

THE STATE  
versus  
KUDZAI LUVIN MANDEYA

HIGH COURT OF ZIMBABWE

CHITAPI J

HARARE, 27 January 2020; 10, 17, 24 February 2020;  
9,10,31 March 2020; 12 & 27 May 2020

ASSESSORS : 1. Mr Barwa  
2. Mr Kunaka

**Criminal trial**

*L. Chitanda*, for State  
*K. Ncube*, for Accused

CHITAPI J: This is a case of fratricide. The accused is Kudzanayi Luvini Mandeya. He is aged 21 years. He stands charged of the murder of his young brother Luwi Mandeya (hereinafter called the “the deceased”). The deceased was aged 15 years at the time of his death. The details of the charge were that, on 15 March, 2019, at Mapfumo Village, Chikwaka Juru, the accused unlawfully assaulted the deceased with a log several times on the head intending to kill the deceased or if not acting with intent to kill, the accused acted with a realization of the real risk of the possibility that his conduct might result in the death of the deceased but continued to engage in the unlawful conduct despite such realization.

When the charge was read out to the accused, he pleaded guilty. The court entered a not guilty plea nonetheless since a guilty verdict on a murder charge can only be returned after evidence of the commission of the murder by the accused has been led by the prosecution. The

state counsel did lead evidence to prove the commission of the offence. The evidence will be briefly dealt with later. Most of the evidence was common cause.

The trial was initially set down on 27 January, 2020. On that date submissions were made by accused's counsel that the accused had exhibited signs of mental disability. It also occurred to the court after observing the accused's deportment and further considered the remand form 242 in the magistrates court record that the police had noted thereon that:

“accused is believed to be mentally disturbed but has never been treated. He sometimes have (*sic*) auditorial hallucinations.”

In such circumstances it was advisable to and I made an order in terms of section 28 (2) as read with section 28 (3) of the Mental Health Act, [*Chapter 15:12*] for the medical examination of the accused to ascertain the accused's mental state. A trial of an accused person can only be held when the accused is in his sound and sober senses. The accused person should be *compos mentis* before he is tried and during his trial.

Following the order for the accused to be mentally examined, he was examined at Chikurubi Maximum Prison by Doctor Dhoropa on 14 February, 20202. A second examination was carried out on 17 February, 20202 by a psychiatric nurse Edmore Mukorera. The results of both the examinations were to the effect that the accused was of normal mental state. The trial was cleared to commence as scheduled following the certification that the accused was fit to stand trial.

A defense outline was filed on behalf of the accused. The gist of the defence outline was that the accused admitted striking the deceased with along several times on the head and that the deceased died as result of the injuries which resulted from the attack upon him by the accused. The accused attributed his conduct to provocation which was brought to bear upon him by the conduct of the deceased. The details of the nature of the deceased's conduct which provoked the accused were outlined in paragraphs 3-7 of the defence as follows:

“3. He was upset with the deceased for taking his phone, changing the password and inserting his econet line.

4. The deceased also made some disturbances of an unsuspected nature that affected the accused's living conditions.

5. The deceased used to receive food from South Africa and would hide the accused's food. He would lock it up in a room and hide the keys. The deceased would only hand over keys when the food was finished.

6. For these reasons, the accused thought of striking the deceased with the log. He will tell the court that he killed the deceased by mistake and sincerely regrets killing.

7. He does not know and/or understand what got into him but he is very remorseful and tormented by the death.”

The state counsel produced by consent the post mortem report which was compiled by a forensic pathologist, Doctor Yehilyn Capetillo following his examination of the body of the deceased to ascertain the cause of death. The doctor concluded that the deceased died from brain rupture, skull bone fracture and head injuries. The deceased’s body was examined at Harare Central Hospital on 18 March, 2019. The report listed a number of injuries observed on the deceased’s head after the skull was opened. There was a left front parietal tissue exiting from the skull, left parietal membranes damage, subarachnoid universal haemorrhage; brain oedema and left temporal brain lobe rupture. The injuries were concentrated on the head and their severity was consistent with the use of severe force because of several fractures which were observed. The fatal injuries which the doctor observed were caused by use of a blunt object. In this regard there is no disputing that the accused assaulted the deceased with a log.

