



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 36 OF 2002

1. Narendra Sahebrao Patil,  
Age 30 years, Occ. Nil
2. Sanjay Sahebrao Patil,  
age 35 years, Occ. Agri.
3. Sushilabai Sahebrao Patil,  
Age 35 years, Occ. Household

All Resident of Manjre,  
Taluka Nandurbar,  
District Nandurbar.

... Appellants  
[Orig. Accused Nos. 1 to 3]

Versus

The State of Maharashtra

... Respondent

.....  
Mr. Ravindra S. Shinde, Advocate for the Appellants.  
Mr. N. D. Batule, APP for Respondent-State.

.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 18.01.2024

Pronounced on : 23.01.2024

**JUDGMENT :**

1. Instant appeal arises out of the judgment and order of conviction dated 20.12.2001 passed by learned Ad-hoc Additional Sessions Judge, Nandurbar in Sessions Case No. 101 of 1994 recording guilt of appellants for offence punishable under Sections 306 and 498-A of the Indian Penal Code [IPC].

**PROSECUTION CASE IN BRIEF**

2. Deceased Chandanbai was married to accused-appellant Narendra on 16.05.1993. After marriage, she went to reside with appellant no.1 husband and in-laws including appellant nos. 2 and 3 i.e. her brother-in-law and mother-in-law respectively. After marriage, everything was smooth for initial period. However, after five weeks, when deceased Chandanbai visited her parents' house, she reported that all accused are demanding Rs.10,000/- for purchasing agricultural land and they wanted the amount to be brought from her father. That, there was threat that if she fails to bring the amount, then she would be divorced and second marriage of husband Narendra would be performed. Accused persons were taunting deceased for not cooking properly and not working properly. They all were always insulting her. Mother-in-law instigated husband saying that parents of Chandanbai insulted her, as a result of which husband beat deceased by means of stick. On 21.04.1994, a letter from deceased was received to PW4 brother regarding demand of new clothes to her father-in-law. Therefore new clothes were also arranged. However, on 25.04.1994, message was received about Chandanbai to be serious. When brother and other relatives reached village Manjre, they learnt that deceased Chandanbai had suffered burns and therefore complaint Exhibit 28 was lodged by brother, on

the basis of which crime was registered by Nandurbar Police Station. PW6 carried out investigation and filed charge sheet for commission of offence punishable under Sections 306, 304-B, 498-A r/w 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. On appreciation of evidence adduced by prosecution, learned trial Judge held accused guilty for offence punishable under Sections 306 and 498-A of IPC and sentenced them to suffer imprisonment and to pay fine respectively. Said judgment dated 20.12.2001 is now assailed before this court.

### **SUBMISSIONS**

3. Learned counsel for the appellants would submit that learned trial Judge has already acquitted accused persons from charge under Section 304-B IPC as well as under the provisions of the Dowry Prohibition Act. Therefore, learned trial Judge ought not to have held accused guilty of offence under Section 498-A of IPC. It is emphasized that there is no independent, reliable evidence in support of charge of cruelty. That, even accepting the case of prosecution witnesses, there was mere taunting and there was no mental or physical harassment so as to attract offence of 498-A IPC. He submitted that there was no previous complaint at any point of time but merely on losing sister, brother had set law into motion out of annoyance.

4. He next submitted that trial court has also convicted appellants for offence under Section 306 of IPC but, according to him, there is no evidence about abetment to commit suicide or instigation as a result of which deceased committed suicide. He pointed out that there is no material whatsoever to show that there was cruelty which was of such nature that deceased was left with no other alternative but to immolate herself. According to him, none of the ingredients which are required for attracting such offence are available in the prosecution evidence. Therefore, it is his submission that learned trial court has not only failed to appreciate the evidence in correct perspective, but has also not considered the settled legal position. According to him, here prosecution has failed to establish its case beyond reasonable doubt. He reiterated that except mother and brother, who are interested witnesses, no other relative or even neighbour was examined. That, in the entire case *mens rea* or ill intention is patently missing and therefore it is his submission that both charges under Sections 498-A and 306 of IPC were not established or proved. Hence he seeks indulgence of this court for setting aside the impugned judgment.

