

THE STATE  
versus  
SAYMORE DZIMAUTA

HIGH COURT OF ZIMBABWE  
MUNGWARI J  
HARARE, 19 January & 27 October 2023

### **Criminal Trial**

**Assessors:** Mr Barwa  
Mr Mabandla

*B Murevanhema*, for the State  
*N Sayi*, for the accused

MUNGWARI J: Saymore Dzimauta (hereinafter the accused) appeared before this court facing a charge of murder as defined in section 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (The Code). It is alleged that on 30 March 2022 and along Patrenda Way, Glen View 2, Harare, the accused unlawfully and intentionally caused the death of Pascal Saul Masaraure (hereinafter the deceased) by striking him on the head with an unidentified object thereby causing injuries from which he died.

The detailed allegations are that on the fateful day, the deceased was walking along Patrenda Way in Glen View 2, Harare when he was attacked by the accused. He hit him on the head with an unidentified object. A kind hearted stranger found him lying in the middle of the road with a swollen head and a deep cut on the back of the head. He was bleeding from the head and was barely alive. He was bereft of any possessions. His cellphone was also nowhere to be found. He urgently conveyed him to Sally Mugabe Hospital where in the early hours of 31 March 2022 he died. Some months later the deceased's cellphone was found in the possession of Naume Mafurutse. She claimed that the accused had sold the mobile phone to her son in March 2022 who in turn had given it to her.. She had been using it ever since. The accused was subsequently arrested on a charge of the murder of the deceased. A post mortem examination on the remains of the deceased established the cause of death as brain damage, global subarachnoid hemorrhage and severe head trauma.

The accused pleaded not guilty to the charge. He said he knew nothing about the allegations. He denied having sold a cellphone to Talent Chikobvu who he had no prior acquaintance with. Instead he told the court that he had a strained relationship with Nicholas Nyakuromba the only state witness whom he knew. Nicholas, so he alleged, had reason to falsify and manufacture allegations against him. The source of the grudge emanated from an incident that allegedly occurred in February 2022 when he met Nicholas at Wellnek bar. Nicholas had threatened him with unspecified action after he saw him walking with his wife only known as Precious. He had told him to watch his back and that one day he would regret his actions of walking with his wife. Arising out of the fall out Nicholas had lied to the police that he was the one who sold Talent Chikobvu a cellphone when he never did. He denied ever possessing and selling the stolen cellphone.

### **The state's case**

The State opened its case by seeking the formal admission of five state witnesses' evidence as it appeared in the state's summary of evidence in terms of section 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*](The CP&E Act) . The witnesses are, Previous Chigwade, Morris Chigede, Cosmas Ruzayi, Naume Mafuruse and Saul Masaraure. As will be illustrated later, the evidence of these witnesses made a lot of issues common cause.

In addition to this the state tendered with the consent of the defence the post-mortem report as Exhibit 1. The cause of death was uncontentious. The deceased died as a result of head injuries. Dr Martinez a forensic pathologist examined the deceased's remains at Sally Mugabe Central Hospital on 4 April 2022. The doctor observed a fracture in the parietal bone on the left side, as well as global subarachnoid hemorrhaging on the deceased's skull. Both are signs of violence. She concluded the cause of death as has already been stated.

The state complimented the postmortem report with production of a medical affidavit which was sworn to by a Dr Manjengwa. The defence also did not contest its admission and resultantly the affidavit was admitted as Exhibit 2. Dr Manjengwa who is stationed at Sally Mugabe Hospital examined the deceased upon admission at the institute on 30 March 2022. He noted head injuries on the deceased. Noteworthy is his conclusion that due to the nature of the injuries sustained by the deceased a sharp object must have been used to inflict the injuries noted. He stated that the approximate number of blows/contacts applied to the deceased's head were about five and that they were severe.

Lastly, a warrant of search and seizure was issued ,which allowed the police to track the deceased's and Naume Mafurutse's activity through their mobile numbers.This and their call histories were tendered as Exhibit 5. The information served to show that the last time that the deceased had used his mobile phone was 30 March 2022 and that Naume Mafurutse had started to use the deceased's cellphone on 31 March 2022.

In addition to this the state called for oral evidence.

### **Oral Evidence**

The State led *viva voce* evidence from three witnesses namely Tendai Machiriori, Talent Chikobvu and Nicholas Nyakuromba.

