

SUMMARY AND CHRONOLOGY OF EVENTS IN THE CRIMINAL CASE FILED VERSUS then DAILY TRIBUNE columnist, now MALAYA and ABANTE columnist LITO BANAYO before the RTC Branch 49, Manila, under Hon. Judge CONCEPCION ALARCON-VARGARA:

1. The First Gentleman, JOSE MIGUEL T. ARROYO, filed a complaint for libel with the City Prosecutor's Office, Manila, against LITO BANAYO in June 2004, alleging that six articles written by the latter in his column "So I See", dated July 21, 25 and 28 and August 11, 13, and 15 were libelous.
2. Subpoenas sent to the offices of The Daily Tribune failed to reach respondent Lito Banayo, who since May 25, 2004, had already been writing for Malaya and Abante, until about August 2004. Subsequently, Banayo filed his counter-affidavit with the City Prosecutor's Office.
3. From September 2004 to March 2006, respondent Banayo was not made aware of any action by the City Prosecutor's Office on the libel complaint filed against him. Sometime in 2005, an earlier libel case filed by the same party, i.e. Jose Miguel T. Arroyo, against Panfilo Lacson, Gilbert Remulla and Banayo, which the fiscal elevated to the Hon. Judge Placido Marquez of Br. 39, RTC Manila, was dismissed for lack of probable cause, and the judge in his decision even praised the respondents for exposing possible instances of graft in government.
4. Then, on Friday, March 24, 2006, one year and 8 months since the complaint was filed, without any hearing where the respondent was physically present, the City Prosecutor's Office filed a case for six counts of libel against Banayo. Respondent Banayo was then in the United States, having left March 14, 2006.
5. On Monday, March 27, 2006, the information was received by the Executive Judge, who then had the same raffled for proper action.
6. On Tuesday, March 28, 2006, at 10:10 in the morning, the RTC Manila Branch 49, received the information, and forthwith numbered the six counts of libel as Criminal Cases 06242822 up to 06242827, respectively. On that very same day, the presiding judge signed and issued an Order of Arrest for accused Banayo, and furnished copies to the Manila Police District, the NBI, the CIDG (PNP), and the Chief of Police, Makati City, as well as the Sheriff of the Manila RTC.

**Rule 112, Sec. 6 of the Rules on Criminal Procedure states that "within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause..."**

**Judge Concepcion Alarcon-Vergara never bothered to follow the requirements of the Rules to personally evaluate the resolution of the public prosecutor and**

**totally ignored the rights of the accused when she immediately, on the same day, issued the warrant of arrest for the six (6) counts of libel.**

7. Banayo's office in Makati, meanwhile, received the warrant order on April 4, 2006, and he was informed about it the following day by telephone. Whereupon, he called his lawyer, Atty. Johnmuel Romano Mendoza, to look into the matter and advise him of actions to be taken.
8. Banayo was scheduled to depart from the US on Holy Thursday, April 13, with a scheduled arrival on Black Saturday, April 15, in Manila. **However, on April 4, he was advised by his lawyer that sources at Camp Crame said the CIDG had expressed rather "unusual" interest in serving the warrant immediately, and since his scheduled arrival day was a Saturday, he would be unable to post bail until the re-opening of office on Monday, April 17.** Whereupon, he had to revise his flight departure, at considerable expense and inconvenience, and arrived early morning of Tuesday, August 18, proceeding immediately thereafter to RTC Branch 49 Manila with his lawyer to post bail.
9. While the cash bail of 60,000 pesos was being paid to the cashier, and Banayo was waiting inside the court offices, elements of the police barged in and seeing Banayo already inside, one of them said "Sayang, nahuli tayo"(We came late.)
10. Arraignment was set for June 5, but meanwhile, private complainant Arroyo wrote the court for postponement.
11. Finally, Banayo was arraigned on July 3, where he pleaded "not guilty", and pre-trial was set at 8:30 in the morning of August 7, 2006.
12. On the morning of Monday, August 7, 2006, the premises of the City Hall of Manila swarmed with uniformed police and Presidential Security Guards along with sniff dogs. No less than the Chief of the WPD, General Pedro E. Bulaong was in the immediate area of Br. 49 at the 5<sup>th</sup> floor, along with some six uniformed police officers, two or three of them with the rank of colonel. The PSG and/or the police effectively barred media (who were attracted by the unusual display of force) from entering the sala of the judge.
13. Without any written pre-trial order signed by both parties, the presiding judge ordered the presentation of the first prosecution witness on the same day, thereby violating Sections 2 and 4 of Rule 118 of the Rules on Criminal Procedure, to wit:

