

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

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

Ponente: PARDO, J.

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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." [1]

The Case

Before this Court is a petition [2] assailing the decision of the Ombudsman [3] for having been issued with grave abuse of discretion. The decision disapproved a recommendation of the Special Prosecutor [4] for the dismissal of the criminal case against petitioner Dr. Honorata G. Baylon (hereafter, Dr. Baylon) and co-accused, and approved a memorandum [5] 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). [6] 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, [7] 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 [8]. The official disbursement was made on February 18, 1994. [9]

On February 18, 1994, the DOH issued Department Order Nos. 73-f and 73-g, series of 1994. [10] 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. [11] Department Order No. 73-g created an Executive Committee and a National Secretariat for the Project. [12]

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 Flavier 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 Flavier 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.[13]

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:[14]

- 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:[15]

- 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,[16] to wit:

Blood NKTi PNRC Mother Our Price

Bag Seaton Lady of Difference

Capacity Fatima

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[17] against Dr. Baylon and other DOH officials. The complaint-affidavit alleged criminal and administrative charges:[18]

(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[r],^[19] Dr. Jaime Galvez-Tan,^[20] Dr. Juan R. Nañagas,^[21] Dr. Filoteo A. Alano,^[22] Dr. Aileen R. Javier,^[23] Dr. Honorata G. Baylon,^[24] Ms. Diana Jean F. Prado^[25] and Ms. Maribel U. Estrella.^[26]

(2)

The administrative complaint was for gross misconduct in violation of R.A. 6713^[27] 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),^[28] Office of the Ombudsman issued a resolution recommending^[29] 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:^[30]

"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:^[31]

"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:[32]

"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[33] an information for violation of Section 3(e), R. A. No. 3019[34] against Dr. Baylon and co-accused, Alano, Javier and Prado. We quote:[35]

"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 out 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.[36]

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.[37]

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

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:[39]

"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:[40]

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

On February 20, 2000, Ombudsman Aniano A. Desierto approved the above-quoted memorandum and ordered that the case be assigned to another prosecutor for its aggressive prosecution.[41]

Hence, this petition.[42]

On June 4, 2001, co-accused[43] Dr. Filoteo A. Alano moved to intervene in the case.[44]

On June 21, 2001, in a written decision, the COA allowed Dr. Filoteo A. Alano's request to lift the previous audit disallowance in the amount of six million six thousand and one hundred thirty three pesos and fifty four centavos (P6,006,133.54) representing the cost of the blood bags that NKTi purchased from FVI. According to the COA decision, the COA came to the following conclusions: First, the purchase of the Terumo blood bags without public bidding is not violative of P. D. 1594, R. A. 1760 and COA Circular No. 85-55A as the supplies were to be used in connection with a project or activity that cannot be delayed without causing detriment to public service and the materials are sold by an exclusive distributor who does not have sub-dealers selling at lower prices for which no suitable substitute can be obtained. Second, to determine if the price is excessive and thus not advantageous to the government, a canvass should have been made by the auditor as required by COA Memorandum No. 97-012, which it failed to do. The COA decided thus:[45]

"Upon the foregoing considerations, the herein request of Dr. Filoteo A. Alano for the lifting of the audit disallowance in so far as the procurement of the Terumo blood bags from FVA is concerned, is hereby granted. Accordingly, the same may now be allowed in audit."

On July 25, 2001, we noted the motion for intervention filed by Dr. Filoteo A. Alano and required the parties to comment on the motion.[46]

On August 27, 2001, petitioner Dr. Baylon interposed no objection to Dr. Filoteo A. Alano's motion to intervene.[47]

On October 15, 2001, the Office of the Ombudsman filed its comment on the motion for intervention stating that it is devoid of merit.[48]

We decide the case on the merits.

The Issue

The issue raised is whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause against Dr. Baylon and co-accused for violation of Section 3(e), R. A. No. 3019, as amended, and in ordering their prosecution before the Sandiganbayan.

