

**TEODORO MARIANO Y LINGAT (ALIAS PANGAN), PETITIONER, VS.
THE PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 46246. October 14, 1939*

Ponente: AVANCEÑA, C.J.

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The appellant was sentenced by the Court of First Instance of Manila for the crime of theft, qualified by grave abuse of confidence, to four years, two months and one day of prision correccional and, for being a habitual delinquent, to the additional penalty of ten years and one day of prision mayor.

On appeal to the Court of Appeals, the latter, taking the view that the theft charged is not qualified by grave abuse of confidence, reduced the principal penalty imposed on the appellant to four months and one day of arresto mayor, affirming the appealed judgment in all other respects. The accused also appealed from this judgment of the Court of Appeals.

Celedonio Mesa had a barbershop establishment on Herran Street where he and his brother-in-law slept upstairs. Sometime on September 9, 1937 and prior thereto, the appellant, upon his request and out of charity, was permitted to sleep in the same place. On the night of that date, the appellant, during the absence of Celedonio, took from the latter's trunk, which was upstairs, the amount of P10.20. After the appellant was informed that he was being suspected of having taken the said amount, he returned the same to Celedonio's brother-in-law and asked that he be forgiven therefor. These facts are fully established.

The appellant makes the point that inasmuch as the amount taken was returned, the crime charged does not exist. The circumstance that the return was made sometime after the taking was effected does not affect the existence of the crime which had already been consummated.

The appellant likewise contends that he should not be sentenced to the additional penalty for habitual delinquency because this circumstance was not alleged in the body of the information but only in a piece of paper which was attached thereto. This was done because the list of previous convictions of the appellant was so long that there was no sufficient space therefor in the printed information-form used in the Municipal Court. However, this list of previous convictions of the appellant, on which the allegation of habitual delinquency is based, is attached to the information as a part thereof.

But, as suggested by the Solicitor-General, the decision of the Court of Appeals is erroneous insofar as it held that the theft charged is not qualified by the circumstance of grave abuse of confidence. Upon his request, the appellant was admitted to sleep upstairs of the barbershop where the offended party slept and where the trunk from which he took the amount of P10.20 was found. This, on the part of the offended party, implied confidence which the appellant gravely abused. In *People vs. Syou* (36 Gac. Off., 1385), where the accused lived in the house of the offended party who gave him shelter out of charity, this court held that, in taking the money of his benefactor, the accused gravely abused the confidence reposed in him when, from charity, he was permitted to lodge in the house. This same view was followed by the Supreme Court of Spain in its decisions of October 15,

1872 and January 9, 1896, wherein it was held that the accused having been gratuitously and generously admitted in the house of the offended party, in taking the latter's money, he gravely abused the confidence reposed in him when he was received and sheltered in good faith in the offended party's house.

In view of the foregoing, the decision of the Court of Appeals is modified, and it is held that the theft with which the appellant is charged is qualified by the circumstance of grave abuse of confidence, and he is sentenced to 4 years, 2 months and 1 day of prision correccional, the appealed decision being affirmed in all other respects, with the costs of the appellant. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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