

THE STATE  
versus  
GODKNOWS TAFADZWA RINGOZIVA

HIGH COURT OF ZIMBABWE  
MUNGWARI J  
HARARE 21 September 2023, 28 February 2024

**Assessors:** Mr *Chimwonyo*  
Mr *Kunaka*

### **Criminal Trial**

*A. Mupini*, for the state  
*P. Takaidza*, for the accused

**MUNGWARI J:** Godknows Tafadzwa Ringoziva (hereinafter referred to as the accused) appeared before us charged with the crime of murder as defined in Section 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The state alleged that on 14 January 2023 and at Kanengoni Village, Chambare, Manyene under Chief Chinyoka in Featherstone, the accused person unlawfully and with intent to kill or realizing that there was a real risk or possibility that death might occur assaulted Mary Mubata (herein after referred to as the deceased) a nonagenarian aged ninety-three years (93) by kicking her all over the body and pressing her neck against a wall with her walking stick. The accused's actions resulted in the old woman suffocating to death.

In detail the state alleged that on the night of 14 January 2023, the accused went to the deceased's homestead in Kanengoni Village, Chief Manyene, where he broke into the deceased's house with intent to steal. Upon being caught by the deceased while ransacking her house he turned on her and assaulted her. He pushed her against the wall and used her walking stick to beat and suffocate her. He also kicked her all over the body causing her to fall on her back. He then took the deceased's blanket and covered her with it. It is alleged that he also used the blanket to suffocate her to death. After battering and subduing the deceased, the accused helped himself to the deceased's property which included, 10 x 2 kilograms of sugar, 7 x 2 litre bottles of cooking oil, 5 kilograms of rice, an *Itel* cellphone with sim card 078202577 and USD \$30 in cash. The accused allegedly packed the stolen goods into sacks and loaded them onto

the deceased's wheel-barrow, covering them with her purple and black blanket before leaving the scene. On his way to Kashora bus stop, he met Anderson Kashora and they exchanged greetings before going their separate ways. At the bus stop, he hid the wheel barrow and the blanket and remained with three sacks full of his loot. A commuter omnibus driven by Taurai Nyandiro stopped to ferry him to his intended destination. Just before boarding the motor vehicle the accused instructed Taurai Nyandiro not to place heavy objects on top of one of the sacks as it contained cooking oil. After securing the accused's luggage and ensuring that the accused was seated in the commuter omnibus, Taurai Nyandiro drove to Chivhu. He dropped off the accused at Chivhu Magistrate Court intersection. Later that day, the deceased's body was discovered by Memory Matova who in turn informed the deceased's son Fanuel Mubata (Fanuel). When he arrived to check on his mother, Fanuel discovered that the deceased's groceries were missing and made a police report. The deceased's body was conveyed to Parirenyatwa Hospital for post-mortem examination which concluded that the cause of death was acute respiratory insufficiency, bilateral ribs fracture and severe thoracic trauma.

In his defence the accused pleaded not guilty and stated the following:

He was employed as a resident gardener at Angela Mombeshora's (Angela) homestead in Chambara Manyene Village on 2 November 2022. He knew the deceased as a neighbour but never interacted with her. While working at Angela's place, he stayed with his wife who also worked at the same household as a live-in maid. On 31 December 2022 his employment was terminated and he left Angela's homestead for his young brother Courage Ringoziva's house at nearby Nyamhere Village in Chivhu. After spending a few days there, he left on 5 January 2023 and went to Mutasa Musakwa Village in Nyanga. He arrived in Mutasa on the same day at around 2100 hours and resided at his parents' homestead until the day he was arrested on 20 February 2023. He essentially raised the defence of an *alibi*. To support his contentions the accused indicated that he would call his younger brother Courage and his father Erick Ringoziva to vouch that he was nowhere near Chambare Manyene at the time of the murder.

