

**THE STATE**

**Versus**

**PAUL JUBANE**

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 24 June 2023 the accused unlawfully caused the death of Irene Jubane referred to as the deceased by striking her twice on the head with an axe 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 time 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 35 years at the time of the commission of the offence and he resided at Tuesday Jubane's homestead, BH28, Chief Mvuthu, Victoria Falls.

- ii. The deceased was aged 60 years at the time she met her death. She used to reside at the same homestead with accused.
- iii. Deceased was accused's mother.
- iv. The accused is a mental patient.
- v. On the 24<sup>th</sup> of June 2023 and at 0800 hours, the deceased was working in her garden, watering some vegetables.
- vi. The accused came out of his bedroom hut carrying an axe and approached the deceased from behind.
- vii. Without saying anything; accused struck the deceased once on the back of the head with the axe and deceased fell to the ground facing downwards. Accused further struck her deceased once on the back of the head as she was lying down. The axe remained stuck on deceased's head.
- viii. Tuesday Jubane, deceased's husband was not able to render any first aid on deceased as accused was violent. He fled from the homestead to seek help from neighbours.
- ix. Deceased bled profusely from the wound on the back of the head and she died on the spot.

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 brain damage; skull fracture; and chop wound. 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  
*Mvhiringi & Associates*, accused’s legal practitioners