The Court's Ruling

We find the petition meritorious. We find it unnecessary to pass upon the motion for intervention of Dr. Filoteo A. Alano as this ruling will benefit him, whether or not the motion is granted.

As a general rule, this Court does not interfere with the Ombudsman's determination of the existence of probable cause.[49] However, this non-interference does not apply when there is grave abuse in the exercise of such discretion.[50] In such a situation, the petitioner may file a petition for certiorari under Rule 65 of the Revised Rules of Court.[51] There is "grave abuse of discretion" where "a power is exercised in an arbitrary, capricious, whimsical[52] or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law." [53]

In the case at bar, there is no showing of probable cause. "Probable cause" signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[54] The grounds for suspicion must be reasonable and supported by sufficiently strong circumstances.[55] The law violated is R. A. No. 3019, Section 3(e). It provides,

"Sec. 3. Corrupt practices of public officers - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

There are two ways of violating Section 3(e), Republic Act No. 3019, to wit: (a) by causing any undue injury to any party, including the Government; and (b) by giving any private party unwarranted benefit, advantage or preference.[56]

In order to be held guilty of violating Section 3(e), R. A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence.[57] Bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident." [58]

The elements of the offense, essential for the conviction of an accused under Section 3(e), R. A. No. 3019, are as follows:

"(1) The accused is a public officer or a private person charged in conspiracy with the former;

"(2) The said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions;

"(3) That he or she causes undue injury to any party, whether the government or a private party;

"(4) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

"(5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect." [59]

We note the absence of some essential elements of the offense charged, to wit:

(1) There was no undue injury to the Government.

The records show that in 1994, the price of Terumo blood bags offered by FVA and accepted by NKTi was in fact lower than the price offered to other government hospitals. The price comparison is as follows:[60]

1994 Prices of Terumo Blood Bags Sold to Government Hospitals

Hospital

Single Bag Double Bag Triple Bag

NKTI P63.54 P150.00 P209.09

PGH P78.00 P185.40 P285.00

JRMMC P85.05 -- --

Fabella P85.00 P199.00 --

PCMC P64.00 -- P209.09

Heart Center P78.00 P190.00 --

From the above table, it can be seen that NKTi was able to secure the Terumo blood bags from FVA at a price advantageous to the government.

We further note that when the COA made a finding that the government suffered a loss,[61] comparing the prices at which the bags were offered to PNRC, Mother Seaton and Our Lady of Fatima with the prices offered to NKTi, it committed a significant error. The prices compared cover two different years. The COA based its findings on prices offered in 1995, whereas the actual purchase of the blood bags was made by NKTi in 1994.[62]

The COA recognized its own error and reversed itself in its decision of June 21, 2001, when it lifted the audit disallowance in so far as the procurement of the Terumo blood bags by NKTi from FVA is concerned.[63] We cannot ignore the reasons behind this, reasons that we accept in this decision as well.

The fact is that NKTi chose FVA as its supplier since it is the sole distributor of Terumo blood bags, and no sub-dealer or dealer could offer the bags at lower prices or at better conditions.[64] The choice of the Terumo brand was also sufficiently explained. Reputable medical institutions such as St. Luke's Medical Center, The Lung Center of the Philippines, Makati Medical Center, Philippine Children's Medical Center and Cardinal Santos Medical Center use the Terumo brand and have attested to its superior qualities compared with other brands, thus:[65]

Characteristic Terumo Brand

Other Brands

Ability to withstand

No bursting reported Bursting reported

centrifugation and leading to wastage

deep freezing

Sharpness of Needle Very sharp

Not so sharp; causes

undue pain to donor

Needle shaft Does not rotate Rotates

Blood flow Fast

Not so fast because

of rotation of needle

Availability of the

Readily available; Less available;

multiple blood bag has a complete line single blood bag

system of single, double, only

triple and quadruple

blood bags

Transfer of blood Easy

Takes longer period

components of time

(2) Even assuming there was injury to the Government, there was no bad faith or inexcusable negligence on the part of petitioner.

