

THE STATE
and
EMELDA MARAZANI

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 24 October & 9 November 2022
& 17 March 2023

Assessors: Mr *Kunaka*
Mr *Mhandu*

Criminal Trial

T Kamuriwo, for the State
G K Muchapireyi, for the accused

MUTEVEDZI J: In times gone by, the generally accepted notion was that women gave life. They rarely took it away. It was an even much rarer occurrence for a mother to kill her own children. From that understanding, when it happened, the event became an astonishing and barely believable narrative. For reasons which may be beyond the comprehension of our legal minds, cases of mothers killing their own children appear to be occurring not only with increasing regularity but also accompanied by mind blowing sadism and savagery.¹ Legally where a mother kills her child, it is properly described as maternal filicide which however remains a form of homicide. The macabre death of the four children who form the subjects of the crime of murder before us at the hands of their mother may be shocking, startling and repulsive even to the usually bold character. As the story unravelled during the trial, it became clear that these budding lives were brought to an unnecessarily cruel end.

Emelda Marazani (the accused) a thirty year old mother of five children appeared before us accused of a quadruple homicide in terms of s 47 (1) of the Criminal Law (Codification and Reform) Act [*chapter 9:23*] (The Code). The indictment states that on 11 November 2020, at No. 4171, Highview in Chivhu, the accused unlawfully and with intent to kill or realising that there was a real risk or possibility that her conduct may cause death and continuing to engage in that conduct despite the risk or possibility, cut the throats of Amanda Brande, Yolanda

¹ See the cases of *S v Portia Chovhani* HH 167/23 and *S v Yeukai Graham Mutero* HH 173/23 which this court recently dealt with.

Brande, Liyanda Brande and Glenda Brande (herein after collectively called the deceased). The four of them died from the injuries sustained. In detail, the prosecutor alleged that on the night before the murder the accused and her husband were involved in a domestic dispute in which the accused confronted the husband accusing him of engaging in an extra-marital affair with another woman. Around 1000 hours on the fateful day, the accused left home and went into town purportedly to purchase a new cell phone. Her husband followed her because she had left the children alone at home. He persuaded her to go back. She complied and proceeded to do so. Upon arrival at their residence, she took a knife with which she cut the throats of the four children. She set the house on fire, locked all doors to the house and the gate before proceeding to Chivhu Police station where she handed herself over to the police.

The accused pleaded not guilty to the charge although she admitted to slitting the throats of the deceased as alleged by the state. Her defence was that at the time the incident happened she was mentally disordered. The mental illness was caused by a condition called psychosis which afflicted her before she turned eighteen years. The affliction, so she alleged, resulted in her exhibiting abnormally aggressive behaviour and irresponsible conduct. Her situation was made worse by extreme emotional, physical and psychological abuse at the hands of her husband. She indicated that to prove her defence she was challenging the psychiatric report which was compiled Doctor Patrick Mhaka because he had done so without following the medical procedures required for the preparation of such reports. She added that there existed in her family, a history of psychopathic disorder. It particularly manifested in her father. As a result, she suspected that it was a hereditary condition in her.

In addition to the above, the accused told the court that she suffered from what is called the battered woman syndrome because of the physical, emotional and psychological abuse perpetrated on her by her husband. When it commenced, she never retaliated but started doing so after prolonged exposure to the abuse. She further advised the court that her husband was promiscuous. At the material time, he was involved in an affair with a woman from their neighbourhood called Chelsea Bepete. Their adulterous relationship was not only an open secret in the community but appeared to have the blessing of his mother. She said she was perceived as not being good enough for her husband. She felt worthless and a lesser woman to others because she was constantly reminded that she only had girl children yet the family expected heirs in its ranks. On the morning of the day she killed the children she had suffered sexual abuse at the hands of her husband who had sexual intercourse with her without her consent. He had only stopped after she wept uncontrollably during the act.

The State's case

The prosecution opened its case by seeking the admission of the post-mortem reports which were compiled by the pathologist who examined the remains of the deceased to ascertain the causes of their deaths. The doctor's conclusions in relation to the cause of the deaths were uncontentious. By consent the court duly admitted the reports relating to Amanda, Yolanda, Liyanda and Glenda as exhibits numbers 1, 2, 3 and 4 respectively.

The state also applied to produce the psychiatric report which was compiled by Doctor Patric Mhaka following his examination of the accused to ascertain her mental status in the period after the deaths of the children. Once again, the defence did not object and by consent the report was duly admitted and became exhibit number 5. He followed that with a request to tender the medical report authored by Johannes Shayanowako, a psychiatrist nurse practitioner at Chivhu. There was no objection to the request which duly became exhibit 7. Other medical reports by Doctors Alice Kanyemba, Blessing Dhoropa and T. Dhobbie were also admitted as exhibits 8, 9 and 10 respectively. The accused's confirmed warned and cautioned statement became exhibit 11. The knife allegedly used in the commission of the murder together with its certificate of weight were tendered as exhibits 12(a) and 12(b) respectively. Exhibit 13 is the sketch plan of the crime scene. Exhibits 14 (a) – (e) are photographs of the slain children as captured by the police when they attended the scene. We will later in the judgment, revert to discuss those of exhibits which are relevant in the determination of the issues which arise in this case.

The prosecutor led oral evidence from a number of witnesses. We deal with it below.

