



Again she tried to talk him out of this belligerent behaviour as it might implicate her since he was using her axe.

She appeared to have won him over as he then walked towards her. He engaged her in a discussion.

Before he finished what he wanted to say, the witness says that the accused one appeared from nowhere and grabbed the deceased from behind by both hands to prevent deceased from using the axe which he still held in his hand.

A struggle for the possession of the axe followed. In the struggle the first accused was grazed by the blade of the axe. At that same time accused 2 emerged from another direction. He wielded a wooden hoe handle. He struck deceased twice using this hoe handle.

Deceased managed to free himself and fled from the scene. He had dropped the axe.

The two accused gave chase.

They caught up with him and felled him to the ground.

Soon afterwards Tapiwa and Peter Mwedzi arrived at the scene and managed to restrain the two further assaulting the deceased.

By then deceased could hardly talk. He was taken to Africa Mwedzi's house.

The defence disputed the evidence by challenging if ever the witness was ever present at the scene and, if she was, she could have seen all the detail she described in the night.

The witness told the court that it was dark. She had used her phone torch at some stage but she also said she could get used to darkness and be able to see in the dark.

She did not pretend that she was able to describe or give a blow by blow account of how the fight or the assault on the deceased progressed.

Her evidence is corroborated in part by the accused own versions of their roles as given in both the defence outline as well as the confirmed warned and cautioned statements given to Police when the details of the events were still fresh in their memories.

For example the first accused expressly admitted having engaged deceased in a fight at the stage when deceased wielded an axe. He got injured by the axe wielded by the deceased.

Accused 1 admits too that the deceased broke free and was chased by accused two. Deceased fell down and they caught up with him and again assaulted the deceased using their bare hands.

It is these admissions, in my view, which provide sufficient ground for a finding of a causal link between their conduct and the death of the deceased.

Accused 2 also makes similar admission about assaulting the deceased.

They both confirmed that they were stopped from assaulting the deceased.

In light of these admissions we find that despite the accused's protest, Talent was and remains, a credible witness upon whom this court can rely on in the determination of this case.

We reject therefore the evidence of the accused wherever it is contradicted by that of Talent. She is corroborated in the main by the other witnesses.

The defence submitted that there was no evidence linking the conduct of the accused to deceased's death because the evidence of this particular witness did not establish the averments in the charge.

As for causation in capable homicide it is wise to bear in mind the words of LORD JUSTICE CLERK – JOHNSON in *Blackie v British Transport Commission* 1961 SC 44 @ 49 which is cited in *S v Mokgethi* 1990 (1) SA32 at p40 F where he states that:

“The law has always come in some kind of compromise with the doctrine of causation. The problem is a practical rather than an intellectual one. It is easy and usual to be devil it with subtleties, but the attitude of the law is that expediency and good sense dictate that for practical purposes a line has to be drawn somewhere, and that in drawing it, the court is to be guided by the practical experience of the reasonable man rather than by the theoretical speculations of the philosopher.”

It is critical to assess objectively the credibility of all witnesses including the accused. The second accused stated that he had intercepted the axe before deceased struck the first accused. If the lighting condition was such that accused 2 could see the axe in such a way as to be able to intercept it, then it must be accepted that other witnesses under the same conditions could make similar observations under similar conditions.

In the end we are of the view that an appropriate verdict in this case ought to be one of guilty of culpable homicide and not guilty of murder.

*National Prosecuting Authority*, state's legal practitioners  
*Mugadza Chinzamba & Associates*, defence legal practitioners