



2026:KER:32710

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 10TH DAY OF APRIL 2026 / 20TH CHAITHRA, 1948

CRL.A NO. 929 OF 2015

AGAINST THE JUDGMENT DATED 26.08.2015 IN SC NO.551 OF 2014 OF

ADDITIONAL SESSIONS COURT, ERNAKULAM

APPELLANT/ACCUSED NO.1:

JOSEPH @ SABU
AGED 49 YEARS
S/O.CHACKO VARGHESE, EMBRAYIL HOUSE, EDAKUNNAM VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT, PIN 686507.
BY ADVS.
SRI.MANJU ANTONEY
SRI.R.ANAS MUHAMMED SHAMNAD
SMT.P.MAMATHA

RESPONDENT/PROSECUTION/STATE:

STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE, ALUVA WEST POLICE
STATION. (CRIME NO.591/2014 OF ALUVA WEST POLICE STATION)
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, COCHIN-682031.

BY SR.PUBLIC PROSECUTOR SRI.VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26.03.2026,
THE COURT 10.04.2026, DELIVERED THE FOLLOWING:



CR

JUDGMENT

Dated this the 10th day of April, 2026

Sole accused in S.C.No.551/2014 on the files of the Special Court under the Protection of Children from Sexual Offences Act, 2012 (for short, 'the PoCSO, Act' hereinafter), Ernakulam, has filed this appeal challenging conviction and sentence imposed by the Special Court against him in the above case, as per judgment dated 26.08.2015. Respondent herein is the State of Kerala.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor. Perused the judgment under challenge.

3. Here, the prosecution alleges commission of offences punishable under Section 7 r/w Section 8 of the PoCSO Act as well as under Section 354 of the Indian Penal Code (for short, 'the IPC' hereinafter), by the accused.

4. The prosecution case is that the accused herein brought the de facto complainant to the cabin room of security personnel at



6.00 p.m. on 19.05.2014 while she was playing along with others and subjected her to sexual molestation.

5. The learned Special Judge proceeded with trial and recorded evidence. PW1 to PW7 were examined and Exts.P1 to P5 were marked on the side of the prosecution. DW1 was examined on the side of the defence. Thereafter, the learned Special Judge found that the accused committed offences punishable under Section 7 r/w Section 8 of the PoCSO Act as well as under Section 354 of the IPC and he was sentenced as under:

“The accused is sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- (Rupees Five thousand only) u/s. 7 r/w. 8 of the Protection of Children from Sexual Offenses (POCSO) Act, 2012. In default of payment of the fine amount, the accused shall undergo rigorous imprisonment for another one month. Set off allowed. In view of s. 42 of the Protection of Children from Sexual Offenses (POCSO) Act, 2012., no separate sentence is imposed on the accused for the offense punishable u/s. 354 of IPC., as the punishment provided u/s. 354 is lesser in degree when compared with s.8 of the Protection of Children from Sexual Offenses (POCSO) Act, 2012. The fine amount, if



realized will be paid to the victim, PW.5 as compensation u/s.357(1) of Cr.p.c.”

6. While challenging the verdict impugned, the learned counsel for the appellant/accused raised a pertinent legal question. According to him, in the instant case, the prosecution has failed to establish the age of the victim by convincing evidence, which is elementary in PoCSO Act offences, and therefore, the learned Special Judge went wrong in finding that the accused committed the offence under the PoCSO Act. According to the learned counsel, rather than the version of the victim examined as PW5, and the mother of the victim examined as PW2, no other evidence adduced to prove the age of the victim. The learned counsel also argued that the place of occurrence also not proved and PW1 did not state the place of occurrence during chief examination and the same was brought out during re-examination. Accordingly, the ingredients to attract the offence under the PoCSO Act, have not been established.

