

**HEMINA M. ONGPAUCO AND DAVE ALLEN M. MAJAROCON,
PETITIONERS, VS. THE HON. COURT OF APPEALS AND LOLITA R.
ALAMAYRI, RESPONDENTS.**

G.R. No. 134039. December 21, 2004

Ponente: GARCIA, J.

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GARCIA, J.:

Via this petition for review on certiorari under Rule 45 of the Rules of Court, petitioners Hemina M. Ongpauco and Dave Allen M. Majarocon seek the reversal of the decision dated November 14, 1997[1] of the Court of Appeals in CA G.R. CV No. 44317, affirming an earlier decision of the Regional Trial Court at Manila, Branch VII, in a suit for damages thereat commenced by the herein private respondent, Lolita R. Alamayri, against, among others, the present petitioners.

The factual antecedents may be stated, as follows:

Private respondent, Lolita Alamayri (Lolita, for short), owned and operated the Alamayri Shoppers Mart located at the groundfloor of the Ongpauco Building at 501-C Edsa corner Bonifacio Serrano Avenue, Cubao, Quezon City, which building is owned by petitioner Hemina Ongpauco (Hemina, for brevity) and her spouse. The Alamayri family also rented a unit at the third floor of the same building, which served as their residence. Apparently, Lolita's contract of lease expired on January 31, 1991, but she refused to vacate the leased premises, constraining Hemina and her husband to file an ejectment suit against her before the MeTC of Quezon City on May 6, 1991.

On May 3, 1991, however, while Lolita, who was then three-month in the family way, was attending to her grocery store at the groundfloor of the building, Hemina molested and attacked her by grabbing her hair, pulling her head to and fro and banging it and her body against the shelves and counters of her store. Victor (a.k.a. Vicente) Majarocon, Hemina's brother-in-law, at Hemina's urgings, hit Lolita's head with a piece of wood while Frejia Majarocon, Hemina's twin sister, and petitioner Dave Allen Majarocon (Dave, for brevity), the son of Victor and Frejia, held Lolita's store helpers and clerks at bay, threatening them with physical harm should they interfere.

On May 15, 1991, Hemina went back to Lolita's grocery store and once more attacked and lambasted her with invectives. Dave was again there to prevent Lolita's store helpers and clerks from coming to her aid and rescue.

On May 17, 1991, while Lolita and her 3-year old daughter were away from the premises, Hemina and her brother-in-law, Victor, closed the door of Lolita's apartment unit at the third floor of the building by driving four-inch nails, thus shutting out the unit completely.

On May 31, 1991, Lolita suffered abortion, losing her three-month old baby as a result of the assaults she suffered from petitioners and the spouses Victor Majarocon and Frejia Marajocon.

Soon, in the Regional Trial Court (RTC) at Manila, Lolita filed a complaint for damages against petitioners and

the spouses Victor Marajocon and Frejia Majarocon.

After trial, the RTC, in a decision dated August 18, 1993,[2] rendered judgment for Lolita, thus:

WHEREFORE, considering the foregoing, judgment is rendered in favor of the plaintiff and against the defendants sentencing the defendants, jointly and severally, to pay the plaintiffs the amount of P500,000.00 for moral damages and another P500,000.00 for exemplary damages, P25,000.00 for attorney's fees plus the costs of suit.

The counterclaim of the defendants is correspondingly dismissed.

SO ORDERED.

Petitioners and their co-defendants elevated the case to the Court of Appeals, whereat their appeal was docketed as CA-G.R. CV No. 44317.

In the herein assailed decision dated November 14, 1997,[3] the Court of Appeals, adopting the findings of fact of the RTC, affirmed the appealed RTC decision, viz:

WHEREFORE, the decision appealed from is hereby AFFIRMED. Costs against defendants-appellants.

SO ORDERED.

Hence, petitioners' present recourse.

At the outset, we note that on page 9[4] of their petition, petitioners candidly admit that based on the official records of the Court of Appeals, a copy of the impugned decision was received by their counsel on December 3, 1997. For sure, a photocopy of the Registry Receipt of the Court of Appeals was even attached as Annex "G"[5] to the petition. Going, then, by what appears on record, petitioners had only until December 18, 1997 either to appeal to this Court by way of a petition for review under Rule 45 or file a motion for reconsideration under Rule 52, both of the 1997 Rules of Civil Procedure. It is not disputed, however, that petitioners filed their motion for reconsideration with the Court of Appeals only on December 27, 1997, a Saturday. Expectedly, said court, in its resolution of June 3, 1998,[6] denied the motion for having been filed "nine (9) days after the reglementary period".

