

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTOR VITUG, DEFENDANT AND APPELLANT.*G.R. No. 9305. October 17, 1914*

Ponente: CARSON, J.

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The appellant was convicted of unlawfully interfering with two secret-service agents of the Bureau of Customs in the discharge of their duties, and sentenced to six months' imprisonment under the provisions of section 333 of the Customs Administrative Act (No. 355). The only question raised on this appeal is one of fact.

It is admitted that the two customs agents came from Manila to the municipality of Lubao, Pampanga, under orders to search the house of Clodualdo Vitug for opium which it was believed had been illegally imported by him; and that having secured a search warrant from the local justice of the peace they proceeded to search the house at about 11 o'clock in the morning, and found there a quantity of opium and certain utensils used by smokers of opium. At this point the evidence for the prosecution and for the defense diverges.

The two secret-service agents testified that as they were about to arrest Vitug, his family implored them not to do so as they desired to avoid the scandal which would result, and asked if there was no other method of satisfying the demands of the law. The secret-service agents replied that it might be possible to compromise the case with the Insular Collector of Customs, but that it would be necessary for Vitug to accompany them to Manila for this purpose and take with him at least P5,000, which they thought would be sufficient to pay the administrative fine which would be assessed in case a compromise was arranged. Vitug's family promised to secure the money during the day so that the party could leave for Manila on the 3 o'clock train. Accordingly the two secret-service agents stayed at Vitug's house and kept guard over him in the sala. The family was unable to secure the money in time to catch the 3 o'clock train for Manila, and they induced the customs agents to give them further time before making the arrest. At about 6:30 that evening Agent Larsen was informed that the provincial governor desired to see him in the municipal building, a short distance away. He left Agent Ramos guarding Vitug and went over to the municipal building, where the governor inquired into the cause of the detention of Vitug. The governor then sent a policeman to Agent Ramos requesting his presence also in the municipal building. Ramos refused to leave the prisoner he was guarding without a written order to that effect from Larsen. This report was carried to the governor and, after consultation with Larsen, it was agreed that the governor's party and Larsen should go over to Vitug's house for further consideration of the matter. After Ramos' refusal to leave the prisoner in the latter's house without a written order from Larsen and after the governor's messenger had left the house, the appellant, Victor Vitug, a son of the prisoner, approached the satchel in which the customs agents had placed the opium and pipes. Ramos immediately ordered him to keep away from this satchel. Victor went outside for a few minutes and during his absence the father arose from the chair on which he was sitting and started toward an adjoining room. Ramos immediately ordered him to sit down again and not to leave the chair. Shortly afterwards the defendant again entered the room and, approaching the table, turned down the lamp which had been lighted, giving as his excuse that there was too much wind. Ramos became suspicious and took the satchel from the table. The prisoner

at the same time started to leave his chair again. Ramos asked him where he was going, but just at this moment was seized by the arms and an attempt was made by some of those present to take the satchel away from him. Turning, he saw that it was the appellant who had hold of him, and looking around the room he saw a municipal policeman, Bartolome Rivera. Ramos informed the policeman that he was a customs secret-service agent, and just then he heard a police whistle after which some more policemen arrived on the scene, among whom was Victorio Calamares, who drew his revolver. Ramos called on them for assistance in defending possession of the satchel and then called aloud for Agent Larsen. It does not clearly appear from the testimony whether these policemen attempted to aid Ramos or those who surrounded him, but Ramos was under the impression that they were endeavoring to interfere with him in the performance of his duties, and that they were more disposed to go to the assistance of the Vitugs than to aid him in guarding the prisoner and the opium which had been seized and left in his care. By this time the party in the municipal building had started for Vitug's house and when Larsen heard Ramos call for help he immediately rushed into the house, where quiet and order were soon restored with the help of the provincial governor, who also arrived within a few seconds.

