

STATE  
versus  
REMIGIOUS VITALIS CHIBANDA SIPANDA  
and  
TAPIWA ZVOMUNO

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 28, 29 and 31 January 2020

### **Criminal Trial**

ASSESORS: 1. Mr Raja  
2. Mr Magorokosho

*Mrs J Matsikidze*, for the State  
*P Nyakureba*, for the First Accused  
*C Ndlovu*, for the Second Accused

MUZENDA J: The two accused are charged with Murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] where it is alleged by the State that on 4 November 2018 and at Magamba Turn-off, Rusape, the two accused in the company of one Lucky, who is still at large, all and each or one or the other of them, unlawfully caused the death of Emmanuel Ngwarati by assaulting him with booted feet and fists and stabbing him with a knife all over the body intending to kill Emmanuel Ngwarati or realising that there was a real risk or possibility that their conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries which the said Emmanuel Ngwarati died. Both accused pleaded not guilty to the charge.

### RIMIGIOUS VITALIS CHIBANDA SIPANDA: ACCUSED ONE'S DEFENCE OUTLINE

Accused 1 stated that on 4 November 2018, he was at home in Overspill Epworth in Harare. He does not know the other accused person(s). He never participated in the commission of the crime. He was arrested because he was the last person to communicate with the deceased on the morning of 4 November 2018 through his mobile phone. He will further state that the deceased called him on 4 November 2018 only enquiring about his money and drugs. The deceased wanted to know when the accused person was coming to Rusape. Accused 1 was

arrested on 23 November 2018 at Overspill, Epworth, Harare at a bar where he had gone to see his girlfriend. He prayed for an acquittal.

#### TAPIWA ZVOMUNO: ACCUSED TWO'S DEFENCE OUTLINE

Accused 2 denies causing the death of the deceased as alleged. On the fateful day he received a call from his acquaintance Lucky inviting him to travel from Harare to Rusape so that they could indulge. When he arrived in Rusape he met up with Lucky who was drinking alcohol and already in the company of the deceased and one Remmy. To the second accused the three appeared before him to be mutual friends. All four of them were partaking alcohol in a Night Club. At some time accused 2 overheard an argument between deceased and Lucky centred on some gold parcel that had allegedly been left at Nyazura Township by the deceased. As the night progressed Lucky suggested to the deceased that they should all proceed to Nyazura to retrieve the gold parcel from deceased's girlfriend's place, where it had allegedly been left. The deceased agreed to the proposal on condition that his car was fuelled.

Accused 2 loaned Lucky \$20-00 to procure fuel and the money was given to the deceased to buy fuel which he did. The four of them got into the car with deceased driving and Lucky seated in the front passenger seat. Along the way the argument between Lucky and deceased intensified and the deceased stopped the car on the side of the road. He switched off the engine and lights and got out of the car. The deceased relieved himself by the side of the car. Lucky also got out of the car, deceased hinted that he was no longer taking them to Nyazura to pick up the gold parcel. Lucky was incensed and a fist fight erupted between the two. The deceased brought out a knife from the pocket of his trousers and threatened to stab Lucky. At that moment accused 2 and Remmy got out of the vehicle and restrained the two. Remmy held Lucky and the accused held the deceased's hand which was holding the knife.

Lucky got free from Remmy's grip and charged at the deceased. Lucky forcibly took or snatched the knife from the deceased. During the melee, accused 2 was stabbed on his hand and began to bleed. He released the deceased and went to stand by the car. Lucky and the deceased continued their altercation and he observed Lucky stabbing deceased several times on the thigh. The second accused screamed at Lucky to refrain from the aggression as the deceased was apparently hurt and was bleeding. Lucky was not deterred and he continued to attack the deceased. Remmy was also calling out to Lucky to stop the violence. Eventually Lucky stopped and the deceased was crying out that he had been hurt badly.

