

EN BANC

[G.R. No. 124736, September 29, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GALLO Y IGLOSO, ACCUSED-APPELLANT.

R E S O L U T I O N

PER CURIAM:

The penalty imposed upon accused-appellant Romeo Gallo y Igloso by the Regional Trial Court, Branch 68, of Binangonan, Rizal, after finding him guilty beyond reasonable doubt of the crime of qualified rape, was affirmed by this Court in its decision promulgated on **22 January 1998**.

On **24 August 1999**, accused-appellant filed a "Motion to Re-open Case (with Leave of Court)" seeking a modification of the death sentence to *reclusion perpetua*. Accused-appellant proffers that the reduction sought by him would be in line with the new Court rulings which annunciate that the seven attendant circumstances introduced in Section 11 of Republic Act No. 7659 partake of the nature of qualifying circumstances that must be pleaded in the indictment in order to warrant the imposition of the penalty.

The Court in the case of **People vs. Garcia**,^[1] speaking through then, Justice Florenz D. Regalado, ratiocinated that the additional attendant circumstances introduced by R.A. 7659 should be considered as special qualifying circumstances distinctly applicable to the crime of rape and, if not pleaded as such, could only be appreciated as generic aggravating circumstances.^[2]

The Information filed against accused-appellant reads:

"That on or sometime in the period of May, 1994 in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with lewd designs and by means of force or intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a 13 year old girl, Marites Gallo y Segovia."^[3]

The above indictment has not specifically alleged that accused-appellant is the victim's father; accordingly, accused-appellant's relationship to the victim, although proven during the trial, cannot be considered to be a qualifying circumstance.^[4]

The next crucial point is whether the Court must now apply retroactively the **Garcia doctrine** to the conviction of accused-appellant.

The Court has had the opportunity to declare in a long line of cases that the tribunal retains control over a case until the full satisfaction of the final judgment