The defense maintains by the evidence of Vitug's wife and his niece that the customs agents made overtures to the family after the discovery of the opium for hush money and that they insisted upon P5,000 as the price, of silence, threatening to carry Vitug to Manila handcuffed, where they said he would die within two days if he was not allowed to smoke opium. The trial judge refused to believe their testimony in this regard, and we are not prepared to say that he erred in so doing. The customs agents appear to have proceeded openly and in accordance with law to secure a search warrant, and the search of the house was conducted in the presence of the chief of the municipal police. It appears also that they signed a return of the warrant at the request of the municipal authorities, showing the results of the search. Under all the circumstances we do not believe that the customs agents would have proceeded so openly had it been their purpose to take advantage of their position as secret-service agents, to enrich themselves at the expense of the Vitug family.

As to the incident which occurred in Vitug's house as the governor's party was on its way there, the testimony of the defense is also at variance with that for the prosecution. Vitug's wife, his niece, a woman named Eulalia Espinosa, and Dr. Felino Simpao, all testified that they were present when the trouble began. They swore that Ramos drew his revolver and pointed it at the old man in a threatening manner merely because he arose from the chair on which he was sitting; that then the women screamed and called for the police; that two municipal policemen came in; and that just about this time Agent Larsen also arrived. These witnesses denied that the appellant, Victor Vitug, was present, and the latter swore that after leaving prior to the disturbance he did not return to his father's house until about 7 o'clock that evening. This evidence is not convincing, and as indicated in the Attorney-General's brief, there are a number of inconsistencies in the testimony of the witnesses for the defense, which he develops in his brief. It is at least improbable that Agent Ramos would have drawn his revolver merely to compel Vitug to resume his seat, in view of the fact that Vitug was admitted by all concerned to be old and infirm, unless there had been some other disturbing element in the situation which these witnesses did not disclose. Under the circumstances, as told by the defense, there would have been no occasion for such a show of authority. From their evidence it would appear that the old man had been sitting quietly and helplessly in the same place for several hours, and had shown not the slightest disposition to become obstreperous. As to the presence of the defendant, Victor Vitug, we have not only the testimony of the customs agents, but also the wholly disinterested testimony of the provincial governor and of the third member of the provincial board, who said that they saw him at the door of the house just as they arrived soon after the disturbance arose. From all the evidence the trial judge was convinced that the defendant was present and that he caught the customs agent by the arm in an attempt to get possession of the satchel in which the opium had been placed, and on the whole record we are of opinion that this finding should not be disturbed.

It is urged, however, that the acquittal of the two policemen, Rivera and Calamares, who were made codefendants of the appellant, is inconsistent with the finding that the defendant is guilty. We agree with the Attorney-General that this contention is not sound. These policemen were charged with aiding and abetting the appellant in interfering with the customs agents. The trial judge seems to have had some doubt as to the identity of one of these coaccused, who was charged with pointing his pistol at one of the customs officers. As to the other, he appears to have been unable to determine whether the acts, which were shown to have been committed by him, were done with the object of interfering with or of assisting the customs officer. But the trial judge was of opinion that there could be no reasonable doubt as to the identity of this appellant or as to the purpose or intent of his acts in laying hands upon the customs officer and attempting to snatch the satchel from his possession. We see no grounds for disturbing his findings in this regard, and even if it were true that he erred in giving the accused policemen the benefit of the doubt, that affords no ground whatever for interfering with his findings as to the appellant, whose guilt was conclusively established by the evidence of record.

It is true that the information charges not only that this appellant committed the specific acts therein attributed to him, but that he committed those acts conspiring together with his coaccused. But the commission of the specific acts charged against this appellant constitute the offense charged, and the failure to establish the conspiracy in no wise defeats or prevents conviction for the offense thus charged and proven.

We find no error in the proceedings prejudicial to the substantial rights of the accused. The judgment entered in the lower court convicting and sentencing him should therefore be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

Moreland, J., dissents.

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