Here, there is no evident bad faith on the part of petitioner and her co-accused. "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud.[66] It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[67]

Neither is there "gross negligence." "Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected.[68]

We cannot discount the fact that a sense of urgency drove petitioner to purchase the Terumo blood bags. The project could not be delayed without causing detriment to the public service. There was a shortage in the blood supply available to the public. To determine whether there was bad faith, these essential facts should not have been ignored. When the Ombudsman did not take these facts into consideration in the determination of probable cause, he gravely abused his discretion. When the Ombudsman chose not to dismiss the case despite the recommendations of the EPIB dated March 17, 1999 and the findings of the Special Prosecutor, dated January 18, 2000, he unduly harassed petitioner and her co-accused.

The petitioner was merely doing her job and only acted in response to an emergency brought about by the shortage in the blood supply available to the public. The shortage in the blood supply available to the public was a matter recognized and addressed by Secretary of Health Juan M. Flavio. Secretary Flavio attests that he "directed the NCKTI to do something about the situation and immediately fast-track the implementation of the Voluntary Blood Donation Program of the government in order to prevent further deaths owing to the lack of blood." [69] In fact, more than finding fault in petitioner's quick action, she and her co-accused, should be commended for acting "promptly" and "diligently" [70] in response to a crisis.

In *National Center for Mental Health Management v. COA*, [71] we found that respondent COA committed grave

abuse of discretion when it "discarded rather hastily, if not unfairly, the factors that were actually taken into account by petitioners before the purchases were effected." We find that the same haste and unfairness exist in the case at bar. In the afore-cited case, the Court characterized expenditures as relative, adopting the comment of then COA Chairman Francisco Tantuico, Jr., to wit:[72]

"The terms 'irregular', 'unnecessary', 'excessive,' and 'extravagant,' when used in reference to expenditures of funds or uses of property, are relative. The determination of which expenditure of funds or property belong to this or that type is situational. Circumstances of time and place, behavioral and ecological factors, as well as political, social and economic conditions, would influence any such determination. Viewed from this perspective, transactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation."

The urgency of the situation, and the good faith of petitioner and her co-accused are attested to by then Secretary of Health, now Senator, Juan M. Flavir. He states:[73]

"...it was imperative that the blood bags were procured immediately to meet the urgent need to supply the hospitals with blood bags to start the blood program...The negotiated prices that NKTI obtained were even lower than the buying price of other tertiary government hospitals...Although the Ombudsman had already dismissed the charges against me and three others, I feel distraught and very unhappy that my colleagues who worked hard for me during my stint as Secretary of Health are being punished for acting promptly and diligently during that critical period in March 1994."

Above premises considered, we fail to see how the purchases of the Terumo blood bags were made in bad faith or with gross negligence.

The Ombudsman's grave abuse of discretion is further made obvious by the fact that the charges against Secretary Flavir were dropped,[74] but the charges against petitioner, Dr. Baylon and her co-accused were not. The basis for this is not seen in the records, indicating arbitrariness on the part of respondent Ombudsman.

The facts of the case also readily show that the circumstances surrounding the purchase of Terumo blood bags exempted it from the requirement of a public bidding. Executive Order No. 301, Section 1 provides:

"Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations:

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"b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

"c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have any subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

xxx

"e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned (underscoring ours)."

The Fallo

WHEREFORE, we GRANT the petition. We REVERSE and SET ASIDE the resolution of the Ombudsman dated

February 28, 2000, finding probable cause. We ORDER the Sandiganbayan TO DISMISS forthwith Criminal Case No. 25703 against petitioner and her co-accused with costs de oficio.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] *Venus v. Desierto*, 358 Phil 675, 699-700 (1998).

[2] A Special Civil Action for Certiorari and Prohibition with a prayer for the issuance of a temporary restraining order filed under Rules 65 of the Revised Rules of Court.

