



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ROSALIE PINEDA y  
PADILLA,  
Petitioner,

G.R. No. 261532

Present:

-versus-

LEONEN, S.A.J., Chairperson,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., JJ.

PEOPLE OF THE  
PHILIPPINES,  
Respondent.

Promulgated:

DEC 04 2023

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DECISION

**M. LOPEZ, J.:**

An accused is liable only for simple theft if the gravity of abuse of confidence was not properly alleged in the information. It is fundamental that every element of the crime must be set out in the information because the accused is presumed to have no independent knowledge of the facts that constitute the offense.<sup>1</sup> This Petition for Review on *Certiorari*<sup>2</sup> assailing the Decision<sup>3</sup> dated July 19, 2021 and the Resolution<sup>4</sup> dated May 24, 2022 of the Court of Appeals in CA-G.R. CR No. 43106 is once more a showcase of this enduring rule.

<sup>1</sup> *Andaya v. People*, 526 Phil. 480, 497 (2006) [Per J. Ynares-Santiago, First Division]. See also *Balitaan v. Court of First Instance of Batangas*, 201 Phil. 311 (1982) [Per J. Guerrero, Second Division].

<sup>2</sup> *Rollo*, pp. 12–29.

<sup>3</sup> *Id.* at 35–49. The Decision was penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Manuel M. Barrios and Raymond Reynold R. Lauigan of the Special Tenth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 51–52.

## ANTECEDENTS

In 2018, Rosalie P. Pineda (Rosalie) was charged with 14 counts of qualified theft before the Regional Trial Court (RTC), docketed as Criminal Case Nos. 325-V-18, 540-V-18, 541-V-18, 543-V-18, 544-V-18, 547-V-18, 550-V-18, 553-V-18, 555-V-18, 556-V-18, 558-V-18, 560-V-18, 565-V-18 and 566-V-18. The Informations were similarly worded except for the dates of commission of the crimes and the amounts involved, thus:

On or about [*date of commission of crime*]. . . the accused, being then employed as sales coordinator of the owner's company, with intent to gain, **with abuse of confidence** because she had free access to the owner's property, and without knowledge and consent of owner. . . did then and there willfully, unlawfully and feloniously take, steal and pocket for herself cash money worth [*amount involved*] that was supposed to be payment for bid documents, to the damage and prejudice of the owner in that amount.

CONTRARY TO LAW.<sup>5</sup> (Emphasis supplied)

Rosalie pleaded not guilty. Trial then ensued. The prosecution witnesses testified that Licht Industrial Corporation hired Rosalie as a sales coordinator to represent the company in government project biddings. The company entrusted Rosalie with money to purchase bid documents from the procuring government agencies. Rosalie accomplished the necessary documents and submitted them before the bid opening. Rosalie also prepared liquidation reports with receipts. Yet, the company was not able to participate in the biddings. The company then discovered that Rosalie did not buy the bid documents and that the procuring entities did not issue the receipts. Consequently, the company dismissed Rosalie from work and filed criminal complaints against her.<sup>6</sup> On the other hand, Rosalie claimed that some projects did not push through because the company's documents were not approved during post-qualification.<sup>7</sup>

On November 7, 2018, the RTC convicted<sup>8</sup> Rosalie of four counts of qualified theft in Criminal Case Nos. 325-V-18, 555-V-18, 556-V-18, and 560-V-18.<sup>9</sup> The RTC found that Rosalie unlawfully took the funds instead of purchasing bid documents and falsified the receipts to hide the misappropriation.<sup>10</sup> However, the RTC dismissed Criminal Case Nos. 540-V-18, 541-V-18, 543-V-18, 544-V-18, 547-V-18, 550-V-18, 553-V-18, 558-V-18, 565-V-18, and 566-V-18 for insufficiency of evidence,<sup>11</sup> to wit:

As can be gathered from the prosecution evidence, the accused was employed by the complaining company. . . as its sales coordinator. In the

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<sup>5</sup> *Id.* at 69.