Lucky was belligerent indicating that he wanted his gold. Deceased indicated that he was not going to release the gold and that he was better off dead. The deceased twice crawled into the road so that he could be run over by passing vehicles. On both instances the deceased was pulled away from the pending danger by Remmy. Deceased shouted that he was going to commit suicide that night. Lucky suggested that deceased be restrained so that he could not harm himself. Lucky and Remmy tied up the deceased on his legs and arms. They ferried him a few metres away from the road and placed him there. Accused 2 pleaded with Lucky not to leave the deceased at that spot but Lucky would not hear any of it. Lucky ordered the accused and Remmy into the car and he drove back to Rusape. On the way back to Rusape the second accused pleaded with Lucky to be dropped off at the bus terminus to catch up a lift to Harare, Lucky obliged and he was dropped off. Before Lucky and Remmy drove away Lucky disclosed that he had taken deceased's phone and that he was going to use same to recover the costs of the fuel that had been put in deceased's car. Accused 2 got a lift that took him to Harare. The following day he was called by Lucky who suggested that they should meet in town. He obliged and upon arrival he found Lucky waiting for him. Lucky produced a white Samsung phone and indicated that he was looking for a buyer to sell the cell phone to so that he would raise bus fare to his residence in Epworth.

The second accused contacted Ernest Mhishi who came and purchased the phone for \$10-00. Lucky took all the money and parted way. That was the last time accused 2 saw Lucky. A few days later he was arrested and he told the police the full story but they would not accept it. Accused 2 was psychologically and physically abused by the police during investigations to the extent that they forced him to sign a false Warned and Cautioned Statement. Even during the confirmation proceedings the police officers maintained vigil and a menacing presence. Accused 2 urged the court to appreciate that he never attacked the deceased, he was actually injured or stabbed when he intervened to stop the fight between deceased and Lucky, he did not participate in tying up the deceased he protested to Lucky that what he was doing was wrong. When deceased was tied up and taken away from the road he was much alive but had been injured. Accused 2 prayed for his acquittal.

## BACKGROUND

The State summary produced by the State briefly state that the two accused and one Lucky all resided in Epworth, Harare and the deceased lived in Rusape where he operated an unregistered taxi. On 3 November 2018, the deceased left his home to visit his rural home but

returned the same day. On the same day, the accused persons and their accomplice left Epworth, Harare by bus destined for Rusape. In Rusape they went to Cheers Bar and drank beer. After some time the two walked to the Harare-Mutare road while their accomplice remained at the bar for a taxi. In no time the accomplice met the deceased who then called accused 1 to find their exact location. When the said Lucky and the deceased arrived where the two accomplice were, the three immediately attacked the deceased with clenched fists, booted fit and a knife all over his body. They immobilised him before taking his cell phone and wallet which were in his trousers pocket. They tied his hands and feet and blindfolded him before putting him on the car which one of them drove. They drove along in his vehicle and upon reaching Magamba turn off they stopped the car. They took the deceased out of the car and demanded the PIN to his ecocash account and assaulted him when he did not oblige. They took away his cell phone and case as well as his car before leaving him there. He was found by passers-by in the morning.

#### STATE CASE

In order to prove its case the State led the following evidence:

- (a) The post mortem report, exh 1, the Doctor noted that: the left wrist was fractured, incisive wound penetrating on the right chest to 2cm above the nipple and 8cm of the sternum area, the wound was 5cm long by 4cm wide, incisive wound by 0.5cm of width on the upper portion of the left thigh, incisive wound of 7cm of length and 4cm of width located on the left tibia, plaque abrasion on the knee, contuse wound of 2cm of length on the left hand, incise wound of 3cm by 2cm of width on the left scapule, incise wound of 5cm of large by 4cm of wide on the right scapule, incise wound of 3cm of large on the outer of thoracic spine cord, incise wound of 2cm of large on the outer of thoracic spinal cord, incise wound penetrating of 4cm of large by 3cm of wide bipanetal area. On the brain, the Doctor detected haematoma, moderate brain oedema, moderate brain congestion, chronis anochroniditis signs. On the thorax: right haemothorax of 60ml, section of the right second rib with haemorrhagic injury, the pleura had a right rapture, the right lung had a rapture of 1cm of large on the upper lobe on the back side, the heart was affected, the liver had a rapture on the right lobe, both kidneys had shock appearance.

As a result of the examination, the Doctor formed the opinion that the cause of death was:

- (a) Hypovolemic shock.
- (b) Right lung rupture and left saphengrum section.
- (c) Multiple stab wound injuries.

The Doctor further remarked that the traject of the stab wounds injuries are multiple, the weapon is a sharp object with approximately 4cm of wide and 10cm of large.