Learned counsel for the appellants has placed reliance of the following decisions:

1. ***Bhartendra Dhanraj Bhojar v. State of Maharashtra*** AIR OnLine 2023 Bom 1638.
2. ***Lata Pramod Dangre v. State of Maharashtra*** 2022 (3) ABR (Cri) 572 : AIR OnLine 2022 Bom 136.
3. ***Geo Varghese v. State of Rajasthan*** AIR OnLine 2021 SC 849 : (2021) 11 SCALE 698.
4. ***Amalendu Palalias Jhantu v. State of W.B.*** AIR 2010 SC 512 : 2009 AIR SCW 7070.
5. ***Kishangiri Mangalgiri Goswami v. State of Gujarat*** AIR 2009 SC 1808 ; (2009) 1 CriLR (Raj) 362.
6. ***Sanju alias Sanjay Singh Sengar v. State of M.P.*** AIR 2002 SC 1998.
7. ***Ramesh Kumar v. State of Chhattisgarh*** AIR 2001 SC 3837: 2001 AIR SCW 4282.

5. Per contra, learned APP submitted that shortly after marriage, accused persons had put up a demand of Rs.10,000/- for purchase of agricultural land. Deceased promptly reported demand both, personally as well as by writing letter. That, she had reported about regular insults, ill-treatment, mental harassment and taunting. He pointed out that it has clearly come in the evidence of brother that

deceased Chandanbai was mercilessly beaten by husband. There is evidence about mother-in-law and brother-in-law humiliating deceased and instigating husband. Therefore, all were subjecting deceased to cruelty. That, cruelty was of such nature and extent that deceased was forced to end up her life. Therefore, finding evidence to that extent, learned trial Judge has correctly recorded guilt and so he prays to dismiss the appeal for want of merits.

6. During trial, though charge was framed for offence under Sections 498-A, 304-B, 306 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act, conviction was recorded for only offence under Sections 306 and 498-A of IPC.

The **essential ingredients** of the offence under **Section 498A** are as follows:

- (1) A woman was married
- (2) She was subjected to cruelty;
- (3) Such cruelty consisted in -
  - (i) Any willful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life,
  - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on

account of failure of such woman or any of her relations to meet the unlawful demand;

(iii) the woman was subjected to such cruelty by her husband or any relation or her husband

7. In a landmark case of ***Girdhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, this Court gave succinct enumeration of the object and ingredients of Section 498-A IPC as under :

*"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."*

8. Likewise, for attracting offence under Section **306 of IPC**, it is obligatory on the part of prosecution to prove the **essential ingredients** which are as follows:

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

9. The *sine qua non* for above charge is abetment to commit suicide. As to what amounts to abetment is provided in the statute itself.

**“306. Abetment of suicide-** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

**“107. Abetment of a thing-** A person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of said conspiracy, and in order to the doing of that thing; or



Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

10. There are numerous and series of judgments of the Hon'ble Apex Court on above penal section. A few landmark judgments could be enumerated as under:

In the case of *Swamy Prahalddas v. State of M.P. and another*, 1995 Supp (3) SCC 438: (AIROnline 1995 SC 94), the supreme Court was considering a situation where the accused was alleged to have remarked to the deceased 'to go and die' and thereafter, the deceased committed suicide. Even in such a situation the Supreme Court held that the allegations, even if they were to be accepted as it is, did not *prima facie* reflect *mens rea* on the part of the accused and it was also found that the deceased did have time to weigh the pros and cons of the act by which he ultimately ended his life. It was held that the accused need not face the charge in such a situation.

In the case of *Sanju alias Sanjay Singh Sengar* (supra), relied by learned counsel for the appellants, the Supreme Court was considering a situation where the deceased had left behind a suicide

note, wherein it was specifically stated that the accused was responsible for his death. In the said case, the Supreme Court considered the liability of the accused to face investigation and prosecution under Section 306 of the IPC, in the context of Section 107 thereof and it was held that the word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, further holding that presence of *mens rea*, therefore, was a necessary concomitant of instigation. It was found that in the said case the alleged abusive words were used by the accused against the deceased, two days prior to the date when the deceased was found hanging. In these circumstances, the Supreme Court found it fit to quash the criminal proceedings.

