

THE STATE
versus
EMMANUEL MACHOKOTO

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 23 January & 14 June 2023

Criminal Trial

Assessors: Mr Mhandu
Dr Mushonga

K Chigwedere, for the State
M Tawodzera, for the accused

MUNGWARI J: Despite the number of victims who die at the hands of their spouses seemingly increasing exponentially by the day, it remains the duty of the courts to firmly deal with perpetrators of domestic violence without hesitation, fear or favour. The latest addition to the rising statistics involved Emmanuel Machokoto, (hereinafter referred to as “the accused”), who appeared before us charged with the murder of his wife, Mercy Munosunama (“hereinafter referred to as the deceased”) in contravention of s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (hereinafter referred to as “the Code”). The prosecution alleged that on 7 April 2022 he fatally assaulted the deceased with a belt and fists several times and pushed her head against the wall.

The couple had just recently married and were staying together at their rented accommodation in Unit N Chitungwiza. The deceased was barely 22 years old while the accused was aged 25 years. Their marriage had been blessed with a child who, at the material time, was only two years old. On the fateful night, their marital challenges took a turn for the worst. They had an argument over some missing money during which the accused assaulted the deceased with a belt and fists all over the body and pushed her head against the wall inflicting head injuries. Battered and bruised, the deceased cried out for help and a co-tenant, Milton Masaraure (Milton) rushed to her aid. He knocked on their door and begged the accused to stop assaulting the deceased. The accused refused him access into the room which was locked from inside and continued beating the deceased. Through the locked door, the accused

informed Milton that he had missed US\$100 and that he suspected that the deceased had stolen it. Milton once more begged the accused to stop assaulting the deceased and undertook to personally go and look for the missing money from the deceased's friend called Aaron Katambarare (Aaron). Shortly thereafter, Milton left his place of abode heading to Aaron's place to source for the money. When he returned in the company of Aaron, they found the deceased lying unconscious on a wet ground outside the house with the accused nowhere to be seen. The two men took the deceased to Chitungwiza Central Hospital where she was pronounced dead on arrival. A post mortem was conducted on the remains of the deceased by Doctor Martinez who established that the cause of death was brain damage, global subarachnoid and severe head trauma.

The accused pleaded not guilty to the charge. He raised the defence of provocation. He explained that he had an altercation with the deceased over US\$ 468 which he had given her for safekeeping. When he asked for the money, the deceased turned violent and struck him with a pot. The attack prompted him to use a trousers belt to lash the deceased on the back of her legs. In his view were it not for the accused's provocative actions he would not have assaulted her. Even then he denied having exposed the deceased to any harm. When he realized that nothing positive was going to come out of the altercation with the deceased, he decided to leave and went to sleep at a friend's house. He left the deceased alive and inside the house. He was surprised to hear that the deceased was found outside the house lying on wet ground and barely alive. As a result he suggested that the deceased may have fallen on the ground or against the wall as she tried to make her way outside. He also suggested that the witnesses could have poured water on the deceased as they tried to assist her regain consciousness or that she poured water on herself for unknown reasons.

State Case

The State opened its case by applying to tender the autopsy report compiled by Doctor Martinez, a pathologist employed by the Ministry of Health and Child Care and stationed at Sally Mugabe Central Hospital who examined the remains of the deceased on 11 April 2022. He noted multiple injuries on it in particular, five abrasions on the cheek, frontal region, on the face, the back shoulder and on the thigh. He also noted injuries to the head that he detailed in the following terms - "*global subarachnoid hemorrhage*" under the scalp and on the brain. He concluded that the cause of death was:

- a. brain damage
- b. global subarachnoid hemorrhage

c. severe head trauma

With the consent of the defence the postmortem report was duly admitted into evidence as Exhibit No. 1. The cause of the deceased's death was therefore uncontentious.

With the consent of the defence the prosecution produced the accused's confirmed warned and cautioned statement that was recorded from him at ZRP Chitungwiza on 12 April 2022 and confirmed by a magistrate sitting at Chitungwiza Magistrates Court on 22 April 2022. It was accordingly admitted as Exhibit No. 2. In the statement the accused mentioned the following under caution:

"I do admit to the charges of assaulting my wife Mercy Munosunama but I was chastising her. I had no intention of killing her."

Oral Evidence

The State led *viva voce* evidence from three witnesses namely Milton Masaraure, Aaron Katambarare and Gift Janhi. The accused on the other hand was the sole witness for the defence.

