

P L D 2019 Supreme Court 261

KHADIJA SIDDIQUI and another - Appellants

Versus

SHAH HUSSAIN and another - Respondents

Supreme Court of Pakistan

Criminal Appeals Nos. 34-L and 35-L of 2018

Decided on 23 January 2019

Bench: Asif Saeed Khan Khosa, C.J.; Maqbool Baqar and Syed Mansoor Ali Shah, JJ.

JUDGMENT

ASIF SAEED KHAN KHOSA, C.J. - On 23.01.2019 both these appeals had been allowed and disposed of by us through a short order which read as follows:

For the reasons to be recorded later these appeals are allowed, the impugned consolidated judgment passed by the High Court is set aside and the judgment passed by the learned Additional Sessions Judge, Lahore on 30.03.2018 convicting and sentencing respondent No. 1 for various offences is restored. The said respondent shall be taken into custody and shall be lodged in a prison so as to serve his remaining sentences.

The following are the reasons for the said short order passed by us on 23.01.2019.

2. According to the prosecution respondent No. 1 namely Shah Hussain had given multiple Chhurri blows to his class-fellow namely Khadija Siddiqui appellant and her minor sister namely Sofia Siddiqui at about 02.00 P.M. on 03.05.2016 in and outside a motorcar belonging to the victims' family parked on a roadside in front of the Ambassador Hotel, Davis Road, Lahore and in respect of the said incident an information was laid by a driver of the victims' family namely Riaz Ahmed before a police officer at 03.23 P.M. on the same day at the Services Hospital, Lahore whereafter formal FIR No. 300 was registered at Police Station Civil Lines, Lahore at 03.45 P.M. during the same afternoon. As a consequence of the said FIR respondent No. 1 was arrested by the local police and upon completion of all the necessary steps taken during the investigation a Challan was submitted against him. A charge in that regard was framed by the trial court against respondent No. 1 to which he pleaded not guilty and claimed a trial. During the trial the prosecution produced twelve witnesses in support of its case against respondent No. 1. Riaz Ahmed complainant (PW5), Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) furnished the ocular account of the incident in issue and out of the said witnesses Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) were injured eyewitnesses. The medical evidence was provided by Dr. Rozina Mustafa (PW11) who had medically examined both the injured victims soon after the alleged occurrence and Javed Iqbal, Incharge Investigation (PW12) stated about the various steps taken by him during the investigation of this case. The remaining evidence produced by the prosecution was more or less formal in nature. In his statement recorded under section 342, Cr.P.C. the appellant denied and controverted all the allegations of fact leveled against him by the prosecution and professed his innocence. He, however, opted not to make a statement on oath under section 340(2), Cr.P.C. and did not produce any evidence in his defence. Upon conclusion of the trial the learned Magistrate Section 30, Lahore Cantonment convicted and sentenced respondent No. 1 on 29.07.2017 for various offences the details whereof are as follows: (i) Under section 324, P.P.C. to seven years rigorous imprisonment with fine of Rs. 50,000/- and in default of the payment thereof, to further undergo simple imprisonment for one year; (ii) Under section 337-A(i), P.P.C. to two years rigorous imprisonment with Daman of Rs. 50,000/-; (iii) Under section 337-A(ii), P.P.C. to five years rigorous imprisonment with Arsh of Rs. 84,016/-; (iv) Under section 337-F(i), P.P.C. to one year rigorous imprisonment with Daman of Rs. 50,000/-; (v) Under section 337-F(ii), P.P.C. to three years rigorous imprisonment with Daman of Rs. 50,000/-; (vi) Under section 337-F(iv), P.P.C. to

