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THE DISTINCTION BETWEEN CRIMES OF WATER TRAFFIC ACCIDENTS AND MAJOR ACCIDENTS

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ABSTRACT

The difference between the Crime of serious water accident of negligence and the crime of traffic accident is more obvious in the field of road traffic. However, the difference between the two in the field of water traffic is very confusing, because the main means of transport in the water transport is the ship, in judicial practice, the aquatic environment is complex, and the shipping and production operations of ships may all be generated, performed, and completed on water. As a result, the scope of public transport management is difficult to define., which makes it difficult to distinguish crimes by the constituent elements. Through the actual case, two crimes can be differentiated from the subject and the business. Thus, it can be seen that the crimes of water traffic accidents and major liability accidents can be distinguished according to the different businesses they engage in.

KEYWORDS

The Crime of Water Traffic Accident, the Crime of Major Liability Accident, Subject, Business.

1. CONSTITUENT REQUIREMENTS

The crime of water traffic accident refers to the violation of traffic and transportation regulations, so that a major accident occurred, causing serious injury, death or the public and private property suffered significant losses. The main body of this crime is the general subject, that is, every person who is 16 years of age and has the ability of criminal responsibility can be constituted, can be divided into the transportation personnel or non-transportation personnel [1]. In addition, according to the provisions of the Supreme People's Court on the interpretation of certain problems in the criminal cases of traffic accident, the unit supervisor, the owner of the motor vehicle, the contractor or the bus driver can also be the main body of the crime of traffic accident under certain circumstances.

The subjective aspect of this crime manifests as negligence, including careless negligence and negligence with undue assumption. This kind of negligence refers to the psychological attitude of the perpetrator to the serious consequences of his illegal behavior. The objective aspect of this crime is the violation of traffic and transportation regulations, so that there is a major accident, causing serious injury, death or the public and private property suffered significant losses. The object of this crime is traffic and transportation safety.

The Crime of Major Liability Accident: refers to the violation of the relevant safety management regulations in production and operation, thus causing serious casualties or other severe consequences. The main body of this crime is the general subject, that is, the person of 16 years of age, the spirit of normal, engaged in production, operation of natural persons, mainly include the production, operations have the responsibility of organizing, directing or management, managers, actual control, investors and other personnel, as well as directly engaged in production, The subjective aspect of this crime manifests as negligence, including careless negligence and negligence with undue assumption [2]. The objective aspect of this crime is to violate the regulations of relevant safety management, so that there are serious casualties or other severe

consequences, and the object of infringement is production and operation safety.

The relationship between the two: the crime of major liability accidents and the crime of traffic accidents both belong to the scope of the crime of endangering public safety. The subjects of the two crimes are all general subjects, that is, any person who has reached the age of 16 years and has the ability of criminal responsibility can be constituted. Subjective aspects are manifested as faults. The difference between the two lies in: the provisions of safety management in the production and operation of major responsibility accidents, and the violation of traffic accidents is the traffic management regulations.

Therefore, on the object side, the Crime of Major Liability Accident is the safety of production and operations, including the safety of life, health, safety, and related major public and private property of unspecified or most relevant persons in production and operations, but the object of the crime of traffic accidental infringement is transportation safety. In judicial practice in the field of water transportation, it is difficult to truly distinguish between two crimes if only relying on the above two differences [3]. The reason is that in the field of water transportation, the ship is a tool with very special properties. It can be used as a means of transportation itself; in the production and operation process, it can be used as a tool for production and operation.

In addition, there are two different viewpoints on how to determine the problem of the vessel's production and operation in public transportation. First, scholars who hold the view of "place theory" believe that the distinction between the two crimes should be based on the place where the accident occurred. That is, if the accident occurs in the area of water transportation, the crime of traffic accident will be determined; if the accident occurs in the field of production and operation, the serious responsibility accident will be determined. Second, the scholars who hold the "business theory" think: In this case, the distinction between the two crimes should be based on the nature of the business the ship is engaged in. That is, if you are engaged in transportation, you will be convicted of

crimes of traffic accidents; if you are engaged in production operations, you will be convicted of major liability accidents. However, this method still cannot solve the distinction between the crime of major responsibility accidents and the crime of traffic accidents in the field of water transportation. In judicial practice, the aquatic environment is complex, and the shipping and production operations of ships may all be generated, performed, and completed on water. As a result, the scope of public transport management is difficult to define.

2. DISTINGUISH TRAFFIC CASUALTIES FROM MAJOR LIABILITY ACCIDENTS IN REAL CASES

Through the study of actual cases, it will be found that in the same case, due to the different subject identities of the defendant, the responsibilities assumed in the case are different, and the final judgment results are also different. In similar cases, since the defendant is engaged in different businesses and the object of the infringement is different, the result of the verdict may also be different. Through the analysis and comparison of cases, it will be easier to distinguish the crimes of water traffic accidents from serious crimes.

2.1 Differentiating Traffic Accident Crimes from Major Liability Accidents by Different Status of Subjects

In actual cases, the crimes of traffic accidents and major responsibility accidents are differentiated according to the status of the main body of water transportation. In the same case, there are cases of crimes of traffic accidents and cases of major responsibility accidents.