Milton Masaraure (Milton)

As mentioned earlier the witness was the couple's co-tenant at 13573 Unit N Chitungwiza. He occupied the rooms that were adjacent to the couple's rooms as well as those opposite. The essence of his evidence is that he shared a passage with the couple which used to fight frequently. At around 7.00 p.m. on the fateful night, he was present and had retired to his room when heard noises of the accused assaulting the deceased who was crying out for help. The assault was so persistent and sustained that about two hours after it had started, he could still hear the sound of the accused's belt cracking against the deceased's body with strokes falling in rapid succession. The deceased cried out loudly and pitifully with each blow. He also heard the accused angrily demanding to know where the deceased had hidden the money. She begged for mercy. The witness concluded that the assault was unusually prolonged and brutal. He stated that he did not hear the couple fighting, but he heard the accused physically assaulting the deceased which prompted him to intervene. When he did so the beatings momentarily stopped but the deceased continued to cry. Amidst her cries, she weakly responded in a low voice and told him that the altercation was over some missing money. From the sound of her voice he could tell that she was in pain. He asked her to open the door which was locked from inside but she did not do so. The witness was not sure whether it was because she was prevented from opening the door or whether she failed to open it. On the other hand the accused remained silent throughout his exchange with the deceased.

Milton turned to a young boy who had just arrived in the passage awakened by the raucous caused by the assault. The boy was a relative of the warring parties and resided with them but slept elsewhere in the house. The witness asked the boy whether he knew where the deceased kept her money. The boy suggested that Aaron Katambarare might have the deceased's money. He then directed Milton to Aaron's residence. The witness testified that the severe and prolonged assaults forced him to leave the safety of his house and go to Aaron's place. He was concerned that the deceased would be seriously injured and he wanted the assaults to stop.

Accompanied by the boy, they arrived at Aaron's house and he explained the purpose of his visit. Aaron denied having the deceased's money and clarified that she had borrowed money from him in the past but had since returned it. Milton informed Aaron about the dire state of the deceased due to the missing money and the severe beatings inflicted by the accused. Aaron was moved by Milton's narrative and offered to accompany him. Together with the boy and others they ran back to the accused's house where, upon arrival, they found the deceased lying unconscious outside the house approximately three meters away from her room. She was facing the ground and was wet. It was clear that someone had poured water on her. The ground on which she lay was also wet. He also noted that the right side of her head and face was severely swollen and her eyes were shut. The accused was nowhere to be found.

The witness was confident that the deceased had not walked to that location where they found her outside the house. From her condition he suspected that someone had carried her outside and attempted to revive her by pouring water over her. There were no nearby structures that she could have fallen against and there was no evidence of an intruder entering the house while they were away. He also dismissed the possibility of the deceased having poured water on herself because she was unable to walk due to her injuries. Additionally there was no sign of a bucket near her. The witness observed that there was very little sign of life in her. She only managed to respond to her name by saying "*he*" in the vernacular. Thereafter, she did not speak any further.

No meaningful cross examination was conducted on the witness and as result nothing significant came out except repeated refusals by the witness of any suggestion of the deceased having fallen and injured herself. According to the witness, the deceased had so many bruises on the right side of her face and body which were impossible to have resulted from one fall.

The witness provided a valuable account of the incident akin to that of an eyewitness. He heard the commotion, he spoke to the deceased and was present to offer assistance when

the assault escalated. Despite the fact that the assault had already been made common cause the witness provided detailed information about the attack which contrasted sharply with the tepid and downplayed version given by the accused. Through him it became clear that the assault was brutal, vicious and prolonged. Despite the deceased's desperate pleas for mercy and the witness's own attempts to intervene, the accused continued to act without restraint. As a result of the assault the deceased sustained serious injuries. Further, the witness's testimony directly contradicted the accused's claim that the assault was merely intended to chastise the deceased. Instead it suggested a more sinister motive that had prompted the witness to leave his room and intervene. The witness was refreshingly candid with the court. He had no reason to falsify any evidence as he was not involved in the altercation. In fact, he had been inconvenienced by the noise and cries of the assault while he was trying to sleep. The gravity of the situation and the intensity of the assault compelled him to get up and assist. He did not seek to fill in any gaps in his knowledge of the events. His testimony was truthful, and we had no doubt about its accuracy.

