

THIRD DIVISION

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

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

D E C I S I O N

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