

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KOC SONG (ALIAS COK SONG), DEFENDANT AND APPELLANT.

G. R. No. 45043. August 28, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This case was prosecuted upon the following information:

"That on or about the 2d day of January, 1936, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain, with grave abuse of confidence, and without the consent of the owners thereof, who were then his housemates, take, steal and carry away the following personal property belonging to Lue Hok, to wit:

One (1) undershirt colored dark green valued at.

1.35

The following personal property belonging to Kong Min, to wit:

One (1) pair of black leather shoes, valued at and the following personal property belonging to Ng Hook, to wit:

3.00

One (1) leather belt, valued at.

2.40

One (1) woolen pants strip black, valued at.

1.75

One (1) pair of golden cuff-links, valued at

.80

One (1) comb, valued at.

10

One (1) leather wallet, valued at. containing:

1.20

P7.47 in bills and coins of different denominations

7.47

One (1) promissory note payable to Ng Hook with the amount of P900 Hongkong money.

500.00

Two (2) pictures of Ng Hook and his son (no value) One (1) cedula (1935) of Ng Hook (no value) Eight (8) Chinese coins, all valued

.04

Total

518.11

to the damage and prejudice of the said owners in the total sum of P518.11, Philippine currency.

"That the said accused is a habitual delinquent having been convicted once of the crime of qualified theft, on January 31, 1935, and. once of theft on November 8, 1935, by virtue of final judgments rendered by competent courts, his last date of release being December 31, 1935."

Having pleaded guilty to the charges in the former information, the appellant was sentenced, as author of the crime of qualified theft, to four years, two months and one day of prison correctional to indemnify the offended party in the sum of P511.86 (not recovered), with the corresponding subsidiary imprisonment in case of insolvency, and, being a habitual delinquent, also to the additional penalty of two years, four months and one day of prison correceional.

The defense contends in this instance that the crime charged is simple theft. This court finds that this contention is well taken. The allegation in the information that the crime was committed with the qualifying circumstance of grave abuse of confidence, is a mere conclusion of law. The only fact alleged as constituting said circumstance is that the accused and the offended party were housemates when the crime was committed. While this fact constitutes a certain abuse of confidence, because living together under the same roof, although accidentally, engenders some confidence, it is not necessarily grave, there being no allegation in the information of another relation, by reason of dependence, guardianship or vigilance, between the accused and the offended party, that might create a higher degree of confidence between them, which the accused could abuse. (Decisions of the Supreme Court of Spain of January 19, 1882, and April 13, 1893.)

This court finds no merit in the allegation of the defense that the sum of P500, representing the amount of the promissory note stolen, should not be taken into consideration in determining the liability of the accused, on the ground that the promissory note is of no value. Said promissory note may not be of value to the appellant but it undoubtedly is of value to the offended party (U. S. vs. Wickershan, 20 Phil., 440; and U. S. vs. Raboy, 25 Phil., 1), and this is sufficient to make the taking thereof constitute the crime of theft.

The lower court sentenced the appellant to indemnify the offended party in the sum of P511.86, which includes the sum of P500, amount of the promissory note. However, it does not appear in the information that the offended party has been deprived of this amount, inasmuch, as after recovering the promissory note he could have obtained payment thereof, and even without the promissory note, it could have been paid him. Consequently there was no justification in sentencing the appellant to pay the sum of P500 to the offended party, with no allegation in

the information that the offended party was really deprived of said amount.

The crime charged being simple theft, it being understood that the principal penalty imposed upon the appellant is two years, eleven months and eleven days, and eliminating the order to pay the sum of P500 to the offended party from the decision, with reservation of the civil action in connection with said amount, the appealed sentence is affirmed in all other respect, with costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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