

THE STATE  
versus  
DIVINE CHIRISA

HIGH COURT OF ZIMBABWE  
MUTEVEDZI J  
HARARE, 7 September and 24 November 2023

**Assessors:** Mr Shenje  
Mrs Gwatiringa

### **Criminal Trial**

*M Mupini, for the state*  
*G F Dzitiro, for the accused*

**MUTEVEDZI J:** Like nocturnal predators the accused and his fugitive colleague are alleged to have attacked the deceased under the cover of darkness. The deceased was asleep with his wife possibly at his weakest and most vulnerable.

The prosecutor alleges that this happened at Elisha village under Chief Nechombo in Mudzi when Divine Chirisa (the accused) unlawfully and with intent to kill or realising that there was a real risk or possibility that his conduct could lead to death but despite that realisation he struck Smart Kamupira (the deceased) with a wooden axe handle several times on his head and forced a knife between his teeth. The state's detailed version of the events leading to the murder is that around 2100 hours on 22 March 2021, the accused and his colleague called Persuade Svovera who fled from justice approached the deceased at his homestead. They knocked at the door. The deceased was oblivious that it was death knocking on his door. He came out. After a while a misunderstanding arose between the deceased and the accused. It related to two grams of gold which the accused had allegedly given to the deceased. The accused was demanding USD \$80 for the gold or a bucket of marijuana in lieu of the money. The deceased indicated that he neither had the money nor the dagga. That incensed the accused who using a wooden axe handle he had brought struck the deceased several times on the head. The deceased collapsed. He rose and tried to flee but the accused pursued and caught up with him. The deceased's wife had gotten out of the house and watched

in horror as her husband was being bludgeoned. She screamed for help. Persuade, took the axe handle from the accused and struck the deceased's wife with it in order to silence her. She was hit once on the head and three times on the back. Despite the beating she managed to flee from the scene. But before she escaped, she had observed the accused hunched over the deceased. He produced a knife from a bag which he was carrying and forced it between the deceased's teeth. He took turns with Persuade to carry out that ritual. They threatened to finish the deceased off with the knife. They later both fled the scene. The deceased's wife had ran off to seek help from the deceased's brother. She returned in the company of Shorai Kamupira, Langton Karomborombo and Edmore Matakanure to find the deceased severely beaten. They ferried him to Elim Mission Hospital. The deceased met his demise upon admission into the hospital on 23 March 2021. Doctor Yoandry Olay Mayedo performed an autopsy to determine what had killed the deceased. His conclusion was that the deceased had died from intracranial hypertension, global subdural haematoma, right parietal occipital bones fracture and severe head trauma.

The accused pleaded not guilty and the court recorded that plea. He gave a detailed defence outline. It started by challenging the contents of a confirmed warned and cautioned statement which he had given to the police at the time he was arrested. He said that prior to the date of commission of the offence he did not know the person called Persuade Svovera (hereinafter called Persuade). He said he had travelled from his home in an area called Makaha to the area called Banze in Chibvembe village in search of a job as an artisanal miner commonly called *makorokoza*. In Banze, he was advised that if he wanted a job, prospective employers were usually found at the local beer hall where most of them were regular patrons. He proceeded there on the evening of 22 March 2021. There he encountered Persuade for the first time. They discussed and Persuade intimated to him that jobs were available. Soon thereafter, Persuade invited the accused to accompany him to go and collect his money from a colleague of his. The accused said he agreed and they went to the deceased's house because he had no reason to suspect that a disagreement could arise between the accused and the deceased. He did not know the deceased. He was equally not aware of Persuade and the deceased's arrangement to barter the two grams of gold with marijuana. He had no reason to assault or harm the deceased at that time. When they arrived, the accused said apart from greeting the deceased he did not say anything else to him. The discussions were between the deceased and Persuade. Unfortunately, it soon became apparent to him that there was serious disagreement between Persuade and the deceased which quickly degenerated into a physical fight. He

(accused) rose from his seat intending to leave the premises. His rising was however mistakenly interpreted by the deceased as an attempt to attack him. The deceased who had all along been involved in an argument with Persuade suddenly went for the accused's neck. The deceased threw the accused to the ground. His wife came out of the house at that moment. She was screaming and running towards where the scuffle was. She scuffled with Persuade whilst he was still grappling with the deceased who was pinning him to the ground under a traditional utensils dryer. He heard Persuade assaulting the deceased's wife because the deceased yelled at Persuade to stop attacking a woman. The accused said he then managed to disentangle himself from the deceased's grip. Both he and the deceased were now on their feet. At that point Persuade hit the deceased with a wooden axe handle on the head. He continued to assault the deceased several times. The accused said he did not use any object throughout his scuffle with the deceased. He argued that he was only defending himself from attack by the deceased. He further alleged that he sustained several injuries from the fight. He left the deceased's homestead not aware that the deceased had sustained life threatening injuries. He prayed that the court acquits him on the charge.