- (b) The State also produced exh 2 which is the call history of the deceased's cell phone showing that deceased called accused 1 after midnight on the morning of 4 November 2018.
- (c) Exhibit 3 was the photo album of the post mortem process showing the deceased's affected body parts.
- (d) Exhibit 4 was the Vodafone cell phone.
- (e) Exhibit 7 was the sim card for number 0784 742542.
- (f) Exhibit 8 was the driver's license belonging to the deceased.
- (g) Exhibit 9 was the blood stained pair of jean trousers.
- (h) Exhibit 10 is the confirmed warned and cautioned statement of accused 2. The statement was recorded by Detective Sergeant Muwowo at Rusape CID on 16 November 2018 at 1500 hours and the English version of the Shona translation was captured thus:

*"I do admit to the allegations that I killed a person called Emmanuel Ngwarati. I committed the offence in the company of my accomplices namely Remmy and Lucky who both stay in overspill in Epworth. Remmy is the one who planned for us to go and steal in Rusape since he was the one who knew that area. On 3 November 2018 at around 2000 hours, I boarded a motor vehicle with my accomplices heading to Rusape. We arrived at Rusape at around 2300 hours and we proceeded to a certain Night Club which is in Rusape where Lucky remained behind looking for a taxi driver. I and Remmy then walked on the road towards Mutare along the Harare-Mutare road. Whilst on that road, I planned with Remmy that if Lucky comes with the taxi driver we will grab him tie him and rob him of his motor vehicle which we will then use in the commission of crimes. We walked with Remmy and we reached a left turn which is along the Harare-Mutare road and we stopped there. The taxi driver Emmanuel Ngwarati then called Remmy asking where we were and Remmy explained to him where*

*we were. Emmanuel Ngwarati then arrived with his motor vehicle in the company of Lucky who was sitting behind the driver's seat. When the motor vehicle stopped, Lucky grabbed Emmanuel Ngwarati's hair and started pulling it backwards. I then opened the driver's seat door and I dragged Emmanuel Ngwarati outside and we laid him on the ground. I assaulted him with fists and booted foot all over his body. Lucky is the one who produced a knife and started stabbing him with it all over his body. Remmy also assaulted him with fists and booted foot all over his body. I then grabbed Emmanuel Ngwarati's hands and Remmy grabbed his legs. We removed his trousers and took two cell phones, wallet and cash amounting to \$1.50 which was in the pockets of his trousers. Lucky then took the car keys and some canvas belts which were in the car and we tied Emmanuel Ngwarati's hands to the back and we also tied his legs with the same canvas belts. Lucky took Emmanuel Ngwarati's trousers and cut off a small piece with a knife which we used to blindfold him so that he will not be able to see wherever we were going. We lifted Emmanuel Ngwarati and we placed him at the centre of the backseat, I and Lucky also sat on the back seat flanking Emmanuel Ngwarati. Lucky drove the car towards Mutare and took a left turn which is along the Harare-Mutare road and stopped on an open area and we took Emmanuel Ngwarati outside the car. Remmy started demanding ecocash account number from Emmanuel Ngwarati but he remained silent. Remmy then took some jumpers from the car and started assaulting him with them on the back and buttocks demanding him to say out his ecocash pin but he remained silent. We then left him there and took his vehicle and returned where we committed another theft crime."*

The statement was confirmed at Rusape Magistrate's Court on 26 November 2018. The State applied in terms of s 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] to have the following evidence of the witnesses to be admitted by the court thereby dispensing the testimony of the witnesses, the defence counsel Mr Nyakureba and Mr Ndlovu indicated that the production of the synopsis of that evidence as outlined in the State summary was by consent. As a result the evidence of James Makolo, Last Adam, Cephaz Maramba, Peter Chikwature, Thomas Nyamudya, Tafadzwa Changara, Mervis Ganyata, Tofirei Mazongonda and Dr Aisa was accepted by the court as not in dispute.

The evidence of Lucia Munyikwa was expunged from the summary of evidence of the State. The State then proceeded to call the wife of the deceased Tsitsi Melanie Madziwa, Ernest Mhishi, Detective Assistants Inspector Gift Mazano, the investigating officer Detective Sergeant Muwowo and MacDonald Mutasa. The evidence of each of these witnesses will be analysed in respect of each accused.