#### **Tendai Machiriori (Tendai)**

He is a police officer stationed at C.I.D Homicide, Harare. He is the arresting detail in the matter. According to the witness, sometime in April 2022 the investigating officer, Detective sergeant Marisa applied for a warrant of search and seizure from Econet for the IMEI number of the deceased's stolen cellphone depicting the call history from 1 March to 30 March 2022 as well as full particulars of the current user and acquired it. The results from Econet showed that the line 07724633991 which was the deceased's number had last been used on 30 March 2022. A new line 0776928912 had been inserted in the handset with effect from 31 March 2022. The line was registered in the name of Naume Mafuruse. The witness and his team made a follow up with Naume Mafuruse of St Mary's Chitungwiza. They recovered the cellphone from her, apprehended her and took her to the station where they interviewed her. Naume informed them that the cellphone was bought by her son. She subsequently led them to her son Talent Chikobvu. Further follow ups were made and Talent Chikobvu was picked up for questioning. Talent Chikobvu stated that he bought the phone from the accused with the assistance of Nicholas Nyakuromba who he knew as a relative of his employer. Talent Chikobvu led them to Nicholas Nyakuromba's house. Nicholas then led the police to house number 2451, St Mary's, Chitungwiza where the accused was arrested. The witness explained that the deceased's cellphone that was sold by the accused to Talent Chikobvu was the connecting factor of the accused to the commission of the offence. Through this witness the deceased's blue Huawei J5 Lite with IMEI number 3546575859878 was tendered without any objections from the defence as Exhibit 4.

No meaningful cross examination was conducted regarding the evidence of this witness except to elicit louder insistence that the theft of the cellphone by the accused was the necessary link between the accused and the murder of the deceased. His evidence was left intact.

**Talent Chikobvu(Talent)**

The witness a supervisor at Small Stone (Pvt) Ltd, informed the court that he knew Nicholas Nyakuromba as a nephew to his employer, Rodrick Kambaza. According to Talent, Nicholas often frequented the company premises and so was a familiar face. He however did not know the accused prior to 31 March 2022. He only came to know him on the fateful day at around 11am, when he came to the wholesale premises in the company of Nicholas Nyakuromba. On that day, Nicholas informed him that the accused was selling a Huawei cell phone. He became interested because he knew his mother needed a new cellphone and so he drew closer to the two men. He looked at the cellphone and liked the Huawei cellphone that was up for sale. When he asked for the selling price the accused told him it was US\$30 and that he was only letting the phone go because he was in desperate need of cash. He tried to negotiate for a reduction of the purchase price. At the time of the negotiations he saw the two men standing side by side. The witness was blown away by the cellphone and decided to buy it for his mother. The only challenge so he said, was that he did not have any money on him and because he was desperate and did not want the bargain to pass him by, decided to borrow some money from his manager, Clara Nyarambi who obliged him. He went back to the two men and found the accused busy on the cellphone as he scrolled and pressed the keypads as if he was deleting something on the phone. According to the witness, the accused's actions showed ownership and familiarity with the cellphone. It was then that he became convinced that the cellphone belonged to the accused. After he had completed his scrolling on the cellphone, the accused handed over the phone to the witness in exchange for the money.

Presumably because he did not want to be short changed, the witness says he observed the accused well in the glare of the morning light for a total of 20 minutes from a distance of about a metre before he transacted with him. He also observed him from the time he arrived selling the cell phone up to the time he left all which took up a considerable amount of time. He took note of the bald hair style and clean shaven look that he was spotting. He also noted distinguishing features such as his protruding cheek bones all within close proximity, at times

even as close as 40 cm away from him and at most a meter apart. All the while directly facing him.

When he finished work that same day, he went to his mother's house to give her the phone. He assisted her to set up the cellphone and left her using it. Sometime in June he received word from his mother that the police had indicated to her that the phone he had bought for her was stolen. When probed he informed the police that he purchased the cellphone from a man whose name he could not recall but had come to him in the company of Nicholas Nyakuomba. He then volunteered to take them to Nicholas Nyakuomba whom he knew.

He described the identifying features on the cell phone as that, it had a cracked front screen, a cracked back camera as well as a scratched speaker. The witness identified Exhibit no 4 as the cell phone that he purchased from the accused. The court noted that the identifying features as narrated by the accused matched those on the exhibit.

