

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO BAUTISTA, DEFENDANT AND APPELLANT.*G.R. No. 5275. December 09, 1909*

Ponente: ELLIOTT, J.

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The defendant Alejandro Bautista was charged with the violation of section 315 of Act No. 355, known as the Philippine Customs Administrative Act. A demurrer interposed to the information on the ground that it did not state facts constituting a public offense was overruled, and, the defendant was tried, found guilty as charged, and sentenced to imprisonment for one year in the public carcel at Bilibid, and to pay a fine of P500, and in the event of insolvency to suffer subsidiary imprisonment as provided by law.

Thereafter an application was made to reopen the case in order to allow the defendant to offer certain newly discovered evidence. This motion was denied, and the case comes here on appeal.

It is contended by the appellant that the court erred in overruling the demurrer, and abused its discretion in denying the motion to reopen the case on the ground of newly discovered evidence. The substance of the, various contentions of the appellant is that the information is defective because it does not allege that the officer or employee to whom the bribe was offered was on duty at the time; and that he had jurisdiction over the matter involved.

1. The particular offense with which this defendant is charged is defined and described by section 315 of the Customs Administrative Act. Every element of the crime is stated in the statute, and the information is therefore sufficient because it substantially follows the language of the statute, and clearly apprises the defendant of the offense with which he is charged. (Commonwealth vs. Weiss (Pa.), 11 L. R. A., 653 (note); State vs. Howard, 66 Minn., 309, 34 L. R. A., 178.)

Omitting matter not applicable to the present case, we find that section 315 of Act No. 355 provides that "any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the Government of the Philippine Islands in consideration of or for any act or omission contrary to law, in connection with or pertaining to the importation, * * * or entry * * * of goods, wares, or merchandise * * * or * * * attempt to improperly influence any such officer or employee * * * as to the performance of his official duty" shall be convicted and fined as therein provided. The information in this case charges that the defendant "did intentionally, illegally, and feloniously offer and promise money * * * to an officer or employee of the Philippine Government, to wit: Jacinto Escolastico, member of the customs secret service duly nominated, qualified, and acting" as such employee, on condition that said Jacinto Escolastico would permit said Alejandro Bautista to procure a quantity of opium * * * which was then and there concealed upon the steamer Tean, then anchored in Manila Bay, the object of said Alejandro Bautista in making such proposition being that he might import said * * * opium into said city of Manila * * * (intending) by means of said promise so made * * * directly to influence said officer and employee * * * and control him in the performance of his duties."

The Act penalizes the promise to give money to an officer or employee of the Philippine Government in consideration of an act or Omission on his part contrary to law, in connection with the importation of goods, or any attempt by such promise to influence or control any employee in the performance of his duties in connection therewith. The landing of the opium by the defendant would have been in violation of the general Customs Administrative Act, as well as of Act No. 1761. The law imposes upon the Insular Collector the duty of enforcing the laws relating to commerce, navigation, and immigration, and to enable him to perform this duty he is authorized to appoint agents, and confer upon them authority to make arrests. (Act No. 355, sees. 19, 25, and 320; Act No. 778.) Section 20 of Act No. 367 expressly provides for and authorizes secret-service agents as a part of the personnel of the customs service.[1] These men are public officials charged by law with the duty of detecting and preventing breaches of the Customs Law. (U.S. vs. Tan Gee, 7 Phil Rep., 738-741.) Under the liberal rules of criminal pleading which prevail in this jurisdiction, the powers and duties of the secret-service agents sufficiently appear.

2. On the night of February 12-13, 1909, Jacinto Escolastico was on duty in Manila Bay within the 2½-mile limit of the city, engaged in the special work of preventing smuggling. Two Hongkong steamers, the Tean and Zafiro, were at the time anchored in the bay. About 2 o'clock in the morning, as Escolastico's launch was circling about these vessels, he observed three men in a banca near the ladder or gangway of the Tean. As the launch approached, the banca slipped away among the cascoes and lighters which were lying about. After a half hour's search Escolastico located the banca "hidden under the bamboo covers of a casco." The three men who had been in the banca had concealed themselves in the bottom of the casco, and upon being discovered the defendant Bautista approached Escolastico, and offered to pay him money if he would permit him to get certain opium from the Tean. Escolastico testified that "when I found this defendant, he approached me and asked me to let him go, and that he wanted to get from aboard the steamer some contraband, and if I would do so he offered to give me P250, and then I told him that that was a very delicate thing, and if my chief learned about it, it would be a bad thing for me and I would be punished. I continued talking with this defendant, and I asked him in what part the opium was, and he told me that it was in the bow of the steamer. I asked him in what part of the bow. He said it was in the general storeroom, among the cargo * * * He told me that on the next day I could wait for him at the office of Smith, Bell & Co., and he would give me the P250; or if I cared to, we could make an appointment somewhere else, and I didn't agree to it. I took him to our office and delivered him to my immediate chief, Mr. Keith."

Escolastico also testified that Bautista told him that he was going to get one box or case of opium from the Tean. This evidence is corroborated by that of Carlos Tuazon, who was engineer of the motor boat, and who overheard the conversation. When taken to the office of the customs secret service, Bautista admitted in the presence of the witness Joseph Keith that he knew that there was opium on board the Tean, and stated that he had made arrangements with a secret-service agent of the custom-house to allow him to land the opium. No opium was in fact found upon the Tean, during her stay in Manila, but about 6 o'clock the next morning four large tins of opium were found floating in the bay some distance from the Tean. The fact that opium was not found upon the Tean does not deprive the act of, Bautista of its criminal character. It is evident from his own statements that he believed that there was opium on the Tean, and it is probable that in this he was correct.

The motion to reopen the case was properly denied, because the so-called newly discovered evidence would atmost merely have tended to show that the opium found floating in the bay had not been taken from the Tean. The facts if admitted would not necessarily have required the court to come to a different conclusion upon the question of the guilt of the defendant. There was no abuse of discretion, and the judgment and sentence is therefore affirmed, with costs against the defendant. So ordered.

Arellano, C.J., Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

[1]See also Appropriation Act, No. 1873.

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