



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 18, 2023**, which reads as follows:*

**“G.R. No. 264613 [Formerly UDK No. 17675] (Hermie Villarin y Arago @ “Baby,” Petitioner vs. People of the Philippines, Respondent). – The Court:**

- (1) **NOTES** the undated Payment of Docket Fees of the petitioner, submitting the new money order to complete the lacking payment of the docket fees; and
- (2) **INFORMS** the petitioner that she or her authorized representative may claim from the Cash Disbursement and Collection Division of this Court the excess payment of the prescribed legal fees in the amount of PHP 20.00 under Official Receipt No. 349983 dated December 20, 2022.

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated May 28, 2021 and the Resolution<sup>3</sup> dated May 23, 2022 of the Court of Appeals (CA) in CA-G.R. CEB CR No. 02656. The CA affirmed with modification the Decision dated August 28, 2015 of Branch 5, Regional Trial Court (RTC), Oras, Eastern Samar in Criminal Case No. 07-25 that found Hermie Villarin y Arago @ “Baby” (petitioner) guilty beyond reasonable doubt of Homicide defined and penalized under Article 249 of the Revised Penal Code.<sup>4</sup>

The Court resolves to deny the present petition.

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<sup>1</sup> *Rollo*, pp. 10-18.

<sup>2</sup> *Id.* at 20-34. Penned by Associate Justice Nancy C. Rivas-Palmones and concurred in by Associate Justices Pamela Ann Abella Maxino and Lorenza R. Bordios.

<sup>3</sup> *Id.* at 37-40. Penned by Associate Justice Nancy C. Rivas-Palmones and concurred in by Associate Justices Pamela Ann Abella Maxino and Ronald Suva Tolentino.

<sup>4</sup> *Id.* at 20.

Primarily, the petition was filed out of time.

As a rule, a petition for review on *certiorari* shall be filed within 15 days from notice of the judgment, final order, or resolution appealed from, or from notice of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.<sup>5</sup> Here, petitioner received the assailed CA Resolution which denied his motion for reconsideration on July 8, 2022. Thus, he had until July 23, 2022 to file the petition for review on *certiorari*. Petitioner then moved for an extension of time requesting for an additional period of 30 days or until August 22, 2022 within which to file the petition. However, the petition was posted on August 24, 2022 or beyond the extended period. As such, the petition should be dismissed pursuant to Section 5(a),<sup>6</sup> Rule 56 of the Rules of Court.

It bears stressing that an appeal is not a natural right but a mere statutory privilege. Hence, the party who intends to appeal must comply with the provisions of the law governing appeal, otherwise, the right to appeal may be lost, as in this case.<sup>7</sup>

Moreover, the petition suffers from technical infirmities because it lacks three hard copies as required under the Rules on E-Filing<sup>8</sup> and the Efficient Use of Paper Rule.<sup>9</sup> Petitioner's payments are likewise insufficient in the amounts of ₱2,030.00 for docket and lawful fees, ₱500.00 as deposit for costs, and ₱1,000.00 for Sheriff's Trust Fund.

In any case, even if the Court were to brush aside these technical lapses, the petition must still fail.

Petitioner does not even dispute the findings and conclusions of the RTC. Instead, he alleged that the RTC did not acquire jurisdiction over the case and over his person considering that the Information was signed only by

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<sup>5</sup> Section 2, Rule 45 of the Rules of Court provides, "Section 2. *Time for filing; extension.* – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition."

<sup>6</sup> Section 5(a), Rules 56 of the Rules of Court provides, "Section 5. *Grounds for dismissal of appeal.* – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds: (a) Failure to take the appeal within the reglementary period[.]

<sup>7</sup> *Umpa v. People*, G.R. Nos. 246265-66, March 15, 2021.

<sup>8</sup> A.M. No. 10-3-7-SC.

<sup>9</sup> A.M. No. 11-9-4-SC.

Prosecutor Kho, without any written approval of the Provincial Prosecutor of Samar.<sup>10</sup>

The Court disagrees.

As aptly held by the CA, the landmark case of *Villa Gomez v. People*<sup>11</sup> (*Villa Gomez*) already abandoned all previous doctrines holding that the lack of signature and approval of the provincial, city, or chief state prosecutor on the face of the Information shall divest the court of jurisdiction over the person of the accused and the subject matter in a criminal action.<sup>12</sup>

In reaching its decision in *Villa Gomez*, the Court stated:

[T]he handling prosecutor's authority, particularly as it does not appear on the face of the Information, has no connection to the trial court's power to hear and decide a case. Hence, Sec. 3(d), Rule 117, requiring a handling prosecutor to secure a prior written authority or approval from the provincial, city or chief state prosecutor before filing an Information with the courts, *may be waived by the accused through silence, acquiescence, or failure to raise such ground during arraignment or before entering a plea. If, at all, such deficiency is merely formal and can be cured at any stage of the proceedings in a criminal case.*

Moreover, both the State and the accused are entitled to the constitutional guarantee of due process — especially when the most contentious of issues involve jurisdictional matters. A denial of such guarantee against any of the parties of the case amounts to grave abuse of discretion. Consequently, a judgment of acquittal or order of dismissal amounting to an acquittal which is tainted with grave abuse of discretion becomes void and cannot amount to a first jeopardy.

*Henceforth, all previous doctrines laid down by this Court, holding that the lack of signature and approval of the provincial, city or chief state prosecutor on the face of the Information shall divest the court of jurisdiction over the person of the accused and the subject matter in a criminal action, are hereby abandoned. x x x.*<sup>13</sup>

Verily, the absence of the Provincial Prosecutor's recommending approval is a mere formal defect which does not, as it should not, divest the RTC of jurisdiction or render the proceedings therein null and void. Objections or challenges based on such defect may be waived through silence,

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<sup>10</sup> *Rollo*, pp. 12-13.

<sup>11</sup> G.R. No. 216824, November 10, 2020.

<sup>12</sup> *Rollo*, p. 38.

<sup>13</sup> *Villa Gomez v. People*, supra note 11.

acquiescence, or failure to raise such ground during arraignment or before entering a plea, as in this case.

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated May 28, 2021 and the Resolution dated May 23, 2022 of the Court of Appeals in CA-G.R. CEB CR No. 02656 are **AFFIRMED in toto**. Petitioner Hermie Villarin y Arago @ “Baby” is found guilty beyond reasonable doubt of Homicide and is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, and eight (8) months of *reclusion temporal*, as maximum; and he is **ORDERED** to pay the heirs of Crispin Morillos the following amounts: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages. All the damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

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6000 Cebu City

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 5, Oras  
6818 Eastern Samar  
(Criminal Case No. 07-25)

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