### **State case**

The prosecution opened its case by applying to produce the autopsy report compiled by Doctor Yoandry Olay Mayedo a pathologist stationed at Parirenyatwa Hospital. The doctor examined the remains of the deceased on 24 January 2023. He noted multiple rib fractures with hemorrhaging as well as lacerations on the left eyelids. Significantly he noted a left lung laceration with hematoma. In the end he concluded that the cause of death was due to:

- a. Acute respiratory insufficiency

- b. Bilateral ribs fracture
- c. Severe thoracic trauma

With the consent of the defence the postmortem report was duly admitted into evidence as Exhibit 1. The cause of the deceased's death was therefore uncontested as were the acts of violence perpetrated upon the deceased. Again with the consent of the defence the state also tendered a range of other exhibits which included a greenish-blue wheelbarrow as Exhibit 2 as well as a purple black and yellow blanket with fringes as Exhibit 3. The deceased's wooden walking stick with a crack in the middle was also tendered as Exhibit 4 whilst the accused's confirmed, warned and cautioned statement was tendered as Exhibit 5.

In addition to this the evidence of Memory Matora and Zindoga Chinyuku was formally admitted in terms of s314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (CP&EA Act) as it appeared in the state's summary of evidence. According to their testimonies, Memory Matova and Zindoga Chinyuku found the deceased's lifeless body on 15 January 2023 in the afternoon after forcibly entering her house. Later that evening at around 1900 hours Zindoga Chinyuku saw the deceased's body being taken away from the scene by Nyaradzo Funeral services. He observed blood on the deceased's blouse as well as on her mouth and left eye. However, the evidentiary value of their testimony was limited as it was already established that some villagers were the ones that discovered the deceased's body.

### **Oral evidence**

The State presented *viva voce* evidence from four witnesses namely Fanuel Mubata, Anderson Kashora, Taurai Nyandiro and Ricky Zhou. The accused testified in his own defence and called his brother Courage Ringoziva and his father Erick Ringoziva as defence witnesses.

### **Fanuel Mubata (Fanuel)**

The witness a 74-year-old male is the deceased's son. According to his testimony, on 15 January 2023 at around 1400 hours he was called to the deceased's residence by Zindoga Chinyuku. Upon arrival he found the deceased's lifeless body in the dining room near the bedroom door and arranged for it to be taken to the morgue. Fanuel later discovered that the deceased's groceries including a case of sugar, 7 x 2 litres of cooking oil, 10 kg of rice, salt and an *itel* cellphone were missing. Additionally, the deceased's wheelbarrow was also missing. Upon receiving word that some items were found abandoned near Kashora bus stop Fanuel and other villagers went to investigate. They found a wheelbarrow and a blanket that Fanuel identified as belonging to the deceased. No meaningful cross examination was conducted on

this witness leaving us certain that the deceased's groceries, mobile phone, wheelbarrow and blanket had indeed been stolen.

**Anderson Kashora (Anderson)**

The 56-year-old resident of Tarukumbura village under Chief Nyoka in Featherstone is the great grandson of the deceased. He informed the court that he knows the accused person as a former employee at Mombeshora residence in their locality. On 15 January 2023 at around 0500 hours while enroute to Mudawarima village, he met the accused person approximately one hundred metres from Kashora bus stop. The accused who had a head wrap on immediately looked down upon noticing the witness. Anderson said he greeted the accused who then raised his head and responded to the greeting. It was at this stage that he identified him as Mombeshora's employee. The witness said that he had observed that the accused was unsteady on his feet due to the visibly heavy load in a green wheelbarrow that he was struggling to push. He nonetheless failed to see the contents of the wheelbarrow as they were covered with a blanket that he characterized as a brown one adorned with fringes. Anderson claimed that Exhibit 3 which is a small purple, black and yellow fringed blanket is the same blanket, he had observed covering the load in the wheelbarrow.

After exchanging greetings with the accused they both continued on their journeys. He learned of the deceased's death later that evening and the following day left his residence in the company of his wife for the deceased's funeral. On his way to the funeral, he saw a blanket by the roadside that was similar to the one he had seen the accused using to cover the load that was in the wheelbarrow. When he arrived at the deceased's homestead, he learned from Fanuel Mubata that the deceased's groceries, a blanket and wheelbarrow were missing. He informed Fanuel about the blanket he had seen by the roadside and together they proceeded to the bus stop where they recovered the blanket. They searched for the wheelbarrow in the area around and in the contours and found it hidden under a tree. The blanket and the wheelbarrow were positively identified by Fanuel Mubata as the property of the deceased.

