

THE STATE

Versus

JOSPAT SIBANDA

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 9 JUNE 2022 & 29 JUNE 2022

Criminal trial

K.M. Guveya for the State
T. Ndlovu for the accused

DUBE-BANDA J:

Introduction

1. The accused person is charged with the crime of murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on the 1st January 2022, and at a Sewage Stream near Roman Catholic Church, Pumula South, Bulawayo he drowned Constance Chitete (hereinafter referred to as the “deceased”) three times inside the Sewer Stream until she lost consciousness intending to kill her or realising that there was a real risk or possibility that his conduct may cause her death continued to engage in that conduct despite the risk or possibility of death.
2. The accused pleaded not guilty to the charge. He was legally represented throughout the trial. The State tendered an outline of the State case, which is before court and marked Annexure A. The accused tendered his defence outline and is before court and marked Annexure B.

3. In brief the accused's defence is that he was so intoxicated that he had a blackout and did not have an appreciation of what he was doing when he caused the death of the now deceased.

The State case

4. In the opening of the State case the State counsel with the consent of the accused tendered the following documentary exhibits: post-mortem report number 04-04-22 (Ext. 1); and accused's confirmed warned and cautioned statement (Ext. 2).
5. The State Counsel further sought and obtained admissions from the accused in terms of section 314 of the Criminal Procedure & Evidence Act [*Chapter 9:07*] (CP & E Act). These related to the evidence of the following witnesses as contained in the summary of the State case:
 - i. The evidence of Witness Sibanda. His evidence is that on the 1st January 2022, at around 0500 hours, he was jogging with his wife along an unnamed road in Pumula South heading towards Godlwayo Drive. As they got onto the foot path from the unnamed road, he heard a voice of a woman screaming from the left side of the road within the bushy area of the sewer stream.
 - ii. As the witness and his wife carried on with their run along the foot path which connects Godlwayo Road, the screams of the woman intensified and could be heard that she was moving towards Godlwayo Drive a few meters away from the Bridge. The woman was screaming and shouting saying: "Help me, he wants to kill me." This witness and his wife increased their pace rushing towards Godlwayo Drive to see what sort of help the woman needed. As the witness and his wife got to Godlwayo Drive, he saw accused aggressively holding her by her shoulders and the woman who was struggling to free herself. Whilst at a distance of about thirty-seven meters the witness's wife

shouted to alert the two of their presence by saying: “hey you what are you doing leave her” but the accused did not stop.

- iii. The witness and his wife moved to a point towards the bridge along Godlwayo Drive and stopped. The witness saw accused holding deceased by the shoulders. It was almost sunrise. The witness’s wife shouted saying: “Hey you, leave that person alone.” The accused was aggressively holding deceased by the shoulders and she was struggling to free herself and screaming louder.
- iv. Accused violently pushed the deceased into the sewer stream and accused immediately followed after her by jumping into the stream. This witness and his wife then rushed to the bank of the sewer stream where accused was standing before he pushed deceased into the stream. The witness observed that the sewer waters were almost below accused and deceased’s shoulders. He also observed some struggle marks on the banks of the stream caused by accused and deceased.
- v. Accused then immersed deceased twice into the sewer waters with an approximate two minutes interval. The witness’s wife began screaming out for help and appealing to the accused to stop what he was doing but accused did not stop, instead he immersed deceased for the third time. This witness saw accused pressing deceased continuously by the back of the neck with a tight grip immersing her in the sewer water. The deceased was gasping for air by splashing the sewer water but accused did not stop to allow her to gasp for air. Now deceased eventually became motionless.
- vi. This witness seeing that deceased’s life was in danger and he was helpless, rushed home to go and alert the Police about the incident. He left his wife at the banks of the sewer stream monitoring the accused. He reported at Pumula Police Station and the police accompanied him to the scene. Upon returning to the scene, this witness’s wife showed the police the place where the accused was hiding. They could not see deceased’s body which had submerged under

the water. The police persuaded the accused to come out of the water, but he refused. A crowd started gathering at the scene and accused pelted it with stones. This witness retreated to his vehicle leaving the police managing the scene.