Aaron Katambarare (Aaron)

He is a tuck-shop owner in Chitungwiza. The accused and his family were his customers. He had known them for about two years. He had even lent the deceased some US\$ 40 which she had since returned. The essence of his testimony was similar to and corroborative of that of the previous witness. He added that together with Milton they proceeded to the police and reported a case of physical abuse. They subsequently proceeded to Chitungwiza Central Hospital where the deceased was pronounced dead upon arrival.

In cross examination of this witness the defence counsel took issue with the differences in the witnesses' testimony on the posture of the deceased on the ground. This witness said the deceased was lying on her side whilst Milton stated that she was lying on her stomach with her head down. This negligible difference was cured by Aaron's concession that he might not have seen properly as he panicked when he realized that the deceased was close to death. The fact remained however that the deceased was in a comatose state. She could neither speak nor walk. Apart from that no meaningful cross examination of this witness was conducted and as a result his evidence was left intact.

The purpose of this witness's evidence was to explain the condition he found the deceased in because he had arrived well after the fact. He confined himself to this and told the court that he had no say over the assault as it occurred in his absence. He told the court that he knew both the deceased and the accused very well. He enjoyed cordial relations with both of

them. He would have no reason to manufacture any evidence. His evidence served to corroborate that of Milton's to the extent of the condition they both found the deceased in. It corroborated the evidence relating to the severity of the assault. The witness struck us a credible witness.

Gift Janhi (Gift)

Is a duly attested member of the Zimbabwe Republic Police currently stationed at ZRP Chitungwiza. He is the investigating officer. On 7 April 2022 he received a report of domestic violence from an informant on behalf of the deceased. The deceased herself was in the car when the report was made but she could neither walk nor talk. He referred her to the hospital for treatment only to be told that she had passed away before she could be treated at the hospital. That very night he attended the scene in the company of Milton. He stated that he observed the wet ground where the deceased was said to have been found lying by Milton. Inside the accused's room he observed disorder. Clothes, plates and blankets were strewn all over. He observed a belt that he suspected to have been used to assault the deceased. Additionally, he observed that the walls in the room had peeled off as if they had been impacted by a hard object. Rubble from the peeling walls was scattered on the floor suggesting that something had repeatedly struck the walls and caused the visible exfoliation. Based on these observations, Gift concluded that this may have been the location of the wall where the accused repeatedly hit the deceased's head resulting in severe head injuries. The evidence of the peeled walls and rubble on the floor provided important context for the court to understand the nature and severity of the assault that took place in the room.

The officer said he overlooked to uplift the belt from the scene that night. When he came back to collect it, a few days later he found that the crime scene had been tempered with. The room was clean and all of the couple's belongings including the belt had been removed by the accused's relatives. The witness confirmed that after the assault the accused had fled the scene only to hand himself over to the police later. The accused had handed himself in after he heard of the deceased's death. On 11 April 2022 he took the accused for indications at the scene. He recorded witnesses' statements as well as the warned and cautioned statement in accordance with the law.

The witness's testimony provided crucial information that helped explain the absence of the murder weapon and shed light on the circumstances that led to the deceased's death. The witness's account provided an essential understanding of the injuries sustained by the deceased as well as the cause of her death. Clearly a belt had been used to whip the deceased. In addition

her head must have been repeatedly banged against the wall causing severe head injuries that ultimately proved fatal.

Defence Case - Emmanuel Machokoto

During his defence, the accused's account of events was marked by inconsistencies and prevarications as he struggled to maintain the narrative that he presented in his defence outline. This was evident in his narration of the events leading up to the incident which we will illustrate below.

His narration was that on the fateful day upon returning home from work, he requested that the deceased produce the money he had entrusted her with for safekeeping. He observed her as she searched everywhere for the money but was unable to locate it. The accused said he asked her if there was a problem. The deceased became angry and started to insult him. At approximately 7.00 p.m., the deceased locked the door and in a bout of anger threw a dirty pot with some leftover relish at him. The pot struck his hand causing him injury. Enraged, the accused then picked up a leather belt that had been lying on the floor and began assaulting the deceased on the legs while holding her hand. He said he struck her approximately six times with the belt and did not use anything else to assault her. In response the deceased fought back and used her free hand to hit him on the neck. He only stopped assaulting the deceased when Milton came to his door and begged him to stop assaulting her.