7. The learned counsel for the appellant/accused placed decision of the Apex Court in **Yuvaprakash P v. State** rep. by



inspector of police reported in [2023 KHC 6709] with reference to paragraph Nos.16 and 19, where the Apex Court considered the evidence required to prove the age of the victim in PoCSO Act cases and held as under:

“16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this Court held in Sanjeev Kumar Gupta v. The State of Uttar Pradesh and Ors. (2019(9) SCR 735) that:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3) (a)(i) the matriculation or equivalent certificate was given precedence and it was



only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert



cannot be the determining factor". This finding is, in this Court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94(2) (i) mandates; nor are they in accord with Section 94(2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this Court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9."

8. Apart from that, the learned counsel for the appellant/accused relied on the decision in **Deny Bora v. State of Assam** reported in [2014 KHC 4542] with specific reference to paragraph 12, where the Apex Court held as under:

"12.....It is well settled in law that conviction



can be based on the testimony of a singular witness. It has been held in Sunil Kumar v. State (Govt. of NCT of Delhi) (2003) 3 SCC 169 that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration. The same principle has been reiterated in Namdeo v. State of Maharashtra (2007) 14 SCC 150 by stating that it is open to a competent court to fully and completely rely on a solitary witness and record conviction, if the quality of the witness makes the testimony acceptable.”

9. Whereas, the learned Public Prosecutor opposed the contention raised by the learned counsel for the appellant/accused and submitted that even though the mode of proof of the age of the victim in PoCSO offences to be established following the ratio of the decision of the Apex Court in **Jarnail Singh v. State of Haryana** reported in [(2013) 7 SCC 263], in a subsequent decision in **Biju v. State of Kerala** reported in [2024 (2) KHC 297], a Division



Bench of this Court held that the unchallenged oral testimony of the victim and her mother would be sufficient proof to prove the age of the victim. The observation of the Division Bench reads as under:

“14. As regards the argument of the learned counsel for the appellant that the conviction of the appellant cannot be sustained since the Prosecution failed to prove beyond reasonable doubt that the victim was below 18 years of age at the time of the incident, we are afraid we cannot accept the same. While the oral testimony of the victim PW1 is of sterling quality and speaks to the commission of the offence, the fact that the victim was only 16 years old at the time of the commission of the offence is proved through her own testimony and the testimony of her mother PW2. The contention of the learned counsel for the appellant that Ext.P8 certificate, proved through PW13 Sainaba Beebi, and showing the date of birth of the victim as 28.05.2001, cannot be relied upon since it is not a document mentioned under the Juvenile Justice (Care and Protection of Children) Act for proving the age of a juvenile, is also one that we find ourselves unable to accept. Firstly, there is nothing under the POCSO Act that indicates that the unchallenged oral testimony of the mother of the victim cannot be taken as proof of the date of birth of the victim. Secondly, we are of the view that the provisions of the Juvenile Justice (Care and Protection of



Children) Act that deal with the documents that can be relied upon to prove the age of a juvenile for the purposes of that Act do not, and indeed cannot, preclude a court considering a question regarding the age of a victim under the POCSO Act from placing reliance on other evidence admissible as per the Indian Evidence Act. We are of the view that the objects of both legislation being different, with the former being concerned with issues regarding the competence of a juvenile in conflict with the law to stand trial before a court and the latter being concerned with issues regarding the physical and mental effects on a child, of an offence committed against her, the manner of establishing the age of a child for the latter legislation can be in any one of the ways permitted under the Indian Evidence Act. In the instant case, we find the testimony of PW2 to be the most reliable evidence as regards the age of the victim for the purposes of Section 5 of the POCSO Act, and consequently for the purpose of attracting the presumption under Section 29 thereof to the appellant. The decisions in Justin @ Renjith & Anr. v. UOI & Ors.-[2020 (6) KHC 546]; Shaju @ Shaju v. State of Kerala & Anr.-[2022 (5) KHC 663] and Yuvaprakash P v. State-[2023 KHC Online 6709 (SC)] relied upon by the learned counsel for the appellant, are thus clearly distinguishable on facts.”