- vii. The evidence of Kudzai Wemba. His evidence was that he is a member of the Zimbabwe Republic Police (Z.R.P.). On the 1st January 2022, in the company of Witness Sibanda and other police officers he attended the crime scene. It was an active scene. At the scene Lwazi Sibanda directed his team to where accused was hiding. This witness asked the accused to come out of the sewer stream and asked him where the body of the deceased was, and the accused did not respond. The witness noticed that a crowd was slowly gathering at the scene, and he continued to persuade the accused to come out of the sewer stream. The accused began throwing stones towards this witness and the crowd. The witness retreated and returned to talk to the accused to reveal where the body of the deceased was. Accused finally pointed out at a place in the sewer stream where there were some reeds and said that was the point where the body of the deceased was.
- viii. This witness asked the accused to bring out the body of the deceased. Accused proceeded to the place where he had pointed out, and lifted the body of the deceased and carried it to the banks of the stream. He left the body on the banks and quickly returned to the sewer waters. He continued throwing stones to the witness and the crowd.
- ix. This witness observed that the body of the deceased had some froth on the nose, scratch above the left eye and some reddishness on her back. One Ruth Sibelo arrived and identified the body to Sergeant Moyo as that of Constance Chitete. This witness continued to persuade the accused to come out of the sewer water and he eventually came out. Upon reaching the banks of the river accused punched Sergeant Moyo, felling him down. The crowd pounced on the accused and assaulted him with fists, booted feet and sticks. This witness

intervened and convinced the crowd not to assault the accused. This witness and Constable Dube assisted by the public managed to handcuff the accused. Later in the day accused complained of painful left leg and hands and he was taken to hospital for treatment.

- x. The evidence of Delight S Netha. Her evidence was that she is a member of the Z.R.P. and was that she was part of the police team that attended an active scene on the 1st January 2022. Lwazi Sibanda showed the police where the accused was hiding in the sewer waters. Accused finally came out of the waters and was arrested and handcuffed with the help of the public. Her evidence is that Detective Sergeant Munyanyi of CID Scenes of crime took photographs of the body before it was placed inside the police dead body metal box. Her evidence is that during the time the body was under her care it did not suffer further injuries.
- xi. The evidence of Brian Munyanyi. He is a member of the Z.R.P currently stationed at CID Scenes of crime. On the 1st January 2022, and during the course of his duties he attended a scene of murder at a Sewer stream near Roman Catholic, Pumula South, Bulawayo. Upon arrival at the scene the body had been removed from the water and was lying by the banks of the sewer stream. He took photographs of the body of the deceased and he observed that it had some froth on the nose, reddishness at the back and a scratch cut wound above the left eye.
- xii. The evidence of Erick Moyo. He is a member of the Z.R.P and his evidence was similar to that of the other police officers who attended the scene of crime. The evidence of Pedzai Murarava. His evidence was that he is a member of the Z.R.P. and the investigating officer in this matter. His evidence is that the accused was admitted at Mpilo Hospital from the 1st to the 3rd January 2022. On the 4th January 2022, this witness recorded a warned and cautioned statement from the accused who was in his sound and sober senses. He gave his statement freely and voluntarily without any undue influence

being brought to bear on him. The evidence of Benjamin Matavo. He is a member of the Z.R.P. and on the 4th January 2022, and in the course of his duties he witnessed the recording of a warned and cautioned statement from the accused. His evidence is that the accused was in his sober and sound senses when he gave his statement, and he gave it freely and voluntarily and without any undue influence being brought to bear on him.

xiii. The evidence of Doctor Juana Rodriguez Gregori. His evidence was that he is a registered medical practitioner based a United Bulawayo Hospitals. He is a pathologist. On the 3rd January 2022, and in the course of his duties he examined the remains of deceased and compiled his findings in a post mortem report number 04-04-22 (Exh.1).

