

**FAH SOCHO**, Appellant, vs. **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1900.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado  
County.

Murder.

Justifiable and excusable homicide—Plea of self-defense—Manslaughter.

In prosecution for murder in the first degree, the State to convict must prove beyond a rational doubt that the killing was willful and that it was done from malice, expressed or implied. So where deceased met prisoner and suddenly assaulted him with a club and then drew from his pocket a pistol, and prisoner struck in self-defense, which blow produced death; it was held that the killing was murder in the second degree, technically termed manslaughter.

It was further held that a party assailed need not wait until he is disabled by his assailant before striking in self-defense; that while he is bound to use all means within his power consistent with his safety to escape from his assailant, yet if he is assaulted with a weapon that could produce death or great bodily harm and he is put in peril of life or limb, he may justify the stroke under the plea of self-defense, and if death results from the stroke it will amount to murder in the second degree.

In this case the appellant Fah Socho is charged with having committed the crime of murder, which is the highest offence of which one may be charged in the catalogue of crimes ; a crime punishable in all ages, by both human and divine laws, with death ; a crime the very mention of which causes humanity, however degraded, to recoil.

The record from the court below shows that at the September term of the Court of Quarter Sessions and Common Pleas, Montserrado County, A. D. 1899, Fah Socho, the prisoner (appellant in this court), was indicted by the grand inquest of the aforesaid county, for the willful and felonious murder of one Walter F. Smith, on the twenty-second day of July, 1899, in the settlement of Bensonville, in the County of Montserrado, to which indictment the appellant was held to answer, and put upon trial for his life before a jury consisting of twelve of his peers, duly sworn to hear, try, and determine the facts. Witnesses were introduced and sworn, and deposed. The testimony having been concluded, the charge and evidence were in due form submitted to the jury by the court, with instruction to try the facts and return their verdict accordingly. The jury, after deliberation, made up and presented to the court a verdict of "guilty" against the prisoner, now the appellant before this court.

The appellant, being dissatisfied with the verdict thus rendered, motioned the court below for a new trial, maintaining that the verdict was contrary to the law, the facts, and legal instructions of the court, and that the evidence supported a verdict of homicide in self-defense; which motion the court below did not allow, and subsequently rendered judgment of death, the sentence of the law attached to the crime of murder. To this ruling and final judgment of the court the appellant excepted, and appealed to this court for a review of the cause.

Before noticing the testimony rendered in this case and the law controlling it, this court says : "Murder is defined to be the willful killing of a human being, with malice aforethought, either expressed or implied by law, and to constitute the offence there must be, first, sound mind and memory in the agent; second, an actual killing; third, malice expressed or implied. Manslaughter is the unlawful killing of another, without malice either expressed or implied; as in mutual combat on a sudden affray or fight in which malice is presumed to be wanting; hence such killing is reduced to murder in the second degree, technically known as manslaughter.

This court further says: Homicide in self-defense is bound within the limits hereinafter described. To justify the taking of life in self-defense the party must employ all means within his power, consistent with his safety, to avoid the danger and avert the necessity. He is not, however, compelled to wait until he is rendered unable to protect himself, by reason of great bodily harm, or even to turn his back upon his assailant. If he is in imminent peril and can reasonably conclude that his assailant intends to take his life, which he may conclude by the means employed in the assault,—as, for instance, the employing of a dirk, an axe, a hatchet, sword, cutlass, hoe, gun, pistol, spear, or like weapons, the use of which is likely to produce death or great bodily harm,— under such peril he may strike in self-defense, and if killing be the result of such stroke, the killing would be in self-defense. The meaning of the law is clear. The assailant must be in possession of some deadly weapon, and he must make such demonstration as would put the assailed in the peril of his life, or in danger of receiving great bodily injury, or put him on guard to protect his house against a burglar, or against one who entered to commit rape or other felonious acts; otherwise the law will not allow the plea of self-defense.

Having pointed out in a concise manner the law controlling this and similar cases, we now proceed to the consideration of the testimony. It may not be amiss for us to say that evidence is that which demonstrates and puts in clear light the truth or falsehood of any accusation. Referring to the testimony in this case, we discover that Walter F.

Smith, the person killed, had staying with him a native heathen girl, in whom he manifested uncommon interest. This girl was taken from his custody by legal process and put in care of Sheriff Stubblefield, so as to be forthcoming at the ensuing meeting of the Quarterly Court, Montserrado County, to give evidence in a prosecution instituted and conducted against the said Walter F. Smith for a high misdemeanor. That by some means Smith found out that Fah Socho, the prisoner, and this girl had agreed upon marriage. That Smith soon after saw the prisoner and told him what he heard about his intention to marry the girl, and that if he did so he intended to kill him. That shortly after this the prisoner was on his way to Monrovia, when Smith saw him and with a gun in his hand ran him a considerable distance, and that the prisoner for safety took refuge in the forest, where he was hidden from Smith. That the prisoner uttered his complaint to the Sheriff, to the County Attorney, and lastly to a Justice of the Peace, for legal process to restrain Smith, which for some cause was not afforded him. That after this the prisoner was heard to say that if Smith attacked him again he intended to defend himself by killing him with his sword (pointing to a sword he usually wore). The evidence further shows that during the month of July, 1899, (the facts above stated occurred during the month of June)—that on the zznd day of July, as aforesaid, the prisoner Fah Socho was passing through the settlement of Bensonville, when and where he met Smith, and that Smith charged him with shaking his sword at him. (This, however, was not seen by any of the witnesses present.) That the prisoner had on or wore the sword he usually traveled with. That Smith and the prisoner met in close contact, Smith's advancing soon bringing them together. That as soon as near enough Smith struck prisoner with a large coffee stick, and made at him two or more other blows with said stick, which blows the prisoner avoided by fending. That the prisoner up to this time made no blows at Smith whatever, but firmly faced him, warding off each assault. That Smith then drew from his pocket a revolver, when the prisoner jumped back and struck Smith with his sword, from which blow, he, Smith, shortly after died.

This is a synopsis of the testimony sent with other record before this court for review. To us this is clearly a case wherein homicide may be said to have been committed in self-defense. The revolver, a deadly weapon, being drawn by Smith in the engagement, reasonably put the prisoner in imminent peril of his life, and both reason and instinct impelled him to strike in defense of his life. A new trial, therefore, should have been granted by the court below.

This court adjudges that the verdict returned in this case is contrary to the law and the evidence, and the same is therefore set aside ; that the judgment rendered on said verdict is hereby reversed, set aside, and rendered null and void ; that the prisoner

Fah Socho be discharged from prison by order of the judge of the court below, as soon as he is informed in chambers of the ruling and judgment of this court; and that the clerk of this court issue in due form a mandate to the judge of the court below, as to this judgment.