

4 Phil. 384

[G.R. No. 1504. April 08, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ROBERT L. HIGHFILL,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On July 31, 1903, Robert L. Highfill was charged by the provincial fiscal of Misamis with the crime of murder for having shot, with a revolver, one Frank Moyer, with premeditation and treachery.

The case came on for trial and the trial judge qualified the case as that of homicide and sentenced the accused to twelve years and one day of *reclusion temporal*, without the payment of indemnity. From this sentence the accused appealed.

On the trial it was clearly shown that on the night of July 1, 1903, at about 7 o'clock, while some cavalry soldiers were in a house of women of bad repute in the Province of Iligan, the soldiers being Lewis Marshall, Peter Seder, Blacksmith Hease, Frank Moyer, one Price, and two civilians, the names of the women being unknown, said Robert L. Highfill came there in company with William T. Larrabee and one Told, apparently having been invited there by the soldier named Price. Highfill and his companions immediately took part in the dancing which was going on in said house, notwithstanding the protest made by the owner of the house, which protest was to the effect that the newcomers should cease dancing. The accused and his two companions paid no attention to this and continued to dance with much noise, shaking the house, for which reason the deceased, Moyer, ordered them, in the name of the owner, to stop dancing and to leave the house, which they did.

After fifteen or twenty minutes the accused and his two companions returned and attempted to go upstairs again, but were seen by the deceased, who told them that they were not wanted in the house and that the dance was given for the cavalry soldiers and some civilians and for them to not cause any trouble, to which statement the accused replied that if Moyer was a man, let him come downstairs; whereupon Marshall said to the accused that if he was looking for trouble he should go to some other place. The accused and his companions left, but the accused intimated that he would return, and then William Larrabee seized the accused by the arm and took him with him. Later on, as a result of a quarrel between Marshall and one Bowen (whom the former struck with his fist), Marshall, Moyer, Seder, and Hease left the house and upon arriving in the street they found the accused, Highfill, waiting, at which moment Moyer saw said Highfill approaching him and said, "Who in the hell are you?" They immediately started to fight and those present could not be sure which one of the two struck the first blow in starting the fight; still they observed that the accused went off running, though somewhat hesitatingly, and the deceased pursuing him. At this moment a shot from a revolver was heard and the companions ran toward their quarters.

It was developed from the investigations made and from the details in the case that Robert L. Highfill, in the fight with Frank Moyer, fired a shot from a revolver at said Moyer, which revolver he had taken from the barracks where it was deposited. The revolver was spotted with blood, as well as the hat worn by the accused, both of these articles being found by one of the guards (named Botts) at the barracks in the place where the fight occurred, the hammer of the revolver being pressed against an empty cartridge shell. Sergeant Frank Sinclair identified the revolver as one taken from him by the accused at the barracks, the accused being the owner of the same. Thomas Feeley, another of the eyewitnesses to the fight, affirms that the deceased struck the accused and the latter stepped back a few steps and fired a shot from a revolver at deceased.

According to the medical examination made by R. J. Gibson, the body of the deceased showed a wound which had been caused by a shot from a

firearm, which wound was located on the left side of the chest, through which the bullet entered, between the second intercostal region and the sternum, which severed the aorta, producing hemorrhage and causing the death of the injured party.

A piece of brick, wrapped in a handkerchief, was found in one of the pants pockets of the deceased and there was a wound on the head of the accused, evidently caused from a blow with a piece of brick. According to the witness William T. Larrabee, he had gone to several places with the accused and one named Told; that they went into an American bar, where they heard a noise in the house where the dancing was going on, whereupon the accused, Highfill, went over to said house to ascertain what had happened and that he, the witness, then heard the noise of blows, which was followed by the sound of a shot.

As will be seen from the above statement of facts, it is fully proven that the soldier Frank Moyer lost his life through violence, which fixes the crime as that of homicide, in the execution of which none of the qualifying circumstances enumerated in article 403 of the Penal Code were present, on account of the occurrences and trouble which preceded the fight between the parties; that during the fight the participants were facing each other and in the middle of the street, and as the death of one of them resulted from the fight, the same being caused by a shot from a revolver, and from the circumstances in the case, the crime only deserves the qualification of homicide contained in article 404 of the Penal Code.

In the crime aforesaid the accused, Highfill, was the principal by direct participation and is guilty beyond a reasonable doubt. The testimony of the several eyewitnesses to the fight which occurred between the accused and the deceased, together with the other facts proven and related one to the other, as appears in the record, clearly lead to the conclusion that the accused, Robert L. Highfill, is principal in the violent death of the unfortunate Frank Moyer. The fact appears that Moyer, at the request of the owner of the house, put the accused and his companions out of same on account of the disturbance raised by them, they being in a drunken condition; this act caused

Highfill to feel resentful; that when they again tried to go upstairs and were opposed by Moyer and his companions, Highfill challenged said Moyer and asked him to come downstairs, and upon leaving, said that he would return; that some time afterwards when the deceased, Moyer, and his companions left the house, they met the accused in the street and the latter ran up to Moyer, a light ensued between them in which Highfill received a blow on the head with a piece of brick, and Moyer was killed as the result of a shot from a revolver with which the aggressor was provided; that in fact the accused had taken the revolver from Sergeant Sinclair at the quarters some hours previous to the occurrence, and, finally, that said revolver was stained with blood and found in the place where the fight occurred and near the body of the deceased, which revolver is identified by the accused, as well as the hat which the accused was wearing on that night; all these facts go to show conclusively—taken in conjunction with the other facts—the guilt of the accused as the author of said homicide.

In the commission of this crime there exists only the one mitigating circumstance contained in paragraph 6 of article 9 of the Penal Code, viz, the accused was drunk on the night of this occurrence, and nothing appears to show that drunkenness was habitual with him or that he became drunk after he had conceived the commission of the crime. No aggravating circumstance appears to counterbalance the effect of this mitigating circumstance.

It is not proper to consider, as urged by the defense, in favor of the accused the exempting circumstance of self defense as defined in article 8, paragraph 4, of the same code, on account of the absence of the three requisites of unlawful aggression on the part of the deceased, the reasonable necessity for using the means employed to oppose or repel said attack, and lack of sufficient provocation on the part of the accused.

The facts above set forth, those which preceded the occurrence, and the conduct of the accused, who, after challenging the deceased and asking him to come downstairs, waited for him in the street, armed with a revolver which he had previously taken from the quarters where it was

kept, and, when he saw the deceased coming, approached the latter and a fight ensued, all clearly show in a manner beyond any doubt that the accused purposely sought a fight and provoked it long before and repeatedly, and instead of being the aggrieved party he was the aggressor and as such made use of a deadly weapon against the deceased, who was helpless, notwithstanding he was provided with a piece of brick, and therefore, as principal in the crime of homicide, wherein existed one mitigating circumstance, he is guilty accordingly and has incurred the minimum penalty for the crime.

By virtue, therefore, of the considerations above set forth, it is our opinion that the judgment appealed from should be affirmed and the accused is also sentenced to the accessory penalties set forth in article 59 of the Penal Code, to the indemnification of P1,000 to the heirs of the deceased, and to the costs in both instances. This case to be remanded to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.