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

The prosecutor opened her case by applying for the formal admission into evidence of the testimony of Langton Koromborombo in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The defence did not protest. As such the evidence was duly admitted in terms of that law as it appeared in the state's summary of evidence. That witness's evidence was basically the same as that of Shorai Kamupira which we will deal with later. The prosecutor followed that up with an application to tender the accused's confirmed, warned and cautioned statement which was recorded at ZRP Makosa on 2 April 2021 and was confirmed by a magistrate at Mtoko on 18 May 2021. The defence consented to the request and the statement was duly admitted and marked as exhibit 1 in the trial. The statement is critical to the resolution of this case. We have no choice but to reproduce it verbatim below. The spelling and other grammar mistakes have been taken as they appear in the original statement. It read:

"I do not admit to the charge. On the 22<sup>nd</sup> day of March 2021 at around 2100 hours, I arrived at the deceased's homestead **with my friend Persuade Svovera** using our torch lights intending to fetch a bucket of dagga since we gave him two grams of gold as payment on the 18 March 2021. I knocked on the house in which he was sleeping with his family and he came outside and sat on his chair. Persuade Svovera and I were sitting on a log near the walls of his house. I told him that we were leaving Chibvembe area where we were panning for gold to some other places to work. Because of that we had come for our dagga. The deceased indicated that he had no dagga. I then told him to give us money (Eighty American dollars) which was equivalent to the two grams of gold and he said he had no money. I then told him to return our gold so that

we could sell it elsewhere and get money for food. He also said he had sold the gold already and he had nothing to give us. I stood up intending to leave but the deceased thought I wanted to assault him. He suddenly stood up and grabbed my neck and I grabbed him and we fell on the ground. The wife of the deceased Yeukai Chinja got out of their bedroom running and crying. Persuade Svovera then picked the axe handle which was near the log where we were sitted and struck Yeukai Chinja once on the back. At that time I had stood up but the deceased was pressing me on his utensils stall drier. I then asked Persuade Svovera as to why he was assaulting the woman and not rescuing me since the deceased had throttled me. Persuade Svovera came to where I was with the deceased and struck him with the axe handle once on the head and he released me. Persuade Svovera again hit the deceased with the axe handle twice on the head and he fell on the ground. I then saw Persuade Svovera armed with a knife putting it on the deceased's mouth rubbing his teeth saying, 'I will cut you, produce our money.' I then said to Persuade Svovera, 'Don't cut him,' and at that moment the deceased was now bleeding profusely from the head. We left his homestead. I did not assault the deceased."

We will return to analyse the statement further in later passages of this judgment.

We mention here that the prosecutor later applied to produce the wooden axe handle, its certificate of weight, the knife and its wooden cover all of which were allegedly used during the commission of the murder. Once again the defence did not object to the production of the items. They were duly admitted.

### **The oral testimonies**

#### **Yeukai Chinja**

She is the deceased's widow. She disclosed that her late husband was an artisanal miner. He was friends with the accused and that she had seen the accused at their homestead on a number of times. On the fateful night, she said the accused and his colleague whom she discovered was called *Mosquito* came to their homestead in the dead of the night. It was her first time to see *Mosquito*. They knocked at the door and the deceased went to answer the knock. He took a stool and went to sit outside with the accused and his colleague. The accused said they were hungry. The deceased returned into the room and took some biscuits. Later the witness said she heard noise from outside. She went to inspect. The deceased attempted to run into the house. She said she observed the accused striking the deceased with a wooden axe handle on the head. The deceased fell to the ground and was throttled by the neck. The deceased was on his knees whilst the accused was standing on his feet. She was right by the door as she observed the assault. As she came out through the door she said she was also struck with a wooden axe handle. The accused and his colleague were demanding money from the deceased. She was struck once on the head and three times on the back with the axe handle. She said she literally crawled to her brother-in-law's homestead to inform him of what was going on. At the time she last saw her husband's assailants the accused was still holding the deceased by the neck. She added that she could not clearly hear what the deceased, the accused and *Mosquito* were

