Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOVITO CANCERAN,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 206442

Present:

CARPIO, *J.*, *Chairperson*,
BERSAMIN,*
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
01 JUL 2015

x - x

DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the August 10, 2012 Decision[1] and the March 7, 2013 Resolution[2] of the Court of Appeals *(CA),* in CA-G.R. CR No. 00559, which affirmed and modified the September 20, 2007 Judgment[3] of the Regional Trial Court, Branch 39, Misamis Oriental, Cagayan de Oro City *(RTC),* in Criminal Case No. 2003-141, convicting petitioner Jovito Canceran *(Canceran)* for consummated Theft.

* Per Special Order No. 2079, dated June 29, 2015.
[1] *Rollo* pp. 20-34; penned by Associate Justice Romulo V. Borja, with Associate Justice Pedro B. Corales and Associate Justice Ma. Luisa C. Quijano-Padilla, concurring.
[2] Id. at 36-37.
[3] Id. at 8-18.

The records disclose that Canceran, together with Frederick Vequizo and Marcial Diaz, Jr., was charged with "Frustrated Theft." The Information reads:

> That on or about October 6, 2002, at more or less 12:00 noon, at Ororama Mega Center Grocery Department, Lapasan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Jovito Canceran, conspiring, confederating together and mutually helping one another with his co-accused Frederick Vequizo, URC Merchandiser, and Marcial Diaz, Jr., a Unilever Philippines merchandiser both of Ororama Mega Center, with intent to gain and without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away 14 cartons of Ponds White Beauty Cream valued at ₱28,627,20, belonging to Ororama Mega Center, represented by William Michael N. Arcenio, thus, performing all the acts of execution which would produce the crime of theft as a consequence but, nevertheless, did not produce it by reason of some cause independent of accused's will, that is, they were discovered by the employees of Ororama Mega Center who prevented them from further carrying away said 14 cartons of Ponds White Beauty Cream, to the damage and prejudice of the Ororama Mega Center.
>
> Article 308 in relation to Article 309, and 6 of the Revised Penal Code.[4]

Version of the Prosecution

To prove the guilt of the accused, the prosecution presented Damalito Ompoc *(Ompoc),* a security guard; and William Michael N. Arcenio *(Arcenio),* the Customer Relation Officer of Ororama Mega Center *(Ororama),* as its witnesses. Through their testimonies, the prosecution established that on or about October 6, 2002, Ompoc saw Canceran approach one of the counters in Ororama; that Canceran was pushing a cart which contained two boxes of Magic Flakes for which he paid ₱1,423.00; that Ompoc went to the packer and asked if the boxes had been checked; that upon inspection by Ompoc and the packer, they found out that the contents of the two boxes were not Magic Flakes biscuits, but 14 smaller boxes of Ponds White Beauty Cream worth ₱28,627.20; that Canceran hurriedly left and a chase ensued; that upon reaching the Don Mariano gate, Canceran stumbled as he attempted to ride a jeepney; that after being questioned, he tried to settle with the guards and even offered his personal effects to pay for

[4] Id. at 21.

the items he tried to take; that Arcenio refused to settle; and that his personal belongings were deposited in the office of Arcenio.[5]

Version of the Defense

Canceran vehemently denied the charges against him. He claimed that he was a promo merchandiser of La Tondeña, Inc. and that on October 6, 2002, he was in Ororama to buy medicine for his wife. On his way out, after buying medicine and mineral water, a male person of around 20 years of age requested him to pay for the items in his cart at the cashier; that he did not know the name of this man who gave him ₱1,440.00 for payment of two boxes labelled Magic Flakes; that he obliged with the request of the unnamed person because he was struck by his conscience; that he denied knowing the contents of the said two boxes; that after paying at the cashier, he went out of Ororama towards Limketkai to take a jeepney; that three persons ran after him, and he was caught; that he was brought to the 4th floor of Ororama, where he was mauled and kicked by one of those who chased him; that they took his Nokia 5110 cellular phone and cash amounting to ₱2,500.00; and that Ompoc took his Seiko watch and ring, while a certain Amion took his necklace.[6]

Canceran further claimed that an earlier Information for theft was already filed on October 9, 2002 which was eventually dismissed. In January 2003, a second Information was filed for the same offense over the same incident and became the subject of the present case.[7]

The Ruling of the Regional Trial Court

In its Judgment, dated September 20, 2007, the RTC found Canceran guilty beyond reasonable doubt of **consummated Theft** in line with the ruling of the Court in *Valenzuela v. People*[8] that under Article 308 of the Revised Penal Code *(RPC),* there is no crime of "Frustrated Theft." Canceran was sentenced to suffer the indeterminate penalty of imprisonment from ten (10) years and one (1) day to ten (10) years, eight (8) months of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months of *reclusion temporal,* as maximum.[9]

---

[5] Id. at 22.
[6] Id. at 13-14.
[7] Id. at 68.
[8] 552 Phil. 381 (2007).
[9] *Rollo*, p. 18.