Lameck Brande (Lameck)

He is the accused's husband. They have been married for more than a decade. He confirmed that the night before the mass murder of his children the accused and himself had a fall out. The next morning he went to open the shop which the family ran. Later he returned home and found the children alone. They advised him that the accused had gone to the fields. He followed but she was not there. He tracked her into town. When he found her she still was in a belligerent mood and he immediately sensed that the previous night's fall out was not over. He wanted to avoid drama in town. He left for the shop and worked until about midday when a stranger arrived to inform him that his house was on fire. He rushed there and on arrival he noticed that a crowd had already gathered at his gate. The house was indeed up in smoke. The doors were locked and neighbours were trying to break down the burglar bars which secured

the house. He broke some window panes to try and create access into the house but failed to get inside because thick smoke had engulfed the entire house. Together with his neighbours they went round to the bedroom side. There they managed to break some bars that secured the window. Lameck then peeped inside and saw two of the children lying on the floor. He gathered courage and jumped inside. He picked one of the children but to his shock and horror he observed that her throat had been slit open. He also noticed that the two children's legs were tied together. He was overcome with emotion and went outside. The second window around that corner led into the children's bedroom. The neighbours broke it down and when he peeped through, the witness said he saw the other children dead on the bed. The gory sight was too much for him and he decided to leave the premises altogether. He proceeded to the police station where he found accused person seated on the floor of the charge office. She was panting and repeating that she had killed the children. On the bench there were keys to their house and some papers. He picked them up. He also advised the police to take the accused to hospital because he suspected she could have taken something poisonous. He assisted in ferrying her to hospital. She was vomiting and was in pain. After that he went back home with a police officer. The bodies of the deceased had been retrieved from the burning house. They were later collected by the police.

Lameck accepted that although he appeared to have acclimatised to the challenges, their matrimonial life was far from blissful. They fought each other frequently. In the months before the murders he had stooped retaliating because the accused was pregnant. There were also times when the accused would burst out and order all the four children to follow him wherever he would be working. The children would comply. They would come to him with the two older ones carrying the younger ones on their backs. He would take them home but often the accused wouldn't be there. That forced him to go back to the shop with the children and let them spend the entire day there. He rounded off his testimony by advising the court that the accused had a funeral policy covering the four children. He wasn't included on the policy. It was fully paid up such that during the funerals for the deceased he didn't pay anything as all expenses were covered by the funeral assurance company.

Lameck's cross-examination

As could be expected, counsel for the accused subjected the witness to some intense cross examination. During the process he revealed that when he married the accused she was barely an adult. He said she was about nineteen years or so and that there is an eleven year

difference between their ages. Challenged that the accused was actually fifteen at the time, the witness said he could neither deny nor confirm her age because the accused did not have a birth certificate or a national identity card. She had actually shown him her sister's birth certificate when he asked her age. He conceded that the accused had frequent mood swings. The situation was worse if any of his relatives visited them. None of her own relatives ever visited. Critically Lameck accepted that he had extra-marital relationships. Asked on the number he became non-committal and said may be two! He continued and told the court that the accused loved her children. It was put to him that he abused the accused by telling her not to waste time trying to track his extra-marital relationships instead of seeking prophets would exorcise the curse which caused her to bear only girl children. He denied insulting the accused in that way but accepted that she indeed visited prophets. When it was further put to him that he was an unfaithful husband because he had adulterous affairs with women named Rutendo, Millicent and Chelsea, the witness accepted that he indeed was an unfaithful husband. He then turned around and said there was nothing between him and those women. He said he knew Rutendo, had sexual intercourse with Millicent on only one night and Chelsea was an ordinary friend to him. Even more importantly, the witness admitted that he sexually forced himself on the accused on the morning of day of murder.

Perseverance Mhuri

She is a police officer at Chivhu Police Station. She was on charge office duty on the day in question. The accused arrived at the police station in a huff. She was wearing a pyjama and was barefooted. The accused then threw herself at the witness's feet repeating that she had killed her children and set the house on fire. She was sweating and said she had ingested rat poison. The officer also noted that the accused was pregnant. They later took her to hospital as explained by Lameck earlier. The witness further said although they lived in the same neighbourhood and met a lot the accused had not opened up to her on anything prior to this incident. It was only when she was in hospital that she told her in detail, the problems that she faced. During those conversations, the officer got to know that the accused had a troubled background; that her husband was promiscuous and abusive and that the problems had driven the accused to commit the crime. She added under cross examination that at the time she came to the police station the accused looked very confused and was sweating. The officer believed that it was caused by a number of factors namely that it was some distance from the accused's home to the police station, the accused was pregnant and had taken poison. She added that at

first accused appeared like she did not know that what she had done was wrong. On the next morning however she appeared completely different as she narrated her ordeal with tears streaming down her cheeks. The officer confirmed that the accused was a mother who loved her children. For instance she regularly saw her with the youngest child strapped on her back despite being heavily pregnant. The witness further learnt that the accused's mother had abandoned her at birth. That led to a troubled upbringing where she was shoved from one relative to another. She couldn't go far with her education. At a young age she found work as a maid and later tried to pursue her education without success. As a result of the problems the accused got married before womanhood. Unfortunately the challenges dogged her worse in that marriage. Her husband was adulterous and was threatening to marry another woman. She accused of not bearing male children. It was then that she decided to kill all her children and commit suicide to allow her husband to start afresh with the woman he wanted to marry.

Tarvinga Kamufetu

We are not sure why he was called to testify. He is the investigating officer in this case but his evidence added nothing new. It is not a rule that an investigating officer must always testify. If anything the evidence of a witness is necessary where it helps the court to resolve one or more of the issues which need determination in the case. Even where that is necessary a witness' oral testimony may not be necessary if the issues he is coming to speak to are not disputed. In such circumstances, the course which is provided in criminal procedure to curtail trials such as formal admissions in terms of s 314 of the CP & E Act must be utilised.

