

**THE STATE****Versus****PROUD BHEBHE**

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessor Mrs Baye &amp; Mr Matemba

GWERU 18 SEPTEMBER 2023

**Criminal Trial***M. Ndlovu* for the state*Ms S. Ncube* for the accused

**MOYO J:** Accused faces a charge of murder, it being alleged that on a date unknown to the prosecutor between 1<sup>st</sup> and 20<sup>th</sup> June 2021, at Njini Village, Chief Sogwala, Lower Gweru, the accused person unlawfully caused the death of Cini Bhebhe using an unidentified instrument and thereby caused her death. The accused person pleaded not guilty by reason of insanity. Both parties drew a statement of agreed facts, it was tendered and marked exhibit 1. It reads as follows:

- “1. Proud Bhebhe (hereinafter referred to as the accused) resides at Njini Village, Chief Sogwala, Lower Gwelo and is not employed. He was 46 years old at the material time.
2. Cini Bhebhe (hereinafter referred to as the deceased) resided at Njini Villaga Chief Sogwala, Lower Gwelo during her lifetime. She was 88 years old at the time she met her death.
3. The deceased was the accused person’s grandmother and they both stayed at the same homestead.
4. On a date to the prosecutor unknown but during the period extending from the 1<sup>st</sup> June 2021 to the 20<sup>th</sup> June 2021 both the deceased and accused were at home when they had a misunderstanding over an undisclosed matter. The accused person used an unidentified instrument to strike the deceased resulting in her death.

5. Thereafter, the accused person dug a shallow grave in the family cemetery and buried the deceased. The accused person informed deceased's children that the deceased had visited her sister in Sogwala village.
6. On the 23<sup>rd</sup> June 2021 one Nelson Gwabeni visited the deceased homestead and saw a dog carrying a bone that he suspected to belong to a human being. He recovered the bone and informed other villagers.
7. The deceased's children and villagers gathered and started searching for the remains of the deceased. The search resulted in the discovery of another human bone and deceased clothing items from the shallow grave where accused had buried the deceased, through accused's indications.
8. Accused person was arrested.
9. The recovered bones were taken to National University of Science and Technology where they were positively identified as those of the deceased.
10. On the 10<sup>th</sup> February 2022 the deceased remains were taken to United Bulawayo Hospitals where Dr Juana Rodriguez Gregori conducted a post mortem examination and concluded that the cause of death was:
  - i. Unidentified
11. The accused person was examined by a Psychiatrist, Dr Elena Poskotchnova on 6/7/22, 27/07/22, 28/09/22, 22/11/22, 29/12/22, 1/01/23 and 23/02/23 at Mlondolozhi Special Institution.
12. Dr Elena Poskotchnova concluded that at the time of the commission of the alleged offence, the accused was suffering from Schizophrenia, substance use disorder. She concluded that the accused was mentally disturbed to such an extent that he should not be held legally responsible for his actions.
13. The accused accepts the evidence of the state witness as well as contents of the post mortem report and that at the time of the commission of the alleged offence he was suffering from a mental disorder to such an extent that he should not be responsible for his actions.

14. The state concedes to the fact that the accused was suffering from a mental disorder at the time of the commission of the alleged offence and it is appropriate for the court to return a special verdict not guilty by reason of insanity in terms of section 29(2) the Mental Health Act (Chapter 15:12).”

The forensic DNA test certificate, the post mortem report and the psychiatric report were also tendered and were all duly marked.

The forensic DNA test certificate confirms that the remains as being those of the deceased.

From the evidence before this court, it is our finding that the accused person was mentally challenged when he committed this offence and therefore cannot be held criminally liable for same. It is for these that:

1. The accused person is found not guilty and is acquitted on the charge of murder by reason of insanity.
2. The accused is a danger to society and is therefore committed to Mlondolozhi Special Institution.

*National Prosecuting Authority, state’s legal practitioners*  
*MSU Legal Aid Clinic, accused’s legal practitioners*