

[G.R. No. 1296. October 26, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GREGORIO MIRANDA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant is charged with the offense of burning a banca anchored on the shore of the town of Biñan, and was convicted by the Court of First Instance of the offense charged and sentenced to six months and one day *prision correctional*, to the payment of the costs of the proceedings, and to pay to the owner of the banca the sum of 1 000 pesos, as indemnification for the burning thereof, and to the corresponding subsidiary punishment in case of insolvency for costs.

The question presented by the defense is as to the sufficiency of the evidence to support the conviction. The conviction rests entirely on circumstantial evidence, and it is contended that these circumstances are not sufficient to show, beyond a reasonable doubt, the guilt of the accused.

It appears from the evidence in the case that Luis Yanco was the owner of the banca in question, and that it was in charge of Sylvester Lopez and Eulalio Almendrolo, manager and pilot, respectively, and was engaged in the business of transporting passengers to the shore from vessels that arrived at that port; that this banca was doing business in competition with several other bancas, among which were the bancas the property of Gesualdo Gano, municipal councilman of Binan; that certain ordinances were enacted by the municipal council of the town of Binan respecting the operation of bancas; that the defendant at the time of the fire held the office of inspector; that as such he had caused the manager and pilot of the said banca to be arrested on several occasions and fined for infractions of the city ordinance; that defendant, as inspector, directed the witness Almendrolo as to the manner in which he should approach steamships and ordered that without his direction the

witness must not draw near the steamships of Senor Luis Yanco, the owner of the burned banca. This witness stated that he was hampered in the operation of their banca by the orders of the defendant as inspector, which the witness attributed to the fact that their banca was larger and had greater capacity than the one operated by the defendant, and to jealousy on account of competition; that an enmity existed between the defendant and those in charge of the banca in question; that on December 31, the day on which the fire occurred, after unloading passengers, the defendant called to the pilot of the banca and told him that if he did not follow his instructions something was going to happen to the banca and to the witness, who was the pilot of the banca. On that night, about 10 o'clock, the banca was seen to be on fire, and, after burning for some time was destroyed. There were remains of dried branches of cane near the banca and the odor of petroleum, indicating that the fire was of incendiary origin. It was shown that the banca, where it was moored for the night, had no person aboard, that there had been no fire on it, and there was no Avay, apparently, by which the fire could have been communicated to the banca accidentally.

At the time of the occurrence, as inspector of bancas it was the duty of the defendant to keep watch over these boats to prevent accidents in their operation and reception of passengers from steamers which made voyages to that town. Besides, he was by occupation a banquero and had the management of a banca. His house, where he lived, was within sight of the place where the burned banca lay at the time of the fire. Defendant failed to appear at the place of the fire that night, or to make his appearance in the discharge of his duties the next day.

The defendant testified in his own behalf, and in answer to the question if he knew whether the banca in question had been burned, said that he did not know. Asked if anything had happened to the banca on the night of December 31, on the shore at Binan, he answered that he did not know. He was asked why he had been imprisoned in the provincial jail, and he said he was ignorant of the reason for his imprisonment. He afterwards said that he had been imprisoned on account of the burning of the banca. He was asked if he saw the fire on the night of December 31, and he said he had not seen the fire. Afterwards he admitted that he knew the burning of the banca had occurred that night, and stated that he was in a casa mortuoria, and that the persons traveling through street told him there was a fire. He stated that the function with respect to the corpse began at 6 o'clock; that arrived there a little after 6, and that he left on the alarm of fire being given. Being asked at what hour the alarm was given, he stated that it was near 10 o'clock. He stated that on leaving the casa mortuoria he heard the alarm of fire, but that he retired to his own residence. He was asked if he went out that night and said that he remained at home to take care of his own house.

Asked what he did the following and succeeding days, and where he was, he replied that he remained at home and did nothing. He was asked if he had given notice of the fire to the president of the municipality, and he said he had not. He was asked if on the following and succeeding days he appeared on the shores as inspector for the purpose of giving orders to the bancas in the performance of his duty as such inspector, and he said that he was then no longer an inspector. He was asked if he was not at the house of Gesualdo Gano on the day following the fire. He said he was; that he was there about 2 o'clock in the afternoon; that he went to the house of Gano to ask if the president was there. He was asked if he had any conversation with any one the night of the fire with respect to the banca, and he said he had not, nor was he on the shore that night.

While this testimony does not connect the defendant directly with the commission of the offense, yet the contradictions of the defendant are so patent and the other circumstances, such as his failure to go to the place of the fire the night the alarm was given, he being the inspector of bancas, and his failure to appear next day in the discharge of his duty as inspector or in pursuance of his ordinary occupation of banquero, the fact of his well known enmity toward the pilot and manager of the burned banca, his threats made the day of the fire, that the fire which destroyed the banca was undoubtedly of incendiary origin, furnish sufficient indications from which to deduce the culpability of the accused.

We reach the conclusion that the Court of First Instance did not err in holding that the proofs were sufficient to show the guilt of the defendant and in convicting him of the offense charged.

The judgment of the lower court fails to impose subsidiary imprisonment in case of insolvency for indemnification to the owner of the banca, but only imposes subsidiary punishment as to costs. In this respect the judgment is erroneous and should be modified.

Proceeding to modify the judgment, we sentence the defendant, Gregorio Miranda, to six months and one day *prision correccional*, to the payment to Luis Yanco, the owner of the banca destroyed, of the amount of 1,000 pesos indemnification and to the costs of the suit, and, in case of insolvency, to a subsidiary personal liability and imprisonment at the rate of one day for every 12 1/2 pesetas, to the extent of the indemnification and costs, the total time of detention for the subsidiary punishment not to exceed one third of the term of the sentence.

Arellano, G. J., Torres, Willard, Mapa, and McDonough, JJ., concur.

Johnson, J., did not sit in this case.

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