The facts of this matter are largely common cause. The *actus reus* committed by the accused is not in dispute. The court must determine the accused’s intention and determine the appropriate verdict. There was no eye witness to the assault perpetrated by the accused on the deceased. A number of witnesses testified in the matter either orally or by way admissions made by the accused of statements of witnesses and the contents therein. The court in the course of the trial directed that the father of the accused and deceased whose statement had been admitted be called to clarify issues arising from the statement which the court considered to be pertinent. The father is Richard Mandeya. It is not necessary to repeat his evidence. A brief summation will suffice.

The witness Richard Mandeya was on the night of the incident present at home with the accused the deceased and another son Richard Mandeya (Junior) aged 10 years old. The witness described the accused as having been suffering from an illness which was unknown. The witness stated that the accused would sometimes do “some things” which were not understandable. When asked to give details, the witness stated that, the accused would act like a possessed person. The accused would just wake up and wear his t/shirt inside out. He could change clothes three times a day. He would eat other siblings food from their plates and if asked why he was doing that, he would respond that he was angry. The changes in the behavior of the accused manifested

themselves when the accused returned from South Africa the previous year where he had been studying for some course. The witness ended up consulting witchdoctors and prophets to no avail. The witness refused to grant the accused person permission to return to South Africa for continuation with his studies because of the accused's changed behavior. The accused was incensed by the decision of the witness and in retaliation the accused ended up burning the family members passports and the witness' personal documents. The accused confessed his misdeeds and boasted to the witness that he (the accused) had fixed the witness by burning the witness documents which were in the witness brief case. The accused dared the witness to retaliate if the witness felt like doing so. The witness reported the accused to the police.

The witness was asked to describe how his three sons, the accused, deceased and Richard Junior related and the witness described the relationship as cordial. The witness however stated that the accused occasionally took the deceased clothes without the latter's permission resulting in altercations between the two. Complaints would also be made to the witness concerning the accused's behavior. The witness stated that the accused was a teetotaler. He however smoked Pacific and Madison brands of cigarettes. The witness stated that him and his sons slept in one house. The accused had his own bedroom and the deceased and Richard Junior shared the other bedroom. The third bedroom was used by the witness. There were no doors to the two bedrooms used respectively by the accused and his two siblings, the deceased and Richard.

In the course of the fateful day, the witness testified that the deceased prepared supper. The witness also had a discussion with his three sons during which he was encouraging them to live peaceably with one another. The family wiled up time listening to the radio before the witness ordered his three sons to go to bed around 9pm. The witness shortly left and got into his bedroom where he sat on the bed and continued to play music on his radio. It was around 9:30pm when the witness heard groaning sounds from the deceased's shared bedroom with Richard Junior. On checking on what was happening, the witness discovered the lifeless body of the deceased. The accused was no longer in the house or within the precincts of the homestead. The witness then made a report to the police.

When asked as to why the accused appeared to have been treated differently from the other siblings, the witness testified that the accused had a lot of problems and he was separated from others because of his condition. The family members including the witness believed that the

accused was mad. Asked whether the local community thought the same way, the witness said that community members would urge him to seek treatment for the accused. The witness stated that on occasions the accused would just leave cloth items he would be wearing like his jacket at any place he may have visited. Apart from clothing items, the accused would just give out home tools to people and would profess ignorance of their whereabouts when asked. The witness further testified that the deceased had complained to the witness that the accused would take and consume the deceased's food whilst hiding his own food under the bed and forgetting about it until maggots developed and the rotten food had to be thrown away. The witness testified that he ended up having to entrust food to neighbors from where the deceased would draw down what to cook. The entrusting of food with neighbours was intended to deprive the accused of access to the food. The witness testified that the accused was not happy with the arrangement. The witness also stated that the family attempted to force the accused to attend on some apostolic faith prophets for possible healing but the accused was not receptive to that and resisted. When asked as to why the witness did not take the accused to hospital, he responded that the thought did not enter his mind because he thought that the accused's condition required traditional and religious interventions. When asked what the accused's reaction was when caught and how the accused was caught the witness responded that the accused was seen the following morning after the nighttime incident. The accused was seated on some rocks and he returned home weeping. The witness said that he sought advice on what to do with the accused's problem by consulting his sister and other relatives. He also committed the village head, the local headmaster and church leaders.

When asked to narrate exactly what the witness was speaking to his sons about prior to their going to sleep and to suggest what could have led the accused to murder his young brother, the witness responded that on the fateful night he spoke to the siblings about differences which they had over food and unauthorized use of each other's clothes. The accused was not happy and enquired as to why food was being hidden from him.