<sup>6</sup> *Id.* at 70-72.

<sup>7</sup> *Id.* at 73.

<sup>8</sup> *Id.* at 69-82. The Decision was penned by Presiding Judge Emma C. Matammu of Branch 269, Regional Trial Court, Valenzuela City.

<sup>9</sup> *Id.* at 81.

<sup>10</sup> *Id.* at 76-79.

<sup>11</sup> *Id.* at 79.

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performance of her functions, she was entrusted with money to go to various local government units for the purpose of buying bid documents and participating, as the private complainant's authorized representative, in bidding for certain projects. . . She is likewise tasked to prepare and submit the required documents for the bidding.

....

With respect to Criminal Case No. 325-V-18. . . the accused allegedly stole and appropriate for herself the amount of P5,000.00 that was intended for the purchase of bid documents. . . The accused also submitted. . . an "Official Receipt of the Republic of the Philippines" No. 9856894 in the amount of P5,000.00, which appears to have been issued by "GSO – San Carlos". . . In other words, the accused made it appear to the private complainant that she has been able to purchase bid documents from San Carlos City. However, upon verification by the private complainant, the Office of the City Treasurer of San Carlos City issued a letter certifying that the "Official Receipt" with number 9856894 is not an official receipt of the said Office. **From the foregoing, it is clear that the accused did not expend the amount of P5,000.00 for the purpose that it was intended and for what she made it appear to be. Since she did not properly account for the said amount, she is presumed to have taken it for her personal gain.**

....

In relation to Criminal Case No. 555-V-18. . . When the accused reported back. . . she submitted "Official Receipt of the Republic of the Philippines" No. 7857387 A. . . in support of the purchase of bid documents. Upon verification. . . the Office of the Provincial Treasurer of Aklan issued a Certification stating that "Official Receipt No. 7857387 A with the amount of P10,000.00 for the payment of Bidding documents [. . .] was not issued by" the said Office. The accused has not disputed the faithfulness of the Certification nor did she present contrary evidence. . . **Again, it is apparent that she did not expend the amount of P10,000.00 for which it was intended and as she had reported to her employer. Absent clear and convincing evidence to the contrary, there can be no other conclusion than that she had taken the amount for her personal gain.**

As regards Criminal Case No. 556-V-18. . . In turn, the accused submitted. . . "Official Receipt of the Republic of the Philippines" with number 5587976 in the amount of P8,500.00 and indicating that it came from NIA MOMARO IMO for bid documents and accreditation fee. In other words, the accused had represented to the private complainant that she was able to purchase bid documents and pay an accreditation fee for the total amount of P8,500.00. . . However, in a letter from the National Irrigation Administration, Mindoro Oriental-Marinduque-Romblon (or NIA MOMARO) IMO, the Division Manager of the said government agency formally informed. . . that the subject Official Receipt was not issued by the said office. **Again, the accused did not dispute the faithfulness of the letter of the NIA MOMARO IMO Division Manager which is clearly indicative of her guilt for unlawfully taking the amount reflected in the subject receipt.**

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With regards to Criminal Case Nos. 560-V-18. . . it is similarly alleged that the accused had again stolen and appropriate for herself the amount of P5,000.00. . . However, upon verification by the private complainant, the OIC-City Treasurer of Masbate certified that Official Receipt No. 9987054 M, which supposedly emanated from the LGU of Masbate City, is counterfeit and was not issued by the said local government. **Once again, since the accused had untruthfully accounted for the amount of P5,000.00 as having been spent for Masbate bid documents, there can be no other conclusion but that she had instead taken the amount for her personal gain.**

....

