

EIGHTH DIVISION

[CA G.R. CR NO. 29511, September 11, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERLITO TAGAZA, PLAINTIFF-APPELLANT,**

D E C I S I O N

CARANDANG, J.:

This is a petition for review which seeks to reverse and set aside the Decision of the Regional Trial Court (RTC), Br. 23, Cabanatuan City affirming that of the Municipal Trial Court in Cities (MTCC), Br. 2, also of Cabanatuan City, which in turn convicted petitioner Berlito Tagasa for violation of Batas Pambansa Blg. 22 (BP 22).

The antecedents of the case are as follows:

Berlito issued a Rizal Commercial Banking Corporation (RCBC) check, dated 15 August 1997,¹ in favor of private complainant Cresenciana Javier to serve as a replacement for an earlier check that was dishonored² and which covered a P150,000.00 loan obtained from Cresenciana in November 1995.³ Upon its presentment however, the same was returned having been *drawn against insufficient funds*.⁴ As a result, a demand letter was sent to Berlito.⁵ When the demand remained unheeded, Cresenciana filed a complaint for violation of BP 22. Based on this, Berlito was arraigned and entered a plea of not guilty. During trial, on 2 May 2000, then presiding judge, Hon. Lydia B. Hipolito, ordered the amendment of the information to "indicate the period *from July 1995 to July 1997* as probable date of issuance of the check, replacing the phrase *sometime in the month of November 1995* as stated in the original information."⁶ In that order, Judge Hipolito explained that the amendment was only in form for no substantial rights of Berlito was adversely affected. She likewise noted that Cresenciana's affidavit-complaint stated in no unclear terms that the check subject of the criminal case was in fact issued sometime in July 1997.⁷ Nonetheless, Berlito on the basis of the amended information was arraigned anew. He likewise pleaded not guilty to the amended information.⁸ Immediately thereafter, Judge Hipolito was appointed as Presiding Judge of Branch 23 of the Regional Trial Court. Meanwhile, Judge Tertulo A. Mendoza took over and presided over the subject criminal case. And on 9 August 2004, Judge Mendoza rendered his decision finding Berlito guilty beyond reasonable doubt of violating BP 22.⁹ The latter appealed the said decision to the Regional Trial Court, and was eventually raffled to Branch 23 which was presided over by Judge Hipolito. On 31 January 2005, Judge Hipolito issued the assailed decision affirming Berlito's conviction.¹⁰ Berlito moved for reconsideration but the same was denied in the RTC's assailed order of 29 July 2005.¹¹

On petition for review before Us, Berlito raises the following errors:

"I.

THE COURT A QUO (RTC Br. 23, CABANATUAN CITY) GRAVELY ERRED WHEN IT AFFIRMED THE ERRONEOUS CONVICTION OF THE PETITIONER BY THE MTCC BR. 2 CABANATUAN CITY BASED ON THE ORIGINAL INFORMATION INSTEAD OF THE AMENDED INFORMATION, TO WHICH THE PETITIONER WAS ALREADY RE-ARRAIGNED.

II.

THE COURT A QUO (RTC Br. 23, CANATUAN CITY) PRESIDED BY JUDGE LYDIA HIPOLITO GRAVELY ERRED WHEN IT PARTICIPATED AND AFFIRMED THE ERRONEOUS CONVICTION OF THE PETITIONER IN THE CASE BEFORE THE MTCC BR. 2 CABANATUAN CITY THE TRIAL OF WHICH WAS PRESIDED BY THE SAME JUDGE HIPOLITO WHEN SHE WAS STILL MTCC BR. 2 PRESIDING JUDGE."¹²

The present petition is devoid of merit.

Berlito argues that he was twice placed in jeopardy. The first, according to him was when he was arraigned under the original information, while the second was when he was arraigned for the subsequent amended information.