Under cross examination the witness emphasized that the accused was the seller of the cellphone. He got to know that it was the accused who was selling the property when he asked the two men who the seller was and was told by Nicholas that it was the accused. Accused who was standing close to Nicholas did not dispute this but instead confirmed this by expressing his desperate need for cash. The witness conceded that Nicholas received the money and he contributed towards discussions for the price of the phone. In his opinion however, the person who was keen to offload the merchandise was the accused because when he had shown some reluctance due to the price at some stage the accused was quick to say that he would take whatever was available and take the balance later. He explained that Nicholas as the nephew of his employer was known to the workers at the wholesale and so it was easy for him to approach them and advertise any product which was up for sale. The witness told the court that he had since left the employ of Roderick Kambaza in September 2022 and so had no reason to be biased towards Nicholas as suggested by the defense counsel. The witness's demeanor on the witness stand depicted truthfulness. He clearly outlined the accused's role in the transaction and that of Nicholas Nyakuomba. He also made concessions where they were due. Had he been biased he could have opted to completely omit Nicholas's facilitation role, but he was candid with the court and narrated all that transpired and was said by the two men. We were convinced that the witness was not biased towards anyone but was instead a truthful witness worthy of belief.

**Nicholas Nyakuromba (Nicholas)**

He survives as a bar tender at Chigovanyika in St Mary's Chitungwiza. The bar is owned by his uncle Roderick Kambasa. Roderick Kambasa is his mother's brother. According to the witness, Roderick Kambasa has many business enterprises that he runs including a warehouse as well as several bars. He explained that Talent was employed at the warehouse while he was employed at the bars. They were in essence co-workers.

According to the witness the accused was a frequent patron at the bar where he worked and Nicholas would sometimes drink beer with him. The accused also used to patronize his home which was also a shebeen and would meet his wife at their residence. The accused was therefore known to Precious his wife of seven years. According to Nicholas, his relationship with the accused was confined to drinking beer together and not more and their relations were cordial.

On the morning of 31 March 2022, he was at the bar when the accused approached him and informed him that he was selling a Huawei cell phone. He told him that he was desperate for cash to buy basic food commodities at his house and asked for \$30 USD in exchange for the phone. The cellphone was a Huawei make with a blue cover. The witness said he did not have such money. The accused asked him to assist him to sell the cellphone and enquired if he knew anyone who wanted a cellphone to purchase. The witness recalled that Talent Chikobvu his co-worker had previously indicated to him that he was looking for a cellphone and told him that if he were to come across someone selling a good phone he should advise him. He then took the accused to Talent's workplace and advised Talent that he had brought the cellphone that he was looking for. When Talent saw the phone he liked it but he had no money. Talent looked around for some money but didn't find any and eventually indicated to them that he was going to source for some money from his manager. He returned with \$20 USD and bought the phone from the accused for US \$20. The witness said he received the money in the accused's presence. He promptly handed it over to the accused but before he did so the accused removed his net one sim card from the phone. He also deleted some information from the phone. This he did within eyesight of Talent and himself. According to the witness the accused cannot now claim not to have sold the cellphone as he presented himself as the owner of the cellphone with the capacity to sell it and even negotiate the price downwards if he so wished. After the sale, he left with the accused and went back to join his drinking friends. The accused bought him three opaque beers as payment for his trouble and pocketed the rest. The accused

did not stay for long at the bar. In June 2022 C.I.D Homicide detectives came to him enquiring about the phone and he led them to the accused. The witness told the court that he never had an altercation with the accused over his wife Precious. He dismissed any suggestions that he threatened the accused in any manner at Welneck Sports bar.

Under cross examination, the witness stated that initially the accused approached him early in the morning before he went to work trying to flog off the cellphone that he had in his possession. He also explained that the only reason he was given the money by Talent was because he is the one who handed over the phone to him. He was clear that he had no reason to fabricate anything against the accused. According to the witness, the accused approached him to facilitate in the sale of the cellphone and nothing else. He never posed as the seller and neither was he the seller. That would explain why the accused took the money for himself and only bought him beer as a thank you for the role he played.

#### **Defence case**

The accused testified in his defence. He was the sole witness. He adopted his defence outline and added that, he is in the business of vending. Welneck sports bar is just five hundred metres away from his vending stall. He admitted knowing Nicholas Nyakuomba from the bar which happened to be the closest place for him to go and while up time. He told the court that he had a fallout with Nicholas sometime in February 2022 on a date he could no longer recall. According to the accused, on that day he visited Welneck bar with his nephew and saw many women inside the bar. He started talking to one of them and while he was chatting her up, Nicholas came to where he was and an altercation ensued with Nicholas alleging that he had taken his wife. It was then that Nicholas promised to fix him for chatting up his wife. He denied knowing Talent and that he ever sold a cellphone to him.

