

THE STATE

Versus

SHUVAI MACHONGWE

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr. Ndubiwa and Mr. Ndlovu

HWANGE 4 March 2024

Criminal trial

Mrs. M. Cheda for the State

Miss. J. Change for the accused

DUBE-BANDA J:

[1] The accused is appearing before this court charged with the crime of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on 2 May 2023 she unlawfully caused the death of an infant Gaudencia Maria Sibanda referred to as the deceased by sitting on top of her, intending to kill her or realising that there was a real risk or possibility that her conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused pleaded not guilty and contended at the time of the commission of this offence she was suffering from a mental disorder as defined in the Mental Health Act [Chapter 15:12]. The accused admits that she caused the death of the deceased but pleads lack of culpability based on mental illness. She contended that at the material time she was suffering from a mental disorder, and therefore she could not be held criminally liable for her conduct. The prosecutor accepted the plea of not guilty premised on insanity.

[3] The prosecutor tendered a statement of agreed facts. The statement is marked Annexure "A" and contains what the State and the accused have agreed constitutes common cause facts, which are these:

- i. The accused was aged 34 years at the time of the commission of the offence and she resides at Gokwe Sibanda's homestead, Chalisenga 1 Village, Lunga area, Chief Sinakatenge, Binga.
- ii. The deceased was aged 2 years at the time she met her death. She used to reside at the same homestead as accused.

- iii. Accused was deceased's mother.
- iv. The accused is a mental patient.
- v. On the 5th of May 2023 Thandiwe Munsaka who shares a husband with accused observed that the accused had started to behave awkwardly. She sang church songs the whole night and she was pacing up and down. She never slept.
- vi. On the 8th of May 2023, at around 0700 hours Thandiwe proceeded to the river to fetch water and left the accused with her daughters Rumbidzai and deceased.
- vii. Upon her return she learnt from Rumbidzai that the accused had left home for the shopping centre with the deceased.
- viii. At round 1200 hours Thandiwe together with Rumbidzai followed the accused to the shopping centre as she had not yet returned home. They got information that the deceased had been observed going into the bush. The two tracked accused's footprint until they found her sitting. They observed that the accused was sitting on top of the deceased.
- ix. Thandiwe sought assistance from two men, Addlord Sabasa and Edmore Mwinde who apprehended the accused.
- x. Thandiwe picked up the deceased who was cold and motionless and did not show any signs of life.

The State and the Defence pray that the honourable court returns a special verdict in terms of section 29(2)(a) of the Mental Health Act Chapter 15:12 since the accused suffered from a mental disorder (Schizophrenia). Accused was mentally disturbed to such an extent that she should not be held legally responsible for her conduct.

[4] The prosecutor, with the consent of the accused tendered two documentary exhibits, i.e., the post mortem report exhibit 1 and a psychiatric report exhibit 2. The post mortem report was compiled by Dr. S. Pesanai who examined the remains of the deceased. The doctor concluded that the cause of death was subarachnoid haemorrhage; blunt force trauma head; and vaginal laceration. The psychiatric report compiled by a forensic psychiatrist Dr. E. Poskotchinova who concluded that:

“In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder (schizophrenia). She was mentally

disturbed to such an extent that she should not be held legally responsible for her actions. She is dangerous to society and needs special verdict to return.

She is fit to stand trial.”

[5] The facts and the evidence show that the injuries inflicted on the deceased were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

[6] In the circumstances of this case, and having regard to the psychiatric report before court, it is clear that at the time of the commission of the offence the accused was suffering from a mental disorder as defined in the Mental Health Act and as such she cannot at law be held criminally liable for her conduct, i.e. the crime of murder. In the circumstances, it is appropriate for the court to return a special verdict, i.e. the accused is not guilty because of insanity.

In the circumstances, it is ordered as follows:

- i. The accused is found not guilty of murder by reason of insanity.
- ii. In terms of section 29(2)(a) of the Mental Health Act [Chapter 15:12] the accused is to be returned to prison pending transfer to an institution for treatment.
- iii. The accused person is still a danger to society.

National Prosecuting Authority, state’s legal practitioners
Mvhiringi & Associates, accused’s legal practitioners