10. The learned Public Prosecutor submitted further that in the instant case, PW5 - the victim and PW2 - the mother of the victim deposed the age of the victim as 8 years on the date of occurrence and therefore, the same is suffice to prove the age of the victim as 8 years on the date of occurrence as the age of the victim deposed by PW5 and PW2 not at all challenged. Therefore, no interference in the verdict impugned is required on the premise of non proof of the age of the victim, as contended by the appellant/accused. He also argued that otherwise the finding of the Special Court is only to be justified to confirm the same.

11. In view of the rival submissions, the points arise for consideration are:

(i) What is the mode of proof of the age of a victim in PoCSO Act cases recognized by law?

(ii) Whether the prosecution succeeded in proving the age of the victim below 18 years in the instant case?

(iii) Whether the Special Court was right in holding that the accused committed offence punishable under Section 7 r/w Section 8 of the PoCSO Act?



(iv) Whether the Special Court was right in holding that the accused committed offence punishable under Section 354 of the IPC?

(v) Whether the verdict would require interference?

(vi) The order to be passed?

12. Point Nos.(i) and (ii)

In paragraph No.23 of **Jarnail Singh**'s case (supra), the Apex Court held that *even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a*



*number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. **In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child***



concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

13. The decision in **Jarnail Singh's** case (supra) has been followed in a latest decision of the Apex Court in **State of Uttar Pradesh v. Anurudh** reported in [**2026 KHC OnLine 6036**] when the Apex Court considered the question of age determination of a victim in a PoCSO Act case at the bail stage and applying the ratio in **Jarnail Singh's** case (supra) holding that determination of age of the victim is a matter of trial and the same could not be considered at the stage of bail.

14. In the instant case, PW5, the victim deposed during the examination that her age was 8 years and in her deposition, her age was recorded as 9 years on the date of the examination. Additionally, during her chief examination, PW5 stated that she was studying in the 4th standard at the time of examination. Even though during chief-examination of PW2, the mother of the victim did not disclose



the age of the victim, during cross-examination, while extracting the niceties of the occurrence, she stated that at the time of occurrence, the age of the victim was 8 and the same was divulged based on a question put by the Court. In this connection, it is relevant to note that the very rudimentary plank for prosecuting an accused under the PoCSO Act, is that the victim must be below 18 years of age, and in such cases, the prosecution is under a bounden duty to prove the age of the victim by the modes prescribed in the decisions discussed above. In **Biju's** case (supra), the Division Bench of this Court held that when the oral testimony of the victim is of sterling quality and the age of the victim is below 11 years at the time of occurrence as spoken by the victim and her mother, nothing in the PoCSO Act which would indicate that the unchallenged oral testimony of the mother of the victim could not be taken as proof of date of birth of the victim. The Division Bench distinguished the decisions in **Renjith & Anr's** case (supra) and **Shaju's** case (supra) on facts where apart from the evidence of the victim and her mother, a certificate showing the date of birth of victim below 18 years produced through corroborative witness which was also adduced by



the prosecution. In the instant case, on facts, no other evidence than that of the victim and her mother is available to prove the age of the victim as 8 years on the date of occurrence. In fact, the view taken by the Division Bench is that when the oral testimony of the mother of the victim was not challenged, the same can be taken as proof of the date of birth of the victim when the mother discloses the date of birth, which would suggest that the victim is a person below 18 years and the rationale given by the Division Bench is that there is no provision under the PoCSO Act in doing so otherwise a fact in issue can be proved by the mode known to law in accordance with the procedure established by the Indian Evidence Act, 1872.

