

**THE STATE**

**Versus**

**MONGAMELI NKOMO**

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 21 February 2023 the accused caused the death of Andile Nkomo hereinafter called the deceased by strangling her on the neck with his hands, biting her on the face several times intending to kill her or realising that there was 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 pleaded not guilty and contended at the of the commission of this offence he was suffering from a mental disorder as defined in the Mental Health Act [Chapter 15:12]. The accused admits that he caused the death of the deceased but pleads lack of culpability based on mental illness. He contended that at the material time he was suffering from a mental disorder, and therefore he could not be held criminally liable for his 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 25 years at the time of the commission of the offence and he resides at Regiment Nkomo's homestead, Lopila Line, Chief Gampu, Tsholotsho.

- ii. The deceased was aged 1 year and 6 months at the time she met her death. She used to reside with her mother at Lavet Mhlanga's homestead Masekesa line, Chief Gampu, Tsholotsho.
- iii. Accused was deceased's father.
- iv. The accused is a mental patient.
- v. On the 20<sup>th</sup> of February 2023 and at 2000 hours, Nokulunga Mhlanga visited the accused at his homestead to spend the night together with the deceased their daughter. Nokulunga was customarily married to accused but was however staying at her parent's homestead with the deceased.
- vi. During the night, the accused woke up and started behaving strangely alleging that there were goblins which were following him and that something bad would happen. Accused knelt down and started praying, he screamed loudly.
- vii. He grabbed Nokulunga's right hand and bit her middle finger and ring finger and further bit her on the left hand. Nokulunga got up and jumped from the bed. She picked the deceased from the bed but the accused violently took the deceased from her arms. She escaped through the door and sought help from neighbours. She met Soneni Tshuma and Vundu Nkomo who went back to accused's homestead with her.
- viii. They found accused standing outside the bedroom hut strangling deceased with both hands and biting her while at the same time shouting in isiNdebele that people should help him.
- ix. Deceased was not crying but moving her hands and legs. Vundu Nkomo tried to take deceased away from accused but failed. Lavet Mhlanga joined and two managed to subdue the accused and tied accused's hands and legs with a rope but accused still maintained his tight grip on deceased's neck.
- x. Accused later loosened his grip and placed deceased on the ground. Deceased was no longer showing any signs of life.
- xi. Deceased had a deep cut on the forehead, part of the mouth and chin were missing. The jaws and teeth were exposed. The missing flesh was not recovered.

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 (Substance induced psychosis). Accused was mentally

disturbed to such an extent that he should not be held legally responsible for his 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. Juana Rodriguez Gregori who examined the remains of the deceased. The doctor concluded that the cause of death was subarachnoid haemorrhage; cranial trauma and assault. 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 (substance induced psychosis). He was mentally disturbed to such an extent that he should not be held legally responsible for his actions. He is dangerous to society and needs special verdict to return.

He 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 he cannot at law be held criminally liable for his 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  
*Mviringi & Associates*, accused's legal practitioners