When asked whether he knew why Milton would come and beg him to stop assaulting the deceased, the accused told the court that it was because Milton had heard the commotion that was going on inside their room. The accused said he assaulted the deceased for a very short time. In fact it was about seven minutes. Sometime during the scuffle he shook off the deceased who was hanging on to his shoulders and she fell down on to the floor which was littered with clothes which had been strewn all over. When asked if she could have hit the wall at that stage the witness refuted this possibility citing the presence of the clothes on the ground that would have cushioned any fall.

Following the incident the accused said he unlocked the door and informed the deceased that he was leaving the house in order to avoid further conflict. He did not see anyone at the house as he left the premises. The following morning his brother informed him that his wife had passed away. He went to report at Harare Central police station because he was afraid to go to the police station in his locality. He said he neither poured water on the deceased nor dragged her outside. He also denied assaulting the deceased with the intention of killing her.

Under cross examination, he said he didn't open the door when Milton asked him to because the deceased was holding his hands from behind. He failed to explain to the court why he did not answer Milton when he was begging him to stop assaulting the deceased. In the absence of a satisfactory explanation we were left to infer that he did not answer because he did not want to be persuaded to stop assaulting the deceased.

Regarding the injuries sustained by the deceased, the accused at this stage sought to explain that they may have been caused by her falling and hitting the corner of a suitcase with metallic sides that was in the room. However he later contradicted himself by admitting that he did not actually check whether the suitcase had metal corners but rather saw her falling on to a suitcase. In an attempt to modify his testimony to fit the new narrative, he then added that she fell on top of the suitcase which had clothes on it. This contradicted his previous statement that the clothes had cushioned her fall on the floor. The issue of the suitcase was clearly a new addition. When confronted with this inconsistency the accused chose to adopt the version in which he claimed she fell on top of clothes only rather than the suitcase. Cornered the accused also abandoned his suggestion that she may have fallen on the floor and conceded that since there were clothes on the floor it was not possible for her to have injured herself in that way. It was clear to us at this stage that the accused was at pains to attribute the injuries that the deceased sustained to something else other than himself.

Although he denied having banged the deceased's head against the wall several times he was unable to explain the presence of peeling paint and residue from the wall which Gift Jani noticed when he went to inspect the crime scene. He could only insist that Gift Jani lied and that he did not accompany him when he went for indications. The only problem with his assertion is that he did not challenge Gift Jani's testimony while he was on the witness stand. That raises doubts about the truthfulness of his claim. In any case the medical report corroborates Gift Jani's evidence. It details wounds that are consistent with a violent attack with multiple blows on the deceased's body including the head. The doctor's report confirms that the deceased suffered from severe head trauma and had multiple injuries on the head. The extent of the injuries suggests that the accused used extreme force and hit the deceased for an extended period of time.

Based on the evidence before us, we are inclined to believe Gift Jani's testimony that the accused repeatedly banged the deceased's head against the wall, causing parts of the wall to fall off.

During cross examination, the accused was unable to maintain his earlier narrative and began to make concessions. As the questioning continued, he eventually abandoned his previous stance and began to admit to certain facts that contradicted his original story. For instance, he admitted that prior to the incident the deceased was in good health. He also admitted that the deceased's death may have been as a result of the assault that occurred in the room when he was alone with the deceased. He discarded his own suggestion that she poured water on herself saying that it was impossible for her to have done so in the state she was alleged to have been in. He confirmed that there wasn't anyone at the house who would have wanted to harm her. He agreed that Milton went to seek for assistance because of the brutal assaults by him on the deceased. He agreed that Milton had to intervene because the beatings were excessive and intense. He admitted that he feared going to the police because he knew he had killed someone.

When the court sought for clarity on how he was provoked he said the words that were uttered by the deceased upset him and the words were "why are you continuously asking me for the money when I am already looking for it." According to the accused she said this in a harsh tone and this provoked him which necessitated the assaults that followed. He had gotten angry, lost control and assaulted the deceased.

The accused proved to be unreliable in his testimony. He only acknowledged the flaws in his own evidence and made concessions once he became aware of the fallacy in his argument. He maintained that he did not intend to harm the deceased but to only chastise her. His defence outline and his concessions during cross examination were mutually exclusive. His version of events and that of the state witnesses were diametrically opposite. Given his prevarications it was obvious that the accused's story was a concocted one. We have no choice but to reject his claim that he only assaulted the deceased six times on the legs for seven minutes with a trousers belt. He was aware of the severity of the injuries sustained by the deceased. If he had injured her unintentionally, his first thought should have been to seek medical assistance for her. The incident occurred at a house with other tenants. It would have been easy for him to call for their help. He however chose to leave the victim lying helpless in the premises citing panic as the reason for his inaction. Once again, we reject his version as false.