6. The State called two witnesses who gave *viva voce* evidence. We summarise their evidence and our findings on their credibility. The first to testify was Lwazi Sibanda. He evidence was that on the 1st January 2022, at around 5 am she and her Witness Sibanda went for a morning jog. It was in the morning and visible. She heard a woman screaming. The woman was screaming saying “please help me someone wants to kill me.” At they moved closer to the direction of the screams, she saw accused and now deceased. She shouted at the accused to leave the deceased alone. She was approximately thirty metres away from the accused and the now deceased. She saw the accused holding deceased from the back of the neck and pulling her towards the sewer stream. She said she continued shouting saying “let her go,” and she saw accused pushing the now deceased into the sewer stream. Thereafter the accused jumped into the sewer water. The level of the water was just below the shoulders of the accused. The witness and her husband moved closer to sewer stream. The witness pleaded with the accused not to kill the deceased, but he continued immersing her into the sewer water. Each time the accused immersed deceased into the water, the witness saw that she was struggling. He immersed her three times into the water. The first and second time she was struggling, but the third time she was no longer struggling.

7. On realising that the now deceased was in danger, the witness asked her husband to go and make a police report. She remained monitoring the movements of the accused. At that moment now deceased had drowned and she could not see her and accused person disappeared under the water. After a while accused emerged and she realised that he was hiding within the reeds in the sewer water.
8. The husband of the witness arrived in the company of the police. The police asked accused to come out of the water under the pretext that his girlfriend was out of the water, and she had asked the police to ask and assist accused to come out of the water. Accused rejected this ruse or trick and said the deceased is inside the water and pointed to where the body of the deceased was located. After a while he lifted the body of the deceased from the sewer stream and he returned to the stream and tried to drown himself. The body of the deceased was forming in the mouth.
9. Accused picked stones and threw them towards the people who had gathered at the scene. It took a long time for him to come out of the water. When he eventually emerged from the water he punched and floored down a policeman. After he punched a policeman the people who had gathered at the scene started to beat up the accused. The police protected the accused from the people who were beating him. This witness then left the scene.
10. Under cross examination this witness testified that when she shouted at the accused to leave the now deceased alone, accused said nothing. She said during the thirty minutes her husband had gone to call the police, accused remained in the water. It was put to this witness that accused says he had taken a lot of alcohol and energy drinks to such an extent that he did not know what he was doing. The witness said she had no comment.
11. Mrs Lwazi Sibanda came across as a witness who had a reasonable recall of events. Her evidence was not challenged in any material respects and there is no reason not to accept it.

12. The second witness to testify was Ruth Sibelo. Her evidence was that now deceased was her friend. On the 31st December 2021, she was in the company of the deceased and accused joined them at around 8 pm. Accused was deceased's boyfriend. Accused brought a bottle of alcohol called Two-Keys, it was half full. He also brought a bottle of a drink called Switch, this was used to dilute the alcohol. They all started drinking. Occasionally accused and now deceased would go out of the house and smoke, return and continue drinking alcohol. At that time the witness did not see anything amiss between accused and now deceased. At 11 45 pm now deceased and accused left the house to go and watch firecrackers. They returned at 0020. When they returned they were now in the company of deceased's brother. The deceased's brother asked this witness to counsel accused and now deceased.
13. The reason they needed counsel was that when they had gone to watch firecrackers, they had a misunderstanding. This misunderstanding was caused by a young man who greeted now deceased, and this did not go down well with accused. After this witness counselled them, accused appeared calm and said he had realised his mistake.
14. The half bottle of Two-keys was finished. This witness's husband brought another bottle of alcohol called Hot Stuff. The bottle was almost half full. The accused and the now deceased drank the alcohol, and this witness could not remember whether it was finished or not. The accused and now deceased would occasionally go out and smoke.
15. The last this witness could recall is that accused went out for a smoke, he returned and asked deceased to join him outside. Deceased joined him outside. It was 4 am at that time. First she could hear them talking outside, and later she could not hear them anymore. She went out and stood by the gate to check, and she did not see them. She returned to the house and dozed while seated on a sofa.
16. This witness testified that she was awakened by someone who was calling her. She then went to the gate. This person asked the kind of hairstyle now deceased was wearing, she described the hairstyle to this person. She was then told that a person wearing such a hairstyle had died in the sewer stream. This witness then went to the sewer stream and found a lot of people gathered at the scene. She then identified the

body of the deceased. The body had no shoes, because deceased had left her shoes at this witness's house. She did not know what caused the death of the now deceased. Under cross examination this witness testified that she had known the accused person for five years. She did not know the type of alcohol he consumed nor whether he was a heavy drinker. At the time her husband brought an almost half bottle of alcohol she noticed that accused and deceased were not very drunk. It was suggested to her that accused was very drunk and he did not know what he was doing, the witness said he was drunk but not to the extent of not knowing what he was doing. She had seen him on previous occasions drinking Hot Stuff, but not the Two-Keys. It was suggested to her Two-keys has the highest alcohol percentage, she agreed. Asked whether accused had a history of violence in the last five years, her answer was no.

