

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SYOU HU, DEFENDANT AND APPELLANT.***G.R. No. 45765. January 29, 1938*

Ponente: VILLAREAL, J.

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The accused Syou Hu was sentenced by the Court of First Instance of Manila to suffer an indeterminate penalty of from one year, eight months and twenty-one days to four years and two months of prison correccional, to indemnify the offended party in the sum of P75, with subsidiary imprisonment in case of insolvency, and to pay the costs, for the crime of qualified theft, consisting, according to the information, in having taken, on August 16, 1937, the sum of P435 in cash from the offended party, Tiu Deit, without the latter's consent, while the accused was living in the house of said Tiu Deit, who had sheltered him out of charity.

The only questions to be decided in the present appeal, which are raised in the brief of the attorney de oficio for the accused, are: (1) Whether or not the court a quo erred in holding that the crime described in the information is qualified theft, and (2) whether or not the trial court erred in imposing the indeterminate penalty of from one year, eight months and twenty-one days to four years and two months of prison correccional upon the accused.

Said attorney de oficio for the appellant contends that unless it be proven that the accused asked for shelter for charity's sake in order to take advantage of the occasion to commit the crime of theft, the mere fact that he had been living out of charity in the offended party's house would be insufficient to convert the crime from simple to qualified theft, inasmuch as article 310 of the Revised Penal Code provides that qualified theft is committed when "grave abuse of confidence is present," making it understood thereby that the relation of cause and effect must exist between the abuse of confidence and the crime. The grave abuse of confidence does not produce the crime of theft as effect. It is the asportation, with intent of gain, of personal property belonging to another without the owner's knowledge and consent, which produces it. The relation of cause and effect, therefore, does not exist between the two concepts. The grave abuse of confidence is a mere circumstance which aggravates and qualifies the commission of the crime of theft. It is not necessary for said circumstance to be premeditated in order to be taken into consideration as an aggravating circumstance qualifying said crime. Its presence in the commission of the crime is sufficient. The fact that the accused was living in the house of the offended party, who had sheltered him out of charity, when he took the money belonging to his protector, aggravates the crime committed by him, inasmuch as he gravely abused the confidence which the owner of the house reposed in him upon permitting him, out of charity, to live therein, stifling the sentiment of gratitude awakened in his bosom by his benefactor's charitable act. This abuse of confidence was all the more grave because it happened between fellow countrymen.

Therefore, the court a quo did not commit the first error of law attributed to it.

With respect to the second assignment of alleged error, the appellant's attorney de oficio maintains that the crime committed by the accused being simple theft and taking into consideration the mitigating circumstance that the accused pleaded guilty, the penalty prescribed by article 309, subsection 3, of the Revised Penal Code, should be

imposed upon him in its minimum period. Having arrived at the conclusion that the crime committed by the accused-appellant Syou Hu is qualified theft, the indeterminate penalty imposed by the lower court is the proper one, except that one day should be added to the maximum thereof in order to come within the maximum period of the penalty of prision correccional, which is from four years, two months and one day to six years, or four years, two months and one day of prision correccional.

Wherefore, and with the modification indicated by the promotor fiscal, the appealed judgment is affirmed in all other respects, with costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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