Common cause issues

What came out of the evidence that was led from both the state witnesses and the accused is that:

1. There was a misunderstanding between the accused and the deceased earlier on the day in question. The disagreement was about the accused's money which deceased was suspected of having misused.
2. Accused admitted that he assaulted the deceased excessively. He however contends that he used a belt for that purpose.
3. Milton a co-tenant intervened but could not save the deceased.
4. The deceased was discovered by Milton, Aaron and others lying outside and barely alive.
5. The assault by the accused caused the death of the deceased.
6. She died on her way to hospital.
7. Later in the evening, after the scuffle the accused disappeared from the scene.

Issues for determination

When the state's evidence, the defense's arguments and the common cause issues outlined above are put together it is apparent that the only issue which arises for determination is whether the accused's defence that the deceased provoked her is sustainable.

The Defence of Provocation

In Zimbabwe, the defence of provocation can only serve as a partial defence to the crime of murder. See the case of *S v Thsuma* HB 171/22. The accused's defence in this case will therefore be assessed against the statutory requirements of the defence of provocation.

S 239 of the Criminal Law Code provides that:

- (1) If, after being provoked, a person does or omits to do anything resulting in the death of a person which would be an essential element of the crime of murder if done or omitted, as the case may be, with the intention or realization referred to in section forty-seven, the person shall be guilty of culpable homicide if, as a result of the provocation—
 - (a) he or she does not have the intention or realisation referred to in section forty – seven; or
 - (b) he or she has the intention or realization referred to in section forty-seven but has completely lost his or her self-control, the provocation being sufficient to make a reasonable person in his or her position and circumstances lose his or her self-control.
- (2) For the avoidance of doubt it is declared that if a court finds that a person accused of murder was provoked but that—
 - (a) he or she did have the intention or realization referred to in section forty-seven; or
 - (b) the provocation was not sufficient to make a reasonable person in the accused's position and circumstances lose his or her self-control; the accused shall not be entitled to a partial defence in terms of subsection (1) but the court may regard the provocation as mitigatory as provided for in section two hundred and thirty-eight.”

The first issue which the court must therefore ascertain is whether or not an accused who claims provocation was indeed provoked. Authorities illustrate that for provocation to

stick, the provocative conduct must have been so intense that a reasonable person would lose self-control and act in the manner that the accused did. See *S v Kashiri* HMT 13/18. In this case, and in the accused's own testimony, the words which allegedly provoked him were that the deceased said:

“Why are you continuously asking me for the money when I am already looking for it?”

The accused added that the deceased spoke the above words with a harsh tone. That provoked him and resulted in the assault. He also said he was hit with a pot on the hand.

As a defence, provocation is characterised by its sudden and impulsive nature. It occurs without premeditation, meaning that the accused's response is instantaneous and spontaneous. In other words it refers to a situation in which the accused has no time to cool off or consider his options before reacting to an event. To successfully use the defence of provocation, the accused must have lost self-restraint in the heat of the moment. The evidence before us is that the two's relationship was tumultuous an indication that it was not their first time to disagree or exchange less pleasantry utterances. There was nothing unusual about the two fighting. The assertion that the accused acted impulsively is disingenuous and an attempt to over extend the defence of provocation. For all we were told, he had previously dealt with the deceased's sharp tongue. He had in the past dealt with her physical assaults. The words that were allegedly uttered by the deceased do not seem provocative even to the most ill-tempered person let alone to a reasonable husband. A reasonable person in accused's stead could have managed the situation in a non-violent manner such as removing himself from the room when he noticed the warning signs. Instead he chose to beat the deceased to pulp. The assault itself is not indicative of someone who acted impulsively. The accused did not stop when he started assaulting the deceased. The evidence which is available is that the assault went on for over two hours. He beat her up continuously from approximately 7.00 p.m. to 9.00 p.m. He had time to cool off. There were interventions from Milton which he ignored and disregarded. He therefore cannot claim that he acted in the spur of the moment. What is clear to us is that his anger actually grew over the two hour period that he assaulted the deceased as he demanded his money. We therefore hold the view that the words that were uttered by the deceased towards the accused and her physical actions were not provocative enough to justify the violent and fatal reaction that followed. Put in another way, we hold that the accused was not provoked.