The witness could not suggest a motive for the attack. The accused gave evidence and adopted his defence outline and the contents of his warned and cautioned statement. He testified that he was 22 years old. He used to be sent money and food by his friends in South Africa only visiting occasionally. He stayed with the deceased and Richard Junior as both their parents stayed in South Africa. He stated he had an argument with the deceased concerning the deceased's habit

of taking the accused's property without permission of the accused. When the accused enquired of the reason for taking the property, the deceased would rudely answer the accused. The accused said that he then killed the deceased using a log which was produced in court as exhibit 4 during the state case.

Under cross examination the accused testified that the deceased used to steal his property since August, 2017. When asked to explain his relationship with the deceased the accused replied that he used to show the deceased respect. He however stated that he (the accused) had changed his personality and the relationship with the deceased was no longer cordial. He stated that his relationship with every family member was strained because the family members would take away his property. When again asked to explain why he beat up his brother, he responded that he acted out of anger which led him to lose self-control. He repeated that whilst he showed respect to the deceased, the latter did not reciprocate the respect.

The accused was asked to explain how he carried out the act, he testified that when the deceased and Richard Junior returned to bed, the accused remained in the kitchen for 3 to 4 hours in deep thought. He went to where the deceased was sleeping before going to the kitchen to where the deceased was asleep and struck him several blows on the head. When asked whether he intended to kill the deceased, he answered that it was his intention to do so. Asked what he hoped to achieve by doing what he did, he responded that he failed to control himself. He said that no one had time for him nor understood him because he was looked upon as a mentally challenged person. He further stated that the family ostracized him since August 2017. He stated as well that the deceased would take his phone and food resulting in him going hungry. The deceased would remove the accused's passwords from the accused's phone and then use the phone without the accused's consent after removing the accused's line. With regards food, the deceased would take the accused's food and place it in the deceased's satchel. The deceased would insist that the phone belonged to him. He said that he burnt the family documents which included passports because his father had denied him permission to return to South Africa. He testified that he was not mad. He put the value of his property which he lost as a result of the deceased taking it away at ZAR 2 000. He did not deny that he shouted at the deceased before striking him that the deceased was getting too excited and that he said to him "today you will die"

The accused stated that he had a build up of emotions since 2017.

When asked whether anyone offered to help him, the accused responded that people and family members would dismiss him off as being insane. Asked whether the village head ever interceded, the accused responded that the village head dismissed the issue as a family affair. He said that no one appeared to side with him and that when he struck the deceased he was overcome with anger.

In the court's judgment this matter is not easy one for the court to determine. On the face of it, the facts are straight forward and admitted. One would be forgiven for holding the view that the guilt of the accused is written all over the script. The accused's *mens rea* or state of mind on committing the act should however be closely examined. Admittedly the accused stated that he intended to kill the deceased. However such intent even if said to be there, is founded on some foundation. The foundation aforesaid was pleaded by the accused as provocation which was manifested in anger build up over a long period of time. The seed of hatred between the accused and the deceased were sown long back from 2017 when the family wrote the accused off as a mentally challenged person and instead entrusted the deceased with responsibilities in the home to the exclusion of the accused. The narrative of the background and circumstantial facts which culminated in the accused attacking his defenceless young brother led one to conclude that the accused acted in anger and felt provoked by how not just the deceased and other family members treated him but the way he was treated by the community at large. Indeed the accused testified that if people continue to call one a mad person and to treat such person as such without abatement, the person ends up believing that he or she is indeed mad. The evidence clearly showed that the accused was considered as a reject and ostracized as a mentally challenged person.

In the closing written submission the accused's counsel powerfully argued that the court should deal with the matter as falling within the realms of s 227 of the Criminal Law Codification and Reform Act, *Chapter 9:23*. Counsel's argument was that the accused should be considered as having suffered from a mental disorder or defect as envisaged in the relevant provisions which are ss 226-228. The provisions read as follows:

**“227 Mental disorder at time of commission of crime**

- (1) The fact that a person charged with a crime was suffering from a mental disorder or defect when the person did or omitted to do anything which is an essential element of the crime charged shall be a complete defence to the charge if the mental disorder or defect made him or her
- (a) incapable of appreciating the nature of his or her conduct, or that his or her conduct was unlawful, or both; or
  - (b) incapable, notwithstanding that he or she appreciated the nature of his or her conduct, or that his or her conduct was unlawful, or both, of acting in accordance with such an appreciation.