15. It is not in dispute that a fact in issue can be proved either by oral evidence or by documentary evidence or by both including circumstances arising therefrom. When an accused was summoned by a Special Court under the PoCSO Act alleging that he committed an offence under the PoCSO Act, the offence alleged against the accused is commission of offences mentioned in the PoCSO Act against a victim below 18 years. No doubt, the prosecution has a duty to prove the age of the victim to maintain a prosecution under the PoCSO Act. For which,



the documents to be relied on are well detailed in **Jarnail Singh's** case (surpa) and other decisions of the Apex Court. In **Biju's** case (supra), the Division Bench of this Court was inclined to rely on the oral testimony of the mother of the victim to prove date of birth which was not unchallenged. Here, accused faced trial before the Special Court where a special procedure is contemplated particularly on the premise that the victim was a minor aged below 18 years. In such a case, the accused conceded the jurisdiction of the Special Court under the PoCSO Act and faced trial. It is legally well settled that the accused could very well contend that the victim is not a child defined in the PoCSO Act during trial and if so, it is the bounden duty of the prosecution to prove the age of the victim and the said mandate would have no dilution. When the child and her mother give evidence before the court, stating the date of birth of the victim, which would substantially show that the victim is below 18 years, if the accused does not dispute the status of the victim as a child below 18 years by contending that the victim's age at the time of occurrence is above 18 years by cross-examining



them and thereby, their substantial evidence would remain unchallenged, and thus, if the prosecution fails to prove the same by documentary evidence as discussed, conviction for the offence under the PoCSO Act is permissible. But when the oral testimony given by the victim and the mother has been challenged during cross-examination contending that the age of the victim is above 18 years and the prosecution fails to prove the age of the victim below 18 years by admissible documents discussed hereinabove, it is unsafe to fasten criminal culpability on the accused under the PoCSO Act, since the prosecution failed to adduce evidence to prove that the victim was aged below 18 years during commission of the offences. Explaining the legal position in the above line, it is unsafe to hold that in the instant case, the prosecution failed to prove the age of the victim below 18 years. Thus, the contention raised by the learned counsel for the appellant/accused that the prosecution miserably failed to prove the age of the victim to establish that she was a child within the meaning



of Section 2(d) of the PoCSO Act, which defines a child as a person below 18 years of age, is untenable.

16. Point Nos.(iii) and (iv)

Now, the question arises for consideration is whether the prosecution proved the ingredients to establish the offences under Section 354 of the IPC and Section 7 r/w Section 8 of the PoCSO Act. Section 354 of the IPC provides as under:

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

17. Thus, the ingredients of the offence under Section 354 of the IPC are assault or use of criminal force on a woman, with the intent to outrage her modesty, knowing it to be likely that he will thereby outrage her modesty. Keeping in view these ingredients, it is necessary to evaluate the evidence adduced by the prosecution. Apart



from PW5, who is the victim, other witnesses, including medical and eyewitnesses, were examined to corroborate the occurrence.

18. In order to determine whether the offence also falls under the PoCSO Act, Section 7 of the PoCSO Act provides as follows:

“Section 7. Sexual assault.—

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

19. As per Section 7 of the POCSO Act, touching a child’s private parts (vagina, penis, anus, or breast) or making a child touch a person’s private parts with sexual intent, without penetration, is an offence of sexual assault. That apart, any other act with sexual intent involving physical contact also is an offence of sexual assault within the ambit of Section 7 of the PoCSO Act.

20. PW1, the doctor who examined the victim and issued Ext.P1 certificate, deposed that on 23.05.2014, she was working as a



junior consultant at the District Hospital, Aluva, at 12:45 p.m., she had examined PW5 and issued Ext.P1. She stated that the victim reported that one Mr.Joseph had caught on her vagina. The learned defense counsel cross-examined PW1, but nothing was brought out to discredit her testimony. Moreover, during cross-examination, PW1 deposed that “no girl child would tell a lie without an incident. *It was highly improbable that the girl would lie. The expressions and feelings of the victim were sufficient to indicate that the incident was probable*”.

21. PW2, the de facto complainant and mother of the victim, deposed that CW3 was her husband and that they had three children, PW5 is the eldest daughter. She stated that she and CW3 ran a tea shop near the apartment complex at _____, and they resided in the same building. At about 5 p.m. on 19.05.2014, while she was at the tea shop, PW5 had gone out to play along with her friends, with her consent. At approximately 6:15 p.m., PW5 returned running and crying, stating that the accused Joseph caught on her vagina. PW2 immediately informed her husband, CW3. She further deposed that the accused, who was the security guard of the _____ apartment



complex, used to visit their tea shop for tea, and that PW5 told her that the accused had taken her on the pretext of showing a camera. On the same day, at 8 p.m., she gave Ext.P2 (first information) to the police. The next day, she went to the police station along with PW5, and PW5 was taken for medical examination.