Under cross examination the accused confirmed that there was no bad blood between himself and Talent and conceded that Talent would not have any reason to fabricate anything against him. He told the court that he had been assaulted by Nicholas with an open hand inside the bar but did not report the assault to the police because he realized that the woman he was with was Nicholas 'wife. When asked why his version of events kept changing from being seen walking together to chatting her up inside the bar the accused tried to consolidate the versions and said that he had been seen walking with Precious inside the bar and that is when the assault occurred. His attention was drawn to his defense outline in which he said after he had been seen walking with Precious and which actions infuriated Nicholas he was only threatened the following day at the bar. He failed to explain the two differing versions. He said the

confrontation by Nicholas occurred in full view of a lot of patrons in the bar. He however failed to pin point anyone who might have witnessed the exchange. He gave a bare denial that he neither stole a phone nor sold it to anyone.

### **Common cause issues**

As stated in earlier paragraphs, the evidence of the witnesses which was admitted in terms of s 314 of the & E Act added to that of the witnesses who orally testified established and made the following facts common cause:

1. The deceased was last seen on 30 March 2022 by his girlfriend Previous Chigwande. The two lovebirds worked together at the same hardware shop in Harare and had bid each other farewell at around 5 pm of the same date. Previous Chigwande's last image of the deceased was when he was heading towards his pick up point at corner Robert Mugabe and Harare street enroute to his home in Glenview.
2. The deceased arrived home changed his clothes and went out. He left the clothes he had been wearing earlier at work on the bed.
3. On the date when he was last seen by his friends and relatives, the deceased had his Huawei cellphone on him.
4. That same evening of 30 March 2022 an unknown assailant struck him on the head with an unknown object. He sustained a deep cut and some serious head injuries.
5. He was rescued from the middle of the road where he lay helplessly at around 9.45 pm by Morris Chigede who found him barely alive. Morris Chigede summoned the police to the scene.
6. Cosmas Ruzayi a police officer searched the deceased. He had no personal effects on him. He had no identity documents. He had no cellphone. He scouted the scene and found no signs of a struggle. His investigations excluded a hit and run road accident.
7. No one witnessed the attack on the deceased
8. The unidentified deceased was ferried to Sally Mugabe hospital and died soon after admission at around 3 am of 31 March 2022.
9. The deceased's father Saul Masaraure, reported the deceased as missing at the police station leading to the identification of the nameless wounded person found along Patrenda way.

10. The deceased's cellphone was recovered from Naume Mafuruse who had started using the cellphone soon after the robbery of the deceased. Naume's son Talent Chikobvu bought it for her after he borrowed money from his workplace manager. In June 2022 she was surprised to hear from the police who informed her that her cellphone had been stolen from the deceased. She directed the police to her son Talent Chikobvu who she alleged had bought the phone for her. She handed over the phone to the police for further investigations.
11. On 29 June 2022 Saul Masaraure identified his son the deceased's cellphone which had been recovered by the police from Naume Mafurutse.
12. The accused was fingered as the seller of the cellphone. He was subsequently arrested.

### **Issues for determination**

From the evidence admitted it is not in dispute that the deceased died a violent death and succumbed to the injuries as alleged. The only issue for determination is the identity of the person who murdered the deceased.

### **Analysis of evidence**

No one witnessed the murder of the deceased. The question of the identity of the murderer in this case can only be resolved by ascertaining who stole the deceased's property. The deceased was assaulted and divested of his possessions which included a cell phone on 30 March 2022. Investigations were carried out and the undisputed findings before this court were that Talent's mother Naume Mafuruse was found in possession of the deceased's cell phone which she had started using on the evening of 31 March 2022. On the other hand Talent was clear that he purchased the cell phone from the accused. The transaction was facilitated and witnessed by Nicholas. The sub question therefore is whether or not it is the accused who sold the deceased's cell phone to Talent. If he is what inference can be drawn in the absence of an explanation by the accused as to where he obtained the cell phone?

