

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
JOSE GLORE, SANTIAGO IRLANDEZ, FELIPE SAPILAN AND PORFIRIO  
AÑOVER, DEFENDANTS, JOSE GLORE AND SANTIAGO IRLANDEZ,  
APPEL...**

*G.R. No. L-2928. December 21, 1950*

Ponente: BENGZON, J.

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**BENGZON, J.:**

Jose Glore, Santiago Irlandez, Felipe Sapilan and Porfirio Añoover were accused of murder with robbery in the Court of First Instance of Leyte. As the last two were still at large, the trial "proceeded against the first, who were found guilty of the separate crimes of murder and theft. Each was sentenced, for murder, to *reclusión perpetua*, to indemnify the heirs of the deceased in the amount of P2,000 and to pay the costs; and for theft, to suffer 6 months of *arresto mayor*, to return the property stolen or pay the amount of P510 to the heirs of the deceased, with subsidiary imprisonment in case of insolvency, plus costs. From such decision, the defendants interposed the instant appeal. The facts disclosed by the record are these:

On August 17, 1947, the spouses Bernabé Miralles and Regina Raagas, residents of the barrio of Mag-aso, municipality of Jaro, Province of Leyte, went to town to inform the Quaile family, that the carabao committed to their care had drowned. The owners decided to dismember the animal and sell its meat if fit for human consumption, and so Samuel Quaile, the landlord's son, proceeded with the couple to the barrio to supervise the distribution and sale. After disposing of the meat, Samuel decided to pass the night in the house of their tenants because it was already late. There he stayed until noon the next day.

After luncheon, as Samuel sat by the window and smoked, Jose Glore appeared in front of the house armed with a tommy-gun, and from the ground, for reasons that do not clearly appear, challenged Samuel to a fight. Samuel kept his place; but Jose Glore fired a shot at him and hit him on the right shoulder. Samuel ran to the kitchen where he was embraced by Bernabe's wife and daughter to protect him from further assault; but Samuel told them to keep away as they might be injured. Jose Glore immediately climbed up the house and fired another shot at Samuel, hitting the latter on the back. To escape, Samuel jumped out of the kitchen but as he landed on the ground Jose Glore ordered his companions Porfirio Añoover, Santiago Irlandez, Hospicio Brum,[1] Felipe Sapilan and Ciriaco Glore,<sup>1</sup> who were deployed behind the house, all armed with carbines, to fire at Samuel, which they did. Samuel sustained multiple gunshot wounds (17) which caused his instantaneous death (Exhibit A).

In the meantime, Regina Raagas ran to the house of the barrio lieutenant and reported the incident. Upon her return, she hid behind the barrio chapel, saw the accused proceeding along the street and heard Jose Glore and Irlandez shouting: "Whoever is resentful because of the man we killed may appear and say so." The group stopped at the house of the barrio lieutenant Felix Mola-bola where Irlandez at gun point asked whether he resented "the killing of that man." No untoward incident happened then, because, Porfirio Añoover dragged Irlandez out of the dwelling. The malefactors then grouped themselves again and returning to the place where Samuel lay dead, Jose

Glore removed a diamond ring (worth P450), from the finger of the deceased while Irlandez ripped off his pocket and extracted the money therefrom (P60). After thus looting the deceased, they smashed his face with the butts of their guns and fired more shots upon the corpse.

Immediately after the incident, Bernabé Miralles reported the matter to the chief of police of the town and to the family of the deceased. That officer and some constabularymen repaired to the barrio and made the corresponding investigation.

The appellant Jose Glore asserted he had nothing to do with the crimes. He declared that having been informed that the finger of suspicion had pointed to him as the murderer, he made his investigation; and having discovered that Hospicio Brum and Ciríaco Glore, who were his cousins, had killed Samuel, he liquidated both of them. He implied that the witnesses, of the prosecution Bernabé Miralles and Regina Raagas; were sore at him because he had maltreated their sons.

Santiago Irlandez pleaded alibi. He said that he was in Carigara at the time; that he knew Jose Glore only in the provincial jail and was not with him in the barrio of Mag-aso on August 18, 1947; and that he could conceive of no reason why the witnesses for the prosecution testified against him.

The evidence of the prosecution sufficiently establishes appellants' guilt. In fact the attorney de oficio finds them responsible for the murder of Samuel and the prisoners themselves have filed a motion to withdraw their appeal, which we have denied, because the case had already been submitted and the prosecution had recommended the death penalty.

The facts proven constitute murder and theft. The first is characterized by abuse of superior force, there being at least four assailants provided with firearms. The circumstance of *alevosía* may not be independently considered either because it has not been clearly established (Samuel was previously challenged and therefore warned) or it is merged with the other circumstance previously mentioned (U.S. vs. Estopia, 28 Phil., 97; U. S. vs. Baul, 39 Phil., 846). Therefore the sentence of life imprisonment meted out to appellants is correct.

However, the penalty for the crime of theft imposed by the lower court is not in accordance with law. As the stolen property is P510 the offense falls under paragraph 3 of article 309 of the Revised Penal Code, under which the indeterminate penalty to be imposed should be from 6 months of *arresto mayor*, as minimum to 2 years, 11 months and 10 days of *prisión correccional* as maximum.

Wherefore, with the modification as to penalty for theft as above indicated, the decision appealed from is affirmed, with costs. So ordered.

Moran, C. J., Paras, Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

Judgment modified.

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[1] Died before the proceedings started.

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