

THE STATE

Versus

MTHULISI TSHUMA

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J with Assessors Mr. Mabanda and Mr. Ndlovu
BULAWAYO 24, 25 & 27 October 2023

Criminal trial

Mr. K.M. Kuveya, for the State
Mr. Mpofu, for the accused

DUBE-BANDA J:

[1] The accused, Mr. Mthulisi Tshuma, is appearing before this court charged with the crime of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) [Act Chapter 9:23] (Criminal Law Code). It being alleged that on 25 July 2021 he unlawfully caused the death of Leon Mnkandla (herein after referred to as the “deceased”) by striking him four times on the head with an axe intending to kill him or realising that there is a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused, who was legally represented throughout the trial pleaded not guilty to the charge, and offered a guilty plea to the lesser crime of culpable homicide. The State rejected a plea of guilty to culpable homicide, and the matter proceeded to trial. The State tendered an outline of the summary of the State case (Annexure A), which was read and is part of the record, and the accused tendered a defence outline (Annexure B) which was also read and is part of the record. The accused admitted that he indeed axed the deceased, and pleaded self-defence and provocation. He sought that he be found not guilty and acquitted of the crime of murder and be convicted of the crime of culpable homicide.

[3] The accused made admissions in terms of s 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] (CP & E Act). The admissions relate to the evidence of certain witnesses as it appears in the summary of the State case.

[3.1] The evidence of Doctor Juana Rodriguez Gregori is that she is a registered medical practitioner stationed at United Bulawayo Hospitals. Her evidence is that she examined the remains of the deceased and compiled a post mortem report (exhibit 1) depicting the injuries inflicted on the deceased and concluding that the cause of death was encephalic dislaceration; skull bones fracture; and cranial trauma.

[3.2] The evidence of Obvious Sibanda (Sibanda) is that when he entered the house, the accused locked the exit door of the house and put the keys into his pocket. At the house he found the deceased, accused and others drinking beer seated inside the accused's bedroom. He joined and partook in the beer drinking. Thereafter, he heard the accused and the deceased exchanging harsh words, but he did not know the cause of the quarrel. He then saw the accused and the deceased leaving the bedroom and entering the sitting room. As the accused left the bedroom, he took an axe with a wooden handle which was behind his bedroom door. One Simon Hwesa (Simon) tried to restrain the accused from assaulting the deceased, but the accused would have none of it and he struck Simon on the mouth with the axe handle. Simon then jumped out of the house through the window in one of the bedrooms and ran away. The witness also escaped through a window and ran away.

[3.3] The evidence of Emmanuel Nyoni is that he is a member of the Zimbabwe Republic Police (ZRP). He attended the scene of crime. He observed the body of the deceased lying on the ground outside the house. The body had no shirt and it had four deep cuts on the left side of the head. He attempted to enter the accused's house *via* the sitting room door, but it was locked. He secured the body of the deceased and the scene of crime until day break. His further evidence is that the body of the deceased did not suffer any further injuries while under his care.

[3.4] The evidence of Privilege Zharare is that he is a member of the ZRP. He attended the scene of crime. The body of the deceased was identified to him by the accused. The body lay adjacent to the accused's bedroom window. There were some shattered pieces of window panes on the ground next to where the body of the deceased was lying. He saw four deep cut wounds on the left side of the deceased's head. The head was deformed. There was a trail of blood from where the body of the deceased lay leading to the accused's sitting room. There was also a pool of blood just by the door way inside the sitting room. He

recovered an axe used in the commission of this crime; a blood-stained green jacket belonging to the accused; and an iron rod and an axe head without a handle which belonged to the deceased. He recorded a warned and cautioned statement from the accused. The accused gave his statement freely and voluntarily without any undue pressure or influence being brought to bear on his person.

[4] The State tendered with the consent of the accused the following documentary and real exhibits: the Post Mortem Report No. 734-562-21 (exhibit 1) compiled by Doctor Juana Rodriguez Gregori who examined the remains of the deceased. The confirmed warned and cautioned statement of the accused (exhibit 2). An affidavit (exhibit 3) deponed by Ernest Dube, Postmaster stationed at Maphisa Post Office, who at the request of the ZRP measured an axe with a wooden handle, and noted that it had the following measurements: 65cm long; length of blade 17 cm x 8 cm. This is the axe (exhibit 5) that was used in the commission of this crime. A blood-stained green jacket (exhibit 4); an iron rod (exhibit 6) with the following measurements length 1.72cm; weight 2kg; and an axe head (exhibit 7).