17. In re-examination she was asked to comment on the sobriety of the accused after drinking the Hot-Stuff brought by her husband, her answer was he was moderately intoxicated.

18. Ms. Ruth Sibelo was a very good witness, never stating more than she knew or believed. We accept her evidence without reservation.

19. At the conclusion of the testimony of Ruth Sibelo the prosecution closed the State case.

The defence case

20. Accused testified in his defence. His evidence was that on the 31st December 2021, he went to work. At around 11 am he bought a bottle of Hot Stuff called Two-Keys and some energy drinks for diluting. It was a 750 mm bottle. He drinks alcohol occasionally. He started drinking alcohol at 2 pm. He left his work place and arrived at Ruth Sibelo's house at around 8 pm. When he got to Ruth Sibelo's place the bottle of Two-Keys was above half full. The Hot Stuff was being diluted with energy drinks he bought in the morning. During the drinking accused and now deceased would go out of the house to smoke. They drank the alcohol until it was time to shoot firecrackers to celebrate the New Year. They left Sibelo's house and went to a house

where there was a party. The party was about sixty metres from Sibelo's house. At the party they were drinking Hot Stuff and it was served having already been mixed or diluted.

21. During the time they had gone to watch firecrackers and celebrate the New Year, as he was walking with the now deceased a certain boy tapped deceased's buttocks and pulled her. The accused protested to the deceased about the conduct of the boy. The boy struck accused with a fist and then ran away. He testified that an argument ensued with now deceased, telling her that he had been assaulted because of her. He wanted deceased to tell her where the boy resided. That is when deceased's brother joined them and advised him not to chase the boy. They later returned to Sibelo's house.
22. Ruth Sibelo's husband brought a bottle of alcohol. They drank the alcohol and he had no idea of the type of alcohol Sibelo's husband brought. They left Sibelo's house at around 4 am on the 1st January 2022, and they went to the house where there was a party and continued drinking alcohol at that house.
23. He started feeling dizzy, and feeling like he was suffocating. He realised that he needed some fresh air. He then went outside and sat near a durawall. The now deceased followed him and asked how he was feeling. She was tapping him trying to wake him up but he could not hear her clearly. He was trying to sit up but was realising that he was not alright. The now deceased suggested that she would get someone to help her accompany accused home so that he could go and sleep. Thereafter he lost consciousness and does not recall what happened thereafter.
24. The accused testified that it actually scares him to hear the things that he is alleged to have done after he lost consciousness. He does not know what had happened to him to do such things. It hurts him so much that he could not recall any of those things that he is alleged to have done.
25. His evidence was that he gained consciousness when he was in the police cells. He did not have an idea of where he was and what he was doing at that place. He asked

people and they told him that he was at a police station. He realised that his legs were swollen and he was bleeding from the head. He tried to stand up and failed. The following day he was taken to hospital, his index finger was amputated and a plaster was put on his leg.

26. Accused's evidence is that he did not kill deceased because of the incident involving the boy. His relationship with deceased had come a long way, they had problems before and solved them without resorting to violence.
27. Under cross examination he conceded that his version about the party, which was sixty metres from Sibelo's house was not put to Ruth Sibelo. He conceded further that according to the evidence of Sibelo they were out to celebrate the New Year from 11:45 and returned at 0020. He said it could be so. He did not dispute that when the deceased left Sibelo's house at 4 am she left her shoes. When it was suggested to him that the deceased would not have gone to the party without shoes, his answer was he did not realise that she had no shoes.
28. He conceded that he was angry when the boy touched deceased's buttocks. He testified that he had been resident of Pumula South, Bulawayo for more than ten years. He has always known of the sewer stream and that people drowned at that stream. When it was put to him that he is the one who caused the death of the deceased, his answer was he could not confirm it because he did not know. When it was suggested to him that he chooses to remember what he wants to remember and choses to forget what he wants to forget, he said it was not so. When put to him that he voluntarily drowned deceased, he disagreed. It was suggested to him there was no party that he attended with deceased, he said it is not like that.
29. Generally, we hold the view that accused did not tell the truth. We make a negative finding on his credibility.
30. At the conclusion of the testimony of the accused, the defence case was closed.