It bears mentioning that in theft, whether simple or qualified, the element of intent to gain merely refers to a mental state whose existence may be demonstrated by a person's overt acts. Direct proof of actual or personal gain is not required. **The fact that the accused had received money from her employer in order to buy bid documents but, instead, submitted fake or falsified receipts, thereby revealing that she did not actually buy the documents, is indubitable proof of her intent to gain.**

**In taking the moneys belonging to the private complainant instead of using them for the purpose that they were intended, the accused gravely abused the trust and confidence reposed upon her.** Certainly, the private complainant would not have authorized the accused to deal with government procuring entities for the purpose of participating in certain projects up for bidding, if it had no trust and confidence in her. In failing to buy the bid documents that she was tasked to purchase and, worse, submitting documentary proof of false purchases, the accused presumably converted the purchase amounts for her own gain and indubitably abused her employer's trust and confidence.

....

**WHEREFORE,** accused ROSALIE PINEDA [y] PADILLA is hereby found **GUILTY** beyond reasonable doubt of four counts of Qualified Theft under Article 310, in relation to Article 309, of the Revised Penal Code, as amended, and hereby imposed the following penalties:

- (1) In Criminal Case Nos. 325-V-18, 556-V-18, and 560-V-18, the indeterminate penalty of two years and six months of *prision correccional*, as minimum, to eight years and one month of *prision mayor*, as maximum, in each case of the three cases; and[]
- (2) In Criminal Case No. 555-V-18, the indeterminate penalty of four years and three months of *prision mayor*, as minimum, to 10 years and one month of *reclusion temporal*, as maximum.

....

The accused is further ordered **TO PAY** private complainant Licht Industrial Corporation the amount of P25,000.00 as civil liability, plus interest at six percent per annum from finality of this judgment until full payment.

In Criminal Case Nos. 540-V-18, 541-V-18, 543-V-18, 544-V-18, 547-V-18, 550-V-18, 553-V-18, 558-V-18, 565-V-18 and 566-V-18, accused Pineda is hereby ACQUITTED, due to insufficiency of the evidence.

Cost against the accused.

**SO ORDERED.**<sup>12</sup> (Emphasis supplied, citations omitted)

Rosalie elevated<sup>13</sup> the case to the Court of Appeals (CA). Rosalie maintained that the prosecution failed to prove the elements of unlawful taking and intent to gain in qualified theft. Rosalie averred that she acquired juridical possession over the funds after they were lawfully released to her for administration.<sup>14</sup> In contrast, the People of the Philippines, through the Office of the Solicitor General (OSG), posited that Rosalie had only physical possession of the funds because of the limitation to use them exclusively for the purchase of bid documents.<sup>15</sup>

On July 19, 2021, the CA affirmed<sup>16</sup> the RTC's finding in Criminal Case Nos. 325-V-18, 555-V-18, and 556-V-18 that Rosalie is liable for qualified theft. The CA explained that Rosalie received only the material possession of the funds and did not acquire their unbridled use.<sup>17</sup> The CA further ruled that Rosalie likewise breached the trust of her employer when she presented false documents to conceal her misappropriation.<sup>18</sup> Nevertheless, the CA acquitted Rosalie in Criminal Case No. 560-V-18 absent credible proof of unlawful taking,<sup>19</sup> thus:

**On the element of taking or asportation, the Court was able to cull from the records proofs thereof for Criminal Case Nos. 325-V-18, 555-V-18 and 556-V-18, but not for Criminal Case No. 560-V-18.**

Specifically, in Criminal Case No. 325-V-18, the prosecution presented the falsified Official Receipts supposedly issued by the GSO of San Carlos, Negros Occidental showing a disbursement of Php5,000.00 and the subsequent Certification from the Office of the City Treasurer denying the authenticity of said Receipt.

Likewise, in Criminal Case No. 556-V-18, the falsified Receipt No. 5587976 from the National Irrigation Administration- MOMARO purportedly showing a disbursement of Php8,500 was adduced, which was, however, repudiated by the same agency in a Letter to Catherine Lao dated March 16, 2018.

