

## FIRST DIVISION

[ G.R. No. 142738, December 14, 2001 ]

**DR. HONORATA BAYLON, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN AND SANDIGANBAYAN, RESPONDENTS.**

### DECISION

**PARDO, J.:**

*"Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. They should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trial. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused."*<sup>[1]</sup>

#### The Case

Before this Court is a petition<sup>[2]</sup> assailing the decision of the Ombudsman<sup>[3]</sup> for having been issued with grave abuse of discretion. The decision disapproved a recommendation of the Special Prosecutor<sup>[4]</sup> for the dismissal of the criminal case against petitioner Dr. Honorata G. Baylon (hereafter, Dr. Baylon) and co-accused, and approved a memorandum<sup>[5]</sup> recommending the prosecution of the criminal case. The petition prays that the Sandiganbayan be enjoined from further proceedings in the criminal case.

#### The Facts

In 1993, the Secretary of Health appointed Dr. Baylon as the Program Manager of the Government's National Voluntary Blood Donation Program (hereafter, the blood program).<sup>[6]</sup> The National Kidney and Transplant Institute (hereafter, NKTi) was the lead agency of the blood program. In the same year, the Department of Health (hereafter, DOH), assisted by the USAID made a study on the safety of the Philippine blood banking system.

On February 3, 1994, the DOH called a meeting of all the managers of the department's several programs. During the meeting, a comprehensive work plan for a new project "STOP D.E.A.T.H.: Hospitals for Philippines 2000" (hereafter, the project) was discussed. The blood program was one of the six (6) new programs included in the project.

A week later,<sup>[7]</sup> on February 11, 1994, the DOH allotted two million pesos (P2,000,000.00) to the NKTi as start-up money for the blood program<sup>[8]</sup>. The official disbursement was made on February 18, 1994.<sup>[9]</sup>

On February 18, 1994, the DOH issued Department Order Nos. 73-f and 73-g, series of 1994.<sup>[10]</sup> Department Order No. 73-f launched the project. The sum of fifty-one million pesos (P51,000,000.00) was allocated for the blood program.<sup>[11]</sup> Department Order No. 73-g created an Executive Committee and a National Secretariat for the Project.<sup>[12]</sup>

On February 24, 1994, Secretary of Health Juan M. Flavio revealed to the public the results of the USAID study, to wit:

- (a) the blood transfusion service of the country failed to adequately meet the public demand for safe blood; and
- (b) the blood sourced from commercial blood banks had a contamination rate of 4%.

On March 3, 1994, in view of the afore-quoted findings, Secretary Flavio issued a closure order on the provincial retail outlets of commercial blood banks.

The events led to an acute shortage of blood available to the public as the commercial blood banks intentionally refused to sell blood in retaliation to the closure order. Thus, Secretary Flavio instructed the immediate implementation of the voluntary blood donation system as the only alternative source of blood.

The NKTi expedited the installation of the blood program. On March 8 and 17, 1994, requisition vouchers for the initial purchase of containers for blood were issued.<sup>[13]</sup>

On March 8, 1994, NKTi decided to purchase Terumo blood bags for immediate distribution to the regional hospitals and medical centers.

On March 16, 1994, NKTi obtained a quotation of the prices of blood bags (Terumo brand) from FVA-Exim Trading (hereafter, FVA). FVA is the **exclusive** distributor of Terumo blood bags and the only supplier which could supply all sizes of the blood bags.

