

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE DELOS SANTOS, ACCUSED-APPELLANT.***G.R. No. 121906. April 05, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-121906/>**PER CURIAM:**

On September 12, 1995, accused-appellant Felipe delos Santos was sentenced to the supreme penalty of death by Branch 95 of the Regional Trial Court of the National Capital Judicial Region stationed in Quezon City for raping his stepdaughter Nhanette Delos Santos on September 12, 1994. The sentence was affirmed by this Court on September 17, 1998 and judgment was entered on October 12, 1998.

On January 5, 2000, accused-appellant, citing *People v. Medina* (300 SCRA 98 [December 11, 1998]) and *People v. Gallo* (G.R. No. 124736, September 29, 1999) filed, with leave of Court, a motion to re-open the case so as to reduce the penalty imposed upon him from the death penalty to reclusion perpetua. Accused-appellant argues that the Information filed against him failed to state that he is the step-father of the victim, hence, his relationship with the victim may not be considered as a qualifying circumstance to justify the imposition of the death penalty.

We find accused-appellant's motion to be meritorious.

The Information filed against accused-appellant reads as follows:

That on or about the 12th day of September 1994, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously brought the undersigned complainant NHANETTE DELOS SANTOS y RIVERA, a minor, 13 years of age, to a vacant apartment located at General Avenue, Project 8, of this City, then forced her to lie down, undressed her, removed her panty, mashed her private parts, afterwhich accused put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent (Rollo, p. 5).

Nowhere in the Information is it alleged that accused-appellant is the step-father of the victim NHANETTE delos Santos. As we first stated in *People v. Garcia* (281 SCRA 463 [1997]), as reiterated in the recent case of *People v. Bragas* (G.R. No. 128874, September 24, 1999), "[t]his Court has successively ruled that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659 the attendance of any which mandates the single indivisible penalty of death, instead of the standard penalty of reclusion perpetua to death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances." Qualifying circumstances must be properly pleaded in the indictment. As adverted to earlier, the Information filed against accused-appellant charged only the felony of simple rape and no attendant qualifying circumstance, specifically that of he being the step-father of the victim, was alleged. Obviously, the technical flaw committed by the prosecution in this instance is a matter that cannot be ignored, and it constrains the Court to reduce the penalty of death to that of reclusion perpetua, the penalty prescribed for simple rape. It must likewise be pointed out that accused-appellant's relationship to the victim, even if proved during the trial, cannot be considered as an aggravating circumstance to increase his liability as the penalty for simple rape is the single indivisible penalty of reclusion perpetua (Article 63, Revised Penal Code).

Likewise, although accused-appellant was convicted on September 17, 1998, before this Court enunciated the Garcia doctrine, the same must be applied retroactively to the instant case, in consonance with our ruling in *People v. Gallo* where we declared that:

The Court has had the opportunity to declare in a long line of cases that the tribunal retains control over a case until a full satisfaction of the final judgment conformably with established legal processes. It has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in the higher interest of justice or when supervening events warrant it.

Moreover, our ruling in Garcia forms part of our penal statutes, pursuant to Article 8 of the Civil Code which provides that "judicial decisions applying or interpreting the law shall form part of the legal system of the land." And since Article 22 of the Revised Penal Code provides that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same," the Garcia doctrine must perforce, be given retroactive effect in this case, said ruling being favorable to accused-appellant, who is not a habitual criminal.

WHEREFORE, the motion to re-open the case is GRANTED and the Court's decision dated September 17, 1998 is hereby MODIFIED by imposing on accused-appellant the penalty of reclusion perpetua in lieu of the death penalty, and ordering him to indemnify the victim in the amount of Fifty Thousand Pesos (P50,000.00) as compensatory damages and Fifty Thousand Pesos (P50,000.00) as moral damages.

Considering that the records of all cases where the death penalty is imposed are forwarded to the Office of the President in accordance with Section 24 of R.A. 7659, the Court DIRECTS the Clerk of Court to FURNISH the Office of the President a copy of this Resolution for its information and guidance.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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