And in Criminal Case No. 555-V-18, another falsified document, Receipt No. 7895657-A, allegedly issued by the Province of Aklan indicating a disbursement of Php10,000 was presented, but was debunked

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<sup>12</sup> *Id.* at 75–82.

<sup>13</sup> *See id.* at 52–67, Brief for the Accused-Appellant dated September 27, 2019.

<sup>14</sup> *Id.* at 59–64.

<sup>15</sup> *Id.* at 93–94.

<sup>16</sup> *Id.* at 41–48.

<sup>17</sup> *Id.* at 45–46.

<sup>18</sup> *Id.* at 44.

<sup>19</sup> *Id.* at 42–43.

by the Office of the Provincial Treasurer in a Certification dated March 13, 2018.

**In said cases, the elements of taking personal property (money to buy bid documents), belonging to another (Licht), sans violence, force or intimidation, are clearly present.**

No competent evidence of taking was, however, adduced in Criminal Case No. 560-V-18. For accused-appellant's conviction in said case, the RTC relied on Receipt No. 9987054 M and the corresponding Certification sent by the OIC-City Treasurer of Masbate, Joey Gallego, via email.

**Observedly (sic), said Certification is in the form of an unauthenticated and unsigned email and is, therefore, incompetent, if not inadmissible, to establish taking or misappropriation by the requisite standard of proof beyond reasonable doubt.** Since the prosecution failed to satisfy that standard, the presumption of accused-appellant's innocence should prevail in said case. The Court is, therefore, left with no other duty in said case except to hand down a verdict of acquittal.

....

**Accused-appellant's intent to gain, apart from being presumed from her unlawful taking, has been established by the circumstances that, despite the subject sums being earmarked as payments for bid documents, they were not paid by accused-appellant for said purpose, and at the same time, she made it appear that they were so expended.**

....

**She breached that trust when, instead of paying the sums to the procuring agency for the latter's bid documents, she did not; she failed to account therefor; and worse, she presented false documents to conceal her misappropriation.**

Relatedly, the same circumstances did not elevate her possession over the subject sums into a juridical possession as opposed to a mere material or physical possession.

....

**The possession acquired and exercised by accused-appellant falls short of a juridical possession. She received the subject sums only in her capacity as an employee of Licht and not by virtue of any other that could give her a right to claim as her own the subject funds or to use them in any other manner than as payment for bid documents.**

Accused-appellant's suggestion that she is Licht's agent for bidding purposes is puerile. **To reiterate, accused-appellant did not acquire the free and unbridled use of the subject funds as she received them for the limited and specific purpose of paying bid documents, and no other.** Withal, her possession could not be juridical in character but merely material or physical.

....

**WHEREFORE**, the appeal is **PARTLY GRANTED**. Accused-appellant is hereby **ACQUITTED** of *Qualified Theft* in Criminal Case No. 560-V-18, but his conviction for the same felony in Criminal Case Nos. 325-V-18, 555-V-18 and 556-V-18 is **AFFIRMED**.

Accordingly, the dispositive portion of the *Decision* dated November 7, 2018 of the Regional Trial Court of Valenzuela City, Branch 269, in Criminal Case Nos. 325-V-18, 555-V-18, 556-V-18[,] and 560-V-18, is hereby **MODIFIED** to read as follows:

“WHEREFORE, accused ROSALIE PINEDA [y] PADILLA is hereby found GUILTY beyond reasonable doubt of three counts of Qualified Theft under Article 310, in relation to Article 309, of the Revised Penal Code, as amended, and hereby imposed the following penalties:

(1) In Criminal Case Nos. 325-V-18 and 556-V-18, the indeterminate penalty of two years and six months of *prision correccional*, as minimum, to eight years and one month of *prision mayor*, as maximum, [is imposed] in each of [the] cases; and

(2) In Criminal Case No. 555-V-18, the indeterminate penalty of four years and three months of *prision mayor*, as minimum, to 10 years and one month of *reclusion temporal*, as maximum.