five years rigorous imprisonment with Daman of Rs. 50,000/-. The accused was ordered not to be released till the payment of Arsh and Daman even after completion of sentence of imprisonment. All the sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C. was extended. Respondent No. 1 challenged his convictions and sentences before the Court of Session, Lahore through an appeal which was partly allowed by a learned Additional Sessions Judge, Lahore vide judgment dated 30.03.2018 and various convictions and sentences passed by the trial court against respondent No. 1 were modified as follows: (i) Under section 324, P.P.C. for attempting to commit Qatl-i-Amd of Khadija Siddiqi, sentenced to five years rigorous imprisonment with fine of Rs. 50,000/- and in default of the payment of fine to further undergo simple imprisonment for three months; (ii) Under section 337-A(ii), P.P.C. for causing injury on the left side of forehead of Khadija Siddiqi, sentenced to three years rigorous imprisonment and to pay Arsh Rs. 84,016/- to the injured Khadija Siddiqi; (iii) Under section 337-F(ii), P.P.C. for causing three injuries to Khadija Siddiqi to pay Daman Rs. 50,000/- to Khadija Siddiqi; (iv) Under section 337-F(ii), P.P.C. for causing injury on the person of Khadija Siddiqi to pay Daman of Rs. 40,000/- to Khadija Siddiqi; (v) Under section 337-F(ii), P.P.C. for causing injury to Khadija Siddiqi and sentenced to pay Daman of Rs. 40,000/- to Khadija Siddiqi; (vi) Under section 337-F(i), P.P.C. for causing injury to Khadija Siddiqi and sentenced to pay Daman of Rs. 10,000/- to Khadija Siddiqi; (vii) Under section 337-F(i), P.P.C. for causing simple injury to Sufia Siddiqi, sentenced to six months rigorous imprisonment with Daman of Rs. 30,000/- to Sufia Siddiqi. All the sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C. was extended. Thereafter a revision petition was filed by respondent No. 1 before the Lahore High Court, Lahore assailing his convictions and sentences whereas another revision petition was filed by Riaz Ahmed complainant seeking enhancement of respondent No. 1's sentences and vide consolidated judgment dated 04.06.2018 a learned Judge-in-Chamber of the Lahore High Court, Lahore allowed the revision petition filed by respondent No. 1, set aside all the convictions and sentences of respondent No. 1 and acquitted him of the charge whereas the revision petition filed by the complainant was dismissed. Hence, the present appeals by leave of this Court granted on 13.06.2018.

3. We have heard the learned counsel for the parties at some length and have gone through the record of the case with their assistance.

4. It has been argued by the learned counsel for Khadija Siddiqui appellant that the prosecution had produced three eyewitnesses before the trial court out of whom Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) were injured witnesses whose presence at the spot could not be doubted and the third eyewitness namely Riaz Ahmad complainant (PW5) was an independent witness having no reason to falsely implicate respondent No. 1 in a case of this nature. He has also argued that the case in hand is a classic case of non-reading of the record by the High Court because the statement made by one of the injured eyewitnesses namely Sofia Siddiqui (PW7) had not even been discussed by the High Court in the impugned judgment passed by it whereas the merits of the statement made by Riaz Ahmad complainant (PW5) had not even been adverted to by the High Court. He has further argued that the High Court had also misread some crucial parts of the record of the case which misreading had clouded its vision and had distorted its perception of the facts of the case vitiating the impugned judgment passed by it. The learned counsel has also contended that the present case was a case of a broad daylight occurrence taking place at a thickly populated area of Lahore, an FIR had been lodged in respect of the occurrence with sufficient promptitude, the eyewitnesses produced by the prosecution had consistently pointed their accusing fingers towards respondent No. 1 as the sole perpetrator of the alleged offences, the medical evidence had provided full support to the ocular account, the background of good relations between the assailant and the victims turning sour was admitted by both the parties, the trial court as well as the appellate court had concurred in their conclusion regarding guilt of respondent No. 1 having been proved to the hilt and the High Court was not justified in acquitting the said respondent. It has been maintained by the learned counsel that the impugned acquittal of respondent No. 1 by the High Court, based primarily upon serious misreading and non-reading of the relevant record, has occasioned grave miscarriage of justice clamouring for interference in the matter by this Court. The learned Additional Prosecutor-General, Punjab appearing for the State/appellant has adopted and supported the

contentions of the learned counsel for Khadija Siddiqui appellant and has also prayed for setting aside of the impugned judgment passed by the High Court and restoration of the judgment passed by the learned Additional Sessions Judge, Lahore. As against that the learned counsel for respondent No. 1 has argued that the infirmities in the prosecution's case against the respondent noticed by the High Court in the impugned judgment passed by it had rendered the allegations leveled against him quite doubtful; the misreading and non-reading of the record by the High Court highlighted by the learned counsel for the appellants were not serious enough to dislodge the High Court's judgment in its entirety; the High Court had recorded very cogent reasons for concluding that the circumstances in which respondent No. 1 had belatedly been implicated in this case were not free from serious doubts; and the law is settled that a judgment of acquittal may not be interfered with by a higher Court in the absence of perversity in the same.

