

SECOND DIVISION

[G.R. NO. 170396, August 31, 2006]

**ROBERTH B. TOLENTINO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND LOPE DULFO, RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Decision of the Regional Trial Court (RTC), Branch 92, Quezon City convicting petitioner of the crime of estafa and sentencing him "to suffer the indeterminate penalty of imprisonment of fourteen (14) years as minimum to twenty (20) years as maximum."

In a complaint filed with the Regional Trial Court (RTC), Branch 92, Quezon City, complainant Lope Dulfo charged Roberth B. Tolentino, herein petitioner, with the crime of estafa under Article 315, par. 3(a) of the Revised Penal Code. The complaint alleges that Lope Dulfo and his wife mortgaged their Tamaraw FX motor vehicle to petitioner for ₱150,000.00. Petitioner required them to sign a blank paper which they thought to be their acknowledgment that they received the said amount. Later, petitioner converted the blank paper they signed into a Deed of Sale, with petitioner as the buyer. When the couple tried to redeem the vehicle, petitioner refused to return it to them. Subsequently, they learned that petitioner had sold the vehicle to one Errol Pamon, as shown by another Deed of Sale purportedly executed by respondent Lope Dulfo and his wife.

After trial, the RTC rendered a Decision convicting petitioner. Upon its promulgation on February 22, 2005, petitioner failed to appear. Nonetheless, he filed a Motion for Reconsideration.

On September 14, 2005, the RTC issued an Order holding that the motion for reconsideration "cannot be given due course" as petitioner lost this remedy for his failure to appear during the promulgation of the Decision, thus:

Section 6 (par. 5), Rule 120 of the Rules of Criminal Procedure provides that "(i)f the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against this judgment and the court shall order his arrest." During the promulgation of judgment held on 22 February 2005, the accused together with his counsel failed to appear despite due notice. Accordingly, and pursuant to the aforementioned rule, the accused lost his right to avail of the remedy of a motion for reconsideration against the judgment of conviction.

On December 1, 2005, petitioner filed the instant petition for certiorari praying that the trial court's Decision be set aside and a new judgment be promulgated