[5] The State called two *viva voce* witnesses and the accused testified in his own defence. The evidence of the witnesses will be summarised very briefly.

[6] The first to testify was Tichaona Hwesa (Tichaona). He testified that the accused is his friend and on 25 July 2021 he arrived at the accused's residence at 10 a.m. The accused was selling beer, and the witness bought a bottle of hot-stuff in a one litre bottle. Simon who is this witness's father and Limukani Mabhena also arrived at the accused's residence, bought beer and they all, including the accused partook in the beer drinking. The number of imbibers had risen to five. The deceased later arrived and bought a bottle of beer. He did not stay long, and he soon left.

[7] Tichaona testified further that the deceased returned to the accused's residence at around 7 pm. An altercation ensued between the accused and the deceased. The accused asked the deceased to leave the homestead, and he complied and left. This witness did not know the reason for the altercation between the accused and the deceased. The deceased returned to the accused's homestead at around 12 midnight. He banged the door with a fist. The accused opened the door for him and he said he had come to buy beer. The deceased was in a violent disposition and the accused refused to sell him beer. The altercation continued between the accused and the deceased resulting in the latter striking the deceased four times with an axe. Tichaona saw the first axe strike, as to the

second, third and fourth strikes he merely heard the sound of the blows as he had escaped to another room. The accused used the axe he took behind his bedroom door. The witness identified exhibit 5 as the axe that the accused used to strike at the deceased.

[8] Tichaona testified that some of the imbibers smashed the windows to exit the house. However, he failed to exit through the window. He could not exit through the door because it was locked, and the accused refused to open the door for him to leave. He remained at the house until the following morning.

[9] Under cross examination Tichaona testified that the deceased once stole from him and the accused, and the theft incident happened long before the events of 25 July 2021. Questioned whether the theft incident was reported to the police, this witness said he advised his employer of the case because the deceased had stolen some pots. He testified that when the deceased arrived for the second time at the accused's residence, the accused asked him to leave, and he saw deceased attempting to attack the accused. But he did not do anything. He conceded that the deceased banged the door at the accused's residence.

[10] Immediately prior to the axe attack he saw the accused holding the deceased by the upper arm. The accused then struck the deceased with an axe, which he was holding with both hands. The first strike caused the deceased to fall down. At that moment this witness escaped to another room in the house. He said the reason he spent the night at the house, is because the accused refused him to leave. The witness testified that although he was intoxicated, he could appreciate what was happening around him.

[11] Tichaona, notwithstanding that he was under the influence of alcohol on the night in question he had a clear recollection of the events. He was a good witness; he was honest and candid in his evidence. For example, he conceded that the deceased was violent and banged the door. He was clear that he did not know the reason for the altercation between the accused and the deceased. again, he was honest that he saw the first axe strike and the did not see other three axe strikes on the deceased. It is clear that he was just narrating the best as he could of what he saw. In cross examination he made concessions. Hie evidence is accepted without reservation.

[12] The second State witness was Simon, he testified that he is Tichaona's father. He arrived at the accused's residence at around 10 a.m. The deceased later arrived at the homestead and an

altercation started between the deceased and the two i.e., Tichaona and Limukani Mabhena. The deceased was paid \$5.00 which was the cause of the altercation. The accused was coking sadza, and the deceased said he was able to spill the sadza that was being coked. The sadza was cooked and all ate it including the deceased. Thereafter, the deceased left the homestead.