discussing at the time they were outside because they were seated at the backside of the house but when she came outside she could clearly see them as she got closer to where they were. Mosquito was actually following her and the accused called her to come to where he was. At the time that she left the homestead, she had not seen Mosquito do anything in assaulting the deceased. She later returned to the homestead in the company of her brother-in-law and others. The assailants were gone but the deceased was badly injured. He was lying prostate inside the room. His head was pivoted on his torch. He was assisted by his brother to go to hospital. There wasn't much that the deceased said to her. His only words were that she was supposed to take care of the children. He had a big live wound on the head. She rubbished the accused's claim that it was his first time at the deceased's residence because he regularly visited. She further restated that it was the accused and not the other person in whose company was who assaulted the deceased. She was equally candid that she could not comment on who had started the fight because when it erupted she was inside the house. But what she saw clearly was the accused striking the deceased with the axe handle on the head. She described the axe handle as having been about seventy centimetres long and brown in colour. She said the accused had brought it to their homestead because they did not have such an axe handle at their homestead. She was then shown an axe handle that was in court. She confirmed that it was indeed the one she had described. The prosecutor applied to produce it as an exhibit. With the consent of the defence the axe handle became exhibit 3 in the trial. At the hospital, the deceased did not make it. She had not been able to accompany him there but was informed of the bad news by her brother in law. She had been married to the deceased for seven years at the time of the tragedy. The marriage was blessed with three children. The eldest was seven, the middle one was five whilst the youngest was only two years and nine months old. The accused and his colleague did not assist at her husband's funeral or at anytime thereafter. She added that when she returned from her brother in law's homestead, she picked a knife cover which was on the blankets where the deceased was lying. She was once again positive that it had been brought by the accused and his colleague because nobody in their family possessed such a knife cover. In her opinion the knife cover was brown in colour. She was again shown a knife cover which she said she recognised as the one that she had picked up that night. Once more by consent of all parties, the knife cover became exhibit 4. She said although the accused was her husband's acquaintance what was odd that night was the time he visited. On all previous occasions she had seen them together either in the morning or around midday.

Under cross examination the witness remained steadfast that the accused and not Mosquito had attacked her husband that night. When it was suggested to her that a third person who is not the deceased or the accused could have been the owner of the axe handle the witness said she wouldn't know. What she knew was that it did not belong to her family and that she had seen the accused assaulting the deceased with it. She explained that the accused was holding the deceased in the cusp of his one arm. The other was holding the wooden axe handle. She conceded that although she later picked the knife cover she had not seen the accused holding the knife. She refuted that the accused had only accompanied Persuade to the deceased's homestead. She said to the contrary, it was Mosquito's first time to visit at their homestead yet the accused was a regular visitor.

### **Shorai Kamupira**

He was alerted of the assault on the deceased by Yeukai Chinja. The deceased was his younger brother. He rushed to the deceased's homestead in the company of Langton Karomborombo. When they got there they observed that the doorway to the deceased's bedroom was covered in blood but the door was closed. They checked three footpaths which exited the homestead anticipating to see the footprints of the assailants but they didn't find any. They returned and opened the door. The deceased was lying in there. His three children were also there. Two of them were fast asleep but the eldest one was seated. There was no light in the room. The witness said he shook the deceased but noted that he couldn't speak. He was badly injured. He shouted the message to Langton who advised him to bring the injured man outside. Outside the deceased attempted to communicate but he sounded confused as he didn't even recognise whom he was talking to. He bled profusely. Later on the witness said they decided that it was best to take the deceased to their parents' place which is in an area called Nyanga. They got there and woke up their parents. The deceased was still bleeding. Their mother tried to cover his head with a baby blanket. The witness then said he borrowed a motor cycle from one of the villagers. He drove the motor bike whilst his brother in law was holding the deceased in the passenger's seat. They took the deceased to Villa mission hospital. The medical staff there required a police report first after they heard that the deceased had been attacked. The witness said they then took the deceased to Ruwange hospital. There, he was admitted and the staff advised the witness to rush to the police to make a report whilst they attended to the deceased. He did. At the police he was assigned a police detail whom he carried on the motor cycle back to the hospital. At the hospital the officer completed some documents

which allowed the staff to fully attend to the deceased. Unfortunately in the very early hours of the next morning a doctor advised them the deceased had passed on.