Under cross examination the witness explained that the distance from the deceased's place of residence to the bus stop is approximately two kilometres. He also reaffirmed that he distinctly saw the accused and explained that visibility was good and since he already knew the accused from a prior encounter with him in December 2022 he could not have been mistaken about his identity. During the December 2022 encounter he stood alongside his wife

approximately a meter away from the accused for six to seven minutes as she demanded her money from him. He had ample time to observe the accused as they conversed. Although he had seen the accused several times at the shops afterwards, he never spoke to him. The witness clarified that while he may be unsure about the colour of the blanket, he was certain about the accused's identity.

It is important to note that the purple blanket with black and yellow patches which was described by the witness as a brown blanket with fringes can also be perceived as brown by someone who is colour blind or is not well-versed in colours. This is particularly true due to the blanket's mottled colouration. The slight colour variation may not have been significant, especially considering the distinctive feature of the fringes. It is not every blanket that has fringes. Exhibit 3 therefore closely matched the description provided in court. The identification of the blanket was proper in the instance and it placed the same blanket in the accused's possession. The cross examination did not undermine the witness's testimony, rather it provided additional details that enhanced the clarity and credibility of his evidence. It reinforced Anderson's account and established him as a reliable witness worthy of belief.

**Taurai Nyandiro (Taurai)**

The witness, a 34-year-old male employed as a commuter omnibus driver plies the Chambara, Manyene to Chivhu route. Prior to the murder he knew the deceased as a customer and knew the accused as a worker at the Mombeshora residence. He would occasionally see the accused on times when he travelled along his official route. He told the court that on 15 January 2023 at around 0630 hours he was on duty heading for Makomo bus stop, when he saw the accused standing at Kashora bus stop signalling for him to stop. He immediately recognized the accused and noticed that he was the only person at the bus stop seeking transport. He stopped the motor vehicle and disembarked to assist the accused in loading his luggage. Taurai mentioned that he had no conductor on this day and so he doubled as the driver and loader also responsible for ensuring that the passengers' luggage was properly secured.

The witness said he noticed that the accused had three fifty-kilogram sacks in his possession. He secured the sacks on the roof racks of the commuter omnibus. He vividly recalled that the accused had instructed him not load anything on top of the sacks as they contained fragile items such as cooking oil. Taurai testified that he noted that the accused was wearing a denim jacket and a woollen hat on that day. They spoke briefly and the accused told him that his final destination was Mutare but that he would drop off at Chivhu town. Along the way the motor vehicle had a mechanical breakdown and the witness requested that the

passengers disembark while waiting for assistance. During the two hours that they were stranded on the roadside Taurai occasionally observed the accused who was seated a mere five meters away from him and was listening to music on his radio. They were eventually towed by another vehicle delaying their arrival in Chivhu which only occurred at around 1000 hours. The witness claimed that he was in the accused's company for approximately four hours and could not be mistaken about his identity. He stated that he dropped the accused and his sacks at Chivhu Magistrate Court intersection and the last he saw of the accused was when he was looking for a pushcart operator to assist him to transport his sacks. Nothing significant came out of the witness's cross examination leaving the witness's evidence intact. We had no reason to disbelieve him and were therefore convinced of his credibility as a witness

**Ricky Zhou (Zhou)**

The witness, a duly attested Detective Sergeant in the Zimbabwe Republic Police is stationed at the Criminal Investigations Department in Chivhu. His evidence corroborated all the other state witnesses' evidence except that he added the following: On the day he reacted to the news of the deceased's murder he attended at the homestead and recovered the deceased's wheelbarrow and a black and purple blanket which was positively identified by Fanuel Mubata and took them as exhibits. On the same day he identified the accused as a suspect and immediately began to search for him. On 16 January 2023 a day after the murder, he managed to get the accused's father's details from Mr Mombeshora, the accused's former employer. He telephonically made contact with the accused's father twice and the father professed ignorance of his son's whereabouts. Zhou said that he tasked police officers at Mutasa station to go to the accused's father's homestead and search for him. The accused was nowhere to be found.