In the court's view, the attempt by the accused to deny having sold the cell phone to Talent appears desperate. He could not suggest any reason why Talent would falsely implicate him in the transaction. He was not previously known to Talent. His allegation that Nicholas had a grudge with him after they clashed when he (accused) chatted up Nicholas' wife in a bar sounds like a cock and bull story. Nicholas was positive and very assertive that the accused and he were well known to each other. The accused knew his family because he used to frequent

Nicholas' residence for drinks as he ran a shebeen there. Nicholas' story on how the accused brought the phone and how he ended up trading it to Talent is so coherent that it could not have been concocted. The accused's alleged reasons for his so-called grudge with Nicholas are distorted as to be meaningless. As already pointed out in his defence outline, he alleged that the grudge started on an unknown date in February 2022 when Nicholas saw him walking with his wife Precious and an altercation took place. He was then threatened with unspecified action the following day while at Wallneck bar while in the company of his relative Moreblessing Muruku. In his evidence in chief he made a volte-face and alleged something totally different. At that stage he said the altercation and threats occurred in Wallneck bar and not over two days as stated in his defence outline. He was assaulted and threatened on that same occasion. He conceded that there were many people in the bar whose names he could not recall except his relative Moreblessing Muruku. Curiously he chose not to call Moreblessing Muruku to back up his story in the face of Nicholas' loud protestations that such an altercation never occurred. Unsurprisingly he also could neither give the date when he was assaulted by Nicholas nor explain why he did not report the assault to the police. He said it was sometime in February 2022. At the very least he must have recalled the date when he was assaulted and threatened since it was the basis of his defence and one usually does not forget an assault on his person. His alleged differences with Nicholas formed the foundation of his defence. He struggled to maintain his story of the existence of bad blood between himself and Nicholas. He could not make up his mind whether the fall out occurred in the bar or outside the bar on the same day or different days or whether Nicholas assaulted him or not. His own evidence was his biggest undoing. It led us to conclude that there was no grudge between himself and Nicholas. We do not accept that he was assaulted let alone that he was threatened with unspecified actions for walking with his wife. It just cannot be true. We find that the accused was untruthful. He fabricated the distorted version of a grudge to create a motive for Nicholas to lie against him and remove himself from the crime.

In addition, both Nicholas and Talent were never hesitant when quizzed by the police. They immediately indicated the origins of the phone which were traced to the accused. It would have been foolishness of the highest order for Talent to kill a person, rob him of a cell phone and then give the deceased's cell phone to his mother. It would have been equally unwise for Nicholas to sell to a workmate a cell phone he had robbed from the deceased. From those facts there is no doubt that the story that it was the accused who sold the cell phone to talent is true.

It however only connects the accused to the murder of the deceased. It is not conclusive that it is him whom murdered the deceased.

### **The doctrine of recent possession**

The doctrine of recent possession entails that if the possessor of recently stolen property cannot give an innocent explanation of such possession, an inference can be drawn that he is the one who stole the property. The inference that he stole the property must be the only one that can be drawn from such possession. In the case of *Nollan Kawadza v The State* HH 5/06, this court cited with approval the case of *S v Parrow* 1973 (1) SA 603 (A) where HOLMES JA said:-

“I pause here to refer briefly to the so-called doctrine of recent possession of stolen property. In so far as here relevant, it usually takes this form. On proof of possession by the accused of recently stolen property, the court may (not must) convict him of theft in the absence of an innocent explanation which might be reasonably true. This is an epigrammatic way of saying that the court should think its way through the totality of the facts of each particular case and must acquit the accused unless it can infer, as the only reasonable inference, that he stole the property. (Whether the further inference can be drawn that he broke into the premises in a charge such as the present one will depend on the circumstances). The onus of proof remains on the State throughout. Hence, even if after the closing of the cases for the State and the defence, it is inferentially probable that the accused stole the property, he must be acquitted unless the only reasonable inference is that he did so for the law demands proof beyond reasonable doubt.”

Essentially what it means is that the only conclusion that a court must be left with is that the accused is the one who stole the property he was found in possession of.

Traditionally the doctrine applied to cases of theft. However in *S v Purrow* (supra) the doctrine was extended to cover cases of house breaking with intent to steal and theft which in our jurisdiction has mutated to be called unlawful entry into premises. On the basis of that extension this court per UCHENA J (as he then was) ruled that there was no reason why the doctrine could not be used in any case of which theft is a component - like robbery. It found that it would be absurd if the court, in a case of robbery, were to be satisfied that it was dealing with theft and had drawn the inference that the accused stole the property but then hesitate to find that since he stole the property he is the robber. It concluded that there would be no basis for that hesitation. The doctrine was therefore held to apply to cases of robbery in as much as it applied to theft and house-breaking cases. The issue, so the court found should simply be; does the evidence of recent possession prove he is the thief? If it does, and the stealing was during a robbery, then he will have been proved to be the robber just as such evidence can be used to prove that the thief is the housebreaker.