Given the nature of Shorai's evidence, counsel for the accused elected not to cross examine him.

### **Shadreck Mavuka**

He investigated the murder. The accused was arrested on fools' day in 2021. The murder had occurred on 22 March the same year. As already stated, the accused and his accomplice fled the scene soon after the murder. Their full particulars were not known. The accused was simply known as Dread whilst Persuade was known by his moniker Mosquito. After numerous inquiries and leads the officer said he arrested both of them whilst they were in hiding some fifty kilometres away from the scene. The police investigations were aided by one man called Kudakwashe Nhunzvi who knew the accused and his colleague physically. They found them staying in a make shift hut along a river in a village called Gotekote. When the police ambushed them the accused and his accomplice tried to flee. The accused's colleague fled for about three hundred metres before he was apprehended. On the day that the officer attended the crime scene before the arrest of the accused he said he had recovered a wooden knife cover which the deceased's wife and her family said was not known to them. He took it together with a wooden axe handle. At the time that he arrested the accused, the accused had a knife in his strap bag generally called a satchel. He confirmed that the knife belonged to him. On quizzing him where the cover was the accused indicated that he probably had lost it at the scene of the crime. When it was put to him that the accused was not the owner of the knife but that it belonged to Persuade, the officer said he could not tell who the owner was but that he had recovered it from the accused's bag. He was shown a knife in court which he confirmed was the one he recovered from the accused. It became exhibit 5 by consent of all. In conclusion the officer said at the time of arrest the accused did not have any injuries on his body which showed that he had been assaulted by the deceased as he claimed. He added that if the accused had been assaulted he ought to have reported that to the police instead of going into hiding.

During cross examination, counsel for accused suggested to the officer that whilst the accused was not challenging the confirmation of the statement he alleged that it contained some factual inaccuracies as certain statements which were made by Persuade were then imputed on him. The example of the barter trade of marijuana and gold was given. The officer insisted in turn that it was the accused who had made those statements. As is apparent not much came

out of the cross examination. Where an accused does not challenge his confirmed warned and cautioned statement it is not possible to pick out and challenge some specific statements. He cannot have his cake and eat it at the same time. Either one challenges the propriety of the confirmation proceedings or one doesn't. In this case, the accused chose not to do so. He must be prepared to be hoist by his own petard.

After the officer's evidence, the state closed its case

## **Defence case**

### **Devine Chirisa**

The accused gave evidence. It was identical to his defence outline in all material respects. He insisted that it was Persuade who attacked the deceased with a wooden axe handle on the head. They left the area soon thereafter and proceeded to Mudzi. Quizzed by his counsel why he had not gone to report to the police, the accused said whilst in Mudzi he met Kudakwashe who told him that the police were looking for him since they had assaulted someone who later died. The accused said he denied having assaulted anyone and told Kudakwashe where they were proceeding to and that Kudakwashe had to bring the police there if they wanted him. How cheeky of him! He further stated that he had no intention to kill the deceased.

The prosecutor's cross examination largely covered areas which had long been dealt with such as why the accused had not protested to the magistrate about what he alleged were inaccurate facts in his statement. Through questioning the accused stated that he did not do anything more than tell Persuade to desist from attacking the deceased and his wife because Persuade was violent. He was afraid he could attack him too.

## **Common cause issues**

There are several issues which are either common cause which resolved themselves as the trial progressed. We list them below:

- a. The accused and his accomplice Persuade Svovera visited the deceased's homestead on the night he was left for dead
- b. Their mission was to collect payment either in cash or in kind for the two grams of gold they had given to the deceased
- c. Negotiations for the payment or alternatively the return of the gold did not go as per their plan. The discussions soon degenerated into violence



- d. The deceased and his wife were both severely assaulted by either or both of the accused and his accomplice
- e. The deceased was bludgeoned several times on the head. He was mortally wounded
- f. Death was a result of intracranial hypertension, global subdural haematoma, right parietal occipital bones fracture and severe head trauma. In addition the autopsy revealed other extensive injuries such as lineal abrasion over left deltoid muscles, ecchymosis in the right neck wall, two abrasions in the right neck wall and left parietal sutured wound. They could only depict a savage attack on the deceased.
- g. The accused and his accomplice left the crime scene and disappeared from the area. If they were assaulted by the deceased they did not report such assault to the police.
- h. The accused made a warned and cautioned statement to the police. The statement was later confirmed by a magistrate.
- i. In it he described in detail why he and his accomplice went to the deceased's homestead and what transpired when they got there. He put his own participation in the whole issue beyond doubt. What he denied was assaulting the deceased. He laid the blame on his fugitive partner.