In the case of *Madan Mohan Sing v. State of Gujarat and another* (2010) 8 SCC 628 : (2010 AIR SCW 5101), the accused was alleged to have instigated his driver to commit suicide. There was a suicide note of 15 pages left behind by the deceased and the accused had approached the High Court for quashing of the FIR and the criminal proceedings, but his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court applied Section 306 read with 107 of the IPC and found that there has to be proximity between the alleged acts of the

accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations made and the material ought to be of a definite nature and not imaginary or inferential. The Supreme Court went into the suicide note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but it was noted that the contents fell short of depicting an intentional act on the part of the accused for driving the deceased to commit suicide. On this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

In the case of *S.S. Chheena v. Vijay Kumar Mahajan and another* (2010) 12 SCC 190 : (2010 AIR SCW 4938), the Supreme Court considered the facts of the said case and after referring to Sections 107 and 306 of the IPC, found that the High Court had erred in not quashing the criminal proceedings. Reference was made to a series of judgments on the aspect of abetment, particularly in the context of instigation. It was observed in the said judgment as follows:-

*“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing.*

*Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.*

*26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.”*

In the case of ***Vajjnath Kondiba Khandke v. State of Maharashtra and another*** (2018) 7 SCC 781 : (AIR 2018 SC 2659), the Supreme Court took note of the fact that there were indeed two lines of cases in the context of quashing of criminal proceedings, when the accused was facing charge of offence under Section 306 of the IPC. After taking note thereof, in the said judgment, the Supreme Court held that the accused may face trial if the material on record *prima facie* shows that the situation was created deliberately by the

accused so as to drive the victim to suicide. On the facts of the said case, it was found that the FIR and the criminal proceedings deserved to be quashed.

In the case of **Geo Varghese** (supra), relied by learned counsel for the appellants the Supreme court held as follows:

*“23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”*

In the case of ***Shabbir Hussain v. The State of Madhya Pradesh and others*** (order dated 26/07/2021 passed in SLP (Cri) No. 7284/2017) : AIROnline 2021 SC 761, the Supreme Court relied upon earlier judgment in the case of ***Amalendu Pal*** (supra) and held that mere harassment without any positive action on the part of the accused proximate to the time of occurrence, which led to the suicide, would not amount to an offence under Section 306 of the IPC.

Further, in the case of ***Kishori Lal v. State of M.P.*** (2007) 10 SCC 797, the Hon'ble Apex Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6:

*“6. Section 107, IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provide in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the*

*punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."*

11. Having discussed settled legal position on both the provisions, this court proceeds to re-analyze and re-appreciate the evidence adduced by prosecution and to further verify whether conviction and guilt recorded by the trial Judge is justified or not and is at all in consonance with the legal requirement.

12. Case set up by prosecution is that accused persons subjected deceased Chandanbai to maltreatment. Because of mental and physical cruelty meted out to her, she immolated herself. In order to prove their case, prosecution has examined following six witnesses:

**PW1** Subhash Baburao Pawar was the Police Patil who gave information about the incident to Nandurbar Taluka Police Station and it was reduced into writing vide Exhibit 18.

**PW2** Shivaji Hilal Patil acted as pancha to seizure of letter produced by brother of deceased vide panchanama Exhibit 20.

**PW3** Dr. Dagajirao Pundlik Patil was the autopsy doctor who issued postmortem note Exhibit 26 stating therein the cause of death as “asphyxia due to 100% burn due to cardio-respiratory failure”.

**PW4** Sanjay is brother of deceased.

**PW5** Annapurnabai is mother of deceased.

**PW6** Dy.S.P. Devidas Mahale is the Investigating Officer.

13. Out of six witnesses, evidence of brother and mother of the deceased is of significance being family members of deceased Chandanbai. As regards to offence under Section 498-A IPC is concerned, it is to be seen whether brother and mother are corroborating each other and have given consistent testimonies so as to rely on their evidence. Ground raised before this Court in appeal is that they are not consistent and therefore it is incumbent upon this court to carefully examine their evidence on record.