[...]

The accused is further ordered TO PAY private complainant Licht Industrial Corporation the amount of P20,000.00 as civil liability, plus interest at six percent per annum from finality of this judgment until full payment.”

**SO ORDERED.**<sup>20</sup> (Emphasis supplied, citations omitted)

Rosalie sought reconsideration but was denied.<sup>21</sup> Hence, this recourse.<sup>22</sup> Rosalie insists that the prosecution failed to establish intent to gain and unlawful taking of funds.<sup>23</sup> She maintains that she acquired both material and juridical possession of the money as administrator and not as a mere cash custodian.<sup>24</sup> Whereas, the OSG reiterates that Rosalie did not acquire juridical possession of the funds because her employer handed them to her for a specific purpose subject to return upon demand and proper liquidation. The OSG also posits that intent to gain is presumed from the unlawful taking.<sup>25</sup>

<sup>20</sup> *Id.* at 42–48.

<sup>21</sup> *Id.* at 51–52.

<sup>22</sup> *Id.* at 12–29.

<sup>23</sup> *Id.* at 22–26.

<sup>24</sup> *Id.* at 23–25.

<sup>25</sup> *Id.* at 130–132.

## RULING

The Petition is partly meritorious.

The crime of theft is committed by any person who, with intent to gain, but without violence against or intimidation of persons or force upon things, shall take the personal property of another without consent.<sup>26</sup> Grave abuse of confidence is a circumstance which aggravates and qualifies the commission of the crime of theft. Hence, its existence makes the imposition of a higher penalty necessary.<sup>27</sup> The crime of qualified theft requires the confluence of the following elements: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence against or intimidation of persons, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the Revised Penal Code (RPC), i.e., with grave abuse of confidence.<sup>28</sup>

Here, Rosalie posits that there was no unlawful taking because she acquired juridical possession of the funds after they were lawfully released to her for administration.<sup>29</sup> This hypothesis is unsophisticated. Rosalie's argument proceeds from the flawed premise that there can be no theft if the victim voluntarily handed the personal property to the accused. Theft may be committed even when the thing was in the lawful possession of the accused prior to the commission of the felony. The taking away of the personal property physically from the offended party is not necessary. The accused can be guilty of theft if the delivery to them has the effect of transferring only the material or physical possession of the thing.<sup>30</sup> In *Pideli v. People*,<sup>31</sup> the Court discussed several cases convicting the accused of theft after they misappropriated personal properties entrusted to them, thus:

**Although there is misappropriation of funds here, petitioner was correctly found guilty of theft. . . the Court has consistently ruled that not all misappropriation is *estafa*. . . :**

....

In *De Vera*, the accused, Nieves de Vera, received from Pepe, an Igorot, a bar of gold weighing 559.7 grams for the purpose of having a silversmith examine the same, and bank notes amounting to P200.00 to have them exchanged for silver coins. Accused appropriated the bar of gold and bank notes. The Court ruled that the crime committed was theft and not *estafa* since the delivery of the personal property did not have the effect of

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<sup>26</sup> REV. PEN. CODE, art. 308, par. 1.

<sup>27</sup> REV. PEN. CODE, art. 310. *See also People v. Mejares*, 823 Phil. 459, 470 (2018) [Per J. Leonen, Third Division].

<sup>28</sup> *People v. Eago*, 386 Phil. 310, 334-335 (2000) [Per J. Puno, First Division].

<sup>29</sup> *Rollo*, pp. 23-25.

<sup>30</sup> *Matrido v. People*, 610 Phil. 203, 214 (2009) [Per J. Carpio-Morales, Second Division].

<sup>31</sup> 568 Phil. 793, 806-808 (2008) [Per J. R. T. Reyes, Third Division].

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transferring the juridical possession, thus such possession remained in the owner; and the act of disposal with gainful intent and lack of owner's consent constituted the crime of theft.

