

1 Phil. 559

[G.R. No. 574. December 17, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BONIFACIO MODAMA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Bonifacio Modama, was charged with the offense of the theft of \$1,000, United States currency, and has been convicted by the Court of First Instance and condemned to the punishment of three years six months and twenty days of *presidio correccional* and to the restitution to the injured party of the amount stolen, arid in the event of insolvency to subsidiary imprisonment in satisfaction of the amount, with costs of the proceedings, from which judgment he appeals to this court.

The testimony shows that on the 12th day of November, 1901, Captain White, who was a guest at the Giralda Hotel in the city of Manila, had, in the inside pocket of his hand satchel, \$1,000 in \$20 gold certificates, United States currency, nearly all new, which satchel he took with him into his room at the hotel and placed under the head of the bed; that about five o'clock in the afternoon he and his family absented themselves from the room for a couple of hours, and that at about ten o'clock that night upon opening his satchel he found that the money had disappeared; that the door of his room was unlocked, it having been left open in order that the *muchacho*, who was the defendant, should have entrance to the room for the purpose of arranging it; that the defendant failed to put in an appearance at the hotel the next day, and the complainant thereupon reported the loss of the money and the circumstances to the Chief of the Secret Service for investigation. The matter was placed in hands of detectives with the description which had been given of the defendant. The defendant was arrested at a saloon in the city of Manila, and upon his person was found the sum of \$280 in \$20 gold bills. He was taken to the police station, and being questioned by the Chief of Police as to where he got the money replied that he was a servant of an

American captain and that he entered his room to make up the bed with another *muchacho* called Juan Mendoza, and that they took the money and divided it between them. Upon being interrogated as to his place of residence the Chief of Police and a detective accompanied him to his house. They searched the premises and found various articles belonging to the Giralda Hotel, and noticing the strange deportment of the wife of the defendant, who had her hand upon her breast and seemed much disturbed, the officer seized her by the wrist and drew her hand from her bosom and found in it five bills of \$20 in gold and two bills of five dollars, gold, each. Upon being asked where she got the money she stated that the defendant had given it to her; she stated that she had already used a \$20 bill in the purchase of some jewelry. The defendant being asked by the officer if this money was taken from the same place as he had taken the other money replied in the affirmative. He was asked what he had done with the rest of the money, and said that a *muchacho* called Juan Mendoza had the remainder. This occurred in the presence of the Chief of Police and of the officer. The money was identified by the owner as bills having a similar appearance to those which he had lost. We think this evidence shows clearly the theft of the property by the defendant as alleged in the complaint.

Under article 518, No. 1, of the Penal Code the theft of an amount exceeding 6,250 pesetas is punished by *presidio correccional* in its minimum and medium degrees. It is contended by counsel for the defendant that the amount of money found on the person of the defendant and that taken from the possession of his wife was less than 6,250 pesetas, and that the defendant should receive the punishment of *arresto mayor*. All of the money amounting to \$1,000, was taken from the satchel, and if the defendant himself did not appropriate to his own use the entire amount, still it is evident that the amount of \$1,000, gold, was taken by him. It is immaterial whether he made the division claimed to have been made of the money or not. The defendant was indicted under article 518 of the Penal Code. He might have been charged with the offense defined in article 520 of the Penal Code, under which he would have been punishable with the penalty next higher in degree, it being shown that he was a domestic of the Giralda Hotel at which the complaining witness lived at the time, but the fact that he was such domestic has not been alleged in the complaint, which should have been done in order to sustain a conviction under article 520. The indictment not having been drawn under this section this circumstance can not be considered as qualifying the offense and raising it to a higher degree. However, under paragraph 10 of article 10 the law defines and enumerates circumstances which aggravate criminal liability and when the act is committed with the abuse of confidence those circumstances may be considered without the necessity of alleging the aggravating circumstances.

Taking into consideration paragraph 10, article 10, as an aggravating circumstance, and giving the defendant the benefit of article 11 as reducing the penalty, the defendant is guilty of the offense punishable with that of *presidio correccional* in the medium degree, the minimum of which is imprisonment for the period of three years six months and twenty-one days, which we think is the punishment applicable to the case as proven. This is substantially the penalty fixed by the lower court.

The judgment of the lower court is affirmed and the defendant, Bonifacio Modama, is condemned to the punishment of three years six months and twenty-one days of *presidio correccional*, and to the restitution to the complaining witness, George White, of the sum of \$1,000, gold, less the sum of \$485, gold, taken from the possession of the defendant, and in case of insolvency to subsidiary imprisonment at the rate of one day for each twelve and one-half pesetas, the amount of subsidiary imprisonment not to exceed one year, together with the costs of the proceedings.

Arellano, C. J., Torres, Smith, Willard, and Mapa, JJ., concur.

Ladd, J., disqualified.