Analysis of the evidence

31. Witness Sibanda's evidence was admitted in terms of section 314 of the Criminal Procedure and Evidence Act. His evidence is that he saw accused violently pushing the now deceased into the sewer stream. After he pushed her in the sewer stream accused immediately followed after her by jumping into the stream. The witness observed that the sewer waters were almost below accused and deceased's shoulders. Accused then immersed deceased twice into the sewer waters with approximate two minutes interval. This witness saw accused pressing deceased continuously by the back of the neck with a tight grip into the sewer waters. The deceased was gasping for air by splashing the sewer waters but accused did not stop to allow her to gasp for air.

32. Lwazi Sibanda who remained on the banks of the sewer stream when her husband went to make a police report. She pleaded with the accused not to kill the deceased, but he continued immersing her into the sewer water. Each time the accused immersed deceased into the water, the witness saw that she was struggling. He immersed her three times into the water. The first and second time she was struggling, but the third time she was no longer struggling. Her evidence was that deceased drowned and she could not see her body anymore and accused person disappeared under the water. After a while accused emerged and she realised that he was hiding within the reeds in the sewer water. After the arrival of the police, accused lifted the body of the deceased from the sewer stream. The body of the deceased was foaming in the mouth.

33. A member of the police team Kudzai Wemba's evidence is that when the other police details arrived at the sewer stream he asked the accused to reveal the location of the body of the deceased. After a while accused pointed at a place in the sewer waters where there were some reeds and said that was where the body of the deceased was. He asked the accused to bring out the body of the deceased. Accused proceeded to the place where he had pointed out, and lifted the body of the deceased and carried it to the banks of the stream. The body had some froth on the nose, scratch above the left eye and some reddishness on the back. The body was identified by Ruth Sibelo as that of the deceased.

34. We find it proven that it is the accused who caused the death of the now deceased by drowning her in the sewer stream. The post mortem report shows that the cause of death was asphyxia and drowning. The findings in the post mortem report are consistent with the evidence of the witnesses, that the accused was immersing deceased in the sewer water and he did so until deceased stopped struggling. We find it proved that the actions of the accused caused the death of the deceased.
35. Pruned to its bare bones accused's defence is that he was so intoxicated that he had a blackout and did not have an appreciation of what he was doing when he caused the death of the deceased.
36. The accused held a grudge against the deceased. The incident of the boy who touched deceased's buttocks and pulled her angered the accused. He even retorted to the deceased that he had been assaulted because of her. That he harboured a grudge against the deceased cannot be disputed. It was because of this incident that deceased's brother accompanied them to Sibelo and asked her to counsel them. Motive is not intention but it may sometimes light-up the evidence and provide answers to some lingering questions.
37. The evidence is that on the 31st December 2021, he bought a 750mm bottle of Hot-Stuff called Two-Keys. He started drinking alcohol at 2 pm. He was sharing the bottle with a friend. Accused's evidence is that when he arrived at Ruth Sibelo's house the bottle was more than half full. Sibelo said it was half full. No one measured whether it was half full or more than half full. We give accused the benefit of doubt and accept that the bottle was more than half full. The three i.e. accused, now deceased and Sibelo finished off the more than half full bottle of Hot Stuff. The alcohol was diluted by an energy drink called Switch. The bottle brought by the accused was finished. Sibelo's husband brought another bottle of alcohol called Hot Stuff. The bottle was almost half full. The accused and the now deceased consumed the alcohol, and Sibelo could not remember whether they finished it or not.

