

THE STATE

Versus

TAVONGA MARUFU

And

TUNHIDZAI MUKWASHA

HIGH COURT OF ZIMBABWE

MAWADZE J

MASVINGO, 24, 25 JULY & 4 AUGUST, 2017

Assessors

1. Mr Mushuku
2. Mr Gweru

CRIMINAL TRIAL

Ms S. Busvumani, for the State

Mr C. Maboke, for accused 1

Ms L.R. Chivasa, for accused 2

MAWADZE J: Both accused persons are charged with murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. The charge is that on 1 October 2016 at stand number 72-3 Mhandamabwe business centre in Chivi, Masvingo both accused

persons or one of them unlawfully struck Henry Takoreka, a male adult with a log on the head intending to kill him or realising that their conduct might cause death and continued to engage in that conduct despite the risk or possibility.

Accused 1 Tavonga Marufu resides in headman Mandyangove in Chivi near Mhandamabwe business centre. Accused 2 Tunhidzai Mukwasha resides at No. 3679/17 Mbizo, Kwekwe but at the material time was residing at Mhandamabwe business centre. The now deceased was also residing at Mhandamabwe business centre with his twin brother Isaac Masarakufa. Both accused persons, the now deceased and his twin brother Isaac Masarakufa were all were all known to each other as they were all engaged in gold panning at Lennox Mine near Mhandamabwe business.

The background facts to this matter are as follows;

The now deceased shared a room with his twin brother Isaac Masarakufa and one Talent at Mandamabwe business centre. Isaac Masarakufa was in love with one Lisa Chikozho a form four student who is said to have been aged 17 years at the material time. Lisa Chikozho is a daughter of Rangarirai Chikozho, a business man at Mandamabwe business centre.

Both the accused persons were apparently aware of the love relationship between Lisa Chikozho and deceased's twin brother Isaac Masarakufa.

Some four days before 1 October 2016 Lisa Chikozho who was about to write her 'O' level examinations eloped to her boyfriend Isaac Masarakufa who took her to his rural home in Kwekwe. Lisa's father Rangarirai Chikozho was unaware of this development and started to look for his daughter.

It is the State's case that on 1 October 2016 at about midnight both accused persons who were drinking beer at Mandamabwe business centre decided to go and inform Rangarirai Chikozho that his daughter Lisa had eloped to Isaac Masarakufa deceased's twin brother. They allegedly volunteered to lead Rangarirai Chikozho to Isaac Masarakufa's lodgings which was hardly 100 m from Rangarirai Chikozho's business premises and residence at Mandamabwe business centre at No. 295 which he shared with his twin brother the deceased. It is alleged both accused identified Isaac Masarakufa to Rangarirai Chikozho which culminated in a confrontation between Isaac Masarakufa and Rangarirai Chikozho.

Rangarirai Chikozho then took Isaac Masarakufa to his nearby residence in a bid to discuss this matter and the now deceased together with accused persons also followed.

The State alleges that accused 1 Tavonga Marufu (Tavonga) while inside Rangarirai Chikozho's yard quarrelled with the now deceased and held each other as accused 2 Tunhidzai Mukwasha (Tunhidzai) stood close by. It is alleged accused 2 Tunhidzai proceeded to a firewood heap inside the yard and picked a log which he used to strike the now deceased once on the head causing him to fall down. Rangarirai Chikozho and Isaac Masarakufa deceased's twin brother unsuccessfully tried to assist the now deceased who had been severely injured by rushing him to Chivi District hospital from where he was transferred to Masvingo General Hospital but died while on the way to Masvingo General Hospital that night. The nature of the defence by each of the accused persons to shift the blame to the other.

Accused 1 Tavonga in his defence outline said after he led Rangarirai Chikozho (Chikozho) to Isaac Masarakufa and deceased's lodgings Chikozho forcibly took Isaac Masarakufa to his residence while interrogating Isaac Masarakufa about the whereabouts of Chikozho's daughter. Accused 1 said he suggested that it was better for Chikozho to take Isaac Masarakufa to the police but this incensed the deceased who proceeded to assault accused 1 with fists. Accused 1 said he fought back by hitting the now deceased with a piece of wire twice on the back. Accused 1 said when they all arrived at Chikozho's yard the now deceased with the help of one Talent held accused 1 in a bid to assault accused 1. Accused 1 said he in turn held on to the now deceased to forestall the assault. Accused 1 said at that stage accused 2 who was close by proceeded to a pile of firewood inside Chikozho's yard, took a piece of firewood and struck the now deceased once on the head causing the now deceased to fall down. Accused 1 said Chikozho ordered accused 2 to render first aid to the now deceased. Accused 1 said he then left the scene. Accused 1 therefore blames accused 2 for attacking the now deceased with the log.

