed to identify the assailant.

21.In view of the above, this Court finds that the evidence of the projected eyewitnesses suffers from material inconsistencies and deficiencies. The doubts regarding their presence at the scene of occurrence, the failure of PW14 to identify the appellant, the discrepancies between the ocular and medical evidence, and the absence of satisfactory corroboration connecting the appellant with the assault cumulatively create reasonable doubt regarding the

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prosecution case. The prosecution failed to establish the guilt of the appellant beyond all reasonable doubt and the appellant is entitled to the benefit of reasonable doubt arising from the evidence on record. The cumulative effect of the deficiencies discussed above prevents this Court from holding that the prosecution established the appellant's guilt beyond reasonable doubt.

22.Accordingly, this Criminal Appeal is allowed, and the impugned judgment dated 15.12.2021 passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.200 of 2019, is set aside. The appellant is acquitted of the charge under Section 304(ii) IPC. The bail bond, if any, shall stand cancelled, and the fine amount paid, if any, shall be refunded to the appellant.

23.This Court appreciates Mr.M.Nallathambi, Legal Aid Counsel for the appellant for his strenuous efforts in doing research and putting forth the case of the appellant effectively assisting Mr.V.Paarthiban for Mr.Mushtaq Ahmed, learned counsels for the appellant. The Legal Services Authority to pay the remuneration to the Legal Aid Counsel as per Rules.

.10.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1.The XVIII Additional Sessions Judge,
City Civil Court,
Chennai.

2.The Inspector of Police,
D-3, Ice House Police Station (L & O),
Chennai-600 005.

3.The Legal Services Authority,
Madras High Court.

4.The Public Prosecutor,
Madras High Court.

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M.NIRMAL KUMAR, J.

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