38. Accused's evidence is that when he and the deceased left Sibelo's house at 1145 to celebrate the New Year, they joined a party that was sixty metres from Sibelo's house. This is the party he said they went to at 4 am after leaving Sibelo's house for the second time that night. He said at that party they were drinking already mixed Hot Stuff, and does not know the name of the Hot Stuff that was being served.
39. If indeed this party was sixty metres from her house, Sibelo could have heard the noise from the party. She said that when accused and now deceased left at 4 am, she went to the gate to check on them. She could have heard the noise from this party or seen that there indeed was a party. Sibelo did not testify about this party. They did not tell her about this party. This issue of a party was not put to Sibelo during cross examination. At 4 am deceased left her shoes at Sibelo's house. It is unlikely that she could have gone to a party bare-footed, i.e. without shoes. We find it false that accused and now deceased attended a party that was sixty metres from Sibelo's house.
40. From the evidence we are able to find that accused went outside Sibelo's house. Later returned and asked deceased to follow him and the two went outside. Sibelo could first hear them talking and finally she could not hear them no more. The reason deceased left her shoes in the house is because she did not anticipate that she would go far. We do not know what trick accused used to ask now deceased to leave Ruth Sibelo's home. The evidence shows that at some point he started pulling her towards the sewer stream.
41. The witnesses heard the screams of the deceased and it could be heard that she was moving towards the sewer stream. The woman was screaming and shouting saying: "help me, he wants to kill me." They then saw accused aggressively holding deceased by shoulders and she was struggling to free herself. When these witnesses got to the banks of the sewer river they saw struggle marks caused by the accused and the deceased. Accused violently pushed the deceased into the sewer stream and accused immediately followed after her by jumping into the stream. The deceased screamed saying accused wanted to kill her because of what he said or did which made her believe that indeed he wanted to kill her.

42. Accused had always known of the sewer stream and that people drowned at that stream. Therefore he knew the direction of the sewer stream. Pulled the deceased towards the stream. Struggled with her and finally overpowered her and violently pushed her into the sewer stream. He chose a deep point where water was up to their shoulders. He immersed her in the water three times to ensure that she was dead. In the process she was struggling and he was able to overpower her. He had such a presence of mind to choose the most deadly place, the will power and the strength to overcome a struggling person and drown her in sewer waters. The witnesses said he was violently holding her by the shoulders and neck, and the post mortem report shows that deceased had a superficial groove in the left lateral of the neck. This groove was caused by the violence used by the accused when struggling with the deceased and drowning her. These cannot be actions of a person who had lost consciousness and had a blackout because of intoxication.
43. When the police arrived at the scene they tried to play a ruse on him, and asked him to come out of the water under the pretext that his girlfriend was out of the water, and she had asked the police to ask and assist accused to come out of the water. He quickly rejected this ruse or trick and told the police that the deceased was inside the water and pointed to where the body of the deceased was located. He was correct because indeed the body of the deceased was still inside the water. He had the presence of mind to reject this ruse.
44. After some negotiations with the police he lifted the body of the deceased from the water and placed it on the banks of the stream. He returned into the water and picked up stones and threw them towards the people who had gathered at the scene. It took a long time for him to come out of the water. When he eventually emerged from the water he punched and floored down a policeman. He had the presence of the mind to pick stones and throw them at the people at the scene. He had the strength and energy to punch a policeman so hard that the policeman fell down. These cannot be actions of a person who had lost consciousness because of intoxication.

45. In our view indeed the accused was intoxicated, but not to the extent of having a blackout or losing consciousness. He lied about going to a party with deceased and the alcohol that was served at that party. This was a lie on a material issue. It is trite that in the face of such a lie we may infer that there is something which he wishes to hide. But we are not entitled to say that because he lied, he is therefore a criminal. See: *S v Vhera* 2003 (1) ZLR 668 (H). It is possible that an innocent person may put up a false story because he thinks that the truth is unlikely to be sufficiently plausible. See: *Maharaj v Parandaya* 1939 NPD 239. In the circumstances of this case this lie constitutes an additional factor against the accused that has to be taken into account with all other relevant factors. Our view is that he lied about the party for the purposes of exaggerating his intoxication. He lied also to create a façade and a falsehood that he was involuntarily intoxicated and lost consciousness.