Accused 1 gave a somewhat different version in his confirmed warned and cautioned statement Exhibit 2. Accused 1 said he assaulted the now deceased with a piece of wire twice on the back while they were coming from deceased's lodgings to Chikozho's residence in a bid to cause the now deceased not to follow them (that is Chikozho, both accused persons, and deceased's twin brother Isaac Masarakufa) but deceased continued to follow them.

Accused 1 said in that statement that while they were now inside Chikozho's yard he and the deceased held each other struggling or tussling. He said it is at that stage that accused 2 then picked a log or stick and struck the now deceased once on the head causing him to fall down. Accused 1 said Chikozho then held accused 2 advising accused 2 to assist the now deceased and that accused 1 then left the scene. Accused 2 gave a complete different version of events.

In his defence outline accused 2 said it is in fact accused 1 who struck the now deceased on the head with the piece of firewood as the two were fighting inside Chikozho's yard. Accused 2 said the only role he played was to try and stop accused 1 and the now deceased from fighting. Accused 2 said he is now being falsely implicated simply because all the State witnesses are related to accused 1 whom they want to exculpate of the offence.

Accused 2 also gave a different version in his confirmed warned and cautioned statement Exhibit 3.

In that statement accused 2 said he was present when accused 1 and the now deceased fought while inside Chikozho's yard. Accused 2 said it is in fact the now deceased who had the stick or piece of firewood. Accused 2 said when he intervened to restrain the two the now deceased then threw away the piece of firewood out of the yard. Accused 2 said he did not see what happened to the now deceased thereafter but just saw the now deceased falling down. Accused 2 said he decided to leave the scene but Chikozho in explicably alleged that both accused 1 and accused 2 had injured the now deceased. As a good Samaritan accused 2 said he offered to render first aid to the now deceased and decided to go and get some salt to rub underneath the now deceased's feet. Accused 2 said he however did not return to the scene.

The piece of firewood or log in question was produced by consent as Exhibit 4(a) and its certificate of weight as Exhibit 4(b). It is a 113 cm long stick which weighs 0,670 kgs.

The stick or log in issue Exhibit 4(a) was recovered by Sgt. Washington Zimunya whose evidence was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*]. He is the detail who also recorded accused persons' confirmed warned and cautioned statements Exhibits 2 and 3.

The cause of the now deceased's death is not an issue at all. Dr Thomas Nyasha testified that he examined the remains of the now deceased and made the following observations;

- i. the now deceased had clotted blood in the nose, mouth and in the ear
- ii. the now deceased's eyes were swollen
- iii. the now deceased had mild skull deformity

From this observation he made the findings that the now deceased sustained basal skull fracture and that death was a result of the head injury. He proceeded to compile the post mortem report Exhibit I in which he endorsed the cause of death as due to basal skull fracture arising from head injury.

The narrow issue which the court is seized with is who inflicted the fatal injury of the now deceased. Is it accused 1 or accused 2 and if it is one of them were they acting in common purpose with the other or not? In order to resolve that question we shall look at the evidence before us as provided by the State witnesses and accused persons.

The State led evidence from Isaac Masarakufa the now deceased's twin brother and Rangarirai Chikozho who both can be termed eye witnesses to the assault perpetrated on the now deceased.

Both accused gave evidence and not call witnesses.

We turn to that evidence

ISAAC MASARAKUFA (ISAAC)

Isaac is now 22 years old and has subsequently "married" Lisa Chikozho after the elopement.

Isaac told the court that both accused persons on day in question first came to Isaac and now deceased's lodgings that night at about 23.00 hrs to collect their cellphones which were being charged in Isaac's room. Isaac had retired to bed in the room with his twin brother the now deceased and one Talent. He said moments later the door was knocked and when he opened the door he saw Rangarirai Chikozho together with accused persons.

Isaac said Rangarirai Chikozho (Chikozho) inquired from him about the whereabouts of his daughter Lisa Chikozho. Isaac said naturally he denied any knowledge of where she was which prompted Chikozho to ask him to go to Chikozho's house to discuss the issue. He obliged and walked towards Chikozho's residence hardly 100m away as Chikozho held his hand.