[13] Simon testified further that the beer drinking continued. They were drinking beer called *explorer* and they finished four big bottles called *straight*. It was in big bottles called straight. At round 8 p.m. although he was intoxicated he could appreciate what was happening around him. He was asleep in the accused's bedroom when the deceased was axed. He got to the scene after the deceased had been axed and did not know the cause of the altercation between the two. He got to the sitting room and saw accused standing on the door way holding an axe. He reprimanded the accused and told him to stop what he was doing. The deceased was lying on the door way. He was motionless and bleeding from the head. The witness tried to exit the house through the sitting room door, the accused struck him on the month with an axe handle and he sustained a deep cut. He then escaped and exited the house through a window. He identified exhibit 5 as the axe that was used to struck at the deceased. He said he knew nothing about the iron rod (exhibit 6) and the axe head (exhibit 7).

[14] Under cross examination Simon testified that the deceased came to the accused's residence around 10 a.m. and on his return in the evening he did not see him. He did not know the cause of the dispute between the accused and the deceased. He did not see the accused axing the deceased, he merely saw the latter lying on the doorway and the accused carrying an axe.

[15] Simon, notwithstanding that he was under the influence of alcohol he came across as a witness who had a reasonable recall of events. His evidence was not challenged in any material respects and there is no reason not to accept it.

[16] The accused testified in his defence. He testified that on the fateful day he was visited by Tichaona. They partook in the drinking of beer and he could not recall the number of bottles that they took. Tichaona had earlier informed him that the deceased had stolen some property. The theft occurred on 22 or 23 July 2021. A police report was made and the deceased was arrested and detained overnight. On his release deceased came to accused residence and found him preparing food in the company of Tichaona. Deceased bought beer. After getting his beer, he then said he was a trouble maker, and asked why he was reported to the police. He then scoped sand and threw

it in the pot of sadza. Before he left, he warned that they were not going to sleep that night because he was a trouble maker.

[17] In the evening the deceased returned to the accused's residence. They locked themselves inside the house and remained quiet to create an impression that there was no one at the house. The deceased banged the door, and they still remained quiet until he proceeded to the bedroom window and started smashing the window panes. The ordeal lasted for 30 minutes. The accused testified that at that point he left the bedroom and proceeded to sitting room and opened the door. He said he was afraid of the deceased. The deceased entered the house carrying an iron rod and an axe. The accused then axed him and he fell down. He tried to stand and pick the iron rod, and he was axed for the second time. He then left the deceased lying on the door way and returned to the bedroom. He returned to see what he had done; he saw the deceased lying motionless in a pool of blood. He testified that he had no intention of causing the death of the deceased. He closed the door and retired to bed.

[18] Under cross examination the accused testified that they consumed more than four bottles of beer. And each bottle contained 40% alcohol content. He said although he had taken alcohol he remained in control of his faculties and was aware of what he was doing as he was the one who was selling the beer. He testified further that in the morning the deceased left after he put soil in the pot of sadza. He disputed that the deceased ate the sadza. He disputed that the theft incident occurred long before the events of 25 July 2021. He said the deceased was the aggressor, and he used the iron rod and the axe head to smash the windows panes. He disputed that the window panes were smashed by persons who were escaping from the house. He said he took the axe from his bedroom and struck the deceased four times, first he used the back side of the axe, the second, third and fourth strikes he used the sharp side of the axe. The accused conceded that he aimed the axe on the side of the deceased's head. He disputed that he struck Simon with an axe handle on the mouth.

[19] The general quality of the evidence of the accused was poor. He was not consistent both within the content and structure of his own evidence and with the objective and established facts. He lied when he said the deceased put soil in the pot of sadza. It is so because it conflicts with the evidence of Simon who testified that the deceased made threats which he did not carry out, and he joined and partook in the consumption of the sadza. Tichaona who was present at

the material time did not testify about the deceased pouring soil in the pot. Further, the issue of the deceased pouring soil in the pot of sadza was not put to Tichaona and Simon in cross examination.

[20] The accused lied when he said the theft committed by the deceased occurred on 22 or 23 July 2021. And that the deceased was arrested and detained overnight and, on his release, he came to accused residence and found him preparing food in the company of Tichaona. This is a falsehood. It is so because Tichaona testified that the theft case occurred long before 25 July 2021, and he was not challenged in cross examination. All he wanted to do was to create an impression that immediately after release from police custody the deceased went straight to the accused's homestead.