With the valueless evidence of the investigating officer, the prosecutor closed his case.

Patrick Mhaka as a court witness

As indicated earlier, the defence requested the court to call Doctor Patrick Mhaka, the psychiatrist who examined the accused in the period after her arrest on these charges in a bid to ascertain her mental status. That request was made in terms of s 278(12) of the CP&E Act. It provides that:

(12) The court in which any affidavit referred to in this section is produced in evidence may, of its own motion or at the request of the prosecutor or of the accused, cause the person who made the affidavit or any other person whose evidence the court considers to be necessary to give oral evidence in the proceedings in question in relation to any statement contained in the affidavit or may cause written interrogatories to be submitted to such person for reply, and such interrogatories or any reply thereto purporting to be a reply from such person shall, on their mere production in those proceedings by any person, be admissible in evidence.

From the above the defence was within its rights to request the court to call Doctor Patrick Mhaka. His medical report was in the form of an affidavit and as such met the requirements of s 278 (12). The issue which arises under that scenario is whose witness such person will be. The answer to that question is important because it guides the procedure which will be adopted in relation to the examination and cross examination of the person. My view is that the person is a court witness. For instance in this case, the affidavit in question was tendered by the state. The prosecutor did not require the attendance of the witness. The accused person did and wished to controvert the contents of the affidavit. If it were to be held that the person so called is a state witness the procedure would be that the prosecutor must lead the witness and the defence would then be allowed to cross examine him. As is evident however, the prosecutor in fact did not require anything from that witness. In the same breath if the person were to be taken as a defence witness because the accused requested the court to direct that he testifies it would mean that the accused or his counsel is not permitted to cross examine the person. Yet the purpose for which the defence requires the attendance of the person is to ask him questions. Designating that person as a state or defence witness will therefore defeat the purpose for which subsection 12 was enacted. It is to allow any party to the proceedings to question the findings of a neutral person who has submitted an affidavit to the court in the course of his duties as a professional.

We admitted Doctor Patrick Mhaka's medical affidavit as exhibit 5. It states his qualifications as MBChB, DHM, MMED (Psychiatry) (UZ). He is a specialist doctor employed at Harare Hospital. He examined the accused at Chikurubi Psychiatric Unit on 8 August 2021. In addition to that examination he also had sight of the accused's medical records and medical certificate of November 2020. His findings were that:

“Emelda was having constant arguments with the husband before she committed the offence. She has no history of mental illness. At the time of the commission of the offence she had no auditory hallucinations (was not hearing voices in her head). She had no paranoid delusions (did not have abnormal suspiciousness). She was not psychotic (sign of mental disorder). She had no depressive symptoms and was eating well and had normal sleep. From my examination I noted that Emelda did not exhibit signs and symptoms of mental illness and even up to now she is of sound mind. In my opinion at the time of the alleged crime the accused was NOT MENTALLY DISORDERED. The accused is fit to stand trial.” (The emphasis was the doctor's.)

It was the above conclusions which the defence indicated they were challenging. Their major contention was that the psychiatrist had not followed the laid down methods of evaluating a patient to determine their state of mind at the time of commission of the offence.

In the witness stand and under cross examination by both the prosecutor and counsel for accused, Doctor Mhaka stated that at the material time he was employed by the Zimbabwe Prisons and Correctional Services. He has been working in a psychiatry set up since 2005 and has been a psychiatrist doctor since 2011. In assessing patients who were facing criminal allegations they used a number of procedures which included observational methods, perusing the patient's medical records and certificates and the evaluation of the patient by a multi-disciplinary team comprising a psychiatrist as head of the team, psychologists and therapists who all assess the accused. The team carries out ward rounds in assessment of the patient. The rounds are done at least once a week. Resources permitting social workers are dispatched to interview relatives in order to collect collateral history. After these issues are attended to, a psychiatric report is then prepared. He said in the instant case, a significant part of that procedure was observed. What he did not remember to have been done was the interviewing of the accused's relatives by social workers. Counsel for the accused took issue that the doctor had examined the accused over a day as indicated in the affidavit. The doctor however refuted it and said the patient had been observed over a period of time. The affidavit is in the form of a template which the doctor completes showing the date when the final report was compiled. He added that he came to the conclusion that the accused was not psychotic after carrying out a mental status examination. That in essence is a process which includes a mental cognition, mood, perception, speech and thought processes tests. The fact that the examination was carried out in April 2021 did not detract from ascertaining the accused's mental status in November 2020 when she allegedly committed the offence because invariably mental status examinations are done in retrospect through the processes outlined above and the history of the patient as told by her. The accused did not have any history of auditory hallucinations, wasn't paranoid, did not have thought interferences and did not suffer from perception disorders at the time of commission of the offence. The doctor was asked what it meant in psychiatry medicine to say that a patient has a transient disorder. His response was that the term means a patient can have a disorder which is momentarily psychotic which causes her to lose control of his/her thought processes. He said in plain language it means that that the disorder comes and goes. It can only be detected after observing a patient over a period of time. The period of observation varies from patient to patient. He agreed that the constant arguments which the accused had with her husband over the husband's infidelity had potential to cause depression in the accused. He further stated that depression is a state of mind with many causes and stress is one of them. On

carrying out a mental status examination of the patient however, it is easy to detect whether a patient has depression or not.