Isaac said Talent remained in the room but the now deceased joined both accused persons who were behind Chikozho and Isaac. He said accused persons told the now deceased to go back to the room but deceased refused insisting he wanted to know what would befall his twin brother Isaac. At that stage Isaac said accused 1 was incensed by the now deceased's attitude and he proceeded to strike the now deceased thrice on the ribs and the waist with a piece of wire accused 1 had in his possession. The piece of wire was about 1-metre-long and accused 1 did not use a lot of force. Accused persons insisted the now deceased should not follow them but the now deceased was unperturbed and insistent. The now deceased still followed them until they all got to Chikozho's yard surrounded with a well-lit durawall.

Inside the yard Isaac said Chikozho continued to probe Isaac about the whereabouts of his daughter Lisa Chikozho whose education was now in jeopardy and Isaac continued to feign ignorance of Lisa Chikozho's whereabouts.

Isaac said accused 1 entered the yard and picked a piece of fire wood which accused 1 dropped near the now deceased. Isaac said accused 2 then came into the yard and picked this piece of firewood Exhibit 4(a) and struck the now deceased once on the head as accused 1 seemed to be holding the now deceased. The now deceased fell down and both accused persons fled.

Isaac said Chikozho chased after accused 2, held him and brought him back into the yard telling accused 2 that he had injured the now deceased. Accused 2 then said he possessed super natural fighting powers and that he had to perform a ritual on the now deceased by urinating on the now deceased for the now deceased to gain consciousness. Isaac said accused 2 unzipped his trousers, tried to urinate but no urine came out. Accused 2 then told Chikozho that he was going to collect salt to rub on the now deceased as first aid. Accused 2 then vanished for good from the scene.

Isaac said at that stage the now deceased was unconscious, bleeding from the nose and had breathing problems. Further his left eye and left side of the head were swollen. Chikozho and Isaac immediately ferried him to Chivi District hospital where the Doctor immediately transferred the now deceased to Masvingo General Hospital but after just 30 minutes of the ambulance's departure it returned to Chivi District hospital. Isaac was advised the now deceased had died.

Isaac described how he said accused 2 struck the now deceased with Exhibit 4(a) the stick. He said excessive force was used. Further he said accused 1 seemed to have been holding the now deceased at the time the fatal blow was delivered. He said he does not know why both accused persons who enjoyed cordial relations with the now deceased behaved in that manner more so as they were not very drunk.

Isaac denied that the now deceased first attacked accused 1 when accused 1 hit the deceased with a piece of wire. Instead he said accused persons simply did not want the now deceased to follow Isaac, Chikozho and the accused persons. Isaac dismissed as untrue that that Talent joined them and said only accused persons, Chikozho and Chikozho's driver one Baluwa were present when they were now in Chikozho's yard. Isaac insisted that it is accused 2 who hit the now deceased on the head with the piece of firewood. Isaac said he and the now deceased did not drink beer at all.

In our assessment Isaac gave his evidence very well. He was indeed sober on the night in question. In fact, the sequence of events on the night in question are not disputed by the accused persons. He explained that he was able to see clearly all what happened because of the lights which illuminated the area. In our view he did not exaggerate his evidence. Isaac was prepared to concede that when accused 1 hit the now deceased with the piece of wire he did not use a lot of force. That is a hallmark of an objective witness. Further he was prepared to concede that he did not see clearly if indeed accused 1 was holding the now deceased when he said accused 2 struck the now deceased on the head. Again this shows that Isaac was not keen to commit himself on issues he did not see or observe clearly. Clearly, he had no cause to misled the court and none was suggested. Isaac satisfactorily answered all questions thrown to him by accused 1's counsel *Mr Maboke*. No useful question was put to him by counsel for accused 2 Ms Chivasa. In that vein we assess Isaac as a credible witness whose evidence finds favour with the court.

RANGARIRAI CHIKOZHO (CHIKOZHO)

Chikozho is well known to both accused persons, Isaac and the now deceased who were all gold panners at Lennox Mine in Mashava. Accused 1 is a fellow villager and the other resided at Mandamabwe business centre where Chikozho runs a business and resides.

Chikozho said accused 1 and accused 2 came at his residence at midnight on the night in question saying they had information as to the whereabouts of Chikozho's missing daughter Lisa. Naturally he was interested to be shown where Lisa was as she had been missing for 5 days. Accused persons led him to some lodgings some 100 m from his house where Isaac and the now deceased resided. When the room was opened Lisa was not in that room where Isaac, the deceased and another man were sleeping. Accused persons told him that Isaac knew where Lisa was so he invited Isaac to come out so that they could discuss this issue. Isaac indicated he did not know where Lisa was but Chikozho decided to take Isaac to his nearby residence to interrogate Isaac. Accused persons followed them. As they were walking towards his residence he heard some commotion behind him and Isaac at where accused persons were but he was not bothered as he was busy questioning Isaac.