In *People v. Trinidad*, defendant received a finger ring from the offended party for the purpose of pledging it as security for a loan of P5.00 for the benefit of said offended party. Instead of pledging the ring, the defendant immediately carried it to one of her neighbors to whom she sold it for P30.00 and appropriated the money to her own use. The Court, citing *de Vera*, similarly convicted defendant of theft.

In *People v. Locson*, this Court considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. . .

In *People v. Isaac*, this Court convicted a jeepney driver of theft and not *estafa* when he did not return the jeepney to its owner since the motor vehicle was in the juridical possession of its owner, although physically held by the driver. Thus, the accused's possession of the vehicle was only an extension of the owner's[.]<sup>32</sup> (Emphasis supplied, citations omitted)

To be sure, transferees acquire juridical possession when they receive money, goods, or any other personal property in trust or on commission or for administration. Juridical possession gives the transferees a right over the thing which they may set up even against the owner.<sup>33</sup> Here, the records show that Rosalie acquired only physical or material possession of the funds. Rosalie had no power to indiscriminately administer the amounts she received from the company. She was merely entrusted to use the funds for the purchase of bid documents from the procuring government agencies. As such, the money merely passed into Rosalie's hands and her custody was only until the amounts are paid to the procuring entities. Rosalie was only a temporary cash custodian who received the funds for a particular purpose. More telling is that Rosalie was required to render proper accounting and liquidation.<sup>34</sup> Verily, an employee who receives money or property on behalf of the employer is not vested with juridical possession but only physical possession. The material possession of employees is adjunct, by reason of their employment, to a recognition of the juridical possession of the employer. The offense committed remains to be theft if the juridical possession of the thing appropriated did not pass to the employee.<sup>35</sup>

Besides the taking of personal property, the other elements of theft are likewise present here. It is undisputed that the unaccounted amounts belong to Rosalie's employer, Licht Industrial Corporation. The absence of consent

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<sup>32</sup> *Id.*

<sup>33</sup> *Reside v. People*, 878 Phil. 122, 129–130 (2020) [Per J. Reyes, Jr., First Division]; and *San Diego v. People*, 757 Phil. 599, 608–609 (2015) [Per J. Peralta, Third Division].

<sup>34</sup> *Rollo*, pp. 70–72.

<sup>35</sup> *Benabaye v. People*, 755 Phil. 144, 154–155 (2015) [Per J. Perlas-Bernabe, First Division]; and *Reside v. People*, 878 Phil. 122, 130–131 (2020) [Per J. Reyes, Jr., First Division].

was evident in Rosalie's defiance of the specific instruction on the use of the funds and her employer's attempt to recover the stolen money. Rosalie even employed a scheme to cover up the fraudulent transactions.<sup>36</sup> More importantly, the prosecution established intent to gain on the part of Rosalie. *Animus lucrandi* is an internal act which can be established through overt acts of the offender. Actual gain is irrelevant as the important consideration is the intent to gain.<sup>37</sup> As the CA and the RTC aptly observed, Rosalie's intent to gain manifested when she submitted fake receipts to hide the misappropriation.<sup>38</sup> In any event, the furtive taking of the money raised the reasonable presumption of intent to gain.<sup>39</sup> Rosalie also held the funds without force, violence, or intimidation.

However, a reading of the Information<sup>40</sup> constrains the Court to rule that Rosalie is liable only for simple theft. The accused's constitutional right to be informed of the nature and cause of the accusation against them mandates the prosecution to allege every element of the crime.<sup>41</sup> The main objective of the rule is to avoid surprise on the part of the accused and to afford them the opportunity to suitably prepare their defense.<sup>42</sup> In this case, the charge against Rosalie was designated in the Information as qualified theft.<sup>43</sup> As intimated earlier, what aggravates and qualifies the commission of theft is the circumstance of "*grave abuse of confidence*."<sup>44</sup> In qualified theft, the taking must be the result of a relation by reason of dependence, guardianship, or vigilance between the accused and the offended party that has created a high degree of confidence between them.<sup>45</sup> Grave abuse of confidence by a thieving employee should be contextualized not only by the relationship between the employer and employee, but also by the purpose for which the employee was given the employer's trust.<sup>46</sup> We are convinced that Rosalie took advantage of her position in committing the crime. Yet, the Information only alleged "*abuse of confidence*," which is a generic aggravating circumstance. In *Homol v. People*,<sup>47</sup> the Court emphasized that abuse of confidence must be grave in qualified theft. When the gravity of exploitation of trust is not proven, the crime is only simple theft and the abuse of confidence shall be treated as a generic aggravating circumstance, to wit:

