

EN BANC

[G.R. No. 121906, April 05, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE DELOS SANTOS, ACCUSED-APPELLANT.**

R E S O L U T I O N

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