Chikozho said he took Isaac inside his durawall after which accused 1, accused 2 and the now deceased arrived. He said accused 1 and the now deceased then held each other. Accused 2 proceeded to pick a piece of fire wood Exhibit 4(a) and struck the now deceased on the head causing the now deceased to fall down. Accused 1 and 2 immediately fled from the scene but he chased after accused 2 whom he apprehended. Chikozho said he asked accused 2 why he had attacked the now deceased but accused 2 proffered no cogent reason. Instead accused 2 said he would urinate on the deceased's body as a ritual to enable the now deceased to gain consciousness. He said accused 2 unzipped his trousers but no urine came out of his urinating organ. Accused 2 then said he should be allowed to go and collect salt in order to apply first aid on the now deceased. Accused 2 then disappeared for good.

Chikozho said accused 1 and 2 were moderately drunk as they were even holding quarts of beer.

As regards the nature of the assault perpetrated on the now deceased he said excessive force was used as the blow to the head produced a loud sound. He did not witness the first assault on the now deceased by accused 1 with a wire as he was busy questioning Isaac.

Inside his yard he said he just saw accused 1 and the now deceased grappling with each other before the now deceased was assaulted on the head. Chikozho said after the assault on the now deceased both accused 1 and 2 fled from the same.

Chikozho said when accused 2 delivered the fatal blow accused 1 and the now deceased were holding each other.

The evidence of Chikozho is virtually unchallenged. This is understandable. Chikozho had no reason to lie against accused persons who had supplied him with information about the whereabouts of his missing daughter. If he was a devious character who would have tried to protect accused persons. We have no cause not to accept Chikozho's evidence.

We now turn to the evidence of accused persons.

We have already alluded to the conflicting nature between accused persons defence outlines. They implicate each other. We have also referred to the contradictory nature between each accused person's defence outline and his confirmed warned and cautioned statement. This does not help each accused person's case.

ACCUSED 1 TAVONGA

Accused 1 admitted that he and accused 2 led Chikozho to Isaac and the now deceased's lodgings on the night in question at midnight. Although drunk accused 1 said he fully appreciated all what happened that night. Contrary to what Isaac and Chikozho said accused 1 said one Talent who resided with Isaac and the now deceased also followed them.

Accused 1 admitted assaulting the now deceased with a piece of wire twice on the back on their way to Chikozho's residence. Accused 1 however said the now deceased was the aggressor as he was the first to hold accused 1 by the neck and tripped him. Accused 1 said he hit back in retaliation due to pain he had felt.

The impression accused 1 gave is that when they got inside Chikozho's yard there were other persons besides Chikozho, his driver Baluwa, Isaac, the now deceased and accused persons. Accused 1 however could not say who were the other persons. This allegation of the presence of other persons feeds into accused 1's allegation that while inside

Chikozho's yard a number of people surrounded accused 1 as if to attack him. This version was never put to either Isaac or Chikozho.

Accused 1 said it is accused 2 who, while in Chikozho's yard took a piece of firewood and approached the now deceased and those other people saying they were all used to bad habits.

Accused 1 was clearly at pains to explain what he himself was doing at that stage. All he said was that he was 'like holding the now deceased' whatever that means.

Accused 1 insisted that it is accused 2 who struck the now deceased on the head with the piece of fire wood causing the now deceased to fall down. He said accused 2 then threw away the piece of firewood. Accused 1 said he was shocked by accused 2's vicious attack on the now deceased. He confirmed that accused 2 fled immediately from the scene but was apprehended by Chikozho who brought him back. Accused 1 said accused 2 offered to administer first aid by urinating on to the now deceased but failed to produce any urine. He said accused 2 then left on the pretext of looking for salt. At that stage accused 1 said he then left the scene.

Accused 1 disassociated himself from the assault perpetrated by accused 2 on the now deceased saying he, accused 1, had no issues with Isaac or the now deceased. Accused 1 said accused 2 did not act in self-defence.

Our assessment of accused 1's evidence is that he has not been consistent in what he said happened on a number of material issues.

It is inconceivable that as accused 1 suggested that accused 2 would just follow accused 1 that night where ever accused 1 went, that is to collect their cell phones, to wake up Chikozho and to Isaac and the now deceased's lodgings. The truth of the matter is that they are friends, they were drinking together and discussed that their movements that night.

