

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINADOR MARANON, DEFENDANT AND APPELLANT.

G.R. No. 41595. March 29, 1935

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the justice of the peace court of Guiguinto, Bulacan, of a violation of the Public Service Act in that he permitted his privately owned and registered car to be used for hire.

The justice of the peace held that such conduct came within the prohibitions of paragraph (k), section 67 of Act No. 3992.

Upon appeal to the Court of First Instance of Bulacan appellant was again convicted of permitting, allowing, consenting to, or tolerating the use of his privately owned automobile for hire but for reasons hereinafter stated, the trial judge held that he would not come within the prohibitions of paragraph (Jc), section 67, but could only be punished under paragraph (I) of that section.

From that decision this appeal is brought, and appellant urges that upon review of the evidence we acquit him on the facts.

There is a direct conflict between the principal witness for the prosecution and the appellant. The principal witness is a half-brother of the appellant and was in charge of the car at the time that it was unlawfully carrying passengers. The question of fact involved in the appeal must therefore be determined by the amount of credibility to be given to, this witness. Both the justice of the peace and the experienced trial judge who had the advantage of seeing the witness on the stand and his manner of testifying, believed him.

In view of the fact that the witness had not been tried for his participation in the offense, the question is a close one. As, however, if his testimony is believed, appellant clearly is guilty of engaging in unlawful commerce and as the story told is not inherently improbable so as to require corroboration, we have determined to be guided by the opinion of the trial court as to the credibility of this witness.

The trial court held that the offense did not fall under paragraph (k) but under paragraph (I), as in paragraph (k) it referred to the violation of section 7, paragraph (c), of that Act and according to the trial court, paragraph (c) applied only to private motorcycles or motor wheel attachments.

The Solicitor-General contends that the offense falls under paragraph (j) of section 67. For a clear understanding of the paragraphs in question they are recited:

"(j) For using a private passenger automobile, private trucks, private motorcycles, and motor wheel attachments for hire, in violation of section seven, paragraph (c) of this Act, a fine of one hundred pesos and suspension of the chauffeur's license for a period of three months for the first conviction; and a fine of two

hundred pesos and six months imprisonment for the second conviction; and an imprisonment of one year and permanent revocation of the chauffeur's license for the third conviction, shall be imposed.

"(k) For permitting, allowing, consenting to, or tolerating the use of privately owned motor vehicle for hire in violation of section seven, paragraph (c) of this Act, there shall be imposed a fine of one hundred pesos for the first conviction, and an increase of one hundred pesos for each subsequent conviction.

" (l) For violation of any provision of this Act or regulations not hereinbefore specifically punished, a fine of not less than ten nor more than fifty pesos shall be imposed."

Section 7 of the same Act in its pertinent provisions reads:

"Sec. 7. Registration classification.—Owners may make applications for registration of a motor vehicle under any one of the following described classifications.

"(a) Private passenger automobiles; (b) Private trucks; and (c) Private motorcycles or motor wheel attachments.— Motor vehicles registered under these classifications shall not be used 'for hire' under any circumstances, and shall not solicit or accept passenger or freight for pay.

"(d) Public utility automobiles; * * *."

It is at once noticed that strictly speaking section 7 is not broken into paragraphs duly lettered but that the lettering refers to classifications, but if the lettering is taken as paragraphing, then the prohibition of motor vehicles registered under classifications (a), (b), and (c) being used for hire is under paragraph (c) because it follows (c) and immediately precedes (d). Therefore the reference in (i) and (k) to paragraph (c) cannot be held to refer to classification (c), and the language of sections 7 and 67 shows unequivocally the legislative intent to punish the misuse of motor vehicles in classifications (a), (b), as well as in classification (c).

We cannot agree with the Solicitor-General that appellant in this case is a principal by induction of a violation of paragraph (j) in view of the fact that paragraph (k) expressly denounces and punishes what he actually did.

We therefore hold the accused guilty of a violation of paragraph (k), section 67 of Act No. 3992, for which a fine of P100 must be imposed, with subsidiary imprisonment in case of insolvency.

As thus modified, the judgment appealed from is affirmed. Costs against appellant. So ordered.

Avanceña, C.J., Abad Santos, Vickers, and Diaz, JJ., concur.

Judgment modified.

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