The RTC wrote that Canceran's denial deserved scant consideration because it was not supported by sufficient and convincing evidence and no disinterested witness was presented to corroborate his claims. As such, his denial was considered self-serving and deserved no weight. The trial court was also of the view that his defense, that the complaint for theft filed against him before the sala of Judge Maximo Paderanga was already dismissed, was not persuasive. The dismissal was merely a release order signed by the Clerk of Court because he had posted bail.[10]

The Ruling of the Court of Appeals

Aggrieved, Canceran filed an appeal where he raised the issue of double jeopardy for the first time. The CA held that there could be no double jeopardy because he never entered a valid plea and so the first jeopardy never attached.[11]

The CA also debunked Canceran's contention that there was no taking because he merely pushed the cart loaded with goods to the cashier's booth for payment and stopped there. The appellate court held that unlawful taking was deemed complete from the moment the offender gained possession of the thing, even if he had no opportunity to dispose of the same.[12]

The CA affirmed with modification the September 20, 2007 judgment of the RTC, reducing the penalty ranging from two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision* mayor, as maximum.

Canceran moved for the reconsideration of the said decision, but his motion was denied by the CA in its March 7, 2013 resolution.

Hence, this petition.

As can be synthesized from the petition and other pleadings, the following are the issues: 1] whether Canceran should be acquitted in the crime of theft as it was not charged in the information; and 2] whether there was double jeopardy.

---

[10] Id. at 17.
[11] Id. at 28.
[12] Id. at 30.

Canceran argues that the CA erred in affirming his conviction. He insists that there was already double jeopardy as the first criminal case for theft was already dismissed and yet he was convicted in the second case. Canceran also contends that there was no taking of the Ponds cream considering that *"the information in Criminal Case No. 2003-141 admits the act of the petitioner did not produce the crime of theft."*[13] Thus, absent the element of taking, the felony of theft was never proved.

In its Comment,[14] the Office of the Solicitor General *(OSG)* contended that there was no double jeopardy as the first jeopardy never attached. The trial court dismissed the case even before Canceran could enter a plea during the scheduled arraignment for the first case. Further, the prosecution proved that all the elements of theft were present in this case.

In his Reply,[15] Canceran averred that when the arraignment of the first case was scheduled, he was already bonded and ready to enter a plea. It was the RTC who decided that the evidence was insufficient or the evidence lacked the element to constitute the crime of theft. He also stressed that there was no unlawful taking as the items were assessed and paid for.

The Court's Ruling

The Court finds the petition partially meritorious.

Constitutional Right of the Accused to be Informed of the Nature and Cause of Accusation against Him.

No less than the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him.[16] It is fundamental that every element of which the offense is composed must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense. He is

---

[13] Id. at 4.
[14] Id. at 65-71.
[15] Id. at 73-74.
[16] Section 14 (2), Article III, 1987 Constitution.

presumed to have no independent knowledge of the facts that constitute the offense.[17]

Under Article 308 of the RPC, the essential elements of theft are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against person or force upon things. "Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all."[18]

"It might be argued, that the ability of the offender to freely dispose of the property stolen delves into the concept of 'taking' itself, in that there could be no true taking until the actor obtains such degree of control over the stolen item. But even if this were correct, *the effect would be to downgrade the crime to its attempted, and not frustrated stage*, for it would mean that not all the acts of execution have not been completed, the "taking not having been accomplished." [19]

A careful reading of the allegations in the Information would show that Canceran was charged with "Frustrated Theft" only. Pertinent parts of the Information read:

> x x x did then and there wilfully, unlawfully and feloniously take, steal and carry away 14 cartons of Ponds White Beauty Cream valued at P28,627,20, belonging to Ororama Mega Center, represented by William Michael N. Arcenio, thus **performing all the acts of execution which would produce the crime of theft as a consequence, but nevertheless, did not produce it by reason of some cause independent of accused's will** x x x.
>
> [Emphasis and Underscoring Supplied]

As stated earlier, there is no crime of Frustrated Theft. The Information can never be read to charge Canceran of consummated Theft because the indictment itself stated that the crime was never produced. Instead, the Information should be construed to mean that Canceran was being charged with theft in its attempted stage only. Necessarily, Canceran may only be convicted of the lesser crime of Attempted Theft.

---

[17] *Balitaan v. CFI of Batangas*, 201Phil. 311 (1982).
[18] *Valenzuela v. People,* supra note 8.
[19] Id.

"[A]n accused cannot be convicted of a higher offense than that with which he was charged in the complaint or information and on which he was tried. It matters not how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted in the courts of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein. He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial, and to convict him of an offense higher than that charged in the complaint or information on which he is tried would be an unauthorized denial of that right. "[20]

Indeed, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.[21] An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter.[22]

The crime of theft in its consummated stage undoubtedly includes the crime in its attempted stage. In this case, although the evidence presented during the trial prove the crime of consummated Theft, he could be convicted of Attempted Theft only. Regardless of the overwhelming evidence to convict him for consummated Theft, because the Information did not charge him with consummated Theft, the Court cannot do so as the same would violate his right to be informed of the nature and cause of the allegations against him, as he so protests.