A month later he later received information to the effect that the accused was at his father's homestead in Mutasa. He then passed this information to police details at Mutasa who proceeded to the homestead and arrested the accused. On 17 February 2023 he collaborated with other detectives and went to Mutasa, where they escorted the accused to Chivhu. He then recorded the accused's warned and cautioned statement in accordance with the law. He told the court that the accused did not mention that he was in Mutasa on the fateful day and could not have done so as he knew that the witness had searched for him there and did not find him. Based on the accused's own indications, he recovered Exhibit 4, the deceased's walking stick which the accused person used to harm the deceased.

Ricky Zhou explained that on 20 February 2023 he took the accused to court where the accused's warned and cautioned statement was confirmed in accordance with the law.

Under cross-examination the witness revealed that his comprehensive investigations indicated that the accused was in the vicinity of the crime scene at the time of the murder and not in Mutasa as he claimed.

The defence counsel's perfunctory cross examination of the witness resulted in emphatic affirmations of the accused's presence in Chambara Manyene on the fateful day. Crucially that the accused was not in Mutasa as he wanted the court to believe. The witness demonstrated that he had no motive to falsely incriminate the accused as their interaction was solely based on his professional obligations. We found him to be a credible witness.

### **Defence case the accused -Godknows Ringoziva**

The accused adopted his defence outline as his evidence in chief and added the following: He claimed to have travelled from Chivhu on 5 January 2023 to his rural home in Mutasa until his arrest on 16 February 2023. He denied any knowledge of Anderson Kashora but confirmed knowing Taurai Nyandiro whom he identified as a commuter omnibus driver and a rival. He alleged that he had a previous altercation with Taurai regarding a romantic interest and this led to him having a strained relationship with him. He further alleged that Taurai his so-called adversary had failed to identify him from other people who were lined up for identification and only managed to do so after officer Ricky Zhou had indicated him. The problem we had with this assertion is that while Taurai was on the witness stand the accused did not cross examine him on this aspect. The fact that the accused then decided to mention this when Taurai had left the witness stand and was unable to respond implies that this maybe an afterthought. We wondered how this was possible when the accused alleged that they knew each other well enough to have previously had a fall out over a love interest.

Under cross examination he claimed that the police told him that they had to arrest him because the chief of Chambare Manyane where the murder occurred was complaining that the police was not doing its job. He however failed to explain why they would demand for his arrest alone out of all the villagers. He also claimed that when the confirmation of his statement was conducted in court, the general public and members of the police force were seated in the gallery. State counsel took him to task over this assertion and he conceded that he omitted to give the details of the impugned recording and confirmation process of his warned and cautioned statement in his evidence as well as to have cross examined Ricky Zhou on this aspect. We observed that despite this concession he still was unable to do so leading us to conclude that the accused was not an honest witness.

### **Courage Ringoziva (Courage)**

The witness a young brother to the accused stated that he was with the accused and his family from 31 December 2022 to 5 January 2023 He however could not dispute that the accused may have been in Kanengoni village in Chivhu on 14 January 2023 because he had last communicated with him on 5 January 2023. His evidence proved to be immaterial as a result thereof. It could not confirm the accused's *alibi*.

**Eric Ringoziva (Eric)**

The witness a father to the accused testified that the accused and his family arrived at his homestead in Mutasa on 5 January 2023 and never left the place until the accused's arrest in February 2023. He explained that the accused would leave the homestead in the morning for menial jobs within the village and would return in the evening. He confirmed having telephonically conversed with officer Zhou the 4<sup>th</sup> state witness sometime in January 2023. Zhou had informed him that he was looking for the accused and that he was suspected of having committed a murder. He claimed to have informed Zhou that he was not with the accused at that moment but rather the accused was at the homestead. During cross examination he denied telling Zhou that he did not know the accused's whereabouts. Instead he claimed that after the phone call with Zhou he informed the accused that he was being sought for by the authorities on murder allegations. The witness stated that the accused did not contact the police because his *Itel* cellphone was not functional. He also said that it did not cross his mind to tell the accused to hand himself to the police regardless of the serious allegations that he had heard from the police. He was adamant that on 14 January the accused was in Mutasa and even though he left the house for part time jobs he did not go to Chivhu. We understood the witness's predicament. The accused is his son, his fourth child out of six children. He was clearly caught between a rock and a hard place. He had the option of conceding that he did not know where the accused was during the period in question or telling the court the truth of his decision not to instruct the accused to hand himself over to the police and clear himself of the murder allegations if indeed, he was with him at his homestead. He opted for neither as to do so would amount to throwing his own son under the bus. It didn't make much difference however because without clear answers on why he did not ensure that the accused reported at the police station and cleared himself of the murder allegations whatever narrative he adopted exposed him for being economical with the truth and revealed a desperate attempt to support and confirm his son's supposed *alibi*. In the end he confessed that he did not know that the accused had given a confession to the police outlining how he had assaulted the deceased. This witness did not impress us as a responsible father, citizen more so a credible witness.