**At most, the abuse of confidence shall be considered as a generic aggravating circumstance since the gravity of exploitation of trust was**

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<sup>36</sup> *Rollo*, pp. 70–72.

<sup>37</sup> *People v. Bustinera*, 475 Phil. 190, 208 (2004) [Per J. Carpio-Morales, Third Division]. See also *Horca v. People*, G.R. No. 224316, November 10, 2021 [Per J. Hernando, Second Division].

<sup>38</sup> *Rollo*, pp. 43 and 79.

<sup>39</sup> See *Homol v. People*, G.R. No. 191039, August 22, 2022 [Per J. M. Lopez, Second Division].

<sup>40</sup> *Rollo*, p. 69.

<sup>41</sup> RULES OF COURT, Rule 110, sec. 8. See also *People v. XYZ*, 879 Phil. 752, 758 (2020) [Per J. Gesmundo, Third Division].

<sup>42</sup> *Pielago v. People*, 706 Phil. 460, 469 (2013) [Per J. Reyes, First Division].

<sup>43</sup> *Rollo*, p. 69.

<sup>44</sup> REV. PEN. CODE, art. 310.

<sup>45</sup> *People v. Cahilig*, 740 Phil. 200, 209–210 (2014) [Per J. Carpio, Second Division]; and *People v. Koc Song*, 63 Phil. 369, 371 (1936) [Per C.J. Avancefa. *En Banc*].

<sup>46</sup> *Tejolan v. People*, G.R. No. 218972, June 30, 2021 [Notice, Third Division].

<sup>47</sup> G.R. No. 191039, August 22, 2022 [Per J. M. Lopez, Second Division].

**not proven.** Indeed, abuse of confidence is inherent in qualified theft but not in simple theft since the circumstance is not included in the definition of the crime. Under Article 14 of the RPC, abuse of confidence exists only when the offended party has trusted the offender who later abuses such trust by committing the crime. The abuse of confidence must be a means of facilitating the commission of the crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence. The confidence between the offender and the offended party must be immediate and personal.<sup>48</sup> (Emphasis supplied, citations omitted)

Here, there is more reason to apply this rule considering that the prosecution failed to recite the gravity of the exploitation of trust. No matter how conclusive and convincing the evidence of guilt may be, the accused cannot be convicted of any offense unless it is charged in the information on which they are tried or is necessarily included therein. The allegations of facts constituting the offense charged are substantial matters and the accused's right to question their conviction based on facts not alleged in the information cannot be waived.<sup>49</sup> Thus, the crime is only simple theft attended with the generic aggravating circumstance of abuse of confidence.

Under Republic Act No. 10951,<sup>50</sup> the penalty for simple theft is *arresto mayor* to its full extent if the value of the property stolen is over PHP 500.00 but does not exceed PHP 5,000.00. Meanwhile, the penalty shall be *arresto mayor* in its medium period to *prision correccional* in its minimum period if the value of the property stolen is over PHP 5,000.00 but does not exceed PHP 20,000.00.<sup>51</sup>

In Criminal Case No. 325-V-18, the amount unlawfully taken is PHP 5,000.00, which merits the prescribed penalty of *arresto mayor*. As this penalty does not exceed one year, the Indeterminate Sentence Law becomes inapplicable.<sup>52</sup> With the presence of the generic aggravating circumstance of abuse of confidence, the impossible penalty must be within the maximum period of the prescribed penalty,<sup>53</sup> which ranges from four months and one day to six months.<sup>54</sup> Accordingly, the Court imposes upon Rosalie the straight penalty of five months.