The Court is not unmindful of the rule that "the real nature of the criminal charge is determined, not from the caption or preamble of the information nor from the specification of the law alleged to have been violated – these being conclusions of law – but by the actual recital of facts in the complaint or information."[23] In the case of *Domingo v. Rayala*,[24] it was written:

> **What is controlling is** not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being *mere conclusions of law* made by the prosecutor, but **the description of the crime charged and the particular facts therein recited.** The acts or omissions complained of must be alleged in such form as is sufficient to enable

[20] *United States v. Campo*, 23 Phil. 368, 371 (1912).
[21] *People v. Manalili*, 355 Phil. 652, 684 (1998).
[22] Section 5, Rule 120, Rules of Court.
[23] *People v. Resayaga*, 242 Phil 869, 874 (1988)
[24] 569 Phil 423, 454 (2008), citing *People v. Dimaano*, 506 Phil 630, 649-650.

> a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.[25]

In the subject information, the designation of the prosecutor of the offense, which was "Frustrated Theft," may be just his conclusion. Nevertheless, the fact remains that the charge was qualified by the additional allegation, *"but, nevertheless, did not produce it by reason of some cause independent of accused's will, that is, they were discovered by the employees of Ororama Mega Center who prevented them from further carrying away said 14 cartons of Ponds White Beauty Cream, x x x.*[26] This averment, which could also be deemed by some as a mere conclusion, rendered the charge nebulous. There being an uncertainty, the Court resolves the doubt in favor of the accused, Canceran, and holds that he was not properly informed that the charge against him was consummated theft.

No double jeopardy when the first jeopardy never attached

Anent the issue of double jeopardy, the Court finds no reason to deviate from the ruling of the CA.

No person shall be twice put in jeopardy for punishment for the same offense. The rule of double jeopardy has a settled meaning in this jurisdiction. It means that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense. This principle is founded upon the law of reason, justice and conscience.[27]

---

[25] *Domingo v. Rayala*, 569 Phil 423, 454 (2008), citing *People v. Dimaano*, 506 Phil 630, 649-650.
[26] *Rollo*, p. 21.
[27] *Melo v. People*, 85 Phil. 767-768 (1950).

Canceran argues that double jeopardy exists as the first case was scheduled for arraignment and he, already bonded, was ready to enter a plea. It was the RTC who decided that there was insufficient evidence to constitute the crime of theft.

To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused.[28]

Here, the CA correctly observed that Canceran never raised the issue of double jeopardy before the RTC. Even assuming that he was able to raise the issue of double jeopardy earlier, the same must still fail because legal jeopardy did not attach. *First,* he never entered a valid plea. He himself admitted that he was just about to enter a plea, but the first case was dismissed even before he was able to do so. *Second,* there was no unconditional dismissal of the complaint. The case was not terminated by reason of acquittal nor conviction but simply because he posted bail. Absent these two elements, there can be no double jeopardy.

Penalty of Attempted Theft

The penalty for consummated theft is *prision mayor* in its minimum and medium periods.[29] The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon principals in an attempt to commit a felony.[30] The basis for reduction of penalty by two degrees is the penalty prescribed by law for the consummated crime. Also, when the offenses defined in the RPC are punished with a penalty composed of two periods, like in the crime of theft,

---

[28] *Dimayacyac v. Court of Appeals*, G.R. No. 136264, May 28, 2004, 430 SCRA 129.

[29] Article 309 (1) of the Revised Penal Code provides that any person guilty of theft shall be punished by the penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than ₱12,000.00, but does not exceed ₱22,000.00; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of the code the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

[30] Article 51, Revised Penal Code.

the penalty lower by one degree is formed by two periods to be taken from the same penalty prescribed.[31]

Here, the products stolen were worth ₱28,627.20. Following Article 309 par. 1 of the RPC, the penalty shall be the maximum period of the penalty prescribed in the same paragraph, because the value of the things stolen exceeded ₱22,000.00. In other words, a special aggravating circumstance shall affect the imposable penalty.

Applying the Indeterminate Sentence Law, the minimum penalty should be within the range of *Arresto Mayor* Minimum to *Arresto Mayor* Medium. In view of the special aggravating circumstance under Article 309 (1), the maximum penalty should be *Arresto Mayor* Maximum to *Prision Correccional* Minimum in its maximum period.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The August 10, 2012 Decision and the March 7, 2013 Resolution of the Court of Appeals in CA-G.R. CR No. 00559 are hereby **MODIFIED**, in that, the Court finds accused Jovito Canceran guilty beyond reasonable doubt of the crime of Attempted Theft.

Accordingly, the Court sentences the accused to suffer the indeterminate prison term ranging from Four (4) Months of *Arresto Mayor*, as minimum, to Two (2) Years, Four (4) Months of *Prision Correccional,* as maximum.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[31] The Revised Penal Code. Luis. B. Reyes. Book One, 16th Edition (2006), p. 708.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

MARIA LOURDES P. A. SERENO
Chief Justice