

1934

Present : Dalton S.P.J.

HOOPER v. JOHN

484—M. C. Colombo, 5,700

Motor car—Private car hired by owner—Charge against driver—Mens rea—Payment of batta to driver—Fee or reward—Definition of hiring—Ordinance No. 20 of 1927, s. 30 (1).

The driver of a private car, which was hired by its owner, cannot be convicted of using the car for a purpose not authorized by the licence in the absence of evidence to show that he knew that the car had been hired.

In the circumstances batta paid to the driver of the car is not a "fee or reward" within the meaning of the definition of "hiring car" in the Motor Car Ordinance.

A PPEAL from a conviction by the Municipal Magistrate of Colombo

L. A. Rajapakse (with him *A. Wijeyeratne*), for accused, appellant.

M. F. S. Pulle, C.C., for Attorney-General, on notice.

Cur. adv. vult.

October 5, 1934. DALTON S.P.J.—

When this appeal came before me on August 23, as there was no appearance on behalf of the respondent, the Sub-Inspector of Police, Fort Police, I directed that notice be given to the Attorney-General, and Mr. Pulle, Crown Counsel, now appears as *amicus curiae*.

The appellant has been convicted on a charge, as driver of private car No. O-201, of using the car in York street, Colombo, for a purpose not authorized by the licence in force for the use thereof, i.e., for hire on April 23 last, contrary to the provisions of section 30 (1) of Ordinance No. 20 of 1927.

The Magistrate has found on the evidence, and there is ample evidence to support these conclusions, that the car, a private car, belonged to D. H. F. Perera, owner and manager of the King's Hotel, Kandy, that the car was hired out by the owner to a commercial traveller from India, named Henny, for use in Kandy and Colombo, that accused, Perera's driver, was employed to drive the car, and that accused was driving Henny in the hired car at the date and place mentioned in the charge. Henny undertook to pay, in addition to the sum of Rs. 7 a day to Perera, the cost of oil and petrol, and also Rs. 2 a day as batta to accused as driver.

Whether or not any proceedings have been taken against the owner of the car or the hirer I do not know. The former of course was aware his car was a private car and that the terms of the licence did not authorize it being hired out, but the latter as a visitor states he had no knowledge whether it was a hiring car or a private one. The question, however, that has to be decided in this case is whether the driver was using the car contrary to the provisions of section 30. The Magistrate correctly points out that the answer depends upon the further question whether or not he was aware that his master had hired the car, a private one, to Henny. The evidence shows that accused asked his master whether he was to collect any hire and the answer given to this question was "No". Mr. Pulle suggests that answer may be untrue, but there is no evidence that any other answer was given to the driver. The Magistrate says the question and answer are very significant and show a guilty knowledge in accused. I regret I am unable to agree that the inference drawn from this question and answer is, in the circumstances, a reasonable one. The accused may perhaps, on the evidence, have had some suspicion that the car had been hired to Henny, but it shows nothing more. To say, as has been said, that the accused should have asked his master on what terms the car had been given to Henny might well have laid him open to the rebuke from Perera to mind his own business.

Mr. Pulle states he cannot support the conviction on the reasons given by the Magistrate, but he argues that the conviction was correct on grounds other than those given by the Magistrate. He agrees that *mens rea* in the accused must be proved, but he argues that it has been proved and that the offence has been committed by the accused because he received batta at the rate of Rs. 2 a day from Henny. This batta he says, under the agreement between Henny and Perera, is part of the amount of the hiring to be paid by Henny, and since accused himself received the batta from Henny, he had knowledge of the hiring and so was liable under the section.

If there is anything in this argument, and I have been referred to the decision in *Meedin v. Perera*¹, which Crown Counsel says supports him, it has to be shown as Mr. Pulle agrees, that Perera was liable, under agreement with his driver, to pay the latter batta at the rate of Rs. 2 a day, and that under his agreement with Perera, Henny took over this liability as part of the contract of hire. There is, however, no evidence of any agreement by which Perera was liable to

¹ 83 N. L. R. 88.

pay his driver Rs. 2 a day or any batta at all. Section 2 (1) of the Motor Ordinance defines "hiring car" as one that is used for the conveyance of passengers for fee or reward. There is no evidence in this case that Perera the owner derived any advantage in the way of a fee or reward by the payment by Henny of batta to the driver. There is no suggestion that there was any hiring by the accused himself.

For the above reasons the conviction of the accused cannot stand. The appeal is allowed and the accused is acquitted.

Set aside.