In similar vein I do not see why the doctrine cannot be further extended to cover cases of murder in circumstances where the murder occurred during the course of a robbery and it is proved that the accused was found in possession of property which was stolen during the

robbery which led to the murder. If the evidence suggests that it is the accused who robbed the victim an inference can be drawn that it is him who murdered that victim of robbery unless he gives a satisfactory and innocent explanation of how he came into possession of the victim's property. The reasoning is not difficult to see. It is that if there is enough evidence to establish the fact that the accused robbed and stole a particular article from the deceased person and if the robbery involved murder, that evidence must be enough to prove that the murder was committed by the accused at the time he was robbing his victim.<sup>1</sup> The evidence will be used to prove that the robber is the murderer. In fact that appeared to have been endorsed by the Supreme Court in the case of *Tonic Mongoma v The State* SC 36/20 where it said that:

“The fact that the deceased's property was pointed by the appellant means he was in possession of it at locations of his own choosing. His possession triggered the application of section 123 of the Criminal Law Code.”

Where an accused person is therefore found in possession of recently stolen property section 123 of the Criminal Law Code which provides as follows comes into play:

“(1) Subject to subsection (2) where a person is found in possession of property that has recently been stolen and the circumstances of the person's possession are such that he or she may reasonably be expected to give an explanation for his or her possession, a court may infer that the person is guilty of either theft of the property or stock theft, or of receiving it knowing it to have been stolen whichever crime is more appropriate on the evidence, if the person –

(a) cannot explain his or her possession; or

(b) gives an explanation of his possession which is false or unreasonable.

(2) A court shall not draw the inference referred to in subsection (1) unless the circumstances of the person's possession of the property are such that, in the absence of an explanation from him or her, the only reasonable inference is that he or she is guilty of theft, stock theft or receiving stolen property knowing it to have been stolen, as the case may be.”

In this case, prosecution have proved beyond reasonable doubt that the cell phone which was stolen from the deceased was sold to Talent by the accused. The accused in turn failed to give not only an innocent explanation but any explanation at all of how he came into possession of the deceased's cell phone. Instead he sought to deny that he was in possession of that cell phone and that he sold it to Talent yet the circumstances show that it is undeniable that he did. That possession reposed the onus on him to explain how he obtained the deceased's cell phone. He could not and did not say anything about it.

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<sup>1</sup> See the reasoning in the case of *Black Samson v The Queen* AD 106/69

It is difficult to envisage any other reasonable inference which can be drawn from the facts as proved except that it is the accused who murdered the deceased and took his belongings. Every other inference is excluded where an accused fails to give any explanation of his possession of the deceased's property and chooses to deny that he was in fact in possession of it. He denied possession because he was aware of the consequences of admitting that he had sold the deceased's phone to the witness Talent. The evidence, circumstantial as it is points to the fact that it is him who bludgeoned the deceased before robbing him of his property. The deceased died as a result of that murderous assault.

### **Disposition**

We have demonstrated above that the accused's narrative of bad blood between himself and Nicholas is palpably false. There having being no bad blood between them, there could have been no reason for Nicholas as well as Talent to lie that the accused had been in possession of the deceased's cell phone on 31 March 2022 a few hours after the deceased was attacked. There is evidence that the deceased died a violent death. His face was swollen. He could not talk. His body was found lying sprawled in the middle of the road. His possessions were all gone. The accused could not explain how he came to be in possession of the deceased's cell phone. We accept that the inference sought to be drawn is consistent with all the proven facts. Again we accept that the proven facts are such that they exclude all other reasonable inferences from them save the one sought to be drawn. The unexplained possession points to his guilt. Having carefully weighed the evidence adduced as a whole in this trial we find that the state managed to prove the guilt of accused beyond reasonable doubt. It is accordingly ordered that:

**The accused be and is hereby found guilty of murder as charged.**

*National Prosecuting Authority, State's legal practitioners*  
*Sai Zishiri, Accused's legal practitioners.*