Accused's 1 version of why he assaulted the now deceased with a wire on their way to Chikozho's residence is plagued with inconsistencies. In the defence outline he said the now deceased hit him with fists after which he picked the wire and struck the now deceased fighting back. In his evidence in chief he said the now deceased throttled him or held him by the neck after which he was tripped causing him pain hence he retaliated by picking a wire at

dumpsite and struck the now deceased. In his warned and cautioned statement Exhibit 2 there is no mention at all that the now deceased attacked him before he decided to assault the now deceased with a wire. These inconsistencies suggest that accused 1 was not attacked at all by the now deceased. Isaac's version on why accused 1 hit the now deceased with a wire is more plausible.

As already pointed out accused 1 was at pains to explain what accused 1 was doing when accused 2 struck the now deceased on the head. He prevaricated. In his defence outline he seem to say they were holding each other with the now deceased when accused 2 struck the now deceased. In his warned and cautioned statement accused 1 said he was struggling or grappling with the now deceased when accused 2 hit the now deceased on the head. In his evidence in chief accused 1 seemed unsure saying he and the now deceased were like holding each other. Under cross examination accused 1 admitted he was holding the now deceased when accused 2 struck. In the same breath he said he was holding a quart of beer in one hand and a cigarette in the other. Accused 1 could not consistently explain this simple issue. Why if he is telling the truth? No wonder why he even denied that accused 2 is not his friend when all the evidence point otherwise.

The fact that accused 1 who was keen all along to assist Chikozho even at midnight suddenly disappeared soon after accused 2 had fatally attacked the now deceased raises a lot of questions. Why would accused 1 leave the scene without ensuring that the now deceased had got some help. Both Isaac and Chikozho were clear that accused 1 fled from the scene with accused 2 soon after accused 2 delivered the fatal blow.

Our assessment of accused's 1 evidence clearly shows that he is not a credible witness. As highlighted we rejected his sanitized version of events.

ACCUSED 2 TUNHIDZAI

Accused 2's evidence is that he was not present when accused 1 went to wake up Chikozho at midnight. Accused 2 said he did not accompany accused 1 and Chikozho to Isaac and the now deceased's lodgings on the night in question, but just met them as they arrived at Chikozho's residence.

Accused 2 said at Chikozho's residence accused 1 picked the piece of firewood pointing at the now deceased threatening to assault him and that the two struggled over

possession of this piece of firewood. As accused 2 tried to restrain them. Accuse 2 said accused 1 then proceeded to head butt the now deceased who then lost grip of the piece of firewood. He said accused 1 then struck the now deceased on the head with the piece of firewood causing the now deceased to fall down after which accused 1 left the scene. Accused 2 said he then followed suit but was held by Chikozho who said both accused 1 and 2 had injured the now deceased. By then accused 1 had disappeared. Accused 2 said he decided to go and look for some salt to use on the now deceased and upon his return he found no one at the scene.

Accused 2 in our view is a hopeless liar. He told a total different story when he gave evidence. It is even surprising that he would even seek to deny non material issues like waking up Mr Chikozho or teaming up to go to now deceased and Isaac's lodgings.

In his confirmed warned and cautioned statement accused 2 said he did not see how the now deceased was injured. In his defence outline he implicates accused 1 as the one who struck the now deceased with a piece of firewood on the head. In his statement he said when he left the scene to go and collect some salt he never returned to the scene. Now he said he returned.

The version accused 2 now gives on how accused 1 struck the now deceased is a complete new version which now entail accused 1 first head butting the now deceased. No wonder why accused 2 could not even tell the police his correct names. He conceded that Tawanda Nyamasare are his names on his national identity card and not Tunhidzai Mukwasha he is using in court. Accused 2 I simply a liar par excellent.

THE LAW

The liability of co-perpetrators is provided for in s 196 A of the Criminal Law (Codification and Reform) Act [Cap 9:23]. This provision simply reinforces the common law doctrine of common purpose which is clearly stated in the case of *S v Mubaiwa & Anor* 1992 (2) ZLR 362 (S) in which it was said;

“for the doctrine of common purpose to apply in a case of murder it would have to be proved that the accused did something to associate himself with the actions of the person who actually did the killing knowing that the other person intended to kill or foreseeing the possibility that he intend to kill.”

See also *S v Chauke & Anor* 2000 (2) ZLR 494 (S) at 497 A.