## **Issues**

It is undisputed that the deceased was found injured and deceased in her house with the cause of death attributed to assaults and that there was no eyewitness to the assault. Additionally, her possessions including her wheelbarrow, blanket and groceries were found missing. Furthermore, the accused was apprehended a month later in Mutasa Nyanga and upon his arrest he provided a warned and cautioned statement detailing the commission of the offence and the statement was duly confirmed. When the common cause facts and the defense's arguments outlined herein are put together it is apparent that the only issue which arises for determination is the identity of the person who attacked the deceased at her homestead on the fateful day.

## **The law on the defence of an alibi**

No one saw the accused person committing the offence on the day in question. He raised the defence of an *alibi* arguing that he was in Mutasa, Nyanga at the time the murder was committed. He further claimed that those who purported to have seen him at the relevant time were mistaken. The defence of *alibi* is when an accused seeks to rebut any direct or indirect evidence tending to prove his guilt by showing that he could not have committed the crime charged because he was somewhere else at the relevant time (Hoffman and Zeffertt *The South African Law of Evidence* 4 ed 619). This *alibi* defence amounts to a denial of the prosecution's case on the issue of identity. In the case of *S v Aston Tadiwanashe Mandaza and Ors* HH 116/24 MUTEVEDZI J described it as a defence which is predicated on the physical impossibility of an accused's guilt because he was at some other location, away from the scene of crime at the material time.

The rule is that once an accused raises the defence of *alibi* that defence must be investigated and a definitive position taken by the investigative agencies in relation to it. It is essential therefore for the accused to raise his *alibi* defence promptly and give sufficient particularity to enable the police to conduct a thorough investigation to either confirm or refute the claim. If the prosecution fails to investigate the *alibi*, it could provide a loophole for the accused. Where it is not investigated, it may succeed and where the court fails to analyse same, it may form a ground of appeal that may be sufficient for the setting aside of the decision of such court.

*In casu* the accused did not, at the time of his arrest, advise the police that he was in Mutasa at the relevant time. Instead, he informed the police that he was at the deceased's house at the relevant period. Out of their own investigations, the police had coincidentally

investigated the accused's *alibi* because the investigating officer contacted the accused's father at whose residence the accused claimed he had been staying. The father denied having seen the accused. He advised the police that the accused was not at his residence. Unconvinced by the father's protestations, the investigating officer tasked his colleagues at Mutasa Police station to proceed to the father's homestead to do a physical check. They did but still the accused was not located there. When the father came to court to testify on the accused's behalf, he was exposed as being untruthful in alleging that the accused had all the time been in Mutasa when he had denied that during investigations. It becomes clear that the accused did not raise the *alibi* defence timeously to the police because he knew that the police had already investigated and confirmed his absence at Nyanga through his father and Mutasa police. It is evident that the *alibi* was an afterthought. His defence is not only unworthy of belief but is palpably false. That finding is substantiated by Exhibit 5 the accused's confirmed warned and cautioned statement which was provisionally admitted by the court in terms of s256 (2) of the CP&E A Act. In that confession the accused stated as follows:

"I admit to the allegations, I wanted some groceries which were in the now deceased's house and the now deceased had seen me in her house and had closed the door with her walking stick, that is when I pushed her inside. The now deceased threw the walking stick at me and I held it. I pushed the now deceased to the wall, pressing the now deceased with the walking stick on the chest, kicking the now deceased on the right-side ribs. I then assaulted the now deceased twice with an elbow on the left ribs. I let go off the now deceased who fell down. I took out a sack which had cooking oil mealie meal, box of milk and sugar and to also look for something to close the door. When I came back I saw the now deceased crawling out of the inner room. I pushed the now deceased down and then took some blankets which were there and wrapped the now deceased with the linen. I took an itel cellphone and cash in the sum on US\$30-00. I then took the now deceased's walking stick and used to close the door whilst I was outside. I took a wheelbarrow which was there at the now deceased's residence and put three sacks of groceries and pushed it going to board a commuter omnibus at Kashora bus stop"