#### WHETHER THE STATE PROVED ITS CASE AGAINST THE FIRST ACCUSED

The first accused in his defence stated that he was not at the scene of the crime on the early morning of 4 November 2018. He states that he was in Epworth. In other words he raised a defence of *alibi*. He however admits that he spoke to the deceased over the phone on the morning deceased was murdered. The defence counsel for the first accused submitted that there is no evidence led by the State to prove that the first accused participated in the robbery, assault and eventual killing of the deceased by the second accused and the other two accused who are still at large, Lucky and Remmy.

He further submitted that accused 2 in this case exonerated first accused from the commission of the offence as he was clear that it was not accused 1 whom he refers to Remmy. First accused also contends that there is no evidence proving that the phone call made by the first accused had anything to do with the deceased's death. No triangulation of the call history was produced to prove the geographical location of the first accused at the time he received deceased's call. On the aspect of the bag, the defence for accused 1 submitted that the bag was not brought to the hospital by first accused but by a third party. When the first accused was already detained only the person who brought the satchel which had deceased's driver's license should explain where he got the bag and how the deceased's driver's license ended being there in the bag.

In relation to the first accused, the State called Detective Assistant Inspector Gift Mazano. He knows first accused as a local of Rusape, he also knew deceased. On 15 November 2018 together with other detectives, they recovered deceased's Vodafone cell phone from Ernest Mhishi who led detectives to accused two. They were then led to first accused by accused two.

Counsel for first accused consented to the admission of the evidence of Mervis Ganyata in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] and the essence of her evidence is that on 23 November 2018 she was present when first accused was arrested at Overspill in Epworth. She was present when a search was conducted on the first accused

which led to the recovery of a Nokia cell phone with an econet line number 0784 742542 which was the last number used to communicate with the deceased. The first accused confirmed the line was his and his participation in the deceased's demise (my own emphasis). McDonald Mutasa is a duly attested member of the Zimbabwe Prison and Correctional Services. He only knows the accused only in connection with this case. On 26 November 2018, he was one of the officers guarding the first accused person. As per procedure at his workplace, he searched the first accused's belongings and found in his satchel two screw drivers and a Zimbabwean driver's license in the name of the now deceased. He informed the police of the findings and handed over the license and screw drivers.

The foregoing evidence of Gift Mazano, Mervis Ganyata and McDonald Mutasa was not in principle challenged by the first accused. The court had no reason to impugn the same in any way. The first accused admits throughout the hearing that he indeed received a call from the deceased though to the first accused, the subject of the call kept changing. According to the State, deceased last called the first accused as to verify their location in Rusape so as to drive there. At the time the ultimate call was made by the deceased, deceased was already with Lucky and first accused at that time of call was with the second accused at a point in Rusape. First accused could not coherently explain to the court why he could be awake at 1245 am and answer incoming calls at that odd hour. We have no hesitation in accepting the version of the State that at the time first accused answered deceased's call, he was with accused 2 in Rusape awaiting the arrival of Lucky and deceased.

The first accused could not produce any evidence that he told the investigation officer about his alibi. He withheld his warned and cautioned statement which could have at least shown that through and through he has been raising a defence of alibi if he had done so surely detectives could have interviewed any witness at Overspill where the first accused was apprehended. Further according to the evidence of Mervis Ganyata, first accused admitted his participation in the deceased's demise upon his arrest at Overspill in Epworth, thus we dismiss the whole euphoria about the defence of alibi raised by the first accused as an afterthought.

McDonald Mutasa gave impeccable evidence, it was not exaggerated and the defence counsel for first accused mounted a casual challenge to his evidence. He did not exaggerate, he logically and fluently told the court when, why and where he searched the first accused's satchel and how he discovered deceased's license. He confronted first accused about the bag and first accused confirmed that it was his. If police had planted the license in the first accused's satchel, they must be the ones to first take first accused to task well before placing first accused



on remand. In any case Detective Assistant Inspector Gift Mazano searched the scene where deceased's body was found as well as deceased's motor vehicle, he did not mention that the license was found.

The unavoidable conclusion we have reached is that deceased's license was in his case or purse which was taken by the assailants from the car at the scene of murder together with the cash, the cell phones and other valuables. That group of assailants included first accused who among other things took possession of the subject driver's licence that is exactly what the Shona adage accurately encapsulates what happened in this matter. "*Mhangachena inoparira parere nhema.*" The recovery of the license by the alert McDonald Mutasa, high recommendation to him, directly places the first accused into the chain of events up to the time deceased was murdered.