Disposition

With the evidence before us and the accused's own admissions, it is evident that the accused brutally assaulted the deceased for an extended period of time. He disregarded pleas

from both Milton and the deceased to stop the assault. The accused persisted in his attack, demonstrating a clear intent to cause harm. He specifically targeted a vulnerable part of the deceased's body. That is indicative of a deliberate effort to inflict the most severe injuries possible. He repeatedly hit the deceased's head. Even if he argues that he did not intend to kill her he must have and indeed subjectively realised that there was a real risk or possibility that his assault could result in his wife's death. Given those circumstances, the accused's intention is clear. The injuries sustained by the deceased align with the state's allegations and the doctor's conclusions. This leads us to the inescapable conclusion that the accused intended to cause the death of the deceased. With the evidence and the circumstances taken in their totality, we have no apprehension to hold that the accused's version of events is palpably false. All the evidence, taken together with the inadequacies of his defence of provocation point to the accused's intention to kill the deceased. We are therefore convinced that the State managed to prove the accused's guilt beyond reasonable doubt. He is accordingly found guilty of murder as charged.

Reasons for Sentence

In arriving at the appropriate sentence, we took into consideration all the mitigating and aggravating factors as stated by counsels. For the prosecution, counsel urged the court to make a finding that the accused committed the murder in aggravating circumstances. She suggested that because the accused assaulted the deceased, a vulnerable woman, as envisaged by s 47(2) and (3) of the Code. It is a requirement that following a conviction of murder, the court must decide on whether the murder was committed in aggravating circumstances. Such circumstances are set out in section 47(2) and (3) of the code. It is not necessary to cite the provisions of subsections 2 and 3 in extensor. What we can conclude is that none of the circumstances as outlined in those sections apply to the case at hand. The murder was not committed in aggravating circumstances.

In mitigation, the court considered that the accused is a youthful first offender. He is 26 years of age and a father of one, a 3 year old toddler, whom he had with the deceased. He has family responsibilities, particularly towards the 3 year old child who will now grow up without a mother. This is all that falls in accused's favour.

In aggravation, the accused murdered his wife, the very person he was expected to take care of. It is also aggravating that the assault was prolonged and brutal and it resulted in the death of a very young 22 year old who was in the prime years of her life. What cannot be disputed is that this was a very bad case of murder.

The rising violent offences committed within domestic settings is a concerning trend that must be addressed by the courts. It is the duty of the court to uphold the sanctity of human life as enshrined in the Constitution of Zimbabwe 2013. Section 25 of the Constitution states the following:

“Protection of family

The State and all institutions and agencies of government at every level must protect and foster the institution of the family and in particular must endeavour, within the limits of the resources available to them, to adopt measures for –

- (a) the provision of care and assistance of mothers, fathers and other family members who have charge of children; and
- (b) the prevention of domestic violence.”

We also noted that perpetrators of violence by the husbands are on the rise. Murder is a serious crime that must always be punished with a significant term of imprisonment. The accused brutally murdered his own wife by hitting her with a leather belt for a prolonged period and not taking heed to her pleas for mercy banging her head against the walls until she suffered head trauma and could not speak, talk or walk. He was determined to get his money back at any cost as evidenced by his unrelenting desire to strike the deceased even after he had already injured her. In aggravation too, the accused did not assist in the aftermath of the brutal assault. He fled the scene and left her lying in a pole position outside the house wet and in the cold with no one to assist her. He could have rendered assistance to her but chose not to. Showing that his intentions were sinister. The court finds the accused actions to be callous and inhumane. He must have appreciated and foreseen the risk of serious injury resulting from his inhumane actions against the deceased. The deceased suffered a painful death due to the nature of the injuries sustained.

It is important that appropriate sentencing patterns be established to remind spouses of the need to avoid violence in resolving matrimonial challenges. We noted that the aggravating factors far outweigh the mitigating factors. While we would have sentenced the accused person to 30 years. We have removed 5 years in recognition that he is a youthful first offender who may have been prone to making ill-advised decisions.

Resultantly, **the accused is sentenced to 25 years imprisonment.**

*National Prosecuting Authority, State’s legal practitioners
Ngongoni, Tawodzera, Pavari & Partners, accused’s legal practitioners*