The procedure that a court must take where an accused person challenges a confirmed warned and caution statement is settled. Where an accused raises a potentially sustainable challenge to the propriety of the confirmation proceedings, the court is obliged to determine the validity of that issue as a separate issue of fact. The onus is on the state to prove the absence of any irregularity. If the state discharges the onus, the statement is provisionally admissible and the onus shifts to the accused to rebut the presumption that the statement is admissible. In this case, the state called the evidence of Ricky Zhou to confirm the integrity of the recording and confirmation proceedings. Zhou informed the court that the processes were above board and were all done freely and voluntarily by the accused. The only attack on the propriety of the confirmation proceedings was that the police had been allowed to remain in the gallery. According to Zhou each police officer involved in the investigation as well as other members of the public were directed to leave court when the confirmation proceedings began. They did

so. After the evidence of Ricky Zhou there was no protestation from the accused or his counsel about that evidence. It became clear that, the accused had opportunity to advise the magistrate if he had wished so, that he had not made the statement which was sought to be confirmed. He did not. Instead, he confirmed to the magistrate that he had done so freely and voluntarily without having been unduly influenced. His feeble challenge of the propriety of the statement can be construed as nothing but an afterthought. The accused failed to discharge the onus placed on him by s256 (2) of the CP&E Act to show on a balance of probabilities, that the confirmed warned and cautioned statement was not made by him or was not made freely and voluntarily or that the confirmation proceedings were improperly done. We find therefore that the accused's statement was freely and voluntarily made. It was properly confirmed and is therefore admissible and his confession therein confirmed his presence at the scene in addition to articulating how he committed the offence.

If it is accepted as it is in this case, that it was the accused who made the statement and that he did so freely and voluntarily, the court is permitted by law to convict the accused solely on the basis of that confirmation. It means there is no requirement for prosecution to produce further evidence. Although in this case there is independent evidence linking the accused to the commission of the offence he could as well be convicted on the evidence of his confession alone. The relevant provision is s273 of the CP & EA Act provides that:

**273 Conviction on confession**

Any court which is trying any person on a charge of any offence may convict him of any offence with which he is charged by reason of a confession of that offence proved to have been made by him, although the confession is not confirmed by other evidence:

Provided that the offence has, by competent evidence other than such confession, been proved to have been actually committed.

The above provision was explained in the case of *Frank Mbanjo and 2 Ors* HB154/17. That authority explained that for a court to convict an accused on the strength of a confession, the state must simply prove that the crime confessed to was indeed committed. The proof must be independent of the confession. In other words, the state must present evidence apart from the confession that a murder was committed in this case. As already pointed out, there is no debate that the deceased was killed by someone who then looted her belongings. The medical evidence equally supports that the deceased died from a brutal assault. The court is therefore convinced that the accused confessed to a crime which actually happened.

Interestingly, even without the accused's confession, the evidence of Anderson Kashora and Taurai Nyandiro which we found credible is probably more damning on the accused's case.

Their evidence relates to the identification of the accused close to the crime scene and in possession of the deceased's property. They both said they saw the accused at or close to Kashora bus stop on 15 January 2023. Anderson mentioned that he recognized the accused who he already knew from previous meetings. He distinctly noticed that he wore what he described as a head wrap among other things. An hour and a half later Taurai stopped his commuter omnibus at the bus stop and picked the accused. He noted then that he was wearing a denim jacket and a blue woolen hat. The defence sought to capitalize on the difference in the description of the accused's headgear. But in our view, nothing really turns on the difference. The witnesses both saw the same accused albeit at different times. Even if it were to be admitted that a head wrap is different from a woolen hat (which in reality it is difficult to say) an hour and a half is long enough for someone with a desire to conceal his identity to have swapped a head wrap for a woolen hat. Had the witnesses both seen the accused at the same time but then given different descriptions of his headwear the discrepancy in the description of the assailant's head gear could be considered material. In this case it cannot.

