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superior strength offset by the mitigating circumstance of voluntary surrender, the penalty is imposable in its medium period of *reclusion perpetua*.

WHEREFORE, the appealed judgment is hereby affirmed except with respect to the civil indemnity, which is hereby raised to P30,000.00. Costs against accused-appellants Fernando Valdez and Frankie Soriano.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., de la Fuente, and *Alampay, JJ.*, concur.

SECOND DIVISION

[G.R. Nos. 63802-03. February 25, 1985]

SINFOROSA R. JAGUROS and WILLIAM A. DIU, *petitioners, vs.* JUDGE ADRIANO R. VILLAMOR, Branch 16, Regional Trial Court at Naval, Leyte, FLORENTINO QUIJANO and SUPREMO SABITSANA, *respondents.*

SYLLABUS

CONSTITUTIONAL LAW; ELECTIONS; RECOUNTING OF BALLOTS; ALLOWED IN SECTION 9 OF RULE VI.— Section 175 of the Revised Election Code of 1967, which allows recounting of the ballots when any interested party petitions for it, is not reproduced in the 1978 Election Code, Presidential Decree No. 1296. But, as noted by the *amicus curiae*, Horacio S.J. Apostol, the acting manager of the Comelec's law department, Section 175 is now found in Section 9 of Rule VI. The ruling in decided cases that evidence of irregularities is not necessary to justify the revision of ballots is still good law. We hold that Judge Villamor committed a grave abuse of discretion, amounting

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to excess of jurisdiction, in refusing to order the recounting of the ballots. Petitioners' 1982 motion for the recounting of the ballots should have been granted.

APPEARANCES OF COUNSEL

Eduardo Polistico for petitioners.
Clemencio C. Sabitsana for private respondents.

DECISION

AQUINO, *J.*:

This case is about the opening of the ballot boxes in an election protest. Florentino Quijano and Supremo Sabitsana, independent candidates, were proclaimed on January 31, 1980 as duly elected mayor and vice-mayor, respectively, of Almeria, Leyte.

Sinforosa R. Jaguros and William A. Diu, the losing candidates of the Kilusang Bagong Lipunan, filed an election protest in the Court of First Instance against the election of Quijano and Sabitsana on the ground that frauds, irregularities and misappreciation of ballots were committed.

On March 10, 1983 the trial court issued an order denying the motion of the protestants for the opening of the ballot boxes in the absence of evidence that irregularities were committed. That order is assailed in the instant petition for *certiorari* and *mandamus* filed on April 26, 1983.

The trial court was furnished with Resolution No. 1451 of the Commission on Elections dated February 26, 1980 which contains the rules for election contests involving elective municipal officials. Rule VI, regarding production and examination of election documents and revision of ballots, provides:

"SEC. 9. *Custody of ballot boxes, election documents and paraphernalia*— Where *allegations* in a protest or counter-protest so warrant, or whenever in the opinion of the Court, the interest of justice so demands, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election to be brought before it. x x x."

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Section 175 of the Revised Election Code of 1967, which allows recounting of the ballots when any interested party petitions for it, is not reproduced in the 1978 Election Code, Presidential Decree No. 1296.

But, as noted by the *amicus curiae,* Horacio S.J. Apostol, the acting manager of the Comelec's law department, Section 175 is now found in Section 9 of Rule VI. The ruling in decided cases that evidence of irregularities is not necessary to justify the revision of ballots is still good law.

We hold that Judge Villamor committed a grave abuse of discretion, amounting to excess of jurisdiction, in refusing to order the recounting of the ballots. Petitioners' 1982 motion for the recounting of the ballots should have been granted.

WHEREFORE, the order of March 10, 1983 is reversed and set aside. The trial court is directed to give *top priority to the electoral protest and to finish it as soon as possible.* This decision is immediately executory. The parties should be advised of it by telegram. Costs against respondents Quijano and Sabitsana.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Escolin, and *Cuevas, JJ.,* concur.

Abad Santos, J., took no part.

FIRST DIVISION

[G.R. No. 69281. February 25, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* *vs.* VICENTE MILLARPE, *defendant-appellant.*