From 2011 to 2012, the defendant Zheng had affiliated the "MinningDe51" cargo ship in charge of its operation and management with Fuan Shipping for operation and management. In order to save expenses, the defendant Zheng breached safety production and operation management regulations, and hired defendants such as B and Ou, Yang, who were not qualified as seafarers to serve as captains on board, engineers, sailors and other duties. The defendant Cheng, as the legal representative and executive director of Fuan Shipping, did not perform substantive management of the vessel during the "MinningDe51" cargo vessel's affiliation, knowing well that the ship's crewmen had a problem with competence, but it has not effectively supervised rectification, and even provided personnel with a certificate of competency for the crew to impersonate the crew of the "MinningDe51" cargo ship, so that the ship obtained the ship operation certificate, resulting in "MinningDe51" cargo ships carry out operational activities where the crew members do not have the appropriate certificates of competency. On the afternoon of May 3rd, 2012, the defendant Ran unlicensed drove the "MinningDe51" cargo ship to drive in the direction of the Baimamen waters of Wanwu Town after loading river sand in waters. At 23:30 that evening, when the defendant ran the "MinningDe51" cargo vessel anchored at the Baimamen Waterway in Wanwu Town, he was negligent when choosing anchoring waters, causing severe vibration of the hull without analysis of the reasons and blind operation, the improper use of emergency measures, resulting in the "MinningDe51" cargo ship overturned, resulting in the ship 3 crew drowning water traffic accident.

In this case, the appellant B violated the regulations for water traffic safety management, drove without a license, had neglected during the process of driving the ship, adopted evasive measures, caused a major traffic accident involving the death of three persons, and belonged to other special bad circumstances. Its behavior constitutes a crime of traffic accidents; the appellant Zheng and the defendant Cheng of the original trial violated the regulations concerning ship safety management in production and operations, resulting in a major responsibility accident for the death of three persons. The circumstances are particularly bad, according to the Article 133 of the Criminal Law of the People's Republic of China and paragraph one of Article 134 of the Criminal Law of the People's Republic of China both constitute the crime of major liability accidents.

2.2 Differentiating Traffic Accidents from Major Business Accidents by Business

Different business activities may constitute the crime of traffic accidents or major liability accidents. The following is a brief analysis of the following real cases.

A) The defendant, Luo, was the ship owner of the No. 003 ferry, take passengers at the Xingtian Terminal, Santang Village, Dashi Township. At 6:30 on July 17, 2014, the defendant Luo used a bamboo pole to hold the boat off the shore in the event that the passenger Liang did not wear a life jacket to enter the cabin in accordance with the regulations. On the side of the bank of the town, it drove off. In the process of propelling the ship off the coast, Liang standing on the bow fell into the water due to the shaking of the bow. The appraisal opinion of the Criminal Science and Technology Department of the Public Security Bureau of Leiyang Municipality is that the deceased Liang is a sign of suffocation, which is consistent with the possibility of sudden death. The Local Marine Department of Leiyang City, Hunan Province, found that the defendant Luo was responsible for the accident. The confession and defense of the defendant Luo confirmed the facts identified by the court and the witness testimony also confirmed this fact. The investigation report of the Local Marine Department of Leiyang City confirmed that the defendant Luo was responsible for the accident and Liang was responsible for the accident.

In this case, the defendant, Luo, violated traffic regulations and took passengers off the riverbank when they did not wear the lifejacket into the cabin as required, resulting in a traffic accident in which the passenger Liang drowned. The main responsibility for negative accidents is that according to Article 133 of the Criminal Law of the People's Republic of China, its behavior constitutes a crime of traffic accidents.

B) The defendant Chen driving a speedboat without a vessel registration certificate (with a nuclear load of 6 persons) without a license and without taking necessary safety measures for the passengers, on January 29, 2017 at Jiangxia Resort, Changle City Beach waters are used to carry tourists to the sea to play activities and to profit from them. At 13 o'clock noon on the same day, Chen drove the speedboat on one of the boats, Shi (female, 28 years old), Liao (female, 7 years old) and other 11 male and female passengers to play in the sea. After 20-30 meters away from the coast, a rollover occurred, causing 11 male and female passengers fall into the water. Passengers Shi and Liao died in the accident.

In this case, the defendant Chen violated safety management regulations in production and operations. He was driven by a speedboat without a vessel registration certificate without a license and caused ship-jacking accidents, resulting in two deaths. According to the "PRC Criminal Law", the first hundred and thirty-fourth In the first paragraph, its behavior constitutes a major liability accident.

It can be known from the above cases that the case A occurred in an open dock, river, and nearby islands, and the business engaged in passenger transportation. Case B The place where the accident occurred is the business of closed area, tourist attraction, and resort waters. This type of tourism project should be a production and business operation. When the relevant personnel are engaged in this activity, they should abide by laws and regulations to ensure business safety. From this, it can be seen that the crimes of water traffic accidents and major liability accidents can be distinguished according to the different businesses they engage in.

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