(2) For the purposes of subsection (1), the cause and duration of the mental disorder or defect shall be immaterial.

(3) Subsection (1) shall not apply to a mental disorder or defect which is neither permanent nor long-lasting, suffered by a person as a result of voluntary intoxication as defined in section *two hundred and nineteen*.

**228 Mental disorder at time of trial**

The fact that a person is mentally disordered or defective at the time of his or her trial on a criminal charge shall not be a defence to the charge unless he or she was also mentally disordered or defective at the time he or she did or omitted to do anything that is an essential element of the crime charged.”

In the defence closing submissions, counsel submitted thus, in relation to the applicability of s 227 as quoted to the facts of this case.

“This is a case that falls on all fours with what is envisaged by section 227 of the Criminal Code, supra. From the evidence led, the defence is of the view that the accused has some mental disability issues. He kept repeating that he failed to control himself, insinuating that some evil spirit possessed him. At the time of the trial, the defence is convinced that he exhibited signs of mental disability and/or impairment. The writing was on the wall, as the African saying goes, when the goat has its tail up you do not ask whether its male or female.” Should the court be persuaded by this argument, the accused has a defence and ought to have a special verdict.”

The defence counsel submitted that the accused exhibited odd, inexplicable and bizarre behavior. He further submitted that the reasons given for the accused conduct were petty and left a lot to be desired. Counsel submitted that the accused gave different versions when he interviewed him to prepare a defence outline and prepare for trial. He argued that the accused gave a different account at the trial and that the accused’s father had alluded to the accused person having exhibited a history of mental “disabilities.” In this regard, a comment is necessary. It is that the accused’s version as given in the defence outline and evidence was consistent throughout albeit the accused not having been eloquent. Lack of eloquence does not necessarily translate to mental disorder.

The court must acknowledge the industry, diligence and assiduity of defence counsel in researching on disability rights and how the Criminal Procedure and Evidence Act [*Chapter 9:07*] needs to be aligned with the Disabled Persons Act [*Chapter 17:01*] and the Mental Health Act [*Chapter 15:02*]. Counsel’s submissions in this regard are simply that the protection given to vulnerable persons who are witnesses in a case should also be accorded to a vulnerable accused person like in situations where the accused would suffer great emotional stress from giving evidence or is likely to be intimidated by the presence of any person or by the nature or proceedings. The protections given in s 319 B of the Criminal Procedure and Evidence Act [*Chapter 7:10*] should also *mutatis mutandis* apply to the accused person. It is the court’s view

that the suggested approach is not just progressive but is consistent with upholding fair trial normatives. The accused is presumed innocent until proven guilty. Therefore there would appear to be no substantial legal justification for not according the accused protection where such accused will or may suffer the same effects which a vulnerable witness may suffer as envisaged in s 319 B. For example in this case, the youthful accused stands arraigned for the murder of his young brother and all eyes including those of his immediate family members are watching him with accusational eyes and guilty verdicts written all over their faces. Such a scenario is no doubt intimidating to the accused person. It is respectfully suggested that the legislature may in its wisdom debate and consider whether or not to extend the law on protection of vulnerable witnesses where facts and situations warrant, to the accused persons.

Defence counsel also argued that the Mental Health Act needed to be reviewed to do away with the medical model of disability and to adopt the disability rights model. Counsel suggested adoption of the disability rights approach which provides for the involvement of psychologists, social workers, clinical criminologists as special investigators who then come up with a decision on the mental state of the accused after their interactive investigations with and of the accused. Again, note is made as already of counsels' submissions. Counsel submitted that the court should consider making a judge made law and order that the accused be subject to investigation by special investigators. The suggestion is ingenious. Regrettably, the short answer is that it is a gross misdirection for a court to create a judge made law where a law which is in existence already provides for procedures to follow in regard to dealing with mentally challenged persons. The Mental Health Act provides for procedures to follow where a court is dealing with a certified or suspected mentally disordered persons. If any interventions are required to bring the law to sync with modern trends on how courts should deal with situations involving mentally challenged accused persons, the lobbying is done to the law giver and not the courts. At present there is no lacuna in this area of the law for which judge made law may be invoked.

Having acknowledged the well-researched though inapplicable arguments by defence counsel on the applicability of the insanity defence in this case, it remains a fact that the accused person was certified as not being mentally challenged or disordered nor suffering from a defect of the mind as provided for in ss 227 and 228 of the Criminal Code as quoted. The accused explained his conduct as having been driven by anger and provocation. He actually stated that albeit his being

ostracized as being mentally challenged he was not a mad person. It was also the court's observation that the accused was able to explain himself and to give a coherent account of what took place sequentially, despite his want of eloquence.

The defence of provocation is available to an accused person charged with the crime of murder. It is however not available as a full defence. The defence if successful results in a conviction for culpable homicide. For the avoidance of doubt, the defence is provided for in s 239 of the Criminal Law Codification and Reform) Act whose provisions read as follows:

**1. 239 When provocation a partial defence to murder**

(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 realisation 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 realisation 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 realisation 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 in section *two hundred and thirty-eight*."

The onus to prove the defence of provocation rests on the accused person to discharge it on a balance of probabilities. The states duty is to disprove the accused's assertions beyond a reasonable doubt. The court must assess the circumstances of the case as revealed by the proven facts and determine using the reasonable person or objective test standard whether the provocation alleged by the accused and accepted as having been proven was such that a reasonable person placed in the same position and circumstances which the accused person found himself in would have lost self-control. The objective or reasonable person test takes into account societal standards and understandings. It is a test which largely accepts that a person may be so provoked to an extent that the person understandably loses self-control. The court places itself in the position of reasonable thinking members of society and considers whether the provocation which the accused was subjected to was such that a right or reasonable thinking member of society placed in the same

shoes as the accused would have lost self-control. See *State v Hanunakwadi* HH 323/15; *R v Ranchi* HH 515/17.

The evidence in this case shows that the accused harboured anger against not just the deceased but felt ostracized by his family and community. His anger was built up in him over a period of time since the accused's return from South Africa in 2017. It was during this time that the family considered him to be irresponsible and treated him as a mentally challenged person. The deceased appeared to have embraced the perception that the accused was a mad person and held the accused in this light. The accused felt demeaned by the deceased behaviour of using the accused's phone and clothes without his consent. Food which the accused claimed to belong to him was denied him and taken away from his control obviously because it was felt that the accused was irresponsible and unable to manage his affairs. The father testified that the family considered him as a mentally challenged person necessitating the father to ask neighbours to keep in safety food which could only be drawn down by the deceased when cooking. The accused reportedly ended up eating food meant for the deceased and Richard Junior because the accused would say that he was hungry.

In regard to the events of the fateful night which preceded the attack on the deceased, the only helpful evidence is to be found in the statement of Richard Mandiya (Junior) which statement was produced by consent as exh 1. Therein, the witness stated at on 1<sup>st</sup> and 2<sup>nd</sup> March 2019, the accused had assaulted the deceased after the latter remonstrated or took issue with the accused for having sold food sent by their parents from South Africa. The accused struck the deceased on the face with a brick. Upon the return of their father on 10 March 2019 the father summoned his three sons to discuss the assault report as aforesaid. The father then warned the accused not to assault the deceased again. In the evening of 15 March 2019 there was again a discussion around 7.00 pm involving the three siblings and their father. The father was enquiring on missing passports which the accused denied any knowledge of although the evidence revealed that the accused lied since he knew about the passports. The father warned the accused that he expected maximum co-operation from the accused regarding the passports issue. The witness and the accused were instructed to go to bed by the accused. They went to their respective bedrooms to sleep around 9 p.m. Hardly 30 minutes later, the accused had armed himself with a log entered the deceased and Richard's bedroom where he stood by the bed side on which the deceased lay whilst saying

“Mupfana unofarisa! Nhasi unofa” which translated means “Youngman you are overzealous. Today you will die” before striking the deceased who was lying on his back five times on the head. The accused was said to have run out of the bedroom after realizing that the deceased had been injured. The witness stated that he remained on the bed seated but was not attacked although he feared to be the next victim.

The circumstances of the case show that the accused did not act on the spur of the moment. In other words, he did not react spontaneously in reaction to an act of provocation perpetrated by the deceased. It cannot be said that the accused was at the critical stage so overwhelmed by deceased’s provocation that he lost self-control. The anger build up over a period of time does not qualify for a defence that the accused has acted under provocation. The provocation envisaged in s 239 is one which has been committed just before the accused acts. Where there has been a cooling period, between the provocation and the commission of the act by the accused, then it not reasonable to hold that the accused as a reasonable person should have lost his self-control completely. There was no evidence led from which to hold that the accused completely lost his self-control. He was able to consciously decide to arm himself, proceed to where the deceased lay sleeping on the bed, accuse the deceased of being over-zealous, threaten him with death and struck him on the head several times with the log. A person who has been provoked to the extent of losing his self-control completely would not reasonably be expected to take calculated and thought out steps in reacting to such provocation. A reasonable person who has lost self-control should have reacted to the provocation at the time that the provoked act has been committed against the him or her. Once it is shown that there has been an appreciable time lapse between the provocation and the accused’s retaliation to it then the defence fails because a reasonable person would be expected to recollect his senses and act rationally given the time lapse. The accused in this case fails the test because there was no close contemporaneity between the provocation which the accused pleaded in his defence and the accused’s attacks on the deceased.

In consequence of the failure of the defence the court must determine whether the accused killed the deceased with intent or he acted in the full realization of a real risk or possibility that his conduct might cause death but continued to engage in the conduct despite the realization. In the courts judgment, the fact that the accused uttered words to the effect that the deceased was an overzealous young man whom the accused would kill that day is not singularly determinant of the

accused's intention. Threats that "I will kill you" are loosely made by even children when are fighting. They mean nothing more than that "I will fix or punish you today." The accused in this case must be held to have foreseen the real possibility that death might result from his conduct. According to the evidence by Richard junior, the accused after bashing the deceased on the head only left the crime scene after noticing that he had badly injured the deceased. Had the accused been intent on killing the deceased, the accused would in all probability have ensured that the deceased was dead before leaving the scene. From the circumstances of the case and the history of the relationship between the deceased and the accused which was not cordial, the probabilities are that the accused intended to just get even or vent his anger on the deceased. However, the accused acted consciously of what he was doing and under the circumstances must have and therefore did foresee the real risk or possibility that his conduct might result in the death of the deceased but continued to engage in the conduct.

The verdict of the court is therefore that the accused is guilty of murder as defined in s 47 (1) (b) of the Criminal Law Codification & Reform Act.

#### SENTENCE

After verdict counsel submitted mitigation and aggravation. At the end of their addresses, the court gave very brief ex-tempore reasons for sentence and indicated that comprehensive reasons would be given in due course. The accused was sentenced to 10years imprisonment. The promised reasons for sentence are as follows hereinafter.

The facts and circumstances of the murder of the deceased are best expressed a family tragedy. It is arguable that the murder could have been avoided had the accused's parents and community not ostracized the accused. It must be stresses that the Shona expression that if you give birth to a madman, the madman is yours. If the madman dances, you must ululate and acknowledge rings true. The accused and deceased's father and mother expressed regret over the incident and states that they now realizes that they should have taken the disagreements between the accused and deceased as a serious matter to be attended on.

The court decided to hear the views of both the father and mother of the deceased and accused in regard to the accused's conviction and punishment to be meted out. Both parents blamed themselves for not having taken remedial measures by consulting medical doctors upon discovery

that the accused could have been mentally disoriented. They also expressed a desire that the accused be spared a long jail term so that he can upon his release attend to his medical and spiritual challenges whilst they were still alive and able to assist the accused. It is indeed true that the deceased's parents are the most affected by the death of their son the deceased. It is therefore salutary for the court to hear the views of the deceased's family more so where the effects of the tragedy are readily felt by the family, having been caused from within the family itself.

When assessing sentence, the court considers the nature of the crime, interests of society and the interests of the convict. The circumstances of the case are not a reflection of daily trends in our society that siblings kill each other. The cause for general deterrence does not present itself as compelling. The same goes for individual deterrence of the accused because he did not have a history of violent crime. The accused deserves sympathy as opposed to out and out retribution. The reformatory function of punishment is to be emphasized in assessing sentence in the circumstances of this case. The accused is not an inherently evil person. He was contrite and is a youthful first offender aged 21 years old.

Notwithstanding that the circumstance of the case deserve a sympathetic approach by the court, the court has a duty to uphold the sanctity of human life. Life is very precious because once lost it cannot be salvaged. It is forever lost. Society looks upon murder as an abhorrent crime which it is. The ideal position is that life be lost through natural causes and not by hand of another human being acting unlawfully. Therefore the court will in the final analysis always impose a sentence which is not seen as cheapening the right of every person to life. After considering all the factors proper to consider in assessing sentence in this matter, an appropriate sentence is as follows:

10 years imprisonment.

*Kossam Ncube and Partners*, accused legal practitioners  
*National Prosecuting Authority*, State's legal practitioners