### **The issue**

It is clear from the above that the only issue which remains for the court's consideration is whether or not the accused caused the deceased's death. In her closing submissions counsel for the accused's major contention is that he did not have the intention to kill the deceased. She cannot be correct. The issue can be looked at from two perspectives both of which do not make the accused's cause less gloomy.

The first view is that the accused assaulted the deceased and directly contributed to his death. The second is that even if he is given the benefit of doubt and it is accepted that it was his fugitive colleague who assaulted the deceased, the accused acted in common purpose with that fugitive and his liability as a co-perpetrator is inescapable. We propose to first demonstrate how the first line of argument entangles the accused.

The evidence which is critical to the resolution of that aspect is that of Yeukai Chinja, the deceased's widow. It settles quite a few issues. First, the accused as already stated sought to make the court believe that he had never been to the deceased's homestead and that he was actually new in the Chibvembe area but from Yeukai's evidence that could not possibly be true. The witness said she knew him previously and that he was a regular visitor at their homestead.

In fact there was additional testimony from the investigating officer that people in the area knew him as *Dread*. Further the accused for instance did not dispute that Kudakwashe knew him and that he knew him from the Chibvembe area. What makes the witnesses' evidence even more credible is that it is corroborated by the accused himself. In his confirmed warned and cautioned statement the accused person made averments some of which were diametrically opposite to what he stated in his defence outline. It meant that he was lying in one or both of those statements. The law is clear that a witness who lies in one aspect of his testimony does not expect the court to believe him on another. For instance in his defence outline he purported to have met Persuade Svovera for the first time on the fateful night. He said they were hardly known to each other. He further stated in his defence outline that when they got to the deceased's place he hardly said anything except to greet the deceased. His statement unfortunately speaks to an entirely different situation. It clearly illustrates that he and Persuade were friends. They both knew why they were going to the deceased's place. The deceased was known to both of them. The accused was the person who was in complete charge of the proceedings at the deceased's homestead as shown by the questions he asked and the fact that he led the negotiations and demand for payment for their gold. He gave the deceased three options namely either to give them a bucket of marijuana, pay them USD \$80 or to return their two grams of gold. If anything the accused's statement indicates that Persuade was the more passive accomplice. That Persuade was so is supported by Yeukai's testimony that before her escape she had not seen Persuade assault the deceased. Further, the accused's description of the incident to the police left us in no doubt that he was familiar with both the deceased and the set up at his homestead for instance at deceased's homestead accused knew which door led to the couple's bedroom. It would not have been possible if it was his first time at the place. It was his colleague Persuade who appeared new in the area. The accused must have found it convenient to create a roles reversal given the absence of Persuade. He reconstructed the events to make Persuade the main actor with him riding along. The statement which he had earlier made to the police and which had been confirmed by a magistrate betrayed him completely. Because it was confirmed, its admissibility in court became a mere formality. He hardly challenged the propriety of its confirmation save for the half-hearted attempt to say there were misrepresentations of some facts in the statement. See the case of *State v Tafadzwa Shamba and Another* HH 396/23 for a fuller explanation of the law which regulates admissibility of confirmed extra-curial statements.

More importantly the accused portrayed himself as someone who had accidentally been dragged into the conflict between Persuade and the deceased. His counsel described him as a bystander. In the process he witnessed the brutal attack on the deceased by Persuade. He decided to walk away in the midst of it. The expectation was that he should have ran straight to the police to report on what he had witnessed. Every right thinking citizen is expected to do that. Instead he chose to go underground. He said that he was not aware that the assault on the deceased had been fatal. But later on when he met Kudakwashe fifty kilometres from the crime scene, he was advised not only that the deceased had succumbed to the injuries but that the police were also looking for him. He once more did not see it fit to surrender himself to the police. His excuse was a cock and bull story that he wanted Kudakwashe to direct the police to where he was yet he claimed that the deceased had been killed by Persuade. In our view the accused's actions simply show that he wanted to be as far away from the police as he could possibly be. At the time he was apprehended he attempted to flee once more before he was cornered.