The prices quoted were:<sup>[14]</sup>

- a. Single - P72.29
- b. Double - P171.00
- c. Triple - P263.70

On March 29, 1994, upon NKTi's request, FVA submitted a quotation at reduced prices, thus:<sup>[15]</sup>

- a. Single - P63.54
- b. Double - P150.00
- c. Triple - P209.09

In March 1995, the Commission on Audit (hereafter, COA) through its Resident Auditor, Ms. Blesida Gutierrez, disallowed in post-audit the above purchase on the ground that the NKTi failed to conduct a public bidding. The COA Auditor averred that the cost of the blood bags was overpriced and grossly disadvantageous to the government. The COA auditor made a comparison of the prices of the blood bags quoted by FVA to NKTi with the prices offered to other medical institutes such as the Philippine National Red Cross (PNRC), Mother Seaton and to Our Lady of Fatima,<sup>[16]</sup> to wit:

<b><u>Blood Bag Capacity</u></b>	<b><u>NKTI</u></b>	<b><u>PNRC</u></b>	<b><u>Mother Seaton</u></b>	<b><u>Our Lady of Fatima</u></b>	<b><u>Price Difference</u></b>
Single	P63.54	P38.00	P43.00	P43.00	P22.21
Double	P150.00	P100.00	--	--	P50.00
Triple	P209.09	P155.00	--	--	P54.09

Based on the above price differences, the COA concluded that the government incurred a total loss of one million nine hundred sixty four and three hundred and four pesos and seventy centavos (P1,964,304.70) arising from the transaction between NKTi and FVA. We quote the NKTi Annual Audit Report for the year 1995 prepared by the COA:

"Procurement of supplies for the National Voluntary Blood Donation Program was made without public bidding in violation of COA Circular No. 85-554 and Hospital Order No. 12, s 1995 resulting to an overpricing in the amount of P1.964 M."

On February 4, 1997, a complaint-affidavit was filed with the Ombudsman<sup>[17]</sup> against Dr. Baylon and other DOH officials. The complaint-affidavit alleged criminal and administrative charges:<sup>[18]</sup>

(1)The criminal complaint was for violation of Section 3 (e) and (g) of R. A. 3019 and was filed against Dr. Juan M. Flavie,<sup>[19]</sup> Dr. Jaime Galvez-Tan,<sup>[20]</sup> Dr. Juan R. Nañagas,<sup>[21]</sup> Dr. Filoteo A. Alano,<sup>[22]</sup> Dr. Aileen R. Javier,<sup>[23]</sup> Dr. Honorata G. Baylon,<sup>[24]</sup> Ms. Diana Jean F. Prado<sup>[25]</sup> and Ms. Maribel U. Estrella.<sup>[26]</sup>

(2)The administrative complaint was for gross misconduct in violation of R.A. 6713<sup>[27]</sup> and was filed against Dr. Nañagas, Dr. Alano, Dr. Javier, Dr. Baylon, Ms. Prado and Ms. Estrella.

On March 17, 1999, a panel composed of members of the Evaluation and Preliminary Investigation Bureau (hereafter, EPIB),<sup>[28]</sup> Office of the Ombudsman issued a resolution recommending<sup>[29]</sup> that the complaint for violation of the anti-graft law against petitioner and her co-accused be dismissed for insufficiency of evidence. According to the resolution:<sup>[30]</sup>

"We therefore subscribe to the finding of the Department of Health Investigation Committee which concluded that there was no overpricing for lack of legal and factual basis. Finally, there was no injury caused to the government hence there is no violation of RA 3019.

"Premises considered, it is respectfully recommended that this complaint for violation of the Anti-graft law against all respondents be dismissed for insufficiency of evidence.

"SO RESOLVED."

A review of the resolution of the EPIB panel was made and on August 9, 1999, the Assistant Ombudsman, EIO, Abelardo L. Aportadera, Jr. in a memorandum to Ombudsman Aniano A. Desierto made the following recommendations:<sup>[31]</sup>

"1. Disapproval of the EPIB Resolution dated 17 March 1999 recommending the dismissal of the case for insufficiency of evidence;

"2. Filing of charges in violation of the Anti-Graft and Corrupt Practices Act against public respondents FILOTEO ALANO, AILEEN R. JAVIER, HONORATA G. BAYLON and DIANA JEAN F. PRADO.

"3. Dismissal of charges against public respondents JUAN M. FLAVIER, JAIME GALVEZ-TAN, JUAN R. NANAGAS and MARIBEL U. ESTRELLA.