We have no hesitation therefore in concluding that "the mysterious" "Remmy" continuously alluded to by the second accused is first accused. It also makes sense why second accused led the police to accused 1 and further as to where first accused was on 4 November 2018. First accused was with Lucky and accused 2 and the fourth person in the car was deceased. We are satisfied beyond reasonable doubt that the State had proved its case beyond reasonable doubt against first accused.

#### WHETHER THE STATE PROVED ITS CASE AGAINST ACCUSED 2

Accused two gave a very long defence outline giving the interns of what happened on the fateful day. The quintessence of his defence is that he was at the scene on the day in question but did not participate in the murder case. It was Lucky who perpetrated the murder while he helplessly stood by. On the issue of the cell phone accused 2 insists that he was selling the phone on behalf of Lucky. He went on further to state that detectives intimidated him and forced him to sign the warned and cautioned statement which he did not agree with. He added that Detective Sergeant Muwowo threatened to shoot him. He was also threatened during confirmation proceedings. He was only refraining Lucky. The second accused further submitted that he has managed to challenge his confirmed statement for it was not made freely and voluntarily.

As regards the second accused, the State led evidence from Ernest Mhishi, the cell phone buyer. His evidence is not heavily contested by the second accused. Accused 2 contacted Ernest Mhishi and offered him a phone for sale. He sold it for \$10-00 which money accused 2 says he gave to Lucky but thereafter both accused 2 and Lucky proceeded to Epworth together.

Ernest Mhishi led to the arrest of accused 2. Detective Assistant Inspector Mazano's evidence is on all fours with Ernest Mhishi as to how accused 2 was arrested. Detective Sergeant Muwowo the investigating officer in this matter went with Detective Assistant Inspector Mazano to Harare recovered the Vodafone cell phone from Ernest Mhishi and then arrested accused 2 upon the indications of Ernest Mhishi. He recorded a warned and cautioned statement from both accused and later facilitated accused 2's statement's confirmation but he did not attend court on the date of confirmation. Detective Sergeant Muwowo was cross examined at length by Mr Ndlovu but he remained cool and denied subjecting accused 2 to any pressure leading to the recording of the warned and cautioned statement and the confirmed statements. The second accused has placed himself squarely at the scene of murder, unavoidably he virtually knows what exactly transpired on the day in question.

#### ACCUSED'S CONFIRMED WARNED AND CAUTIONED STATEMENT

Section 256 (2) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] provides as follows:

“A confession or statement confirmed in terms of subsection (3) of Section *one hundred and thirteen* shall be received in evidence before any court upon its mere production by the prosecutor without further proof.

Provided that the confession or statement shall not be used as evidence against the accused if he proves that the statement was not made by him or was not made freely and voluntarily without him having been unduly influenced thereto, and if after the accused has presented his defence to the indictment, summons or charge the prosecutor considers it necessary to adduce further evidence in relation to the making of such confession or statement he may reopen his case for that purpose.”

The confirmed warned and cautioned statement of accused 2 was produced by the State with the consent of Mr Ndlovu for accused 2. Accused 2 did not challenge the admissibility of the warned and cautioned statement which could have triggered the course of action as per the proviso to s 256 (2) cited *supra*. If the challenge was done by accused 2's defence counsel that would have necessitated a trial within a trial. The court is at a loss when accused 2 in his closing submission contend that he managed to prove that he did not voluntarily give the warned and cautioned statement to the police. Maybe he thinks that by putting questions to the investigation officer during the main trial, he was challenging the admissibility of the statement before even the production of that statement. (See the matter of *Moffat Sibanda v The State* SC 61/91 per GUBBAY CJ (as he then was) and also *R v Schumber Kuffler* 1969 (1) RLR 78 at 80 PER BEADLE CJ.)