5. After hearing the learned counsel for the parties and going through the record it has straightaway been observed by us that the incident in issue had taken place in broad daylight and at a place which was thickly populated and was buzzing with activity at the relevant time. An FIR in respect of the said incident had been lodged with sufficient promptitude and the medical examination of the injured victims had also been conducted without loss of time. The ocular account of the said occurrence had been furnished before the trial court by three eyewitnesses namely Riaz Ahmed complainant (PW5), Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) out of whom the last two witnesses had the stamp of injuries on their bodies vouchsafing their presence at the scene of the crime at the relevant time. The said eyewitnesses had consistently pointed their accusing fingers towards respondent No. 1 as the sole perpetrator of the alleged offences and ostensibly they had no earthly reason to falsely implicate respondent No. 1 in a case of this nature or to substitute him for the actual culprit. The medical evidence had provided sufficient support to the ocular account furnished by the above mentioned eyewitnesses and the trial court as well as the appellate court had found the evidence produced by the prosecution to be worthy of implicit reliance but the High Court had taken a different view of the matter and had acquitted respondent No. 1 of the charge. The reasons prevailing with the High Court for acquitting respondent No. 1 of the charge may be summed up as follows: (i) The blood-stained clothes of the injured victims had not been produced before the investigating officer and were not secured during the investigation. (ii) Respondent No. 1 was a class-fellow of Khadija Siddiqui (PW6) and they were known to each other quite well but the said injured victim had nominated respondent No. 1 as the culprit for the first time on 08.05.2016, i.e. after five days of the occurrence despite the fact that Dr. Rozina Mustafa (PW11) had stated before the trial court that at the time of arrival of the said injured victim at the hospital she was well oriented and on that occasion the victim had only stated that a boy had attacked her and had not named respondent No. 1 as that boy. (iii) While medically examining Khadija Siddiqui (PW6) Dr. Rozina Mustafa (PW11) had initially noticed only eleven injuries sustained by the said victim but subsequently the said number had been swelled to twenty-three and such additional injuries had been mentioned by the said doctor on the basis of the operation notes of the victim and not on the basis of her own examination of the victim. The doctors conducting the operation on Khadija Siddiqui (PW6) had not been produced during the trial. (iv) If the condition of Khadija Siddiqui (PW6) was critical soon after the occurrence then she could not have gone to the Illaqa Magistrate seeking an order for her medical examination. (v) Khadija Siddiqui (PW6) had failed to appear before the District Standing Medical Board for fresh examination of her injuries despite having repeatedly been summoned by the Board for the purpose. (vi) According to the eyewitnesses there was profuse bleeding of the victims inside their motorcar but admittedly no foot-mat or any other article stained with blood was taken into possession during the investigation from inside the said motorcar nor any such article had been produced before the trial court. (vii) Riaz Ahmed complainant (PW5) had not informed the parents of the victims or any other member of their family about the incident and had proceeded to lodge an FIR in respect of the same on his own. (viii) The motive set up by the prosecution had not been proved by it because according to Khadija Siddiqui (PW6) respondent No. 1 used to harass her and wanted to marry her but she had rejected the proposal whereas the said stance of Khadija Siddiqui (PW6) had been contradicted by her letter brought on the record as Exhibit-DW wherein she had volunteered and had repeatedly stated that she was ready and eager to marry respondent No. 1.

(ix) The alleged recovery of a Chhurri at the instance of respondent No. 1 was legally inconsequential because the said recovery had been effected after about five months of the incident in issue, the recovered Chhurri was not stained with blood and the recovery had been effected from an open place which was accessible to all and sundry. (x) The alleged recovery of a helmet statedly belonging to respondent No. 1 from inside the motorcar of the victims was not readily believable because the recovered helmet was of red colour whereas Asghar Ali, F.C. (PW10), a witness of the said recovery, had clearly stated before the trial court that the recovered helmet was of black colour. (xi) The statements made by the injured victims namely Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) did not inspire confidence because Khadija Siddiqui (PW6) had not divulged the true and complete tale. With these considerations weighing with the High Court it had been concluded by it that the occurrence might have taken place and the two injured victims might have received their injuries during the same occurrence but the manner in which the occurrence had taken place and its background might have been quite different from those described and stated by the said victims.