[21] The accused further lied when he testified that the deceased smashed windows at the house. This evidence is false because of the following reasons; it is at variance with the evidence of Sibanda admitted in terms of s 314 of the CP & E Act. The effect of a formal admission in terms of s 314 is that it relieves the State of the necessity of proving the admitted facts. The admissions made in terms of s 314 are binding on the accused. The evidence of Sibanda is that when he entered the house, the accused locked the exit door and put the keys into his pocket. Inside the house and in the accused's bedroom the deceased was amongst those who were drinking beer. Therefore, it is a lie that the deceased was outside the house smashing window panes. He was actually in the accused's bedroom drinking beer in the company of the accused and others.

[22] The accused lied when he said he did not strike Simon with an axe handle and that Simon got injured when he escaped through the window. The evidence of Simon in this respect is corroborated by the admitted evidence of Sibanda, who said Simon tried to restrain the accused from assaulting the deceased but the accused would have none of it and he struck Simon with the axe handle. The accused cannot riddle out of the evidence of Sibanda because he admitted it in terms of s 314 of the CP & E Act. Again, the accused lied when testified that he first struck the deceased with the back side of the axe, it is a lie because it is at variance with the evidence of Tichaona and the accused's own confirmed statement. In his statement he said he axed him once on the head and he fell down, thereafter he axed him three more times. This version of having used the back side of the axe is just a recent fabrication.

[23] The following facts are found established; on 25 July 2021 at night the deceased arrived at the accused's residence to buy beer. He joined the accused and other persons who were drinking beer at the accused's residence. The drinking was taking place inside the accused's bedroom. The deceased was generally in a violent disposition. At the moment Sibanda entered the house the accused locked the exit door and put the keys inside his pocket. The accused and the deceased exchanged harsh words; however, the cause of the dispute remains unknown. The two left the bedroom and proceeded to the sitting room. The accused, as he left the bed room picked up an axe behind his bedroom door and charged towards the deceased. He struck the deceased four times on the head with an axe. The accused unlocked the door, dragged the body of the deceased and left it outside the house. Thereafter, he got into the house, locked the door and proceeded to his bedroom to sleep.

[24] It is also proved by evidence that at the time Simon tried to restrain the accused from attacking the deceased, the deed had already been done. The accused struck Simon once on the mouth with an axe handle. The persons who were drinking beer in the house, including Simon escaped through the windows. They smashed the windows to escape. Tichaona failed to escape and spent the night at the accused's bedroom.

[25] It is established by evidence that the police found the body of the deceased lying on the ground outside the house. There were shattered pieces of window panes. The body was approximately two meters from the main door *via* the sitting room. It had four deep cuts on the left side of the head. The doctor who examined the body opined that the cause of death was encephalic dislaceration; skull bones fracture; and cranial trauma. The evidence shows that the accused struck the deceased four times with an axe on the head. It is therefore not in dispute and it is proved by evidence that the injuries inflicted on the deceased were caused by the accused. And that the injuries inflicted by the accused caused the death of the deceased.

[26] It is trite law that an accused is not expected to convince the court as to the truthfulness of his version, whatever explanation he gives, no matter how improbable it may be, the court cannot dismiss it unless it has been shown to be not only improbable but beyond doubt false. See *R v Difford* 1937 AD 370; *S v Jochems* 1991 (1) SACR 208 (A), *S v Jaffer* 1988 (2) SA 84 (C), *S v Kubeka* 1982 (1) SA 534 (W) at 537 F-H. However, the accused's version is not looked at in isolation but in light of the evidence led against them, and the probabilities of the whole case. The State must prove the guilty of the accused beyond a reasonable doubt in order to secure a

conviction. However, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it required such proof because it will rarely be achieved. See *Musimike v The State* SC 57/20.

[27] In his defence outline the accused raises the defence of self-defence and the defence of property. In terms of our law the defence of self-defence and defence of property have been codified in s 253 and s 257 of the Criminal Law Code. Section 253 and s 257 provides thus:

253. Requirements for defence of person to be complete defence

(1) Subject to this Part, the fact that a person accused of a crime was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if—

(a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent or he or she believed on reasonable grounds that the unlawful attack had commenced or was imminent, and

(b) his or her conduct was necessary to avert the unlawful attack and he or she could not otherwise escape from or avert the attack or he or she, believed on reasonable grounds that his or her conduct was necessary to avert the unlawful attack and that he or she could not otherwise escape from or avert the attack, and

(c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and

(d) any harm or injury caused by his or her conduct—

(i) was caused to the attacker and not to any innocent third party; and

(ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

(2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.

