

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EUSTAQUIO FLORES, DEFENDANT AND APPELLANT.***G.R. No. 45973. May 27, 1938*

Ponente: DIAZ, J.

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Appellant was charged with qualified theft of jewels valued at P220, belonging to Luisa Magbituin. Having pleaded guilty upon arraignment, he was convicted of the crime and sentenced by the trial court to an indeterminate penalty of one year, eight months and twenty days to four years, two months and one day of prision correccional.

His appeal is based on the supposed error committed by the lower court in having considered the offense as qualified theft instead of only simple theft. He contends that the allegation of the information that he committed the crime with abuse of confidence because he was at the time living in the house of the owner of the jewels from whom he was receiving his daily subsistence, is not sufficient to elevate the offense to the category of qualified theft. The question raised by the appellant is not new, having been decided on more than one occasion contrary to his contention. It is opportune to repeat here what we stated in the case of *People vs. Syou Hu* (36 Off. Gaz., 1335), that "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 benefactors' charitable act. This abuse of confidence was all the more grave because it happened between fellow countrymen." He who, with intent of gain, acts as the appellant did, removing and carrying away surreptitiously jewels or other movables belonging to the person who has given him shelter and daily bread, out of charity, acts with grave abuse of confidence and thereby commits the crime of qualified theft. Consequently, the classification given to the offense of the appellant is in accordance with law.

There is no question as to the penalty imposed on the appellant. Under the provisions of article 310 of the Revised Penal Code, taking into consideration the value of the stolen jewels (less than P6,000 but more than P200), the crime calls for the penalty of prision correccional in its maximum degree to prision mayor in its minimum degree. In the absence of any aggravating circumstance to offset the extenuating circumstance of plea of guilty, the minimum degree of the penalty was imposed by the lower court, which is within the limit of the penalty next lower in degree to that prescribed by the law, in accordance with the terms of the Indeterminate Sentence Law.

The appealed judgment is affirmed with costs against the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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