46. In our view his drunkenness falls into the realm of section 221 of the Criminal Law (Codification and Reform) Act [Chapter 9: 23]. He participated in the consumption of alcohol, first a 750 mm bottle of Hot Stuff called Two-keys. This was being diluted with an energy drink. He again participated in the consumption of the half bottle of Hot Stuff brought by Sibelo's husband. He was voluntarily intoxicated. Our view is that the effect of his intoxication was not such that he lacked the requisite intention, knowledge or realisation of the crime of murder. In terms of our law such intoxication is not a defence to the crime.

47. We reject the accused's defence that he was involuntarily intoxicated. We reject his version that he was so intoxicated that he had a black out and did not appreciate what he was doing. It is falsehood.

Verdict

48. The evidence and the post mortem report shows that the accused persons caused the death of deceased. Having carefully weighed the evidence adduced as a whole in this trial we are satisfied that the State has proved its case beyond a reasonable doubt against the accused person.

49. The accused person is charged with murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*]. It is no longer necessary in our law to specify that the accused has been convicted under 47(1) (a) or (b). See: *Mapfoche & Another v The State* SC 84/21.

In the result:

Accused is found guilty of murder as defined in section 47 (1) of the Criminal Law (Codification & Reform Act) [*Chapter 9:23*].

Sentence

50. Mr *Sibanda*, this court must now decide what sentence is appropriate for the offences for which you have been found guilty. To arrive at the appropriate sentence to be imposed, this court will look at your personal circumstances, take into account the nature of the offence you have been convicted of, and factor in the interests of society.

51. Mr *Guveya* State Counsel submitted that this murder was committed in aggravating circumstances in that it was premeditated. We do not agree that this murder was premeditated in the reading of section 47(3) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. In any event section 47(3)(a) unlike section 47(2) gives this court a discretion in respect of what it could consider as aggravating circumstances. We make a finding that this matter was not committed in aggravating circumstances.

52. Your personal circumstances have been placed on record by your defence counsel, they are these: you are 38 years old. Married with two minor children. You are the sole provider of your family. You are a first offender. These are mitigatory factors in your favour.

53. It has been placed on record that you are remorseful. When you were giving evidence you actually shed tears. You said you were sorry for causing the murder of the now deceased who was your girlfriend. You said you loved her and still love her and you are pained about how she met her death. A lot of friends had deserted you because of causing the death of the now deceased. You further said her parents trusted you and accepted you as their son in law notwithstanding that you were a poor man. You wish you could talk to her parents and apologise. We accept that you are remorseful. We take this into account in considering an appropriate sentence.
54. We also factor into the sentencing equation that you committed this crime while you were under the influence of alcohol. The evidence is clear that you were intoxicated in the reading of section 221 of the Criminal Law (Codification and Reform) Act. We take this into account in considering an appropriate sentence.
55. On the other side of the pendulum the offence for which you have been convicted of is grave and serious. We note that you committed a barbaric act of mindless brutality directed at a helpless and vulnerable woman. The interests of society is significantly implicated in this case in that it involves violence of an extremely serious degree against a woman. Violence against woman is generally prevalent, society is entitled to expect of courts to impose sentences that send a message clearly, loudly and without ambiguity that violence against the weak and vulnerable in our society will not be tolerated. This court must deal effectively and severely with this kind of violence.
56. The evidence shows that an extraordinary degree of violence was deployed against a defenceless human being. The violence that preceded the killing of the now deceased was such as to place this crime in the category of the most serious. It is difficult to conceive the degree of violence that you meted out against the now deceased, and what the deceased experienced in her last moments. What a horrible way to end the life of another human being.
57. State Counsel submitted that you be sentenced to life imprisonment. We spare you such a sentence because of the mitigatory factors enumerated above. However you

still deserve a long term of imprisonment. Society expects no less for such serious crimes.

58. Taking into account the facts of this case we are of the view that the following sentences will meet the justice of this case:

Accused is sentenced to 18 years imprisonment.

National Prosecuting Authority State's legal practitioners
Sansole & Senda accused's legal practitioners