The defence case

The accused testified in her defence. We wish to state it from the outset that in this case we have taken the unorthodox route of reciting the accused's testimony in its entirety because it has a bearing on the defence which she raised. She began by telling the court that she was born an only child. When she gave birth to her children she thought she had found younger sisters. She loved her children dearly. She admitted she killed all of them on the fateful day. As she grew up she faced serious emotional and other challenges. She realised that her relatives did not have the love to look after her regardless of being an only child. When she thought about ending her life she was sure that her children would go through untold suffering if she left them alive. It was then that she decided to end all their lives at the same time that she would commit suicide. Those murderous and suicidal thoughts tormented her because as she put it, her husband was abusing her. He wanted to take another woman as a second wife. She thought her children were going to suffer at the hands of their father's new wife if she died.

The accused also narrated her background. Her parents had separated when she was in grade five. The family was staying in Guruve. When the parents divorced she was left in the custody of an aunt who no sooner than she had taken custody of her started abusing her. Among other things the aunt always taunted her about her father's wayward behaviour. She left the aunt's place and went to a place called Chitsungo where her father hailed from. She had to stay in Chitsungo on her own because her father was working in another place called Mahuhwe. It was then that her mother's brother came and took her to Gutu. There she stayed with the uncle's wife for a couple of years. She left Gutu when she was in grade seven. Her presence in Gutu had torn the uncle's family apart. The uncle's brothers accused him of having brought an extra mouth to feed when there already wasn't enough food to feed their families. She then went to her paternal grandmother's place where she did forms one to three. She indicated that her fees for attendance at school during that period were never paid. She never wore any kind of uniform. She did not know what it felt like to wear shoes. The rags which she called dresses and which she wore to school were always dirty and stinky because the grandmother could not afford washing soap. She was abused and harassed by other kids at school and was their laughing stock. She could not take it.

The accused skipped what happened in between and jumped to the time she met her husband and got married. It was in 2007. She said at the time they met, both of them appeared to have resigned to their sorrowful and poor backgrounds. They did not have anything. In fact their poverty was so notorious that even when there was a funeral in either of their families, the couple would be the last to be told about it because they were regarded as virtually useless. They survived by gathering firewood and selling it. Paradoxically, so the accused went on, their times of poverty were their happiest in their marriage. They had no marital conflicts and lived in wonderland. Their love for each other kept them oblivious of the poverty that stalked them. As if God was rewarding them for remaining true to each other fortune knocked on their door during the general elections of 2008 in Zimbabwe as they both got employment. The accused worked as a maid whilst her husband was engaged to repair sewing machines. Life continued to get better for them. By 2011 when they were blessed with their first child, she said they could afford all that they craved. Unfortunately, it was at the same time that the red flags regarding her husband's infidelity started to appear. Wizen by hers and her husband's past struggles she persevered and pressured the husband that they had to save money for the purchase of their own residential stand. Her employers had promoted her to the position of shopkeeper. To complete their rags to riches story, by 2013 they had saved enough money to buy a 1000 square metres piece of land in the town of Chivhu. They built a two roomed cottage there. The improvement in their financial situation unfortunately corresponded to a similar deterioration of their marital happiness. In 2014 her husband's promiscuity was no longer a secret. He fell for a woman called Rutendo. The accused at that same time became pregnant with their second child. She experienced serious pregnancy complications which affected her employment until she quit. She was given a severance package of USD \$3 000. They agreed that she had to relocate to Chivhu. The husband remained in Harare. It liberated him for more mischief. He fell in love with another woman called Millicent. The accused said she discovered that after the woman had been bitten by dogs at their lodgings where her husband was staying. There were several other women who came into the picture but every time the accused tried to ask, the husband would beat her up and order her not to ask about such issues. She would not retaliate to the assaults and abuse. With their joint savings and her severance package they started constructing the main house at their stand in Chivhu. At the same time their marital problems worsened. The husband started an affair with a woman called Memory who worked in a bar. She particularly remembered that affair because she was assaulted many times for asking about that adulterous relationship. She said she however thought there was a chance that

they could go back to the marital bliss of their poor days. She continued to work as hard as he did. She sold kitchenware and operated a groceries shop. They bought a car which she described as a Honda Fit. Immediately after its purchase the husband being the predator that he had become fell in love with yet another woman called Kimberly. The two lovebirds, possibly reaping the wages of sin were involved in a road accident with the car. Kimberly suffered serious head injuries. To add insult to injury, Kimberly's mother forced the accused to sign an affidavit confirming that Lameck was responsible for her daughter's injuries. The accused said she got to the end of her wits. She advised Lameck's employers about his promiscuity and abusive behaviour. He was dismissed from work in 2018. The employers gave him a package. The couple then added that package to their savings from the shop and purchased a commuter omnibus. They were now staying together in Chivhu but at the time he relocated Lameck had fallen in love with another woman called Memory. Soon after arriving in Chivhu, he started dating another girl called Chelsea Bepete. The accused confronted him but as usual she was answered with an assault. She was particularly hurt about this affair because Chelsea's mother who supported the adulterous affair, knew that Lameck was married and had a family. Lameck and Chelsea became so engrossed in their little secret that Lameck started spending nights at the shop in order to see and speak to Chelsea freely. She asked and was once again assaulted. It was the first time that she then retaliated by head butting him and biting him on the shoulder. She took Lameck's phone and broke it. On the evening of that day, he came home and ordered the accused to take whatever she had bought and leave the house. She resisted but the next morning she boarded a bus to Harare to see Lameck's brother. To compound her misery when she got to the brother's place she found out that the couple had the same problems as hers and Lameck. She went back to Chivhu without even telling them why she had visited. The marriage continued. The youngest child was weaned from breast feeding and the accused once more conceived. Chelsea remained a thorn in their lives. Lameck's mother came to live with them. Lameck did not have a phone because she had broken it. He took advantage of his mother's presence and semi-illiteracy to use her phone to communicate with his mistress. The mother was unable to delete texts sent by Chelsea to Lameck on the phone. The accused read every one of them. When Lameck discovered this challenge, he was unrelenting. He resorted to using their neighbour's phone.