[3] In S. B. Crim. Case No. 25703 (OMB-0-97-0242) entitled "People of the Philippines v. Filoteo A. Alano, Aileen R. Javier, Honorata G. Baylon and Diana Jean F. Prado" dated February 28, 2000, signed by Aniano A. Desierto (Ombudsman) who stated that, "Prosecution shall be aggressively pursued as recommended by the O.L.A." and ordered that the case be assigned to another prosecutor.

[4] Dated January 18, 2000, prepared by Cicero D. Jurado, Jr. (Ombudsman Prosecutor II). Recommending Approval by Robert E. Kallos (Deputy Special Prosecutor); concurred in by Leonardo P. Tamayo (The Special Prosecutor).

[5] Dated February 20, 2000, prepared by the Office of the Chief Legal Counsel, For Aniano A. Desierto (Ombudsman) thru Director Andrew F. Ammuyutan (Chief Legal Counsel, OIC-OLA) from Paul Elmer M. Clemente (Legal Counsel).

[6] Petitioner Dr. Baylon was the former head of the Hematology and Transfusion Medicine Division at the NKTI (Petition, Rollo, pp. 3-42, p. 5).

[7] Internal DOH memorandum dated February 9, 1994 directing DOH undersecretary for management service Ms. Teresita de la Cruz to allot the sum of two million pesos (P2,000,000.00) to the voluntary blood donation program. (Petition, Annex "C", Rollo, p. 31).

[8] Land Bank of the Philippines Check No. 0000016772-AS (Petition, Annex "D", Rollo, p.52).

[9] Official Receipt No. 166654 evidencing the official disbursement (Petition, Annex "E", Rollo, p.52).

[10] Both signed by then Secretary of Health, now Senator Juan M. Flavier.

[11] Petition, Annex "F", Rollo, pp. 53-54.

[12] Petition, Annex "F-1", Rollo, pp. 55-56.

[13] Petition, Annexes "I" and "J", Rollo, pp. 73-74.

[14] Petition, Annex "K", Rollo, pp. 75-76.

[15] Petition, Annex "L", Rollo, pp. 77-78.

[16] Records of the Sandiganbayan, Review Memorandum of August 9, 1999, pp. 4-10, at p. 9.

[17] Fact-Finding and Intelligence Bureau of the Office of the Ombudsman officially represented by Director Agapito B. Rosales.

- [18] Petition, Annex "O", Rollo, pp. 93-94.
- [19] Former DOH Secretary (Now Senator) for approving contracts relative to the purchase of overpriced blood bags under Purchase Order (P. O.) Nos. SP94-000172; SP94-000132; SP94-000147 and SP94-00943.
- [20] Former DOH Undersecretary.
- [21] DOH Undersecretary for approving the purchase of overpriced blood bags under Purchase Order No. SP94-00172 in the amount of P2,209,915.00.
- [22] NKTi Executive Director.
- [23] NKTi Dep. Exec. Director.
- [24] Project Manager - DOH NVBD Program.
- [25] NKTi Chief Property Division.
- [26] NKTi Chief Accounting Division for approving and allowing the disbursement of public funds as payment for the grossly overpriced blood bags to FVA-Ex Im Trading.
- [27] Code of Conduct and Ethical Standards for Public Officials.
- [28] Eladia C. Reyes (Panel Head); Avelino G. Credo, Jr. (Member) and Oscar Ramos, Sr. (Member).
- [29] EPIB Director Angel C. Mayoralgo, Jr. recommended approval.
- [30] Petition, Annex "Q", Resolution of March 17, 1999, pp. 105-124, p. 124.
- [31] Petition, Annex "R", Review Memorandum of August 9, 1999, Rollo, pp. 126-132.
- [32] *Supra*, p. 132.
- [33] By Ombudsman Special Prosecutor Aleu A. Amante.
- [34] Anti-Graft and Corrupt Practices Act, as amended.
- [35] Petition, Annex "J", Information, Rollo, pp. 133-134.
- [36] Petition, Annex "T", Motion for Reconsideration and Reinvestigation, Rollo, pp. 135-147.
- [37] Petition, "Annex U", Rollo, p. 148.
- [38] Records of the Sandiganbayan, p. 492.
- [39] Petition, Annex "A", Order of January 18, 2000, Office of the Special Prosecutor, Rollo, pp. 43-47, at p. 47.
- [40] Petition, Annex "B", Memorandum of February 9, 2000, Rollo, pp. 49-50.
- [41] Handwritten note on Order of January 18, 2000, Petition, "Annex A", Rollo, pp. 43-47, at p. 47.
- [42] On October 2, 2000, we gave due course to the petition (Rollo, p. 194).
- [43] In Criminal Case No. 25703 before the Sandiganbayan.
- [44] Motion to Intervene, Rollo, pp. 249-308.
- [45] Motion to Intervene, Annex "A", COA Decision No. 2001-111, Rollo, pp. 355-360.
- [46] Resolution of the Court, Rollo, p. 347.