**"Pre-trial agreement.- All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise they cannot be used against the accused. The agreements covering the matters referred to in Section 1 of this Rule shall be approved by the Court.**

**“Pre-trial order.- After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial unless modified by the court to prevent manifest injustice.”**

14. Further, Section 1 of Rule 119 explicitly declares that after a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order. **Therefore, her order to immediately proceed to trial was a blatant disregard and violation of the Rules.**
15. The judge arbitrarily, capriciously and despotically ordered the case to proceed to trial moments after she terminated the pre-trial conference. During the testimony of the First Gentleman, Atty. Arroyo, she repeatedly denied motions of the lawyer for the defense in a manner so high-handed, punctuated with unabated and unnecessary shouting.
16. Then, after the one-hour direct examination of the private complainant, the judge wanted to force the defense counsel to cross-examine the private complainant immediately, without the benefit of time to confer with the stenographic notes of the lengthy testimony.
17. Thereafter, she directed continuation of the trial the following day, Tuesday, August 8, at 2:00 p.m. She directed the court stenographer to give the transcript to the affected parties the same afternoon.
18. Finding the actions inside the courtroom on Monday, August 8, as being an utter display of partiality and high-handedness, Banayo conferred with his defense counsel, Atty. Mendoza, and asked him to prepare a Motion to Inhibit the presiding judge.
19. By 1:15 p.m. of Tuesday, August 8, the stenographer had completed transcribing only 62 pages of the notes, a little more than half of the testimony of the previous day. Pressed for time, Atty. Mendoza filed the Motion to Inhibit signed by Banayo thereafter.
20. Judge Alarcon-Vergara promptly started the hearing at 2:00 p.m., and immediately denied the Motion to Inhibit, and in tones livid with anger, peremptorily disputed the charge of partiality against the accused. She then directed the defense counsel to cross-examine Atty. Arroyo.
21. Defense counsel rightly refused and begged leave of court. Banayo was directed by the judge to remain. Whereupon, she appointed a counsel de oficio. Inside the court was Atty. Humberto Basco, a lawyer who accompanied his friend Rogelio de la Paz, a friend of Banayo who went there to lend moral support. Both are

former councilors of Manila who were able to enter the court only because they arrived at the same time that the First Gentleman and his party, which again included Gen. Bulaong and assorted police and PSG's. **Even Banayo, who arrived a few minutes later, was denied entry by a PSG agent, only to be allowed inside after some higher official directed the guard to allow the accused inside. Again, media were not allowed inside. Another friend of Banayo who followed him was denied entry by the PSG.**

22. **Judge Vergara immediately appointed the unwitting and unwilling Basco to be de officio lawyer, and when Banayo himself stood to protest the surreal events, and declared that he does not agree to be represented by a lawyer who had virtually no knowledge of the case, the judge persisted. At one point, no less than the First Gentleman needled Basco to accept the appointment as counsel de officio, saying “*Magaling ka namang abogado, e*” When Banayo asked for a postponement of the trial so he could be properly represented, the judge again denied, and forced Atty. Basco to proceed with cross-examining the second witness, the First Gentleman's private prosecutor, Atty. Ruy Rondain.**
23. Again, the judge acted arbitrarily, depriving the accused of representation by proper counsel, and insisted that she wanted to finish this case with dispatch. Dispatch for whom? For the First Gentleman his lawyer constantly reminded the judge was “a busy man”? And against the rights of the accused to a fair trial and proper representation by counsel of his choice?
24. What was so urgent about a complaint for libel against a member of media, that short-cuts have to be forcibly undertaken, in violation of the legal rights of the accused, simply because the accuser is probably the most powerful man in the country, being the husband of a president?
25. Considering that the complaint languished in the City Prosecutor's Office for almost two years, why then is the First Gentleman, his lawyer and the presiding judge of Branch 49, RTC Manila, so bent on “finishing off” this libel case at this time?
26. I view this as no less than a bare-fisted, arrogant attempt to send a message to the entire media that they should always be wary of criticizing the powers-that-be in this benighted land. This may seem a small incident involving an insignificant columnist who dares to continue expressing his views against the abusive powers who rule the land. But taken side by side with the repeated assaults upon the integrity of co-equal branches of government---the legislature, particularly the Senate, and even the judicial system, alongside likewise the summary killings and unsolved murders of both militants and journalists, the effect is downright chilling.

LITO BANAYO