Sometime in November 2020, Lameck went to his rural areas with his mother. He spent two days there. When he returned, he suddenly indicated that he wanted to close all their shops. Their eldest daughter enquired what would become of their mum. Lameck indicated that she

was nothing to him and he would simply marry another woman. The accused discovered from the phone which Lameck had lately purchased, messages which indicated that he was having unprotected sexual intercourse with Chelsea. He intimated in those messages that he wanted a baby boy with her. He repeated in those messages the vitriol that the accused was nothing to him because she had given him enough girl children. When confronted about the messages Lameck once more turned abusive. He assaulted her and she hit him back. She attacked him with an empty beer bottle on the forehead. He told her to consult prophets so that she could give him a baby boy. She in turn threatened to take the phone to the police and show them Chelsea's messages because there were four pending cases against men that Chelsea had falsely accused of raping her. Later at home the fight between them continued. The accused tried to inform her mother of the challenges. As already stated, she was pregnant. The fights affected her and she would collapse during the nights. Lameck took her to a private hospital. They refused to treat her because her pregnancy was advanced. Lameck then went to a public hospital and bought pain killers before threatening to take the accused to her communal areas where he had never been before. The threat was carried out. They went there for a couple of days. On the morning they returned their problems mounted. Lameck said he was from that time going to sleep at the shop because the accused was refusing to have sexual intercourse with him. She said she indeed was denying him conjugal rights because she suspected that he could have been infected with HIV as one of his mistresses was rumoured to be positive. When he went out the accused said she went and confronted their neighbour who appeared to be facilitating communication between Chelsea and Lameck. An argument ensued. Lameck returned and dragged her from the neighbour's place. He insulted the accused and said that she was doing all those things because she longed for sexual intercourse. They got home and he raped her. He only stopped when she continued crying. He went out immediately after. The accused went to town because she wanted to visit an Econet shop for purposes of purchasing a phone line and register it in her own name. Unfortunately there was no electricity in town. She had an old cell phone line which she then decided to put in her handset. Using that, she called Chelsea's number which she had memorised. She wanted to tell her to stop the affair with Lameck. Instead Chelsea scoffed at her. She ridiculed her for her inability to give her husband male children. She ended by advising the accused that she was pregnant by Lameck and would shortly give him a male child. That was the last straw for the accused. She left town and went home where she took rat poison from the boot of the family car. There were several tablets from which she selected three that she swallowed. Two of the children were asleep. She took

four pills and put one in each of four cups. She mixed them with a drink after which she called her eldest daughter Amanda to bring the youngest child. The girl complied. The accused gave the baby the drink laced with rat poison. The second youngest child was also brought and she too gulped the poisoned drink. Amanda and Yolanda took their drinks thereafter. The accused then told all of them that they were going to sleep. Whilst asleep, she felt she was starting to lose her breath. She panicked that she would die and feared that somehow her children might survive. She imagined that without her they would be doomed. She gathered strength and woke up, picked a knife and proceeded to where the children were sleeping. One after the other she callously slit their throats with the knife.

Asked about Lameck's relationship with their children it was her evidence that he loved them. Regarding the matrimonial, property she said she immensely contributed to the acquisition of all that they had. She had married Lameck when he had nothing. In fact she remembered that he had one pair of shorts and a cheap shirt. She also indicated that despite the numerous forms and incidences of abuse by her husband she never reported him to the police because her culture had taught her that a woman should endure all that is thrown at her to save her marriage. She rounded off her testimony by asking for forgiveness from the court, from her husband, from her relatives and the entire country for her irresponsible behaviour.

Under cross-examination, she repeated most of the issues she stated in her evidence in chief. She admitted however that except for the anger issues, she was mentally alright all that time. She admitted that she had not been attended to by any doctor in relation to any mental disorders at any time before the commission of the offence.

After the accused's evidence, counsel for the accused applied to tender a medical affidavit which was compiled by Doctor Michel Dube at Sally Mugabe Central Hospital after examining the accused to ascertain her mental status at the time of the commission of the offence. In the affidavit, the doctor set out her qualifications as MMED Psychiatry. She however did not state the institution from which she obtained the qualification. The prosecutor did not oppose the application. The court duly admitted the medical report and labelled it as exhibit D1.

Counsel also applied to tender a second medical affidavit compiled by Doctor M.F.S. Mazhandu at Parirenyatwa Annex Psychiatric Unit on 12 October 2022. His qualifications are MBChB (UZ) and MSc Psychiatry (UZ). The report was admitted and marked as exhibit D2.

We will in the course of the judgment revert to analyse both medical reports.

The defence then called other oral testimony to buttress the medical evidence adduced. Those called were:

Maria Mupini

She is the accused's mother. Her testimony was that the accused was born on 9 May 1992 and is her only child. She confirmed that she divorced the accused's father when the accused was only five years old. They divorced because the accused's father wanted another child yet she could not conceive anymore. The man had serious anger issues. She left him and the baby in a huff. She only saw the girl next at the time that she was in form three. When they reunited after the accused's marriage their relationship went on well before this tragedy shook them all. She said she couldn't tell if anything was amiss because she hadn't stayed with her for a long time. All she did was to show her love as a mother. Needless to say, the evidence was colourless.