6. Taking up the above mentioned grounds weighing with the High Court for disbelieving the case of the prosecution and for acquitting respondent No. 1 one by one we note that the first ground prevailing with the High Court was based upon a misreading of the record on its part. According to the High Court the blood-stained clothes of the injured victims had not been produced or secured during the investigation whereas the record of the case shows that blood-stained clothes of Sofia Siddiqui (PW7) had not only been produced and secured during the investigation but a memorandum of such recovery had duly been exhibited before the trial court as Exhibit-PG.

7. The second consideration weighing with the High Court based upon failure of Khadija Siddiqui (PW6) to name respondent No. 1 straightaway as the culprit despite their previous intimacy has been found by us to be based upon an incomplete reading of the record of the case by the High Court. The statement made before the trial court by Dr. Rozina Mustafa (PW11) had clearly established that immediately upon receipt of her injuries Khadija Siddiqui (PW6) had become semi-conscious and in the next few days repeated attempts made by the investigating officer to record her statement had failed because according to the recorded opinion of the concerned doctor the said victim was unfit to make any statement. It is true that upon having been taken to the hospital immediately after the occurrence Khadija Siddiqui (PW6) had stated before Dr. Rozina Mustafa (PW11) that a boy had attacked her but the statement made by the said doctor before the trial court clearly shows that at the relevant time the condition of Khadija Siddiqui (PW6) was critical and the surgeons were ready to operate upon her and when Dr. Rozina Mustafa (PW11) wanted to know from the victim the identity of the boy the said doctor was required by the surgeons to immediately leave the operation theatre so that they could commence the operation straightaway in order to save the victim's life. In the next few days the said injured victim had remained under the effect of anesthesia and soon after regaining consciousness after a few days she had divulged the name of respondent No. 1 as the culprit. Unfortunately this part of the statement made by Dr. Rozina Mustafa (PW11) had been completely ignored by the High Court.

8. The next consideration weighing with the High Court regarding Dr. Rozina Mustafa (PW11) noticing eleven injuries on the body of Khadija Siddiqui (PW6) ignored that part of the statement made by the said doctor before the trial court according to which when the said doctor was examining the victim her condition was critical and the surgeons ready for the operation had required the said doctor to leave the operation theatre and, thus, recording of the remaining injuries of the victim by that doctor in the Medico-legal Certificate being prepared by her had been deferred till after the operation and the said task was subsequently completed by her on the basis of the operation notes because for the next many days the victim was unconscious and under the effect of anesthesia. Be that as it may the fact remains that even sustaining of eleven injuries by the said victim instead of twenty-three could have conveniently attracted the provisions of section 324, PPC and nothing actually turned in this case on the fact that eleven of the victim's injuries had been recorded by the concerned doctor in the first phase whereas the remaining injuries had been recorded by the said doctor at a subsequent stage after the operation of the victim.

9. As regards the next consideration weighing with the High Court we have been surprised to notice that according to the High Court the injured victim namely Khadija Siddiqui (PW6) had gone to the Illaqa Magistrate first seeking an order regarding conducting of her medical examination and thereafter she was medically examined on the basis of such an order passed by the Illaqa Magistrate. This consideration weighing with the High Court was squarely based upon a misreading of the documents brought on the record as Exhibit-PN and Exhibit-PJ which clearly established that Khadija Siddiqui (PW6) was medically examined on 03.05.2016 without any intervention or order of a Magistrate and on the next day, i.e. 04.05.2016 the investigating officer had filed an application before the Illaqa Magistrate seeking a direction regarding supply of a copy of the Medico-legal Certificate pertaining to Sofia Siddiqui (PW7) to him. We are constrained to observe that the High Court had not demonstrated the requisite care in examining the record of this case and resultantly such a glaring misreading of the record on the part of the High Court had been occasioned. We expect the High Court to do better in this regard in future.