In a long line of authorities, courts have always been cautioned against readily believing a witness's evidence of identification. For it to be satisfactory a witness's evidence of identification must be completely reliable. In *S v Nkomo* 1989(3) ZLR 117 (S), the Supreme Court held that good identification does not need corroboration or support but poor identification does. Examples of good identification include cases where the witness observed an accused over a long period or many times or where the accused was well known to the witness see also *S v Mtetwa* 1972 (3) SA 766. Our view is that the evidence of the witnesses in this case is more than satisfactory. Anderson's evidence is that he recognised the accused the minute he raised his head while pushing his heavy load. According to Anderson he recognized the accused as an employee at Mombeshora's homestead with whom he had at one time interacted with in his wife's presence. He also knew him from seeing him at the local shops during the month of December 2022. Anderson stated that visibility was already good at the time he saw the accused. This is believable because it was around 0500 hours. It is a notorious fact that in summer in Zimbabwe, the sun rises around that time. In addition to this Taurai Nyandiro also saw the accused a short while later. He spent a considerable amount of time in his presence on the day in question, from loading his three sacks on top of the bus's roof rack to conversing with him as the accused gave him instructions on how to load his sacks up to the time, they parted ways. All in all, Taurai spent a total of about four hours with the accused. That made his perception of him very good. The accused on the other hand confirmed that he

is known to Taurai. What this means is that Taurai Nyandiro could not have been mistaken about the identity and presence of the accused in Kanengoni village Chambare Manyane.

In conclusion, the court is thoroughly satisfied with these witnesses' identification of the accused. We deem it completely reliable. Once this is accepted, the evidence places the accused firmly in contact with the deceased on the material day. We have already indicated that his *alibi* was investigated and is hopeless. The evidence produced by the state incriminates the accused person and links him to the murder scene. It is our finding that the accused was at the scene on the date and time of the fatal assault on the deceased. The causal connection between the accused's actions and the medical findings seals his fate. We find that once the deceased confronted the accused, he assaulted her and pressed her chest against the wall using her walking stick. He kicked the deceased on the right side of the ribs and elbowed her on the left side of the ribs until she fell down. When he turned to see the deceased alive and crawling out of the inner room, he took a blanket and stifled her with it. He then used the blanket to wrap her thereby suffocating her to death. Dr. Mayedo concluded that death was likely to have been caused by respiratory insufficiency, fractured ribs as well as thoracic trauma that the deceased sustained. All this corroborates the state's evidence of how the deceased sustained the mortal injuries. Taking the deceased's advanced age of ninety-three years into account restraint must have been taken by the accused. Instead, he assaulted the nonagenarian on delicate parts of the body. The accused must have and he indeed foresaw the possibility that his conduct may cause death but was reckless as to whether it did. He continued to assault the deceased even when he saw her vulnerable and, crawling on the floor leading to respiratory insufficiency and subsequent death.

In the final analysis, we have no apprehension to hold that:

- i. The accused was present at the crime scene
- ii. The deceased confronted the accused after he unlawfully entered her house with an intention to steal.
- iii. The accused person unlawfully with intent to kill or realizing that there was a real risk or possibility that death might occur assaulted Mary Mubata by kicking her and pressing her neck against the wall with her walking stick suffocating her in the process. He then wrapped her in a blanket further depriving her of oxygen until she died.
- iv. He then then stole the deceased's goods and made good his escape from the scene.

- v. He was however seen by Anderson Kashora as he made his way to the bus stop with a heavy load in a wheelbarrow later identified as the deceased's. He was also identified by Taurai Nyandiro who transported him to Chivhu. The identification by these two witnesses was done independently of each other. They both recognised the accused and their recognition cannot by any standard be faulted
- vi. The accused confessed to the assault and that confession was confirmed by a magistrate in terms of the law
- vii. The accused's conduct in its totality, his use of excessive force, his brutality of using the deceased's walking stick leaves us without a doubt as to his intention

It is against the above background that we are convinced that prosecution managed to prove the accused's guilt beyond reasonable doubt. **He is accordingly found guilty of murder as charged.**

**MUNGWARI J:**.....

*National Prosecuting Authority, the state's legal practitioners*  
*Mabuye Zvarevashe -Evans legal practitioners, accused's legal practitioners*