14. Informant brother PW4 in the initial chief deposed about marriage being performed, his father giving Rs.12,500/- to father-in-law of deceased for clothes and ornaments. According to him, for initial 15 days of the marriage and even three weeks thereafter when she visited their house and returned back to her matrimonial house,



everything was smooth and she was happy. According to him, when thereafter she was brought by his father, deceased informed that all accused and father of accused had told her to bring Rs.10,000/- for purchasing agricultural land. He claims that deceased also told that if she fails to bring the amount, divorce would be given and second marriage of Narendra would be performed. He levels allegations about accused persons taunting her for not cooking properly; not doing work properly; taking long time to cook meals and eat meals. According to him, all insulted her and deceased promptly reported it to them.

He also deposed that mother-in-law instigated husband stating that when she went to the maternal house of deceased, she was insulted. That, on such instigation, husband beat her by means of stick on her back and that he had seen violence marks. That, mother in law used to make complaints that deceased was not waking up early, not cook properly and that she had no manners and that they had not brought new clothes for father-in-law of husband when he had undergone operation. He further deposed that deceased secretly wrote a letter asking them to arrange for new clothes for her father-in-law. Then, he learnt about the incidence of burns.

15. Mother PW5, also as regards to ill treatment is concerned, deposed that for one month or so her daughter was treated well. But thereafter deceased told that all accused were demanding Rs.10,000/- for purchasing agricultural land and that there was taunting to her for not cooking properly, not washing clothes properly, not going to the field and not waking up early in the morning. According to her, when she met deceased in the marriage of her niece, deceased said that, had they paid Rs.10,000/-, she would not have been ill treated. That, accused mother-in-law levelled false allegations and therefore husband Narendra took her to the field and beat her by means of stick and violence marks were shown by deceased. She also stated that deceased told that once earthen pot fell from her hands and broke and therefore accused said that they would bring another wife for accused husband. That, she was dragged out of bathroom on accusation of not washing clothes properly. She stated that father-in-law made complaint that her daughter did not gave him leg massage and was not going towards him and that daughter had been impregnated by someone else prior to the marriage. She also stated about receiving letter from deceased and thereafter they got the news about her burns.

16. In cross of PW4 brother, he has answered that he does not know whether accused husband was serving at Surat. However he admitted that when he made inquiry in the village Manjre, some persons were saying that accused Narendra had gone to Surat. He admitted that after marriage when deceased sister came for the first time at that time she stayed for 15 days and her father-in-law had come to take her away and she stayed at matrimonial house for one month and she was happy. He admitted portion marked "A" to be true and correct. He denied that father-in-law of his sister had asked his documents for arranging employment. He admitted in para 24 that he had not specified the date, day or the month when deceased disclosed about ill treatment to her at the hands of accused. He also admitted about not disclosing the name of daughter of his maternal aunt who was married at Patan. He admitted that he did not take his sister for treatment on seeing violence marks. He also admitted about not mentioning day, date and month as to when his sister disclosed about demand of money and clothes for father-in-law. In para 25 he admitted that when he made inquiries with father of accused, he disclosed that deceased died because of flare of the stove while she was heating water. In para 26 he has admitted that accused Narendra had come from Surat to attend the funeral in the evening which had taken place at Village Manjre i.e. matrimonial place. Rest is all denial.

17. As like PW4, even mother of deceased i.e. PW5 in cross admitted that she cannot give month in which deceased showed violence marks. She admitted that her daughter living happy married life up to second *mool*. She was also unable to give the month and year of demand of Rs.10,000/- raised by accused. Rest is all denial.

18. On carefully re-analyzing the above discussed testimony of informant brother and mother of deceased, it is clearly emerging that they are both speaking about deceased being asked to arrange Rs.10,000/- for agricultural land and on its failure, there was ill treatment. However, it is clearly revealed that almost all accusations are for taunting on the count of not preparing proper meals, not waking up early, not washing clothes, eating too much. Both are speaking about in-laws being upset for not bringing new clothes after alleged operation of father-in-law. Though both are attributing beating by husband with a stick, when said incident took place, even is admitted by them to be not disclosed in their testimony. They are also admitting about not giving particulars like day, date month or year of said demand. Therefore, *prima facie* allegations are omnibus in nature. Informant brother does not speak about deceased stating to them that, had they paid Rs.10,000/-, there would not have been ill

treatment to her. Informant is also silent about what is stated by his mother, i.e. about father-in-law being upset as his legs were not pressed by deceased and she did not come near him. Her version about accused persons disowning the pregnancy from husband is also not stated by PW4. Therefore, for above reasons, they are not found to be consistent. Neither specific particulars like day, date or year of alleged demand and ill treatment are given by both of them. Even where accused persons were planning to purchase agricultural land is also not stated by both of them.

