

STATE  
versus  
BRIGHTON MWADHANA MUREYA

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 11, 12 AND 14 January 2022

**CRIMINAL TRIAL (Murder)**

ASSESORS: 1. Mr Magorokosho  
2. Mr Mudzinge

*M Musarurwa*, for the state  
*Mr J Zviuya*, for the accused

MUZENDA J: Accused is being charged of Murder as defined in s 47(1)(a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The allegations by the prosecution are that on 4 August 2020, at Mureya Village, Chief Musikavanhu, Chipinge, accused in the company of John Panganayi Mlambo Mureya and Clemence Fuddy Mureya (both of whom are still at large) acting in common purpose and in association with one another unlawfully caused the death of Benjamin Mukwakwami by assaulting him with fists, machete, kicks and a log all over the body intending to kill him or realising that there was a real risk or possibility that their conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Benjamin Mukwakwami died.

Accused pleaded not guilty. In his summary of defence Annexure B, accused states that he was at the scene at Muchakubani bar partaking alcohol in the company of his siblings John Panganayi Mlambo Mureya and Clemence Fuddy Mureya and other beer patrons. Deceased was also present. At one point all the patrons were at a snooker game. When deceased's turn came to play, he could not see the black ball and deceased blamed accused's elder brother John Panganayi for having hidden the black ball. John Panganayi and deceased fought. They were restrained by other patrons. However deceased and his colleagues assaulted accused by bashing his head on the snooker.

John Panganayi left the scene only to return armed with a machete. Deceased challenged John Panganayi to a fight. Accused later saw deceased entering the bar injured on his shoulder, he had been struck by John Panganayi with a machete. At the time deceased was struck accused was inside the bar bleeding. The accused later left the scene going home with his family. When accused and his family got home, deceased and Munorweyi Mukwakwami followed and shouted at John Panganayi challenging him to a revenge fight. John Panganayi went to where deceased was, accused and Clemence Fuddy followed John Panganayi to restrain the latter. A fight ensued between John Panganayi and Clemence Fuddy on one hand and deceased and Munorweyi Mukwakwami on the other side. Both John Panganayi and Clemence Fuddy took turns to strike deceased using a log. Both struck deceased on the head whilst deceased was on the ground. After being hit on the head deceased never rose. Accused's mother and John Panganayi's wife and other family members arrived and tried first aid on the deceased but nothing helped deceased. The family then left deceased at the scene and went to its homestead. Accused later learnt about the death of the now deceased.

### Facts

It is all about the game of snooker. A snooker is a variety of pool played with 15 red balls and 6 balls of other colours. Among those balls is the black ball which is central to the game. It is used to hit all other balls, if a player sinks it, he or she is penalised. If it is not there, there will not be a game anymore. The game of snooker is alien to Zimbabwe but gradually became popular in bars and restaurants soon after independence in 1980. It can be used in gambling or simply to while up time as a hobby, but as can be seen in this matter can be very dangerous to the participants.

On 4 August 2020 accused and his colleagues were playing snooker at the bar. Deceased and his drinking mates as well as his maternal uncles were also at the snooker table. It is important to note that accused's family and deceased's were related to each other and well known. When deceased's turn to play came the black ball was nowhere to be found. Deceased pointed at John Panganayi as the one who had mischievously concealed the ball. Deceased demanded that John Panganayi release the black ball. John Panganayi could not give in. A fight ensued and subsided after onlookers' intervention. John Panganayi was incensed by the whole episode, he left the bar, went to his house and returned armed with a firearm. He was disarmed. He did not rest, he went back to his house and came back with a machete. He sought for

deceased. Deceased left the bar and went outside daring John Panganayi. John Panganayi struck deceased on the left shoulder using a machete. John Panganayi was disarmed by the bar man of the machete. John Panganayi and accused left the bar and walked home. After a moment deceased and Munorweyi Mukwakwami also left the bar and silently walked towards their home. The two were waylaid by John Panganayi and accused. Deceased was severely beaten on the head, kicked and stamped. Munorweyi Mukwakwami was also assaulted and ran away from the scene but hid and witnessed what was happening to the deceased. Deceased was left for dead and abandoned by the roadside. He was later picked by Munorweyi Mukwakwami who sought transport to ferry him to the clinic and subsequently to the hospital. Deceased never recovered and succumbed to the injuries. Dr Stephen Mbiri conducted a post-mortem on deceased's body and concluded that the cause of death was due to *severe head injuries secondary to assault*.

*The issue for determination by the court is whether accused assaulted deceased with a log, stamped on his head and kicked him leading to his death?*

The state led oral evidence from two witnesses Mr Alouis Providence Runavo, the bar attendant and Munorweyi Mukwakwami. Alouis Providence Runavo's evidence relates to what happened in the bar and most of his evidence is not in dispute and is only there to perceive the history of the clashes between accused and now deceased. What however appears from his evidence is that John Panganayi Mlambo Mureya was the aggressor from the onset and accused took sides with him on all occasions. We also conclude that it was a war between accused's family members or brothers and now deceased's. There is no way accused could have remained a bystander when his elder brother Panganayi was having running battles with deceased. Accused arrived at the bar in the company of Panganayi. He was at the snooker when Panganayi concealed the black ball. He was involved in the melee where John Panganayi shoved deceased outside the bar. Accused and Panganayi left the bar together heading to their homestead. It is not difficult to see that accused associated himself with John Panganayi right from the onset. Alouis Providence Runavo did a sterling job disarming John Panganayi on two occasions and took deceased into safety, we have no problem in accepting his evidence in its entirety.