10. The High Court had also observed that Khadija Siddiqui (PW6) had failed to appear before the District Standing Medical Board for re-examination of her injuries and an adverse inference had been drawn by the High Court in that regard against the prosecution. The record, however, shows that the order passed by the Illaqa Magistrate requiring Khadija Siddiqui (PW6) to appear before the District Standing Medical Board had been suspended by the High Court through a Writ Petition filed against that order and that order never stood revived till the conclusion of the trial. Unfortunately this ground weighing with the High Court was also based upon a serious non-reading of the relevant record of the case by it.

11. It had also weighed with the High Court that no blood stained foot-mat or any other article had been secured by the investigating officer from inside the relevant motorcar but the High Court had failed to read the statement made by the investigating officer of this case namely Javed Iqbal, Incharge Investigation (PW12) properly who had categorically stated before the trial court that the relevant motorcar had been inspected by him soon after the occurrence and that he had noticed blood being available inside that motorcar. Any inefficiency on the part of the said investigating officer in securing any blood-stained article from inside that motorcar was insufficient in the circumstances of this case to conclude that the two injured victims had not been injured at all or that no blood had spilled inside that motorcar at the time of taking place of the occurrence. Khadija Siddiqui (PW6) had received as many as twenty-three injuries on different parts of her body through the use of a Chhurri and it was unimaginable that no blood of the said victim had come out of her body while being subjected to such a fierce assault through a lethal weapon.

12. The consideration weighing with the High Court that Riaz Ahmed complainant (PW5) had not informed the parents or other members of the family of the victims before proceeding to lodge an FIR has been found by us to be insignificant and irrelevant because the complainant was the driver of the victims and if the victims had been subjected to a very serious assault with the use of a Chhurri then it was nothing but natural and proper for the said driver to have straightway taken the injured victims to the nearest hospital and upon arrival of the police to inform the police about the incident. Such conduct on the part of the driver in fact could be cited in support of the prosecution's case as the FIR had been lodged by the driver straightaway without even consulting anybody belonging to the victims' family. This aspect of the case ruled out any deliberation taking place before lodging of the FIR and the same augmented its credibility rather than weakening its reliability.

13. The High Court had observed that the motive set up by the prosecution had not been proved by it because on the one hand Khadija Siddiqui (PW6) had maintained that she had refused to marry respondent No. 1 but on the other hand a letter written by her to respondent No. 1 showed that she was quite willing and eager to marry him. The High Court had failed to read that portion of the statement of Khadija Siddiqui (PW6) wherein she had explained that she was being harassed by respondent No. 1 and she wanted to complain against him to her mother and, therefore, an attempt was made by respondent No. 1 to silence her. Khadija Siddiqui (PW6) had also been suggested by the defence itself that respondent No. 1 had shunned her company but the young lady persisted in

continuing her relationship with respondent No. 1 which suggestion clearly showed that there was a break in the close friendship between that young lady and respondent No. 1 prompting the respondent to make an attempt to get rid of her which provided a plausible motive to respondent No. 1.

14. The High Court had discarded the alleged recovery of a Chhurri at the instance of respondent No. 1 and the reasons recorded by the High Court in that regard have been found by us to be valid and cogent.

15. The reasons recorded by the High Court for discarding the recovery of a helmet from inside the motorcar of the victims have failed to impress us. The High Court had failed to notice in that regard that a helmet had been recovered by the investigating officer on the very day of occurrence and in the Memorandum of Recovery (Exhibit-PF) no colour of the recovered helmet had been recorded. It could be a lapse of memory on the part of the recovery witness namely Asghar Ali, F.C. (PW10) when he had stated about the colour of the recovered helmet or it could also be attributed to a dishonest concession on his part but the matter of colour of the recovered helmet was not serious enough to throw out the entire case of the prosecution against respondent No. 1, particularly when such case was strongly based upon statements of two injured victims who were a young lady and a minor girl having no reason to substitute the actual culprit who, according to the suggestions of the defence itself, was quite well known to them.