On the same breath, however, petitioners claim that their motion for reconsideration was timely filed. Speaking through counsel, they alleged that as plainly indicated in their motion, a copy of the Court of Appeals' decision "was received on December 10, 1997 by a certain Mr. Garcia, a Security Guard in the building where the undersigned counsel holds office and delivered to the undersigned counsel on December 11, 1997 xxx".[7] Upon that premise, petitioners argue that their present recourse was timely filed.

In her comment to the petition, private respondent contends that as between the claim of petitioners' counsel and the records of the Court of Appeals relative to petitioners' receipt of the herein assailed decision, the latter must prevail.

For being jurisdictional, this issue must first be resolved before we even venture into the errors assigned in the petition. Simply put, the question is: May the assailed decision of the Court of Appeals still be subject to review by this Court via the instant recourse, or has it already become final and unappealable?

The Court rules against petitioners.

As between petitioners' bare allegation in their pleading that their counsel received the subject decision of the Court of Appeals on December 11, 1997, and the official records of that court, showing that a copy of the same

decision was received by petitioner's counsel on December 3, 1997, there can be no doubt at all that the latter shall prevail. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[8]

This Court must rely only on what appears in the official records of the court. The determination of as to when the reglementary period commence cannot be left to the parties, otherwise there will be chaos.

And, based on records, the 15-day period for petitioners to appeal or file a motion for reconsideration started to run on December 3, 1997, not December 11, 1997, as argued by them. Consequently, upon the lapse of said period on December 18, 1997, the questioned decision of the Court of Appeals attained finality and is no longer appealable.

In *Nacuray vs. NLRC*,[9] this Court reiterated the time-honored policy that -

Nothing is more settled in law than that when a judgment becomes final and executory it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land (citing *Nunal v. Court of Appeals*, G.R. No. 94005, 6 April 1993, 221 SCRA 26). The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law (citing *Garbo v. Court of Appeals*, G.R. No. 100474, September 10, 1993, 226 SCRA 250).

Clear it is, therefore, that this Court can no longer review the challenged decision of the Court of Appeals. This brings to mind what we have stressed in *Veloria vs. Comelec*: [10]

Since the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law (*Borre vs. Court of Appeals*, 158 SCRA 560), and its timely perfection within the statutory period is mandatory and jurisdictional (*Delgado vs. Republic*, 164 SCRA 347; *Sembrano vs. Ramirez*, 166 SCRA 30; *PCI Bank vs. Ortiz*, 150 SCRA 380; *Quiqui vs. Boncaros*, 151 SCRA 416)...

With the recognition of the fact that the decision subject of this petition had already become final and executory almost exactly seven (7) years ago, it will be an exercise in futility for this Court to dwell upon the errors therein assigned. And this Court will never allow itself to delay any further the realization of what has been long adjudged in favor of private respondent.

But even assuming, in *gratia argumenti*, that this petition was seasonably filed, still, petitioners' case is doomed.

We note that the main thrust of the petition is the alleged error of the two (2) courts below in their factual findings and conclusions.

Let alone the circumstance that this Court is not a trier of facts, there is the rule that factual issues are beyond the scope of certiorari because they do not involve any jurisdictional issue (*Abig v. Constantino*, 2 SCRA 299; *Bay v. RTC of Zamboanga City*, 191 SCRA 610).

True, the rule against review of factual matters thru certiorari is not cast in stone, as admittedly it admits of exceptions. We have, however, meticulously examined the records before us in the light of the pleadings filed by the parties, and found no error of substance committed by the Court of Appeals to warrant an overthrow of its assailed decision.

WHEREFORE, the instant petition is hereby **DISMISSED** for having been filed out of time and for lack of merit.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.
Corona, J., on leave.

[1] Penned by then Associate Justice Oswald Agaoili and concurred in by then Associate Justices Antonio Martinez and Corona Ibay-Somera.

[2] Rollo, pp. 51-63.

[3] Rollo, pp. 30-38.

[4] Rollo, p. 16.

[5] Rollo, p. 92.

[6] Rollo, p. 40.

[7] Motion for Reconsideration, p. 1; Rollo, p. 86.

[8] Yambao vs. Zuñiga, 418 SCRA 266 [2003].

[9] 270 SCRA 9 [1997].

[10] 211 SCRA 907 [1992].

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