

**THE STATE**

**Versus**

**TAWANA PAUL CLIFFORD NGWENYA**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Mashingaidze and Mr Ndlovu

BULAWAYO 26 October 2023

**Criminal trial**

*Ms. D.E. Kanengoni*, for the State

*V.E. Ndlovu*, for the accused

**DUBE-BANDA J:**

[1] The accused, Mr. Tawana Paul Clifford Ngwenya, is appearing before this court charged with the crime of murder as defined in section 47(1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 (Criminal Law Code). It being alleged that on 29 May 2020 the accused struck Tabela Mazolo (hereinafter referred to as “the deceased”) on the head with an iron bar and slit her throat with a knife intending to kill her or realising that there is a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused, who had legal representation admitted the charge. However, a plea of not guilty was recorded as required by law. Mr *Ndlovu* counsel for the accused explained that at the time the accused committed this crime he was suffering from a mental disorder, and therefore he could not at law be held criminally liable for his crime.

[3] Counsel for the State and defence counsel tendered into the record of proceedings a statement of agreed facts. The statement is before court and marked Annexure A, and it reads as follows:

The State and the Defence are agreed that the following issues are common cause being that: -

- i. The accused person is a male adult who was aged 19 years at the time of the commission of the offence and resided at House number 04 Eaglesfield Road, Matshemhlope, Bulawayo.
- ii. The deceased was aged 25 years at the time she met her death and she resided at house number 04 Eaglesfield Road, Matshemhlope, Bulawayo, where she worked as a caretaker and lived with the accused person.
- iii. The accused person and the deceased were not related.
- iv. On the 29th of May 2020, the accused person and the now deceased were at House number 04 Eaglesfield Road, Matshemhlope, Bulawayo, where they sat in the living room watching television. the accused person then stood up, went outside, took a metal pipe which he used to strike the now deceased on the head and then he proceeded to cut her throat with a knife.
- v. The accused person then took USD\$400-00 from the deceased's bedroom.
- vi. On the following day the accused person sought the help of Cassy Chivako and the two went to purchase a plastic drum and hydrochloric acid. They then cut the drum open, poured the hydrochloric acid and put the body of the deceased inside the drum.
- vii. On the 8th of June 2020 the accused person took some of the deceased's clothes and proceeded to Harare.
- viii. On the 10th of June 2020, Buzwani Ngwenya, who is the accused person's father and was employed at the same residence as a gardener, detected a foul smell coming from the bedrooms, which then prompted him to file a missing person's report at Hillside Police Station for the now deceased since he had not seen her for a number of days. He also advised the police of the foul smell which was emanating from the house.
- ix. On the same day, the police attended the scene and found the body of the now deceased in a plastic drum, which led to investigations and the arrest of the accused person who was in Harare.
- x. The accused person was charged with the crime of Murder as defined in section 47 of the Criminal Law (Codification and Reform) Act (Chapter 09:23).
- xi. On the 11th of June 2020 and at United Bulawayo Hospitals Dr Pesanai S examined the remains of the now deceased and concluded that the cause of death was: -
  - a. Brain damage
  - b. Depressed skull fractures
  - c. Assault

- xii. The accused was seen and examined on numerous occasions by Dr E. Poskotchinova at Mlondolozhi Forensic Institution in Bulawayo and after clinical examinations she concluded that while accused is fit to stand trial now, at the time of the commission of the offence he was mentally disordered and suffering from Psychosis related to brain trauma injury, Schizoid personality disorder and as such he was mentally disturbed to an extent that he should not be held legally responsible for his actions.
- xiii. Wherefore the State and the defence pray that a special verdict be returned in this matter in terms of section 29 of the Mental Health Act (Chapter 15:12) as the accused person lacked the requisite mental capacity to commit the offence at the material time and should therefore not be held criminally liable.

[4] The State tendered the following documentary and real exhibits; affidavit of Doctor Elena Poskotchinova (exhibit 1) who performed a psychiatric evaluation on accused person; affidavit of Constable Welcome Dube ((exhibit 2) who identified the remains of the deceased to Doctor S. Pesanai; a Post Mortem Report Number 528 — 527 – 2020 (exhibit 3) compiled by Doctor S. Pesanai who examined the remains oof the deceased; a forensic DNA Test Certificate (exhibit 4) compiled by Mr Zephaniah Dlamini who did DNA profiles; a 200 litre blue plastic drum (exhibit 5) ; Sony Experia cell phone (exhibit 6); Samsung J7 cell phone (exhibit 7); Carrier bag containing red candles and a brown 2 in 1 blanket (exhibit 8); a rustic metal rod 90cm in length, 2.5cm in diameter and 1.9kg in weight (exhibit 9); a knife with a black handle, length of blade 14cm, widest part of blade 3cm, weight of the whole knife 150 grammes (exhibit 10); hacksaw measuring length 59cm, width 17 cm, with an orange handle (exhibit 11).

[5] The accused struck the deceased on the head with a metal pipe and then proceeded to cut her throat with a knife. He then put the body of the deceased inside a drum with hydrochloric acid. The post mortem report shows that the cause of death was brain damage; depressed skull fractures; and assault. Therefore, the evidence shows that the injuries inflicted on the deceased were caused by the accused, and the post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

[6] According to the expert Psychiatrist the accused is fit to stand trial. The expert concluded as follows:

“In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering mental disorder (organic Psychosis related to Trauma Brain Injury, Schizoid personality Disorder). He was mentally disturbed to such an extent that he should not be held legally responsible for his actions.”

[7] In the circumstances of this case and having regard to the undisputed evidence before court, it is clear that at the time of the commission of this offence the accused was suffering from a mental disorder and as such he cannot at law be held responsible for this crime. In the circumstances, it is appropriate for this court to return a special verdict, that is to say the accused is not guilty by reason of insanity.

In the result, it is ordered as follows:

- i. The accused is found not guilty and acquitted by reason of insanity.
- ii. The accused is hereby returned to prison pending transfer to Mlondolozhi Special Institution for further examination and treatment in terms of section 29(2)(a) of the Mental Health Act (Chapter 15:12).

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