16. The High Court had completely failed to refer to that part of the evidence brought on the record which had clearly established that Khadija Siddiqui (PW6) and respondent No. 1 were class-fellows and it had consistently been suggested by the defence to all the relevant prosecution witnesses, including the two injured victims, that Khadija Siddiqui (PW6) and respondent No. 1 were close friends, they used to visit parks, hotels and the house of PW6's maternal grandmother as well as the house of the victims' parents besides watching movies in cinema houses together and, thus, there was hardly any question of Khadija Siddiqui (PW6) not recognizing respondent No. 1 as the sole culprit in an occurrence taking place in broad daylight and at a populated place. The defence had itself brought on the record many photographs, some in intimate positions, establishing a close and intimate relationship between Khadija Siddiqui (PW6) and respondent No. 1. The letter written by Khadija Siddiqui (PW6) to respondent No. 1 brought on the record of the case by the defence as Exhibit-DW left no room for doubt regarding very close friendship between the two which friendship had statedly hit some complications in the recent past.

17. We note with some concern that in the entire operative part of the impugned judgment passed by the High Court no discussion had taken place as to why the High Court had ignored or disbelieved the ocular account furnished by the minor and injured eyewitness namely Sofia Siddiqui (PW7). The said injured victim was six years old and the incident had taken place just outside her school when her elder sister, the other injured victim, had gone to bring her back from the school. The said minor injured victim had identified respondent No. 1 as the culprit on the first occasion that she got after the occurrence when respondent No. 1 had appeared before a Court for the purpose of seeking interim pre-arrest bail in connection with the present criminal case. Even Riaz Ahmed complainant (PW5) had identified respondent No. 1 on that occasion and had straightaway informed the investigating officer that respondent No. 1 was the person who had launched the murderous assault on and had injured Khadija Siddiqui (PW6) and Sofia Siddiqui (PW7) a few days ago. Sofia Siddiqui (PW7) had made her statement under section 161, Cr.P.C. on the very day of occurrence and it was suggested to her by the defence itself that she as well as her elder sister, i.e. Khadija Siddiqui (PW6) used to visit parks, hotels and cinema houses in the company of respondent No. 1 and the defence itself had suggested to her that she knew respondent No. 1 since before the occurrence as respondent No. 1 used to visit the victims' house. In this backdrop failure on the part of Sofia Siddiqui (PW7) to name respondent No. 1 straightaway but recognizing him at the spot and naming him as the sole culprit at the first opportunity becoming available to her after the occurrence did not detract from the overall strength of the case of the prosecution against respondent No. 1. Be that as it may, the High Court was not justified in completely ignoring the statement of the said injured eyewitness who had absolutely no reason to falsely implicate respondent No. 1 in a case of this nature.

18. We have noticed that some downright misreading of the evidence had been committed by the High Court and for some of the reasons prevailing with it the High Court had ignored many critical aspects of the case available in the evidence brought on the record. The exercise of appreciation of evidence in this case by the High Court has, thus, been found by us to be laconic and misreading and non-reading of the record by the High Court has been found by us to have led the said Court into a serious error of judgment occasioning failure of justice and clamouring for interference in the matter by this Court. A judgment of acquittal suffering from serious misreading or non-reading of the evidence materially affecting the final outcome of the case is nothing short of being perverse and, hence, not immune from interference. Apart from that the High Court ought to have appreciated that it was only seized of revision petitions and not an appeal and in exercise of its revisional jurisdiction the High Court ought to have confined itself to correctness, legality, regularity or propriety of the proceedings of the courts below rather than embarking upon a full-fledged reappraisal of the evidence, an exercise fit for appellate jurisdiction. In the case in hand the trial and appellate courts had undertaken an exhaustive analysis of the evidence available on the record and had then concurred in their conclusion regarding guilt of respondent No. 1 having been proved beyond reasonable doubt. In the absence of any error of law committed by the courts below and in the absence of any illegality, irregularity or impropriety committed by the courts below in the trial or hearing of the appeal the High Court ought to have been slow in interfering with the concurrent findings of fact recorded by the courts below.

19. For what has been discussed above these appeals are allowed, the impugned consolidated judgment passed by the High Court is set aside and the judgment passed by the learned Additional Sessions Judge, Lahore on 30.03.2018 convicting and sentencing respondent No. 1 for various offences is restored. The said respondent shall be taken into custody and shall be lodged in a prison so as to serve his remaining sentences.

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