On the above basis alone it cannot be doubted that the accused is guilty. But if it could and as already said the other side is that the accused and Persuade both went to the deceased's place on the fateful night. If we go by the accused's version Persuade was carrying weapons. He had a knife and a wooden axe handle. The knife was later recovered from the accused in his satchel. They wanted to confront the deceased to get payment for the gold they had given him. There was a possibility that the gold could be barter traded with marijuana. It was in the dead of the night. Everything appeared ominous. The accused must then have realised that there was a real risk or possibility that an argument could ensue between Persuade and the deceased and that one or both of the weapons could be used if any argument deteriorated into a fight.

At common law the liability of two or more people who committed a crime together was anchored on the doctrine of common purpose. The codification of the Zimbabwean criminal law resulted in the discontinuance of the use of that doctrine. Its essential elements were fortunately imported into the statute. Section 196 A of the Criminal Law Code caters for the liability of co-perpetrators. It provides as follows:

**“196A Liability of co-perpetrators**

(1) If two or more persons are accused of committing a crime in association with each other and the State adduces evidence to show that each of them had the requisite *mens rea* to commit the crime, whether by virtue of having the intention to commit it or the knowledge that it would be committed, or the realisation of a real risk or possibility that a crime of the kind in question would be committed, then they may be convicted as co-perpetrators, in which event the conduct of the actual perpetrator (even if none of them is identified as the actual perpetrator) shall be deemed also to be the conduct of every co-perpetrator, whether or not the conduct of the co-

perpetrator contributed directly in any way to the commission of the crime by the actual perpetrator.”

Where prosecution therefore wishes to have an accused convicted of a crime on the basis that he/she acted together with another perpetrator it is required to establish that in the first place each of the perpetrators possessed the necessary intention to commit the offence in question. Of course intention may come in the different states of mind provided for under Part III of the Criminal Law Code from ss 12- 15 in form of either intention, knowledge or realisation of risk or possibility respectively.

In subsection (2) the section the law provides that:

“(2) The following shall be indicative (but not, in themselves, necessarily decisive) factors tending to prove that two or more persons accused of committing a crime in association with each other together had the requisite *mens rea* to commit the crime, namely, if they—  
(a) were present at or in the immediate vicinity of the scene of the crime in circumstances which implicate them directly or indirectly in the commission of that crime; or  
(b) were associated together in any conduct that is preparatory to the conduct which resulted in the crime for which they are charged; or  
(c) engaged in any criminal behaviour as a team or group prior to the conduct which resulted in the crime for which they are charged.”

Admittedly, without guidance and presumptions it would have been difficult for prosecutors to prove the common design of perpetrators of crime. The law anticipated the difficulties and designed measures intended to help the state in its quest to establish the intention of an accused. The issues stated in subsection (2) become important. The prosecutor simply needs to illustrate that the accused was present at or near the vicinity of the crime scene in circumstances which incriminate him/her directly or indirectly in the commission of the offence. The prosecutor may also seek to demonstrate the accused’s *mens rea* by alleging that before they committed the offence the two or more accused persons engaged in certain activities which are seen as preparatory steps for the commission of the offence.

The above requirements dovetail into the accused and his accomplice’s situation. They were together earlier in the night when the deceased was attacked. They planned to visit the deceased. Persuade was carrying lethal weapons. Such munitions were unnecessary if their visit to the deceased’s homestead was a peaceful one. Crucially one of the weapons was later recovered from the accused himself. He had seen Persuade using it to assault the deceased. He knew it was one of the murder weapons. To then take it and keep it in his bag betrays his lies that he did not have anything to do with the murder. Based on the events which occurred later that night it is reasonable to draw the inference that they made or at least that they discussed

preparations for their attack on the deceased. The accused by his own admission and the testimonies of witnesses was at the deceased's homestead where the crime was committed. He assisted his accomplice in assaulting the deceased and in demanding payment for the gold. Those circumstances clearly incriminate the accused directly in the commission of this murder.

From the above analysis, it becomes clear that the evidence shows in more than one way that the accused perpetrated this murder. He cannot escape liability on the basis of what he personally did and can also be found guilty on the basis of the principle of liability of co-perpetrators prescribed under s 196A of the Criminal Law Code. It is against that background that the court has no apprehension to find that the state managed to prove the accused's guilty beyond reasonable doubt as required by law. **Accordingly it is directed that the accused be and is hereby found guilty of murder as charged.**

*National Prosecuting Authority, for the State*  
*G Dzitiro Attorneys, for the accused*