- [47] Manifestation dated August 24, 2001, Rollo, p. 366.
- [48] Comment to the Motion for Intervention, Rollo, pp. 373-388.
- [49] *Espinosa v. Office of the Ombudsman*, 343 SCRA 744 (2000).
- [50] *Rodrigo, Jr. v. Sandiganbayan*, 362 Phil. 646, 659 (1999).
- [51] *Tirol, Jr. v. Del Rosario*, 317 SCRA 779 (1999).
- [52] *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*, 371 Phil 827, 838 (1999).
- [53] *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 330 (1997), citing *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1, 57 (1996).
- [54] *People v. Valdez*, 363 Phil. 481, 489 (1999).
- [55] *People v. Chua Ho San*, 367 Phil. 703 (1999).
- [56] *Santiago v. Garchitorena*, 228 SCRA 214 (1993).
- [57] *Fernando v. Sandiganbayan*, 212 SCRA 680 (1992).
- [58] *Venus v. Desierto*, 358 Phil. 675 (1998).
- [59] *Garcia v. Office of the Ombudsman*, 325 SCRA 667, 669-670 (2000); *Ingco v. Sandiganbayan*, 338 Phil. 1061, 1072 (1997).
- [60] Records of the Sandiganbayan, Counter-Affidavit of Filoteo Asinas Alano, M.D., pp. 16-29, at p. 25.
- [61] Allegedly, amounting to P1.964 Million.
- [62] We agree with the arguments set forth in the Counter-Affidavit of Filoteo Asinas Alano, M.D, supra, pp. 26, 28.
- [63] Decision signed by Guillermo N. Carague (Chairman); Raul C. Flores (Commissioner) and Emmanuel M. Dalman (Commissioner).
- [64] Records of the Sandiganbayan, Counter Affidavit of Diana Jean F. Prado, Annex 4, p. 54; Annex 5, p. 55.
- [65] Records of the Sandiganbayan, Counter-Affidavit of Filoteo Asinas Alano, M.D., pp. 16-29, at pp. 17-18; See also Records of the Sandiganbayan, Counter-Affidavit of Filoteo Asinas Alano, M.D., Annexes D, D-1, D-2, D-3, D-4, D-5, D-6, pp. 36- 42.
- [66] *Fonacier v. Sandiganbayan*, 238 SCRA 687 (1994).
- [67] *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).
- [68] *Fonacier v. Sandiganbayan*, supra, Note 66.
- [69] Petition, Annex "G", Affidavit of Secretary Juan M. Flavier, Rollo, pp. 64-70, at p. 66.
- [70] *Ibid.*, p. 69.
- [71] 222 Phil. 222, 235 (1996).
- [72] *Supra*, p. 239.
- [73] Petition, Affidavit of Senator Juan M. Flavier, Annex "G", pp. 64-70, at pp. 67-69.

[74] Affidavit of Senator Juan M. Flavies, Petition, Annex "G", pp. 64-70, at p. 69.

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