22. PW3, another security guard of the same apartment complex, deposed that on 19.05.2014, he was working alongside the accused as a security guard in the said apartment complex. He stated that he knew CW3, the husband of PW2, and that CW3 used to visit their tea shop to take food. On the evening of 19.05.2014, the children were playing in front of the gate of the apartment complex. He further deposed that the children often entered the compound through the gap between the bars of the gate, and he instructed the accused, Joseph, to prevent such entry. At the relevant time, he was inside the security cabin and engaged in writing the register. PW3 deposed that the incident occurred at about 6:30 p.m. on the same day, when CW3, Mujeeb, came to the flat and assaulted the accused, alleging that the accused had sexually assaulted PW5.



23. PW4, a construction worker at the [redacted] apartment complex, deposed that he had witnessed the police preparing the scene mahazar and had attested the same as Ext.P3. During cross-examination, he stated that he knew the proceedings were in connection with a sexual assault case. He further deposed that, on the date of the incident, he had seen the children playing in front of the gate.

24. PW5 is the victim. Her evidence is that last year she was studying in 4th standard. She along with her parents, younger sister and brother had been residing near to the [redacted] at Mampra. They used to play in front of the [redacted] flat. Her parents were conducting a tea shop near to the flat. She knew the accused as the security guard of the [redacted] flat and he used to come their shop, for taking tea. While, she was playing with her friends in front of the flat, accused took her inside the gate on the pretext of showing the camera and touched on her vagina and other parts of the body. Immediately, she left the place and informed PW2 and in turn, PW2 informed the same to her father (CW3) and police came and recorded her statement. In re-examination, she has further deposed that, the



accused assaulted her from the security cabin. At that time, her friends were watching the camera.

25. PW6, a Sub-Inspector of the Aluva Women's Cell, deposed that on 22.05.2014, on the request of PW7, SI of Police, Aluva West, she went to the house of PW5 and recorded her statement, which was subsequently handed over to PW7.

26. PW7, the Investigating Officer, deposed that on 19.05.2014, he was working as the Sub-Inspector of Aluva West Police Station. On that day, at 8:15 p.m., PW2 came to the station and gave Ext.P2, the first information statement. He recorded the same and registered Ext.P2(a) FIR. The next day, he went to the scene of occurrence, prepared Ext.P3 (scene mahazar), and recorded the statements of witnesses. On the same day, at 10:40 a.m., he arrested the accused as per the Ext.P4 series of arrest memo, inspection memo, and custody memo were tendered in evidence through him. He also filed Ext.P5 report to include the name and address of the accused in the case. After completing the investigation, he laid the charge sheet.

27. Going by the evidence discussed hereinabove, the



ingredients to find commission of offence under Sections 7 r/w 8 of the PoCSO Act as well as under Section 354 of the IPC, have been established by the prosecution beyond reasonable doubt. Therefore, the learned Special Judge is right in convicting the accused for the said offence. Therefore, the conviction does not require any interference. Coming to the sentence, for the offence punishable under Sections 7 r/w 8 of the PoCSO Act, the Special Court imposed rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-. For the offence under Section 354 of the IPC, no separate sentence imposed. Since the minimum punishment provided for the offence under Sections 7 r/w 8 of the PoCSO Act is 3 years of rigorous imprisonment, though extendable upto 5 years, no reduction in sentence is possible. In such view of the matter, the sentence also is liable to be confirmed.

In the result, this appeal fails and the same is dismissed.

The order suspending sentence and granting bail to the accused stands cancelled and the bail bond executed by the accused also stands cancelled. The appellant/accused is directed to surrender before the Special Court, forthwith to undergo the sentence, failing



which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, without fail, for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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