

1 Phil. 687

[G.R. No. 949. February 06, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EULOGIO DE SOSA,
DEFENDANT AND APPELLANT**

D E C I S I O N

WILLARD, J.:

The information filed in this case was as follows:

“On the night of the 16th of April Eulogio de Sosa in company with three other persons unknown entered the house of Zacarias Tiongson and forcibly carried away the latter and one Nicasio Rafael, who was also in the house, bound them, beat them, and carried them out of the town to the woods, where the persons so sequestered were separated, Zacarias having been beaten with a stick, and Nicasio cut with a bolo. The latter succeeded in regaining his liberty by the aid of a passer-by who stopped near the tree where the kidnapers had left him tied, the fate of Nicasio being still unknown. This against the statute in the case made and provided. Balanga, October 16, 1901.”

It is difficult to say whether the intent of the Prosecuting Attorney was to charge the defendant with the illegal detention of Zacarias Tiongson under article 481 of the Penal Code or with the illegal detention of Nicasio Rafael under the last paragraph of article 483, which is as follows:

“He who illegally detains another and does not give information as to his whereabouts or facts to prove that he set him free, shall suffer the penalty of *cadena temporal* in its maximum, degree to *cadena perpetua*.”

The defendant was convicted of this last offense and sentenced to eighteen years eight months and one day of *cadena temporal*. The conviction can not be sustained for two reasons. (1) The complaint does not charge that offense. There is no allegation that the defendant had not given information as to the whereabouts of Nicasio Rafael. (2) There was not sufficient evidence that the whereabouts of said Nicasio Rafael was not known. He was not a resident of the town in which he was seized, but was casually passing through there. It was proved that he had a wife living in Tondo. The only evidence that he had disappeared was the testimony of the three persons who were in the house when he was taken away, who said that they had not seen him since. The mere failure of the defendant to give notice of the whereabouts of the man seized is not sufficient to convict him. In addition to that fact the court must be satisfied that the man has really disappeared. The best evidence of this fact would be the testimony of the members of his family.

The complaint is, however, with slight amendments, sufficient to charge the defendant with the illegal detention of Zacarias Tiongson. The judgment is reversed and the case remanded with instructions to amend the complaint by striking out all reference to Nicasio Rafael, and inserting statements as to the time and place, where and when the crime was committed, to call upon the defendant to plead to the amended complaint, and to try him thereon without prejudice to the right of the fiscal to proceed against the defendant in a separate complaint for the illegal detention of Nicasio Rafael under said article 483.

Arellano, C. J., Torres, Cooper, and Ladd, JJ., concur.