The most critical and central witness to the matter is Mr Munorwei Mukwakwami. He is obviously related to both deceased and to the accused. He told the court that on 4 August 2020 he had consumed alcohol but recalls what transpired on that day. He was in the company of now deceased. He saw John Panganayi striking deceased on the left shoulder with a machete.

He also saw accused punching deceased on the occasion. He told the court that he took deceased after the deceased was struck with a machete. He was able to describe the nature of the injury sustained by the now deceased moreso in that it was not life threatening.

After the departure of accused and his brother, the witness resolved to go home albeit quietly in order not to attract the attention of accused and his brother John Panganayi. On their way home they were surprisingly attacked by accused who was armed with a log weighing 3 700g and accused struck deceased below the back of the head and now deceased fell. Accused also struck the witness who ran away and hid at a vantage point 10 metres away from where now deceased was being assaulted by accused and Panganayi. At that point in time Panganayi was then not armed. It was accused who was stamping on the head of the deceased. From the time now deceased fell, he never rose and the witness had to carry him from the scene. Whilst accused and his brother were assaulting the deceased they uttered words resolute to killing the now deceased. When the witness lifted now deceased, now deceased was literally lifeless. It can safely be concluded that he died on the spot. This is confirmed by the abrupt abandonment of now deceased by accused's family who had tried first aid on him. They realised that now deceased had passed on and according to accused none of the family members could go to sleep on that night.

Munorwei Mukwakwami was subjected to a thorough and committed cross-examination by the defence counsel, to the witness' credit he remained forthright consistent and did not exaggerate on his testimony. He gave a vivid graphic description of how accused ambushed deceased and assaulted him. If the witness had a propensity to lie as submitted by the defence, he could have simply done so but he was an honest witness who genuinely narrated to court what happened on the day in question. We do not buy the suggestion posed by the defence that the witness was inebriated and possibly confused. His evidence flows with remarkable clarity and we accept it as truthful. Allegations of inconsistencies between the witness' evidence in court and the version given by him to the police were emphasised by the defence. The unfortunate situation on the part of the defence is that we were not shown the signed statement of the witness, nor were we referred to a particular paragraph of such a statement. Defence relied on the extracts of summary of the state case prepared at the pleasure and choice of the state. Surely one cannot say in essence for purposes of comparative analysis that it is a witness's statement. In any case in our considered view, if there were any

discrepancies, they were immaterial and insignificant and did not affect the quality of the witness' version.

What has been capably established by the state is that accused and his brother Panganayi felt enraged by the deceased's confrontation about the black ball of the snooker. Panganayi could have sensed defeat at the hands of the now deceased and resorted to the use of weapons. He was disarmed. The two then resolved to way lay now deceased on his way home. Accused fatally struck now deceased, did not render any restraint assuming it was Panganayi and Clemence who were assaulting now deceased. In our view Clemence was not involved in any way and accused wants to take advantage of the absence of both John Panganayi and Clemence. He failed to explain any steps he took to assist now deceased and literally left now deceased for dead. We are satisfied that it was accused who caused the fatal injuries on the head of the deceased.

**The next question to consider is whether accused intentionally caused the death of now deceased?**

Accused deliberately settled on a garden pole weighing 3, 700kg. He ambushed now deceased and chose a fairly dangerous and vulnerable part of the body, back of the head to strike. The medical evidence as per post mortem report exh 2, shows fatal injuries on the head. We also have oral evidence showing that now deceased's head was deformed and was jelly like due to the crushed skull. Accused was seen stamping on the head of deceased whilst deceased was lying helplessly on the ground. Accused did not challenge most of his evidence. He places himself at the scene though he downplays his role. Cumulatively accused gave a poor show as a witness and could not extricate himself on the aspect of the fatal blows. When he and his brother, Panganayi left the bar, they deliberately planned to attack now deceased and Munorweyi Mukwakwami. The latter is lucky to be alive. Accused intentionally opted for a lethal weapon and targeted a vulnerable part of the body and attacked the deceased who succumbed to death. We have no difficulty in adjudging the intention of the accused. He had the requisite *mens rea* to cause now deceased's death.

Accordingly, accused is found Guilty of Murder with actual intent.

#### Sentence

Accused was 20 years old when he committed the offence. He is now 21 years old. He is obviously classified as a youthful offender. He is single. From date of his arrest he has been

in custody. Given his youthful age he could have been influenced by peer pressure of his older brother John Panganayi.

In aggravation, the accused teamed up with his older brother to attack an unarmed person. Deceased was aged 19 years old and equally young. The injuries on the post mortem report shows that deceased died a painful death. Accused did not assist deceased. Moral blameworthy of the accused is very high. Accused allowed a trivial matter of a snooker ball to cost a man's life. Accused and his brother had been restrained but then chose to attack now deceased where there were no people and no one to restrain them.

Accused's salvation is his youthful age, otherwise he could have received capital punishment. Though a youthful offender, the offence he had committed is still and remains serious and a deterrent sentence is called for.

You are sentenced as follows:

15 years imprisonment.

*National Prosecuting Authority, state's legal practitioners*  
*Bere Brothers, accused's legal practitioners*