

1 Phil. 464

[ G.R. No. 947. November 04, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DONATO SALANDANAN ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**MAPA, J.:**

The record discloses the fact, established not only by the testimony of the witnesses for the prosecution, but also by the confession of the defendant Mendigoren, that Ignacio Lopez and Alvaro Bruno were kidnaped on the afternoon of the 5th of November, 1901, and were held under the control of the defendants, who were members of a band of malefactors, until the night of the 7th of the same month, when they succeeded in recovering their liberty, by force, with the help of Catalino Pangilinan. The other defendant, Salandanan, has also acknowledged by implication the truth of the facts charged in the information, but has endeavored to excuse himself by alleging, without proving his statements, that although he accompanied the persons who committed the crime, and was armed with a gun, it was because he also had been kidnaped.

These facts constitute the crime of illegal detention, defined and punished by article 481 of the Penal Code. The judge below so held correctly, and condemned the defendants to eight years and one day of prisidn mayor, not applying any circumstance in mitigation of the responsibility arising from the commission of the crime prosecuted.

The defense in this instance admits that the guilt of the defendants is disclosed by the record, but contends for them as a mitigating circumstance, in the first place, the loss of self-control which, it is alleged, was naturally produced with respect to both of them by reasons of the suspicion they entertained that the injured parties were members of the secret police. There is nothing in the record to justify such an assertion, and this alone is sufficient to demonstrate, without the necessity of further consideration, the inadmissibility of such contention. It is absolutely necessary, in order to consider the concurrence' in the

commission of a crime of the mitigating circumstance invoked by the defense, that the record contain proof of the causes which are supposed to have produced such powerful excitement as to overcome reason and self-control.

Counsel for the defense also invokes the circumstance of race, established by article 11 of the Penal Code. This circumstance is not necessarily mitigating. It rests in the discretion of the courts to apply it in mitigation or aggravation according to the special circumstances of each case. In the present case no reason can be found which would lead us to apply this circumstance as a ground for the mitigation of the penalty in favor of the defendants. The judgment of the court below is therefore affirmed, with the costs of this instance to the defendants. So ordered.

*Arellano, C. J., Torres, Cooper, Smith, Willard, and Ladd, JJ., concur.*

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