257. Requirements for defence of property to be complete defence

(1) Subject to this Part, the fact that a person accused of a crime was defending his or her or another person's property against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if—

(a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent; and

(b) his or her conduct was necessary to avert the unlawful attack; and

(c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and

- (d) any harm or injury caused by his or her conduct—
- (i) was caused to the attacker and not to any innocent third party; and
 - (ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.
- (2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.
- (3) In determining whether or not any means used by a person to avert an unlawful attack were reasonable, or whether or not any harm or injury caused to an attacker was proportionate to that liable to be caused by an unlawful attack, a court shall have regard to the nature of the property which the person was trying to protect and its value to him or her.

[28] The accused's defences must be examined to determine whether they meet the requirements of the law. The first issue is to consider whether on the evidence before court there was an unlawful attack on his person and / or his property.

[29] The accused's version is that the deceased insisted that he be let inside the house. That he smashed windows panes to try and force himself inside the house. And that the deceased was armed with an iron rod and an axe head. The evidence of Sibanda a s 314 witness and that of Tichaona shows that the accused's version is false beyond a reasonable doubt. The deceased did not smash any window panes at the house. He was partaking in a beer drink in the company of the accused and other persons seated inside the bedroom. The accused had locked the exit door to the house, put the keys inside his pocket. As the two left the bedroom to the sitting the accused picked an axe which he used to struck the deceased on the head. There is no way the deceased could have left because the door was locked. The defence of property to the extent that it is anchored on the alleged smashing of windows cannot stand because it is based on a falsehood. Therefore, the defence of property falls on the first huddle, i.e., there was no attack.

[30] The accused in his defence outline says the deceased was armed with an iron rod and an axe and he tried to force the way into the house. This is also a falsehood, because it is anchored on the lie that the deceased was outside the house smashing windows and thereafter moved to the sitting door to try and force himself to enter the house. The deceased was inside the house partaking in the drinking of beer with the accused and others persons. There is nothing to show that the deceased attempted to use the iron rod and the axe-head against the accused. The probabilities of the case do not support the accused version in this respect. It is the accused when the two left the bedroom who armed himself with an axe and he used it four times on the deceased. The deceased could not

even escape because the exit door was locked and the keys were inside the accused's pocket. Instead of locking the deceased inside the house, he should have let him go. It is clear that the accused was not under any attack at all. At the moment the accused struck the deceased neither was his person nor property under attack. Therefore, the defences of self-defence and defence of property are not available in whatever form to the accused. Such defences are available to one who was under an unlawful attack, and the evidence shows that the accused was not under any attack.

[31] The accused also raises the defence of provocation. This common law defence has been codified in ss 238 and 239 of the Criminal Law Code. MATHONSI J (as he then was) said in *S v Ndlovu* HB 293/17 that what is clear is that the jurisprudence formulated as far back as 1982 in the case of *S v Nangana* 1982 (1) ZLR 150 (S) is still applicable because s 239 simply codifies that approach. The first stage is to apply the normal subjective test to decide whether there was an intention to kill. If there was intention the court should proceed to the second stage thus: whether the provocation would reasonably be regarded as sufficient ground for the loss of self-control that made the accused act against the deceased the way he did? The evidence shows that the accused had intention to kill. At best for the accused is the evidence of Sibanda a s 314 witness who said the accused and the deceased exchanged harsh words. The court does not know the exact harsh words exchanged by the two inside the accused's bedroom.

[32] In any event the accused had the presence of mind to lock the exit door and pick up an axe, carry it to the sitting room where he struck the deceased four times on the head. By locking the exit door, he made it impossible for the deceased to leave the house. In fact, he locked the door because he wanted to keep the deceased inside the house. The question is why not unlock the door and let the deceased leave if he wanted to leave or ask him to leave. Even if there was provocation during the exchange of harsh words as testified by Sibanda, it was not such that a reasonable person would lose his self-control, again it was not sufficient to make a reasonable person in the accused's position and circumstances to lose self-control and struck the deceased in a vicious manner he did causing his death instantly. Therefore, provocation as a defence is not available to the accused person.