Eunice Mutukwa

She is wife to accused's uncle. She is the one who stayed with and looked after the accused in Gutu when she was in grade five. To her, the accused was a normal child. She related well with other children. The only abnormality she noted was that when the accused was sent to do some errand, she would do it as and when she wanted. She at times simply left the homestead to go to her grandparents' place without telling anybody. She also advised the court that the accused's paternal grandmother and her father's twin brother are not alright mentally. She said that she formed that view because she didn't understand their behaviour. She suspected that their odd behaviour must have rubbed on to the accused. The accused's father used to herd cattle whilst playing a radio which he would be carrying on his shoulders.

With that evidence, the defence closed its case.

The common cause facts

Almost all issues in this trial except a few are uncontentious. It is common cause that:

- a. The accused's childhood was troubled
- b. Her marriage to Lameck Brande was blissful in its formative years. It became turbulent and abusive when the couple acquired enough to live a decent life
- c. The accused's husband Lameck Brande is an extremely promiscuous man. His choice of sexual partners appeared indiscriminate

- d. The accused deliberately killed all the deceased first by lacing their drinks with rat poison and later slashing their throats with a knife as they slept.
- e. Glenda and Liyanda Brande died as result of hypovolemic shock, laceration of vascular package and traumatic incision on the neck
- f. Yolanda and Amanda died as a result of traumatic incision on their necks

Given these common cause aspects, the only issue which remains for determination in this case is whether or not the accused was mentally disordered or intellectually handicapped at the time of the alleged commission of the offence.

The law

The defence of mental disorder at the time of commission of crime as it is known now, has its genesis in the common law defence of insanity. The requirements for the defence of insanity were developed from the acquittal of the infamous Scottish assassin Daniel McNaughton. He successfully claimed that because of insanity he was not mentally responsible for the shooting of top civil servant Edward Drummond. The requirements came to be known as the McNaughton Rules. Paraphrased, the rules were simply that, for an accused to establish a defence grounded on insanity he/she must prove, on a balance of probabilities that, at the time of the commission of the alleged act he/she was labouring under such a defect of reason caused by a disease of the mind, which resulted in him/her not knowing the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong. That same understanding of the defence and its requirements was wholly imported into our law. See G Feltoe, *Criminal Law Guide: 2005*. The concept of what came to be known as the irresistible impulse was also added. It entailed that if the accused was aware both of the nature and quality of his act, and that it was wrong, he was unable to resist the impulse to commit the crime because of a disease of the mind. See HUNGWE J'S remarks in the case of *S v Chikandiwa* HH 281/17.

The coming into effect of the Criminal Law Code brought with it the legislation of the defence of insanity. It assumed a new nomenclature in *mental disorder at the time of commission of crime*. The defence is provided for in both s 29 of the Mental Health Act [chapter 15:12] (the MHA) and Part V of the Criminal Law Code. On one hand, the MHA prescribes the procedure which must be followed when dealing with a person who was allegedly mentally disordered at the relevant time. On the other, Part V of the Criminal Law Code stipulates that mental disorder at the time of commission of a crime is a complete defence

available to an accused charged with a crime under provided the person satisfies the requirements prescribed therein. Part V provides for defences of mental disorder as follows:

“PART V

MENTAL DISORDER

226 Interpretation in Part V of Chapter XIV

In this Part—

“mental disorder or defect” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of the mind.

227 Mental disorder at time of commission of crime

(1) The fact that a person charged with a crime was suffering from a mental disorder or defect when the person did or omitted to do anything which is an essential element of the crime charged shall be a complete defence to the charge if the mental disorder or defect made him or her—

(a) incapable of appreciating the nature of his or her conduct, or that his or her conduct was unlawful, or both; or

(b) incapable, notwithstanding that he or she appreciated the nature of his or her conduct, or that his or her conduct was unlawful, or both, of acting in accordance with such an appreciation.

(2) For the purposes of subsection (1), the cause and duration of the mental disorder or defect shall be immaterial.

(3) Subsection (1) shall not apply to a mental disorder or defect which is neither permanent nor long-lasting, suffered by a person as a result of voluntary intoxication as defined in section *two hundred and nine-teen*.”

Streamlined, the requirements of the statutory defence appear not to be very dissimilar from those of common – law insanity. The first requirement although worded slightly differently still relates to an accused’s appreciation of the nature of his/her conduct or that the conduct was unlawful or both. The second one is that if he/she had the necessary appreciation, it must be shown that he/she failed to act in accordance with such appreciation.

Section 2 of the MHA defines *mentally disordered or intellectually handicapped* in relation to any person, to mean that “the person is suffering from mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of the mind. S 226 of the Criminal Law Code as shown above ascribes the same definition as the MHA to a mental disorder or defect.

What is critical therefore is that there must be an underlying mental infirmity which disconnects the accused’s capacity to control his or her actions and which prevents him or her from appreciating the nature and quality of such actions or to act in accordance with such appreciation. The presence of a disease of the mind or mental illness is central to a plea of insanity. The condition which the accused suffers from must be pathologic. Subsection (3) of s 227 which excludes mental disorder or defect which is neither permanent nor enduring caused by voluntary intoxication illustrates that in all other cases, the disease need not be permanent and can be transient. An ephemeral mental illness can therefore sustain a defence in terms of s 227.