We are satisfied that the production of the second accused's confirmed warned and cautioned statement by the State with the consent of the defence counsel was above board and the statement is admissible against accused 2, in terms of s 256 (2) of the Criminal Procedure and Evidence Act. See the case of *Kevin Woods and 2 Ors v The State* 1993 (2) ZLR 258, per GUBBAY CJ (as he then was)). On page 11 of the report, he aptly held that:

“.....in the absence of a patent irregularity in proceedings to confirm the warned and cautioned statement and indications made by the first and second appellants, all such statements were admissible on their mere production in terms of s 242 of the Criminal Procedure and Evidence Act.....”<sup>1</sup>

Accused 2 throughout his defence shifts all the blame to Lucky alleging that he initiated the trip to go to Nyazura to collect the gold parcel, confronted deceased, assaulted deceased and stabbed him several times using a knife. In our view accused is merely taking advantage of the absence of Lucky who is not before us. However the confirmed warned and cautioned statement, the selling of the cell phone to Ernest Mhishi places the second accused at the helm of the crime, why did not Lucky sell the cell phone on his own?

Section 196A of the Criminal Law (Codification and Reform) Act [Chapter 9:23] provides:

“If two or more persons are accused of committing a crime in association with each other and the State adduces evidence to show that each of them had the requisite *mens rea* to commit the crime, whether by virtue of having the intention to commit it, or the knowledge that it would be committed, or the realisation of a real risk or possibility that a crime of the kind in question would be committed, then they may be convicted as co-perpetrators in which event the conduct of the actual perpetrator (even if none of them is identified as the actual perpetrator) shall be deemed to be the conduct of every perpetrator, whether or not the conduct of the co-perpetrator contributed directly in any way to the commission for the crime by actual perpetrator.”

The conduct of Lucky and the accused was collaborative of each other's. We are satisfied that both accused and their outstanding accomplice, Lucky, set out from Harare with the express intention of committing robbery in Rusape. In Rusape they picked out the deceased upon the involvement of accused 1 who was incidentally very familiar to both deceased and the geography of the town, they tactfully lured him to an isolated rendezvous where they brutally assaulted deceased. They later kidnapped him to the place where his body was eventually found, demanded the PIN number to his ecocash account, assaulted him further then ransacked his motor vehicle. They then drove away after tying him and blind-folded him. The second accused is obviously not telling the truth that he did not report the matter to the police

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<sup>1</sup> See also the provision of s 273 of the Criminal Law Procedure and Evidence Act [Chapter 9:07]

because he feared Lucky. He did report the matter because he was a co-perpetrator to the murder of deceased.

We also reject his (accused 2's) that he was just watching helplessly as Lucky was literally mutilating deceased's body with a lethal weapon. As already highlighted hereinabove the detailed account of accused 2's version both in the defence outline and confirmed extra-curial statement tallies with some of the facts admitted by both as common cause in this matter. The State has successfully managed to prove the case against accused 2 beyond reasonable doubt. He participated knowingly in the robbery of deceased and also participated actively in the killing of the deceased and dumping his body. He benefited a cell phone from the loot and accused 1 took away deceased's driver's license.

We are thus satisfied that both accused are guilty of Murder with actual intent in terms of s 47 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

### **Sentence**

In assessing an appropriate sentence the court will take into account both the mitigatory and aggravatory features submitted on behalf of the accused and the State. Accused 1 is aged 28 years and accused 2 is aged 30 years. Both are family men and first offenders. On the other hand they committed the offence out of greed and laziness in order to live a joyous life.

The offence committed by the accused is by all standards of evaluation punishable by capital punishment, the ultimate penalty for a murder charge committed in aggravatory circumstances in this case during robbery. The murder callous, heartless and brutal to say the least.

Accused kicked deceased with booted feet, punched him with fists and stabbed him repeatedly and the post mortem shows that deceased's body was littered with stab wounds all over the body, front, back, on the legs and arms. He was also bruised. Deceased died a horrible and painful death. The knife used was 4 cm wide and the blade 10 cm long. Accused stripped deceased and left him semi-naked in public for all passers-by to see. Deceased could not cry for help, could not move because accused had immobilised him. The offence calls for a severe penalty. However to second accused's credit he led police to the arrest of the first accused.

Section 47 (4) (a) provides that the penalty for murder committed in aggravated circumstances is a death penalty, imprisonment for life or imprisonment for any definite period of not less than twenty years.

Accordingly given the horrific circumstances this murder was committed, both accused are sentenced as follows:

Imprisonment for life.

*National Prosecuting Authority*, state's legal practitioners  
*Maunga Maanda & Associates*, first accused's legal practitioners  
*Gonese & Ndlovu*, second accused's legal practitioners