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SECOND DIVISION

[G.R. No. 206442, July 01, 2015]

JOVITO CANCERAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

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.

The records disclose that Caneeran, 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 Caneeran, 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 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, 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.
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> 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 Caneeran approach one of the counters in Ororama; that Caneeran was pushing

a cart which contained two boxes of Magic Flakes for which he paid P1,423.00; 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 P28,627.20; that Caneeran hurriedly left and a chase ensued; that upon reaching the Don Mariano gate, Caneeran 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 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 Tondena, 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 P1,440.00 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 P2,500.00; 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]

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.

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 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 ail 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.
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> [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.

"[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]