"4. Dismissal of charges against FRANCISCO V. ABALOS, as President of FVA EX-IM Trading, because, due to his death, any criminal liability is extinguished.

"5. Blacklisting of FVA EX-IM Trading from entering into future transactions with the government."

The memorandum further recommended that:<sup>[32]</sup>

"In view of the foregoing, undersigned recommends for the filing of charges in violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act against public respondents ALANO, JAVIER, BAYLON and PRADO."

On October 15, 1999, the Special Prosecutor filed with the Sandiganbayan<sup>[33]</sup> an information for violation of Section 3(e), R. A. No. 3019<sup>[34]</sup> against Dr. Baylon and co-accused, Alano, Javier and Prado. We quote:<sup>[35]</sup>

"That on or about the period April, 1994, to December 1994, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused FILOTEO A. ALANO, AILEEN R. JAVIER, HONORATA G. BAYLON, and DIANA JEAN F. PRADO, all public officers connected with the National Kidney Transplant Institute and the Department of Health, and while in the performance of their official functions, conspiring and confederating with Francisco V. Abalos, President of FVA EX-IM Trading, dealer of Terumo blood bags, did then and there unlawfully and feloniously cause undue injury to the government and gave unwarranted benefit to FVA EX-IM Trading, in the following manner: that the accused with evident bad faith caused the planning, preparation and purchase by the DOH/National Kidney Transplant Institute of grossly overpriced Terumo brand blood bags from the FVA EX-IM Trading, which price per unit of blood bag is higher by P30.00, more or less, in comparison with the price per unit of

blood bags sold to the Philippine National Red Cross, Mother Seaton Hospital and Our Lady of Fatima Hospital, resulting in an overprice to the government of the amount of P1,964,304.70, more or less our of the following purchases:

"Date	Voucher No.	P. O. No.	Amount
1. 03-27-95	143	94-00172	P2,127,137.51
2. 12-06-94	100	94-00182	487,703.63
3. 11-24-94	097	94-00132	515,926.75
4. 11-16-94	46978	94-00147	1,639,223.83
5. 08-25-94	039	94-00943	1,263,141.82

Contrary to Law."

On November 5, 1999, Dr. Baylon filed with the Sandiganbayan a motion for reconsideration and/or reinvestigation.<sup>[36]</sup>

On November 9, 1999, the Sandiganbayan ordered the Office of the Ombudsman to conduct a reinvestigation of the case and suspended further proceedings pending review.<sup>[37]</sup>

On November 25, 1999, the Sandiganbayan arraigned the petitioner, and she pleaded "not guilty."<sup>[38]</sup>

On January 18, 2000, acting on the motion for reconsideration, the Office of the Special Prosecutor found that there was no overpricing, therefore, there could be no injury to the government and recommended thus:<sup>[39]</sup>

"WHEREFORE, in the light of the foregoing, it is respectfully recommended that the case against accused AILEEN R. JAVIER and DIANA JEAN F. PRADO, HONORATA G. BAYLON and FILOTEO A. ALANO be dismissed and in the (sic) information against them be withdrawn."

On February 9, 2000, the Office of the Legal Counsel, Office of the Ombudsman, submitted to the Ombudsman a memorandum stating that Dr. Baylon and her co-accused did not exercise ordinary prudence in ascertaining and verifying the prices offered by FVA Ex-Im Trading to medical institutions imbued with public interest. Dr. Baylon and her co-accused did not exert their best efforts at obtaining the best deal for the government and that such inaction indicated their gross inexcusable negligence. The memorandum stated that there appears to be no cogent reason to reverse the memorandum of August 9, 1999 finding probable cause against Dr. Baylon and her co-accused. The memorandum recommended thus:<sup>[40]</sup>

"**WHEREFORE**, premises considered, it is respectfully recommended that the motion for reconsideration be **Denied** and prosecution **Proceed** forthwith."