

## THIRD DIVISION

[ G.R. No. 139033, December 18, 2002 ]

**JOVENDO DEL CASTILLO, PETITIONER, VS. HON. ROSARIO TORRECAMPO, PRESIDING JUDGE, RTC OF CAMARINES SUR, BRANCH 33 AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**CORONA, J.:**

The instant petition is one for the review, by way of appeal by certiorari, of the Decision<sup>[1]</sup> of the Court of Appeals dated November 20, 1998, and of the Resolution dated June 14, 1999 denying the motion for reconsideration thereof.

Petitioner was charged on March 8, 1983 with violation of Section 178 (nn)<sup>[2]</sup> of the 1978 Election Code in Criminal Case No. F-1447 before Branch 33, Regional Trial Court, Camarines Sur. The Information alleged:

That on May 17, 1982, (Barangay Election Day), at around 8:15 P.M. in Barangay Ombao, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did, then and there unlawfully conducted himself in a disorderly manner, by striking the electric bulb and two (2) kerosene petromax lamps lighting the room where voting center no. 24 is located, during the counting of the votes in said voting center plunging the room in complete darkness, thereby interrupting and disrupting the proceedings of the Board of Election Tellers.<sup>[3]</sup>

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.

On January 14, 1985, the trial court rendered judgment and declared petitioner guilty beyond reasonable doubt of violating Section 178 (nn) of PD 1296, otherwise known as the 1978 Election Code, as amended, and sentenced petitioner to suffer the indeterminate penalty of imprisonment of 1 year as minimum to 3 years as maximum.

Aggrieved, petitioner appealed his conviction to the Court of Appeals which eventually affirmed the decision of the trial court *in toto*. Said decision became final and executory. Thus, the execution of judgment was scheduled on October 14, 1987.

On October 12, 1987, an urgent motion to reset the execution of judgment was submitted by petitioner through his counsel. But it was denied for lack of merit.

During the execution of judgment, petitioner failed to appear which prompted the presiding judge to issue an order of arrest of petitioner and the confiscation of his bond. However, petitioner was never apprehended. He remained at large.

Ten years later, on October 24, 1997, petitioner filed before the trial court a motion to quash the warrant issued for his arrest on the ground of prescription of the penalty imposed upon him. However, it was denied. His motion for reconsideration thereof was likewise denied.

Dissatisfied, petitioner filed with the Court of Appeals a Petition for Certiorari assailing the orders of the trial court denying both his motion to quash the warrant of arrest and motion for reconsideration.

On November 20, 1998, the Court of Appeals rendered its now assailed decision dismissing the petition for lack of merit.

Following the denial of his motion for reconsideration, the instant petition was filed before us.

Petitioner asserts that the Court of Appeals gravely erred in holding that the penalty imposed upon petitioner has not prescribed. Petitioner maintains that Article 93 of the Revised Penal Code provides that the period of prescription shall commence to run from the date when the culprit should evade the service of his sentence. The Court of Appeals, in its interpretation of the said provision, engaged in judicial legislation when it added the phrase "by escaping during the term of the sentence" thereto, so petitioner claims.

Going over the merits of the petition, the Court finds that the Court of Appeals did not err in dismissing the petition for certiorari.

The threshold issue in the instant case is the interpretation of Article 93 of the Revised Penal Code in relation to Article 157 of the same Code.

In dismissing the petition, the Court of Appeals ruled:

"Article 92 of the Revised Penal Code provides as follows:

'When and how penalties prescribe – The penalties imposed by the final sentence prescribed as follows:

1. Death and *reclusion perpetua*, in twenty years;
2. Other afflictive penalties, in fifteen years;
3. Correctional penalties, in ten years; with the exception of the penalty of *arresto mayor*, which prescribes in five years;
4. Light penalties, in one year.'

"And Article 93 of the Revised Penal Code, provides as follows:

'Computation of the prescription of penalties – The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which his Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.'

"The penalty imposed upon the petitioner is one (1) year of imprisonment as minimum to three (3) years of imprisonment as