The renowned author Burchell in *South African Criminal Law and Procedure Volume 1*, 3rd Edition at page 307 sums up the doctrine of common purpose as follows;

“where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise, each will be responsible for the specific criminal conduct committed by one of their number which falls within their common design.” (my emphasis)

The requirements for common purpose are;

- (i) presence at the scene of crime
- (ii) knowledge of the criminal act
- (iii) intention to make common cause with the actual perpetrator of crime
- (iv) manifestation of a sharing of a common purpose with the actual perpetrator of crime by performance of some own act of association with the conduct of the perpetrator
- (v) *mens rea* (intention) either actual intention (*do lus directus*) or constructive intent (*do lus eventualis*) in respect of the perpetrators of the crime.

See *S v Mgedezi & Ors.* 1989 (1) SA 687 (A).

The criminal liability of accused 2 is clear. We totally reject his version of events and accept the evidence of Isaac and Chikozho that it is accused 2 who struck the now deceased with a log Exhibit 4(a). The degree of force was clearly excessive. The blow was directed on the head. It caused basal skull fracture. The now deceased immediately lost consciousness. He died moments later. Accused 2 therefore did foresee that his conduct might cause death but nonetheless continued to engage in that conduct despite that risk or possibility. Accused 2 cannot escape liability for contravening section 47(1)(b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] which relates to murder with constructive intent.

The last issue to answer is whether accused 1 is a co-perpetrator which is premised on the doctrine of common purpose. Our finding is in the affirmative for the following reasons;

- (a) Accused 1 was the first to attack the now deceased with a piece of wire on their way to Chikozho's residence as both accused did not want the now deceased to follow Isaac, Chikozho and accused persons.
- (b) There is evidence that inside Chikozho's yard accused 1 was the first to pick the piece of firewood Exhibit 4(a) although he threw it down.
- (c) Accused 1 is the one who engaged in a physical struggle with the now deceased inside Chikozho's yard as he did not want the now deceased's presence at the scene.
- (d) When accused 2 delivered the fatal blow accused 1 was holding the now deceased making it virtually impossible for the now deceased to protect himself.
- (e) Immediately after accused 2 delivered the fatal blow accused 1 fled from the scene with accused 2.
- (f) Throughout that night from time they went to wake up Chikozho until the time the now deceased was fatal injured accused 1 was in the company of accused 2 and were in agreement in all what they did.

For the above reasons therefore accused 1 cannot escape criminal liability on the basis of common purpose or co-perpetrator.

VERDICT – BOTH ACCUSED

Guilty of contravening section 47(1)(b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] murder with constructive intent.

SENTENCE

Both accused now stand convicted of murder with constructive intent despite their spirited denials during trial.

It is disheartening to note that cases of murder are very prevalent in Masvingo province. This is not a reputation for the province to be proud of at all. The courts have a duty to play their role to ensure that the generality of Masvingo respect human life.

Most of these cases arises from minor disputes especially after the drinking of alcohol. People should learn to solve whatever differences they have amicably and peacefully.

You are both employed at Lennox Mine near Mashava. I wonder whether this mine is cursed because a lot of offences are being committed at this mine.

The sanctity of human life cannot be over emphasised. Human blood is sacred.

It is baffling as to why you attacked the now deceased. He had not wronged anyone of you in any way. You had both decided to be busy bodies by poking your noses into other people's affairs. Your role should have ended there. There is absolutely no reason as to why you brutally attacked the now deceased causing the basal skull fracture.

An innocent life has been unnecessarily lost. Neither of you exhibited any contrition at all.

In arriving at the appropriate sentence we have not lost sight of your personal circumstances. There are no compelling reasons as to why we should treat you differently as your personal circumstances are generally the same.

You are both first offenders and deserve some measure of leniency. You are almost of the same age. Each one of you is married with 3 minor children. Both of you have extra responsibilities to look after your extended families. You were both moderately drunk on the day in question.

The only notable difference is that accused 1 contributed towards the now deceased's funeral expenses whereas accused 2 did not. However, accused 1 was only in custody for 3 months whereas accused 2 has been in custody from the time of your arrest to date. Overallly your moral blameworthiness is the same despite that it is accused 2 who delivered the fatal blow and that accused 1 is being convicted as a co-perpetrator.

Each one of you is sentenced to 15 years imprisonment.

National Prosecuting Authority, counsel for the State

Ruvengo, Maboke & Company, pro deo counsel for accused 1

Legal Resources Foundation, pro deo counsel for accused 2