We do not agree. Under the constitutional guarantee against double jeopardy, one is protected from being subsequently prosecuted for a crime which he has previously been acquitted or convicted. Double jeopardy attaches only when, (1) there is a valid complaint; (2) before a competent court; (3) after arraignment; (4) a valid plea is entered; and (5) the person charged was acquitted or convicted or the case against him dismissed or otherwise terminated without his express consent.¹³ Thus, it is necessary that the first jeopardy has attached or validly terminated prior to the second jeopardy. Unfortunately for Berlito, this is not so. In the present case, the amendment ordered by the MTCC was merely confined to form and did not in any way validly terminate the first jeopardy.

In applying the rules on amendment and substitution of information under Section 14, Rule 110 of the Revised Rules of Criminal Procedure, the Honorable Supreme Court held,

"(a)n amendment which merely states with additional precision something which is already contained in the original information, and which, therefore, adds nothing essential for conviction for the crime charged is an amendment as to form that can be made anytime. Jurisprudence allows amendments to information so long as: (a) it does not deprive the accused of the right to invoke prescription; (b) it does not affect or alter the nature of the offense charged; (c) it does not involve a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense; (d) it does not expose the accused to a charge which would call for a higher penalty; and (e) it does not cause surprise nor deprive the accused of an opportunity to meet the new averment."¹⁴

In this case, the amendment merely consisted in correcting the probable date the subject RCBC check was made. A review of the transcript readily reveals that while the loan was obtained sometime in November 1995, several worthless checks were given to cover for the said loan, the last of which was the subject RCBC check given sometime in July 1997 but postdated to 15 August 1997.¹⁵ The complaint filed by Cresenciana also states that the subject check was offered to her sometime in July 1997. Clearly, the correction was merely to add "precision" to the fact that Berlito made and issued the RCBC check that bounced, a fact which was already laid down in the original information. Thus, the prosecution's theory never changed. And as such, the amendment or, more precisely, the correction could not have been detrimental to Berlito's defense since the same remained applicable even after the said correction was made. With that, the first jeopardy never attached for it was but proper and correct for the MTCC to order the amendment.

Next, Berlito argues that the MTC erred in convicting him on the basis of the original information. While we are one with Berlito that the original information was already superseded by the amended one, We do not agree that the MTCC erred in convicting him on the basis of the latter. While the MTCC inadvertently made reference to the original information, it is obvious that it was referring to the amended one precisely because the original one was already replaced. It cannot be denied that the amended information has taken the place of the original one and that Berlito was being prosecuted under the said amended information for he was re-arraigned based on it. More importantly, the evidence submitted and received by the MTCC was for that same amended information which was eventually considered and made the basis for Berlito's conviction below, thus:

"The evidence of the prosecution as offered by the trial prosecutor consists of RCBC Check No. 060534 issued by the accused that bounced due to insufficiency of funds when presented for payment with the drawee bank, Exhibit "A". Exhibit "B" is the bank return slip, meaning the check was returned for reasons of "DAIF". Upon its return to the complainant, a demand letter was sent to the accused, Exhibit "C". The evidence showing the obligation incurred and signed and executed by the accused is the Promisory Note Exhibits "D". Lastly, the profile of the accused, Exhibit "E" the purpose for which it was offered is to show the identity of the accused, together with the aforementioned exhibits are all deemed considered admitted and duly noted in the resolution of the case.

Again, the records show that accused failed to controvert the facts and evidence of the prosecution. Thus, the court is convinced and is morally certain that the crime imputed upon the accused has been committed and the accused deserves to suffer the penalty which the law provides and to be imposed upon him."¹⁶

Now, considering that the *gravamen* of the offense under BP 22 is the act of making or issuing a worthless check and the mere issuance of such is *malum prohibitum*¹⁷, Berlito's conviction was indeed in accordance with law and with the evidence at hand, and the RTC did not err in affirming the same.

In fact, Berlito already raised this point on appeal before the RTC.¹⁸ And to this, the RTC similarly found that since Berlito was arraigned under the amended information the MTCC's reference to the original one was "just a mere oversight."¹⁹ Nothing can