[33] The accused did not raise the defence of intoxication. A court cannot fail to consider a defence which emerges out of the facts because the accused has not taken it. There is evidence that the accused and his companions were imbibing from around 10 a.m. to the time he struck the deceased

with an axe. Notwithstanding the fact that the accused was drinking beer, the defence of intoxication is not available to him. In his own words the accused testified that although he had taken alcohol he was in control of his faculties and was aware of what he was doing as he was the one who was selling beer. Again, the accused person's recall of events is so clear that it could not be said that he was so beside himself with intoxication when he struck deceased on the head four times with an axe. He knew exactly what he was doing and for what purpose. Therefore, the defence of intoxication as provided in s 220 of the Criminal Law Code is not available to the accused in whatever form as a defence.

[34] For this court to return a conviction of murder in terms of s 47(1) of the Criminal Law Code, the State must prove beyond a reasonable doubt that when the accused axed the deceased on the head four times, he intended to kill him or realised that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility. The accused struck the deceased in the head with a huge axe weighing 2 kg; measuring 65 cm long; with a sharp blade measuring 17 cm x 8 cm. He summoned all the force there be and held the axe with both hands and aimed the head. After the first strike the deceased fell down, and he continued three more times striking the head with the axe. He struck a total of four times. The post mortem report speaks to the extraordinary violence meted on the deceased. The skull bones were fractured to pieces. A human body cannot endure such violence. No wonder the deceased died instantly on the spot. The evidence shows that the accused desired to bring about the death of the deceased and succeeded in completing his purpose. See *S v Mugwanda* SC 215/01.

[35] Having carefully weighed the evidence adduced as a whole in this trial it is clear that the State has proved its case beyond a reasonable doubt against the accused. 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 whether the accused is guilty of murder in terms of s 47(1) (a) or (b). See *Mapfoche & Another v The State* SC 84/21.

In the result, the accused is found guilty of murder as defined in s 47 (1) of the Criminal Law (Codification & Reform Act) [Chapter 9:23].

Sentence

[36] Mr Tshuma, this court has convicted you of the crime of murder as defined in s 47 (1) of the Criminal Law Code. The evidence shows that this murder was not committed in aggravating circumstances as defined in s 47 (2) and (3) of the Criminal Law Code.

[37] 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 impose, 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 and the provisions of the law and in particular the Criminal Procedure (Sentencing Guidelines) Regulations, 2023.

[38] Your personal circumstances have been placed on record. You are 35 years old. You a grade 7 drop out. You are not married nor do you have children. Prior to your arrest you were employed as a general worker earning USD\$100.00 per month. You were taking care of your father who is 54 years and two siblings. Your mother is late. You are a first offender and you have been in pre-trial incarceration for 2 years 3 months. This court further takes into account in terms of s 221 of the Criminal Law Code the fact that you were intoxicated on the day in question.

[39] The crime you have been convicted of is grave and serious. The prevalence of the crime of murder is such that cognisance is sometimes lost of the extreme consequences that flow from it. A life is ended. Not only is a life ended, but the lives of family and friends are irreparably altered and damaged. The attack was brutal and savage. The kind of brutality you exhibited on the day in question is alarming indeed. The deceased died a violent death. You displayed a high degree of callousness. The injuries which you inflicted on the deceased were callous and brutal. You used lethal weapon and attacked the most delicate and vulnerable part of the human body, i.e., the head. The extent of the force which you used was so excessive that you managed to fracture the skull. You used a huge axe against another human being. You chose to direct the attack on the head, not once but four times. Life was lost in an extremely violent manner, when the deceased was locked inside the house and had no way of escape. He was subdued and axed to death. What a horrible way to end the life of another human being. This violence can never be tolerated at all. A sentence of direct and long imprisonment is called for in this case.

[41] Taking into account the facts of this case, the following sentences will meet the justice of this case:

You are sentenced to 18 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Coghlan and Welsh, accused's legal practitioners