

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MATEO BALBIN, DEFENDANT AND APPELLANT.

G.R. No. 11006. February 29, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

The information in this case charges:

"That the accused, on or about the 22d day of July 1914, in the municipality of Tacloban, Province of Leyte, Philippine Islands, was the agent and inspector of conductors employed by the company known as La Union, an organization engaged in the business of carrying passengers and freight by automobile for hire between the municipality of Tacloban and other nearby towns within the Province of Leyte; that the said accused on said date, as such agent or inspector of conductors, was present in one of the automobiles of the said company La Union, While it was making its trip between Dagami and Tacloban, within the Province of Leyte, defendant willfully, illegally, criminally and knowingly collected from Romualdo Garcia, Victoriano Depas, Benedicto Decoy, and Pedro Marquez, who were then and there passengers of the said company in said automobile from Dagami to Tacloban, the sum of P3.60, Philippine currency, as the fare of the said persons, instead of collecting the sum of P4.32 which was the sum which should have been collected from said persons according to the schedule of fares adopted by the said company; that said sum of P3.50 which the said accused collected from said persons for said trip was a price unjustly discriminating and gave undue preference to said persons, in violation of the law."

On trial the accused was convicted under this information and sentenced to pay a fine of P500, with subsidiary imprisonment in case of nonpayment, and to pay the costs of the trial. This appeal is from that judgment of conviction.

The claim of the Government is that the accused violated section 17, paragraphs (a) and (d), and section 33 of Act No. 2307 [as amended by sec. 16 of Act No. 2362], providing, so far as material to this case, as follows:

"Sec. 17. No public utility as herein defined shall:

" (a) Make, impose, or exact any unjust or unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, commutation rate, mileage, and other special rate, toll, fare, charge, or schedule for any product or service supplied or rendered by it within the Philippine Islands.

* * * * *

"(d) Make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever."

"Sec. 33. Any person who shall knowingly and willfully perform, commit, or do, or participate in performing, committing, or doing, or who shall knowingly and willfully cause, participate, or join with others in causing any

public utility corporation or company to do, perform, or commit, or who shall advise, solicit, persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public utility corporation or company to perform, commit, or do any act or thing forbidden or prohibited by this Act, shall be punished by a fine not exceeding two thousand pesos, or imprisonment not exceeding five years, or both, in the discretion of the court."

The first question raised by the appellant is one of fact. He claims that he had nothing to do with the collection of the fare set out in the information; that he was simply an inspector of conductors and an advertising and publicity agent for the company. He introduced evidence to substantiate his claim. On the other hand the Government claimed and offered evidence to prove that the accused was as a matter of fact the very person who made the rate referred to in the information and that the conductor of the automobile, in collecting the fares, acted under his direction. While the evidence is, in truth, conflicting, there is sufficient, if believed, to establish the alleged acts of the accused beyond a reasonable doubt. We find nothing in the record on which we can lawfully disturb the findings of the trial court in that regard, due weight being given to the fact that he saw the witnesses, heard them testify and took into consideration and was moved in making his finding by all those elements which, while not appearing in the record, are present in the trial of a case and of which an appellate court has no knowledge and on which it can properly base no act.

Reading the sections of the statute above quoted and with full consideration of the purpose of the Act we are unable to escape the conclusion that the facts proved constitute the crime charged. Both are specific. Paragraph (d) of section 17 prohibits any public utility from making or giving any undue or unreasonable preference or advantage to any person, or from subjecting any particular person to any prejudice or disadvantage in any respect whatsoever; while paragraph (a) thereof prohibits the making of any special rate or fare for any product or service supplied by a public utility within the Philippine Islands. We can see no escape from the proposition that, if the company had made the rate of P3.50 for a particular passenger in violation of the published schedule, at the same time requiring all other passengers to pay P4.32 for precisely the same service rendered at the same time, the act would have been a discrimination against the other passengers and a favor or preference to those paying the lower fare. In order that the law be violated it is not necessary that there be a rate, tariff, or schedule published by the offending company which gives a preference to a particular person or class of persons. It is sufficient if it makes a rate in favor of a single person lower than that which other persons contracting with the public utility for the same service receive. If a public utility were permitted to make a particular rate for a particular person at a particular time the beneficial purpose of the statute would be circumvented.

If the statute prohibits a public utility from making a preferential rate for a particular person at a particular time, then, under section 33 already quoted, an agent or employee of the company is prohibited from doing the same thing under the penalty therein prescribed. In that section any person who shall knowingly and willfully cause any public utility to perform or commit any act or thing forbidden or prohibited by the Act is guilty of a misdemeanor. As we have seen, it has been proved beyond a reasonable doubt that the accused gave, and, therefore, caused the company to give, a preference to the four passengers mentioned in the information by collecting from each of them a fare considerably less than that fixed by the schedule of the company and actually collected from other passengers for the same service. The evidence of the prosecution brings the case, it seems to us, clearly within the provisions of the law already referred to.

No claim is made on this appeal by the appellant that such acts as he performed were not done knowingly and willfully. The prosecution proved not only that the accused was an inspector of conductors but also an advertising agent of the company and held stock therein. It was shown that he performed the act complained of deliberately. It was furthermore shown that he was familiar with the tariffs and schedules of the company and that he knew that,

in collecting P3.50 from the passengers mentioned in the information and P4.32 from the other passengers, he was not conforming to the tariff fixing passenger rates and that he was acting in violation of the company's orders and contrary to law. These facts are sufficient, in the absence of evidence by the defense disproving it, to establish that the acts were done knowingly and willfully. (U. S. vs. Estavillo, 19 Phil. Rep., 478; U. S. vs. Tria, 17 Phil. Rep., 303; U. S. vs. Tabuyo, 19 Phil. Rep., 501; U. S. vs. Rosales, 28 Phil. Rep., 228.)

The Attorney-General as attorney for the Government in this appeal has suggested that the penalty might possibly be severe; and while he does not make or recommend that it be reduced he submits the matter with a mere suggestion. We do not disturb the penalty imposed by the trial court for the reason that it is within the limits prescribed by the statute and is, therefore, within the discretion of the court to impose. Section 33 provides that any person guilty of any act therein mentioned "shall be punished by a fine not exceeding two thousand pesos, or imprisonment not exceeding five years, or both, in the discretion of the court." Any penalty imposed within this limitation is imposed under the discretion of the trial court and we have no authority to touch it on appeal. Moreover, the accused has raised no question over the severity of the penalty. The prayer in his brief is that he be acquitted on the facts and the law. He does not ask, in case of affirmance of the conviction, for a reduction of the penalty, nor does he raise any question in connection therewith.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur in the result.

Carson, J., did not take part.

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