The defence of mental disorder at the time of commission of crime is a special defence. It is remarkable because unlike other defences, it places on the accused the reverse responsibility to prove on a balance of probabilities that he/she was insane at time of commission of the crime. The requirement is clearly an affront to the general understanding that an accused need not prove his/her innocence but rather that it is the state which must prove his/her guilty. That seems to conflict with everything we understand about the law. The situation is compounded when the consideration is made that a mentally ill person is least capable of discharging that onus. In many instances, accused persons who are mentally ill actually deny that they are mentally disordered even in cases where that may be apparent. In view of that it may be time that such an approach is revisited. It is however a topic for another day because that issue is not before this court now. As it stands, it remains law that it is the accused who bears that burden. He is required to at least lay the basis of how he/she denies the crime. Thereafter, prosecution has the duty to disprove the defence. The wording of s 29(2) of the Mental Health Act is critical in that regard. It provides that:

“(2) If a judge or magistrate presiding over a criminal trial is satisfied from evidence, including medical evidence, given at the trial that the accused person did the act constituting the offence charged or any other offence of which he may be convicted on the charge, but that when he did the act he was mentally disordered or intellectually handicapped so as to have a complete defence in terms of section 248 of the Criminal Law Code, the judge or magistrate shall return a special verdict to the effect that the accused person is not guilty because of insanity.” (Underlining is for emphasis)

In the case of *S v Zexteen Dzemwa* HH 808/22 I had occasion to interpret s 29 (2) of the MHA and said:

“The word *including* whether used as a verb or a preposition means to consider as part of something or to add to a category. Viewed from that meaning, s29(2) requires a judge or magistrate as of necessity, to consider medical evidence in addition to any other evidence available when ascertaining the mental status of an accused person at the time that he committed the conduct constituting the crime. It is not possible and will constitute an irregularity were any court to declare an accused person mentally disordered or handicapped in terms of s29 (2) without the aid of medical evidence. In my view, medical evidence connotes the testimony of a medically qualified person, who is competent to provide admissible information falling outside the competence of the court. Like any other evidence it may manifest as *viva voce* testimony or may be provided in the form of a statement, report, medical notes or affidavit.”

The duty to procure medical evidence lies with the accused because as held in *R v Romeo* [1991] 1 S.C.R. 86, an accused is presumed sane until the contrary is proved. The requirement in s 29 (2) that a court must consider medical evidence only makes sense. Much as it has been coined *legal insanity*, there is virtually nothing *legal* about insanity or mental illness. It has nothing to do with the law. Instead it is a concept which is steeped in psychiatry

and psychology.² Both those subjects are branches of medicine. Those who have the knowledge and expertise in such subjects can therefore assist the court in arriving at a just conclusion. They do so in the same way that other experts give their opinions in court. Opinions, regardless of being expert opinions are not and cannot be binding on the court. The ultimate decision on whether an accused was mentally disordered or not at the material time is the function of the court and not of the behavioural, medical or psychiatry experts. Morse S.J. in his work *Mental Disorder and Criminal Law*³ argues that:

“The criminal law can, but need not, turn to scientific or clinical definitions of mental abnormality as legal criteria when promulgating mental health laws. The Supreme Court has reiterated on numerous occasions that there is substantial dispute within the mental health professions about diagnoses, that psychiatry is not an exact science, and that the law is not bound by extra-legal professional criteria. The law often uses technical terms, such as ‘mental disorder,’ or semi-technical qualifiers, such as ‘severe,’ but non-technical terms, such as ‘mental abnormality,’ have also been approved. Legal criteria are adopted to answer legal questions. As long as they plausibly do so, they will be approved even if they are not psychiatric or psychological criteria.”

The admonishment regarding disputes amongst the mental health professions sounded above was at play in this case as will be illustrated later. Our Supreme Court has also taken the same approach that it is the court that must decide the existence or otherwise of mental illness at the time of commission of crime and not medical experts. In the case of *Sibanda v State* SC 137-93 MCNALLY JA discussing diminished responsibility which in my opinion is a form of mental illness held that:

“Now it is true that the *onus* of proof is ... on the defence. But I think, with great respect, that judicial officers not infrequently forget that actions speak louder than words. The very facts of the case can give mute testimony... often in spite of the accused person’s efforts to lie his way out of trouble, or to explain what he is really unable to explain, even to himself. In other words, what the accused person actually did will often show, on a balance of probabilities that he was at the time in a state of diminished responsibility, if not a state of certifiable insanity.”

The court must in conclusion look at the totality of both the factual and the medical evidence before it and decide if it is satisfied that the accused was mentally disordered or intellectually handicapped at the time of commission of the offence.

² <https://www.frontiersin.org/articles/10.3389/fpsyt.2017.00199/full#B9>

³ 101 *J Crim Law Criminol* (2011) 3:885–968 [Google Scholar](#)

Application of the law to facts

Given the above discussion, for her to escape a conviction of these murders, the responsibility is on the accused to show, on a balance of probabilities that at the time she laced her children's drinks with rat poison and subsequently slit their necks with a knife, her mind was diseased resulting in a mental disorder which caused her to fail to appreciate the nature of her conduct or that her conduct was unlawful or both. If she had that appreciation, she is required to show again on a balance of probabilities that despite appreciating the nature of her conduct or that her conduct was unlawful, she nevertheless was incapable of acting in accordance with such an appreciation

The medical evidence

As will be demonstrated, there were contradictory medical reports from three doctors, all of them qualified in psychiatry. We indicated in the earlier parts of the judgment that we would revert to discuss the medical reports. We do so now. Exhibit D1 was the medical affidavit deposed to by Doctor Michelle Dube. In essence the report stated that:

“Émelda had a difficult childhood, being moved around different households. Emelda's marriage was tumultuous with a lot of arguments. They would even have physical fights. Émelda was feeling low, would often cry at the time before the alleged crime. Émelda recalls giving the children rat poison and taking rat poison herself with the intent of dying. She thought the children would suffer if she left them as orphans. This information was from Émelda only.”