In Criminal Case Nos. 555-V-18 and 556-V-18, the amounts stolen were PHP 10,000.00 and PHP 5,000.00, respectively, which warrant the prescribed penalty of *arresto mayor* in its medium period to *prision*

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<sup>48</sup> *Id.*

<sup>49</sup> *Andaya v. People*, 526 Phil. 480, 497 (2006) [Per J. Ynares-Santiago, First Division]. See also RULES OF COURT, Rule 120, sec. 4.

<sup>50</sup> "An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as 'The Revised Penal Code', as amended" (2017).

<sup>51</sup> Republic Act No. 10951 (2017), sec. 81.

<sup>52</sup> Act. No. 4103 (1933), sec. 2.

<sup>53</sup> REV. PEN. CODE, art. 64(3).

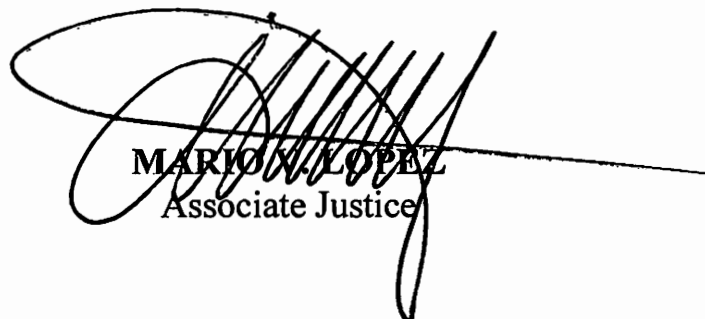
<sup>54</sup> REV. PEN. CODE, art. 76.

*correccional* in its minimum period for each case. Given the presence of the generic aggravating circumstance of abuse of confidence, the impossible penalty must be within the maximum period of the prescribed penalty<sup>55</sup> which ranges from six months and one day to two years and four months.<sup>56</sup> Thus, the Court imposes upon Rosalie the straight penalty of eight months for each case.

Applying prevailing jurisprudence, the actual damages due to Licht Industrial Corporation amounting to PHP 20,000.00 shall earn interest at the rate of 6% per annum from the date of the RTC's Decision on November 7, 2018 until full payment.<sup>57</sup>

**ACCORDINGLY**, the Petition is **DENIED**. The Decision dated July 19, 2021 and the Resolution dated May 24, 2022 of the Court of Appeals in CA-G.R. CR No. 43106 are **AFFIRMED with MODIFICATIONS**. In Criminal Case No. 325-V-18, petitioner Rosalie Pineda is found guilty of simple theft and is sentenced to suffer the penalty of imprisonment for five months. In Criminal Case Nos. 555-V-18 and 556-V-18, petitioner is likewise held guilty of simple theft and is sentenced to suffer the penalty of imprisonment for eight months in each case. The award of actual damages to private complainant Licht Industrial Corporation in the amount of PHP 20,000.00 shall earn interest at the rate of 6% per annum from the date of the RTC's Decision on November 7, 2018 until full payment.

**SO ORDERED.**



MARIO N. LOPEZ  
Associate Justice

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<sup>55</sup> REV. PEN. CODE, art. 64(3).

<sup>56</sup> REV. PEN. CODE, art. 76.


<sup>57</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013) [Per J. Peralta, *En Banc*].

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

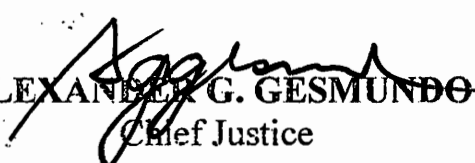
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice