

THE STATE
versus
MERJURY MURIRA

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 14 February & 21 October 2022

Criminal Trial

Assessors: Mr Chimonyo
Mr Mpofu

D H *Chesa* with T *Mukuze*, for the State
T *Sengwayo*, for the accused

MUNGWARI J: Had it not been tragic, the sordid and grimy events which led to these allegations of murder would have been the perfect script for a horror movie. In another sad reality of the scourge of domestic violence Merjury Murira (hereinafter the accused) appeared before this court charged with the murder of her husband Taruwinga Muhwati. The allegations against her are that on 19 November 2020 at Chisiku village in Pfungwe Mutoko, she struck the deceased once on the chin with an axe intending to kill him or realising that there was a real risk or possibility that her conduct could cause the death of the deceased. Despite that risk she persisted with her conduct resulting in the deceased's demise.

In detail, prosecution alleged that on the fateful day, at around 1000 hours a misunderstanding arose between the couple. The dispute revolved around the issue of a certificate of death for the accused's former husband. During the altercation the deceased assaulted the accused. He was however restrained by Prudence Mudyirapo (Prudence) from further assaulting the accused. In the evening, the two together with Prudence retired to bed. During the same night, the accused is alleged to have woken up when the other two were in deep slumber. She picked an axe that was nearby and struck the deceased on the chin. He died instantly. She threw another strike which landed on Prudence's head. She thereafter fled the scene. She was arrested a short while later.

On 26 November 2020 a post mortem examination was carried out on the remains of the deceased. It was concluded that death was due to brain oedema and severe head trauma.

The accused denied the charge. In her defence outline she told the court that:

Prudence is her biological daughter whom she sired with her former husband. It therefore meant that the deceased was Prudence's stepfather. On the fateful day the accused said she had discovered that her daughter Prudence was 4 months pregnant and that the deceased was responsible for the pregnancy. The discovery brought with it intense and unbearable pain on her. She confronted the deceased about it. He was shameless in admitting it. Instead of being remorseful, he subjected her to inhuman and degrading treatment. He relentlessly assaulted and tortured her from the afternoon of that day until well into the night.

During the assaults, the deceased had even turned on the volume on his radio set to its fullest in order to drown the accused's cries and to avoid attracting their neighbours to the abuse. As a result, no one came to the accused's rescue. In addition the deceased denied the accused food. Whenever she tried to raise alarm, the deceased would stuff soil into the accused's mouth to muzzle her voice.

The assaults were perpetrated in incremental phases and were indiscriminate. The weapons which were used alternated between a switch, bare hands and a log. They were also punctuated by threats that he intended to kill her with his knife and axe. At some point he actually pulled out a knife an indication that he really intended to kill her. Fortunately, Prudence wrestled the knife out of his hands. What traumatised her further was that Prudence was not the Good Samaritan she pretended to be because when she took away the knife from the deceased she admonished him not to kill her but to simply beat her to a pulp so that she could die on her own accord in the wilderness.

In another extremely humiliating episode during the assaults and torture, the deceased forcibly undressed the accused. Whilst naked she was beaten in front of her male children. He exposed the accused's genitals to the scrutiny of her male children. In the process he rhetorically asked the boys whether the accused was a woman. To cap his dehumanisation of the accused, the deceased later that evening and in full view of the accused, had sexual intercourse with Prudence who moaned with pleasure as she sat astride the deceased. In the midst of the erotic romp, the deceased announced for the benefit of the accused that Prudence was now his wife. The accused had to either accept it or be relegated to the role of a housemaid. He once again threatened the accused that she would not live to see daybreak as he intended to

kill her that night. Fearing for her life, when the two finished their sexual escapades, the accused instinctively rose from where she lay. She picked an axe which was lying next to the deceased. In pre-emptive self-defence she struck the deceased. She argued that she intended to immobilise him and get time to escape. When Prudence rose in the darkness, the accused panicked thinking she intended to get hold of her and finish her off. She also struck Prudence with the axe and bolted out of the room. She did not see where she struck the deceased and was only informed by the police upon her arrest that she had struck him on the chin.

As can be discerned from her defence outline, the accused pleaded self-defence and provocation. She told the court that she did not have the requisite *mens rea* to be guilty of the offence of murder.

STATE CASE

Prosecution opened their case by seeking the formal admission into evidence of the testimonies of Mukonza Sango, Francis Tafiramutsa and Sibusisiwe Moyo as they appeared in the summary of the state's evidence in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (CP&E Act). With the defence's consent, the evidence was so admitted. It established the following relevant facts:

1. Accused was known by the neighbours as deceased's first wife.
2. The tragedy occurred around 0030 hours when the neighbour was alerted.
3. The accused was arrested on the same day sitting on a hill barely 2 km away from the scene of crime
4. A warned and cautioned statement was recorded from the accused in accordance with the requirements of the law.

In addition to this the state applied to produce as an exhibit the autopsy report compiled by Dr Yoandry Olay Mayedo a pathologist who on 26 November 2020 examined the remains of the deceased in order to ascertain the cause of his death. With the consent of the defence the post-mortem report was accepted by the court as exhibit No. 1 in the trial. The cause of death was therefore uncontentious. The deceased died as a result of brain injury, particularly brain oedema, global subarachnoid haemorrhage and severe head trauma.

The prosecution also sought to introduce in evidence, the accused's confirmed, warned and cautioned statement. The statement was recorded on 7 December 2020 by sergeant Moyo in the presence of constable Jakachira. On 17 December 2020 it was confirmed by a magistrate

sitting at Mutawatawa. The statement was admitted in terms of s 256 (1) of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The defence did not challenge that the statement had been made freely and voluntarily and without any undue influence. Its admission was therefore another common cause factor. The court admitted it and marked it as exhibit 2. In that confession the accused stated as follows:

“I admit to the offence of killing my husband. My husband always assaulted me every day. He had sex with me and my daughter during my presence, under the same roof. He forced my daughter to call me sister in law. This tormented me. My husband assaulted me at noon on the 19th of November 2020. I waited until he slept. When it was midnight, I woke up, took an axe and struck him with it on the head once. This happened when he was sleeping with his junior wife who is my third daughter. She is my daughter who I have with another man. My husband was no longer interested in me but in my daughter who is four months pregnant because of him. I was living like a widow because I had lost my own husband to my child. This was tormenting me.”

COMMON CAUSE FACTORS

The State outline, the accused’s defence outline and evidence tendered with the consent of the parties made the following factors common cause:

- On the fateful day the deceased had an altercation with the accused.
- One of the issues causing the differences was that the deceased had impregnated Prudence, the accused’s daughter.
- The deceased wanted to or had taken Prudence as his wife. When the accused refused to accept the immoral arrangement, he assaulted her. At some stage of the altercation he was restrained by Prudence from assaulting the accused further.
- At night the three of them, the accused, the deceased and Prudence retired to bed together
- The deceased had sexual intercourse with Prudence in full view of the accused
- At around midnight the accused struck the deceased with an axe once on the chin.
- The deceased sustained mortal head injuries from the assault. He died instantly.
- The accused caused the death of the deceased

ISSUES

As already stated, the accused alleges severe provocation and that she acted in self defence to preempt the attack on her which the deceased had incessantly threatened throughout the ordeal she suffered at his hands. As a result she pleaded that she lacked the requisite intention to sustain a charge of murder.

To prove its allegations, the State led *viva voce evidence* from one state witness namely Prudence. On the other hand the accused was the sole witness for the defence.

Prudence Mudvirapo (Prudence)

The witness is a 17 year old girl. She was only 15 at the material time. Her brain must have been corrupted beyond measure by the deceased. She was a crucial eye witness to the murder. She is a daughter to the accused and was a step daughter to the deceased. She told the court that the deceased had lured her into having a sexual relationship with him and impregnated her under the pretext of assisting her to secure a birth certificate.

On 19 November 2020 she raised a complaint over the issue with the accused. The accused was angered by her revelations that she threatened to beat her up. The accused also informed her that she was going to report the matter to the police. In the afternoon of the same day the accused confronted the deceased about it. This marked the commencement of assaults and insults upon the accused by the deceased. In a fit of rage the deceased told the accused that she was too old to be his wife and that the youthful witness was now his official wife. He gave the accused very unenviable choices. These were, on one hand, that the accused accepts the witness as a co-wife and remain the deceased's first wife or on the other refuse to acknowledge the arrangement and become a housemaid. The accused chose to frown on the arrangement. Her refusal worsened the beatings. The deceased assaulted the accused inside the palms of her hands. When he got tired of assaulting her he took a rest.

It was the witness's further testimony that during the protracted assaults the deceased would at times smear mud on the face of the accused and stuff soil inside her mouth so that whenever she tried to cry out she would not be heard. At some stage he dragged the accused inside the house and undressed her in front of the witness and her brothers Kenneth, Bernard and Nigel. The deceased opened accused's thighs and beat her on her privates. He told the witness and the other children that the accused was not a normal woman. He asked the children whether they had seen a mother who looked like the accused as he directed their gaze to her private parts.

He resumed the assaults using a switch and fists. He also used his elbows and open hands to assault her multiple times. The witness added that she heard the deceased swear that the accused would not reach day break alive. The actual words that the deceased had said to the accused were "*I want to kill you, you are not going to reach dawn alive.*"

Prudence went on to tell the court that at some stage during the continuing assaults she had even confiscated a hoe that the deceased intended to strike the accused with. According to the witness the deceased resumed the assaults whenever he felt like.

The witness was clear that the assaults were intermittent and incremental. In those phases, the accused was assaulted from the afternoon of that day until the evening. Whenever the accused tried to run away the deceased would grab her and force her back before resuming the assaults. She however did not render any assistance as she just stood by and watched her mother being pummelled and humiliated.

According to Prudence, from the time the accused confronted the deceased in the afternoon she was never allowed to eat even a morsel of food. The deceased made sure that she starved that day. Towards sunset the deceased instructed the accused to cook supper. Yet again he made sure the accused did not eat any of the food that she prepared. She was made to watch as everyone else partook of the meals that she had cooked.

The witness said in the evening after they had finished eating supper she was surprised when the deceased asked her to remove her clothes. He invited her to have sexual intercourse with him. She had agreed! The deceased also called the accused inside the house to witness the sexual act. He told the accused that he wanted to remove any doubt from her that the witness was now his wife. True to his word he then instructed the witness to mount him and not to cover herself up so that the accused would see them mating. According to the witness the intention was to hurt the accused and make her surrender to the reality that the witness was now a wife to the deceased and that she (the accused) had been relegated to the role of a maid. The witness explained how, after the full bout of sexual intercourse she had just collapsed into a heap and after a while fell into deep sleep. But that was not before she had heard the deceased tell the accused again that she would not see daybreak.

A few moments later she was awakened from her sleep by the sound of the deceased's voice who was lying sprawled next to her crying out for help. Instinctively she raised her head to check but was struck by an axe on her head. Naked, she bolted out of the house as she ran towards their neighbour's house calling out for help. The neighbour helped her cover her nudity

by giving her a *Zambia* cloth. When she returned home with the neighbour she realised that the deceased had also been struck and was dead. She had not personally witnessed the striking of the deceased by the accused because it happened just after she had fallen asleep.

The deceased had placed the axe and knife next to where he lay. She had left the accused and the deceased still awake when she slept. The accused was still bragging to the accused that Prudence had given him better sex and that the accused was no good to him. There was an exchange of words between the two which she however chose to ignore.

In cross examination it turned out that because of the witness's stunted level of literacy a few moments later did not mean the one or two hours later that she had alleged earlier in her evidence. It actually meant a few minutes.

The witness admitted that the accused struck the deceased in self-defence. She explained that if she hadn't done so, she would have died at the hands of the deceased who seemed determined to kill her. She also admitted that the deceased's escapades had extremely provoked the accused. She admitted that because of the lengthy periods of attack that the accused was subjected to she sustained visible injuries. Her whole body was swollen and her eyes could not see. Her lower lip had almost been cut off. It was dangling from the corners of her mouth.

In rounding off her evidence she told the court that she had since given birth to the deceased's child and that like herself, the child she bore is currently in foster care. She was not able to take care of the baby.

In our analysis the demeanour of the witness whilst giving evidence betrayed a girl who appeared caught between the proverbial rock and hard surface. The accused is her mother and the deceased was on one hand her step-father and on the other her paramour and baby-dad. Despite betraying her mother and the despicable and abominable acts of publicly engaging in sexual intercourse with her mother's husband she struck the court as a very truthful girl bent on telling only the truth. In fact she poured her heart out like her life depended on it. She did not depart from her evidence as outlined in the summary of the State's case. She merely added detail to it. What was clear however was that she is an extremely immature and utterly abused girl. Even her manner was indicative of those traits. That probably explains why she took the unmeasured decisions which triggered the furore that engulfed the family and resulted in the death of the deceased. She clearly, both at the material time and when she was on the witness stand, did not comprehend the implications of her actions. She denied that she had a hand in

the death of the deceased and that her own actions had driven the accused to the edge of the precipice. That failing notwithstanding, our view was that her evidence was completely credible because it fell squarely into the narration of events by the accused herself. The evidence achieved three things. Firstly and contrary to the State's allegations that the altercation between the deceased and the accused had stopped during midday, it had not. The deceased had assaulted the accused from midday until the evening when they retired to bed. Even after the witness had slept the deceased had continued berating and mocking the accused. The attack was therefore protracted and continuous. It only stopped when the accused attacked the deceased with the axe. Secondly Prudence's evidence confirmed that the accused acted in self-defence when she struck the deceased with an axe that night and that if she hadn't she would have been murdered by the deceased. Thirdly her evidence illustrated that the accused was subjected to extreme provocation by the deceased.

DEFENCE CASE

Merjury Murira (Merjury)

The accused elected to testify. Despite adding detail to it, she maintained the story that she had told the court in her defence outline. In her narration, the dispute that led to the fateful attack on her by the deceased erupted as a result of her confronting the deceased over the issue of Prudence's pregnancy which the deceased was responsible for. Contrary to what the State alleged, the dispute had nothing to do with her late husband's death certificate.

She had on 15 November 2020, confronted Prudence after noticing that her physical appearance had changed. After a lot of persuasion and three days later Prudence opened up. She revealed that she had been sexually abused by the deceased. That same night she confronted the deceased. He was evasive. The following day he told her that he was in a position to respond and tell her exactly what he wanted. In the afternoon of 19 November 2020 he told her that he wanted her to become the first wife whilst her daughter Prudence would become the second wife. She flatly refused the proposal and informed him that she was going to cause his arrest. He then undertook to assault her until she understood.

When he initially assaulted her she had her eleven months old baby strapped to her back. Prudence rushed up to her and released the baby from her back. She was spiteful as she took the baby by uttering that the accused had to be assaulted properly without the assailant fearing to attack the baby as well. Once the baby was freed from her back, the deceased dragged

her outside the home and using his elbows nudged her on the ribcage and pressed her chest at the same time.

Just like narrated by Prudence, the accused detailed the nature of the assaults on her person. She explained to the court how during the attack the deceased had paused to take a breather as he said he was tired of assaulting her with bare hands. He had called for a switch and resumed the assaults. He had also paused when it was time to have lunch and resumed the attack afterwards. Sometime later in the day all the children were summoned and the deceased enquired from them whether they still wanted the accused to be the mother of the house or the housemaid. Knowing that this is what the deceased wanted to hear they unanimously sang that they wanted her to be the housemaid. Even during this charade where the children had voted that their mother becomes the maid he had not relented. He resumed the assaults. The deceased then told the accused that from that day onwards she would sleep in the kitchen whilst he slept with Prudence in the bedroom. In all this Prudence beamed huge happy smiles, happy, that she had displaced her mother as the deceased's wife.

The accused said she pleaded with the deceased that she be allowed to sell her solar equipment to enable her to leave the homestead. The request unfortunately fell on deaf ears. It only served to spur the beatings. She tried to flee but was dragged back and the beatings and insults continued. She was denied food, beaten with a switch and fists. At some point the deceased took a knife intending to stab her but before he could, Prudence snatched it from him. Prudence had implored the deceased not to kill the accused as her death could cause problems for them.

After supper the deceased invited Prudence into the bedroom. He also asked the accused to come inside. The accused said she stood about a metre away from where the two lovebirds were. She saw Prudence undress and mount the deceased who had also already removed his clothes. She watched as the two enjoyed sexual intercourse. They both cried with enjoyment.

After the sexual act the deceased taunted the accused by telling her that, the pleasure he had gotten was what she had failed to provide him with. Moments after Prudence got down from the deceased and the two were cooling down the accused thought she had found an opportune time to run for her life. She seized the axe which was in the room next to deceased and struck him with it. Her intention was to immobilise him so that he could not pursue her. She only learnt from the police afterwards that she had struck him on the head.

The accused explained why her confirmed warned and cautioned statement differed with her oral evidence in particular where she had said:-

“My husband assaulted me at noon on the 19th of November 2020. I waited until he slept. When it was midnight, I woke up, took an axe and struck him with it on the head once.”

She told the court that the waiting until he slept did not mean that he stopped assaulting her. She only got her chance to flee at around midnight when the opportune time came. She insisted that it was a question of interpretations and urged the court to take her oral evidence and that of Prudence as the truth with regard to the issue of the continuing assaults and harassment. The brief statement, which was eight lines long, made no mention of the fact that the assaults had continued into the night. If anything it gave the impression that the accused had only been assaulted at noon and had then lain in waiting for the deceased before she struck him with an axe. The court’s view on the issue, was that the accused’s explanation is reasonable. The dispute is not a material one, because the evidence of the two witnesses qualified and expanded on the brief statement. With the accused’s explanation, the alleged difference pales into insignificance. In the face of nothing else to the contrary we took the accused’s evidence as the truth. In any case we had already decided that Prudence was indeed a credible witness and so the explanation by the accused was reasonable in the circumstances.

THE LAW

The accused relied on two primary defences to the charge she was facing.

PROVOCATION

Section 239 of the Criminal Law Code provides that:

“(1) If after being provoked, a person does or omits to do anything resulting in the death of a person which would be an essential element of the crime of murder if done or omitted, as the case maybe, 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...”

Clearly, the defence of provocation where it succeeds, is not a full defence but a partial one which only serves to reduce a charge of murder to one of culpable homicide. Authorities illustrate that for the defence to succeed the accused must show that the provocative conduct was so intense that a reasonable person would have lost self-control and acted in the manner that the accused did. See the case of *S v Kashiri* HMT 13/18 for that proposition. The court could have analysed the requirements for the defence of provocation in a more in-depth manner. It deliberately refrained from doing so given that the accused proffered another defence which if it succeeds is a complete defence to the charge against her.

What is clear however is that there can hardly be worse provocation than what the accused was subjected to. The deceased had been physically and emotionally abusing her every day. Her situation illustrates one of the worst forms of marital abuse which embodies several species of domestic violence. She was physically abused by being assaulted and being tortured. She was sexually abused. First by being treated as a sex object, then being told that even in being that object she was not good enough for the sexual duties. Second she was undressed in front of her own children who were asked to scrutinise her genitals. It is the worst thing that any mother can imagine happening to her. Third she was asked to be a spectator as her husband and her daughter had sexual intercourse. The deceased impregnated her daughter and elevated her to the position of a wife whilst she was ridiculed, insulted, told that she was worthless and would be relegated to become a housemaid. She had lost her husband to her daughter. To say her emotions were bruised would be an understatement. She must have been left soulless.

If this did not qualify as provocation then nothing else would. Sexual intercourse between human beings was never meant to be done in public. It is not a spectator game. Morality demands that it remains a private act. A mother cannot be forced to spectate her daughter engaging in it worse still with her own husband. It is taboo. The vitriol which was spewed on her after the sexual intercourse only served to make matters worse. In the end we can do no more than recommend that the Department of Social Welfare and other concerned entities must make concerted efforts to attend to the counselling of this traumatised woman and assist her get over the dehumanisation that she went through. The daughter who was the first witness in this case is abused in the same manner and equally needs therapy.

In view of the above, the court was convinced that these facts which reveal pent-up anger may be a basis for extending the current requirements of the defence of provocation to include situations where an accused does not act in the heat of the moment but is gradually trolled until he or she reaches break point. Our view is that this form of provocation may actually be more dangerous than that which suddenly occurs and is currently the basis of this defence in our jurisdiction. We however choose to leave this open for debate on another day. The reason for this is that as already stated the case does not turn on the issue of whether the accused was provoked. Rather what is critical is the accused's defence of self-defence.

SELF DEFENCE

Section 253 of the Criminal Law Codification and Reform Act [*Chapter 9:23*] provides that self-defence can be a complete defence where an unlawful attack upon an accused has

commenced or was imminent. In this jurisdiction it is trite that a person is entitled to take reasonable steps to defend herself, any third party or her property against an unlawful attack or harm. It is accepted that in circumstances of imminent danger to life, even killing the assailant may be excusable. The requirements of that defence were prominently explained in the case of *S v Banana* 1994(2) ZLR 271 (S) at 273. They are that:

- a. There must be an unlawful attack.
- b. The attack must have commenced or was imminent.
- c. That attack must be directed upon an accused person or upon a third party.
- d. The action taken must be necessary to avert the attack or the accused must believe as such.
- e. The means used to avert the attack must be reasonable.

The purpose of these strict requirements is to dissuade self-justice. All the requirements must be satisfied for the defence to succeed. There is very little if any debate around the requirements and the position has become settled in this jurisdiction. An application of the requirements to the case at hand reveals the following:

1. **Unlawful attack which had commenced or was imminent and directed at the accused**

There is no gainsaying that a vicious, tortuous, calculated and sadistic attack upon a helpless woman's person had commenced and was continuing. It had been on-going for hours on end at the time that the accused attacked the deceased. The accused and Prudence's testimonies corroborated each other that the violence began during the day and continued late into the night. The accused was attacked and assaulted so viciously that she sustained a swollen body and her lower lip was dangling from the corners of her mouth. It is significant that the deceased attacked the accused and rested when he felt like and only to resume the assaults with even more severity. This explains why the accused attacked the deceased at a time when it appeared there had been a hiatus in the abuse and assaults. She was convinced that once he regained his strength that he had expended on sexually abusing the little girl, the assaults would certainly resume. The action she took was clearly necessary to avert the further attacks which the accused was sure would come her way. In any case, the deceased had already and continued to threaten that the accused was not going to live until daybreak. He at one time appeared like he was going to carry out that threat were it not for the intervention of Prudence. The accused

must have feared for the worst. Her fears must have been compounded by the presence of the axe which lay next to the deceased and the knife he had in his possession. They were ominous signs of continuing and impending danger. At the time Prudence slept the two were still engaging each other in the most acrimonious manner. It is therefore undoubted that the first requirement for the defence of self-defence was more than satisfied.

2. The action taken and the means used to avert the attack must be necessary and reasonable

It is an accepted position of the law that a person is entitled to take reasonable steps to defend himself, any third party or his property against an unlawful attack or harm. In circumstances of imminent danger to life, the killing of an assailant may be excusable. The accused had on many occasions begged the deceased to let her leave the homestead. She had been denied the opportunity and dragged back into the house. She was literally a captive in her own home. As if the captivity was not enough she was forced to watch the extremely immoral and erotic romps between the deceased and her daughter Prudence. When she thought she had gotten the opportunity to escape, the axe and knife were the only weapons available in the room. Admittedly both were lethal weapons. As such neither could be said to have been a worse choice than the other. In any case, given the barbaric and unceasing attacks which she had already been subjected to it would be preposterous for anyone to have expected her to properly weigh her options and carefully assess which weapon was commensurate to the attack so that her defence of self-defence could succeed in court if she ended up being charged with murder. In providing these defences to crimes, the law does not expect the courts to take an armchair approach. Instead the courts are expected to be robust and to put themselves in the shoes of an accused person who alleges that she was under attack. The accused jumped at the first weapon she saw. She actually did not intend to kill the deceased but simply to immobilise him to allow herself room to escape without him pursuing her. In the heat of the moment she again had no opportunity to select the part of the deceased's body she aimed at. She attacked this man who had tortured and beaten her all day and threatened to kill her blindly so to speak. Failure to seize the opportunity of grabbing any one of the weapons between the axe and the knife in the room would have spelt doom for her. It certainly would have resulted in more vicious assaults and the possible death of the accused. The action taken to avert the attack was therefore necessary and the means used were equally reasonable.

From the above analysis, it is clear that the accused satisfied all the requirements to sustain the defence of self-defence. She could not be expected to have done anything else. She did not have the necessary intention to sustain a charge of murder.

DISPOSITION

It is clear from the evidence led that the defence of self-defence is available to the accused. No one deserves to die. The courts do not encourage violence or resort to self-help remedies. Where however an inveterate abuser such as the deceased is killed in circumstances where he corners a hapless and defences woman, torments her and keeps her in near captivity, the accused cannot be convicted on the sole basis that another human being died. In this case, all the elements necessary to sustain the defence of self-defence have been met. As such we are not convinced that the State managed to prove that the accused had the requisite intention to sustain a charge of murder. Equally where it has been accepted that the accused acted in self-defence, it means the court will have found that he or she had the right to defend themselves. The question of negligently causing the death of the deceased cannot therefore arise and a conviction on the competent verdict of culpable homicide cannot also be sustained. Against that background, the court is not satisfied that the State proved the accused's guilt beyond reasonable doubt as required by law. She is accordingly found not guilty and is acquitted of the charge of murder.

*National Prosecuting Authority, State's legal practitioners
Trust Law Chambers, accused's legal practitioners*