In the considered opinion of this court, mere taunting of above nature would not amount to harassment or mental cruelty. Solitary instance of husband beating with stick is stated but even its details are not given as to when the same took place. No steps are taken thereafter to question accused or to give understanding to the accused. Consequently, evidence of brother and mother does not disclose commission of offence under Section 498-A IPC.

19. Case of prosecution is that getting fed up of ill treatment, deceased immolated herself. Whereas, defence case is that while heating water in the early morning, there was flare of a stove flame and deceased catching fire and sustaining 100% burns.

20. Admittedly, there is no distinct evidence showing what happened exactly that night or even during the proximity of episode of burns. Neighbours are not examined. Occurrence has admittedly taken place in the house. PW4 and PW5 i.e. brother and mother have not levelled any allegations of any maltreatment in proximity to the incident. Spot panchanama on close scrutiny shows that at the place there was stove and a pot which was blackened at the bottom. Alleged incident had taken place around 3.00 to 4.00 a.m. on 25.04.1994. Spot panchanama was drawn at 2.00 p.m. on 26.04.1994 wherein above circumstances were noted. These tell tale signs about stove lying, smell of kerosene and blackened pot, probalizes defence case about sustaining accidental burns. Even AD was registered with such history. In absence of any material to show that accused persons set her to fire, it would be unjust to indict them. It would amount to drawing assumptions and presumptions. Though informant denied that husband Narendra was serving at Surat, in cross para 26 he has admitteds that husband of deceased had come in the evening from Surat for attending funeral. Therefore, taking such answer into consideration, it is doubtful whether husband was at all present in the house when the alleged incident of burns took place.

21. When specific accusations of prosecution are that deceased committed suicide by immolating herself, then burden is on prosecution to establish the same. It is expected of prosecution to show that accused persons abetted the suicide and are thereby responsible for the same. But one does not come across any iota of evidence regarding all accused abetting deceased to commit suicide or ill treatment being meted out to her which was continuous and of such nature that she was left with no other alternative but to end up her life. In absence of any evidence about ill treatment or abetment in proximity to the episode of burns, it is unsafe to hold that they have abetted her suicide.

Settled law on the point of offence of 306 IPC has already been discussed in aforesaid paras. Applying the settled legal position here, in the considered opinion of this court, there is no evidence about instigation or inducement to commit suicide. *Mens rea* which is essential ingredient is shown to be missing in the testimony of PW4 and PW55. Simplicitor accusations of taunting and demanding Rs.10,000/-, which was admittedly not followed by physical or mental cruelty, itself would not be sufficient to attribute abetment to commit suicide. Hence, in the considered opinion of this court, this charge fails.

22. On going through the impugned judgment, it is evident that learned trial Judge has recorded guilt by accepting the case of prosecution without properly appreciating the available evidence in its proper perspective. Learned trial Judge lost sight of legal requirements for fastening guilt. Settled law on the point of both the offences has not been applied and unfortunately, with such weak and fragile evidence, conviction has been recorded. The view adopted by learned trial Judge is not in consonance with the evidence on record. Hence, interference is called for in such findings. Accordingly, I proceed to pass the following order:

### **ORDER**

- I. The appeal is allowed.
- II. Conviction awarded to the appellants, i.e. appellant no.1 Narendra Sahebrao Patil, appellant no.2 Sanjay Sahebrao Patil and appellant no.2 Sushilabai Sahebrao Patil, by learned Adhoc Additional Sessions Judge, Nandurbar in Sessions Case No. 101 of 1994 under Sections 306 and 498-A of IPC on 20.12.2001 stands quashed and set aside.
- III. All three appellants stand acquitted of the offence punishable under Sections 306 and 498-A of IPC.



**IV. The bail bonds of appellants stand cancelled.**

V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of Muddemal.

**[ABHAY S. WAGHWASE, J.]**

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