The doctor rounded off her report by stating that as a result of the observations she formed the opinion that:

“Émelda is currently mentally stable. She is able to give evidence in court. At the time of the alleged offence Emelda had symptoms of severe depression.”

Exhibit D2 was the medical affidavit by Doctor M.F.S. Mazhandu. His findings were that:

“Emelda Marazani has a positive family history of mental illness. Emelda Marazani at the time of the alleged crime experienced low mood, loss of appetite and loss of sleep. Emelda Marazani also displayed abnormal behaviour. Emelda Marazani had hopelessness, excessive guilt and paranoid delusions (strong thought of persecution). Emelda Marazani has amnesia of the alleged crime.”

The psychiatrist then conclude that as a result of his observations:

“Emelda Marazani has a mental disorder. She is currently mentally stable and is fit to stand trial.”

Both reports are in our considered opinion, severely deficient. To begin with, they are in direct conflict with the report which was done by another psychiatrist- Doctor Patrick Mhaka. We are not insinuating that Doctor Mhaka was more competent than these two. Our

view is that he explained the basis of his conclusions better than the latter doctors did. Earlier we discussed and approved the argument made by author Morse S.J. that psychiatry is an inexact science. Any conclusions reached by a psychiatrist must therefore be backed by acceptable reasoning why they were arrived at. Doctor Mhaka's deductions were pursuant to an assessment of the accused not only by him but by a multi-disciplinary team made up of psychologists and therapists and headed by him as the psychiatrist. They observed the patient over a period of time. They also relied on her past records. That allowed them to conduct a mental status examination which is a process that includes a mental cognition, mood, perception, speech and thought processes tests. Even with those elaborate processes he conceded that more could have been done. For instance, it could have assisted if they had been able to collect the accused's collateral history from her relatives. In contra distinction, the examinations carried out by Doctors Dube and Mazhandu were solo efforts. They tell us nothing more than what the accused narrated to them. In fact Doctor Dube expressly admits in her report that the information is "*from Emelda only*". We were not advised how they arrived at their findings and what informed them to make such conclusions. They did not interview anybody. They saw the accused person over one day if not less. Their reports were results of over the counter diagnoses.

In his report, Doctor Mhaka categorically states that:

"In my opinion at the time of the alleged crime the accused was NOT MENTALLY DISORDERED."

He added in oral testimony that the accused did not have any history of auditory hallucinations, wasn't paranoid, did not have thought interferences and did not suffer from perception disorders at the time of commission of the offence. Further we hold that the gap created by his team's inability to gather the accused's collateral history was bridged by evidence adduced in court relating to the accused's background and the alleged history of mental illness in the family. We rejected such allegations because they were not backed by any tangible factual or medical evidence.

What is conspicuous in both Doctors Dube and Mazhandu's reports is that their omission to state their opinions and conclusions on whether or not the accused was mentally disordered at the material time. They only stated what they were told by the accused. We reemphasise that for medical evidence to qualify as expert evidence/opinion it must relate to the provision of admissible information which falls outside the competence of the court.

The Supreme Court adverted to the same principle in the case of *S v Gambanga* SC 32/98 when it said that it should be borne in mind that medical reports suggesting that a person may have been suffering from a state of diminished responsibility at the time of the commission of the offence need to be supported by some other evidence. On their own, such reports may not be conclusive. In this case, the reports alleging mental disorder are not supported by anything other than what the doctors were told by the accused. They are not only inconclusive but also useless.

It is our conclusion therefore that the medical evidence before us tends to show that the accused was not mentally disordered or intellectually handicapped at the time of the alleged crime. The matter however does not end there. The law requires the court to assess other evidence which may demonstrate the presence of a diseased mind at the material time.

The sequence of events in this case is critical. The accused had a troubled background. Her early life was loveless and mired in poverty. The only witness who testified to the accused's behaviour as a child was Eunice Mutukwa. She had looked after the accused from the time the accused was in grade five until she was in grade seven. That represents roughly two years. Her evidence was that:

“She stayed with and looked after her in Gutu when she was in grade five. The accused was a normal child. She related well with other children. The only abnormality she noted was that when the accused was send to do some errand, she would do it as and when she wanted. She at times simply left the homestead to go to her grandparents' place without telling anybody. She also advised the court that the accused's paternal grandmother and her father's twin brother are not alright mentally. She said that she formed that view because she didn't understand their behaviour. She suspected that odd behaviour must have rubbed on to the accused. The accused's father used to herd cattle whilst playing a radio which he would be carrying on his shoulders.”

The above evidence does not speak to any abnormal behaviour on the part of the accused. There is nothing extra-ordinary about a child who is send to do an errant and chooses to do it as and when they want to. In fact many children could do worse things than that. Yet their minds would be perfectly functional. The accused's father's behaviour is equally not alarming. A person who whilst herding cattle listens to music or other programmes on radio cannot on that basis alone be classified as mentally disordered. At worst the person is eccentric. Except the bald assertion that she did not understand their behaviour, the witness did not elaborate to the court what she found to be abnormal in the behaviour of the accused's grandmother and her father's twin-brother. Equally, the only part in the accused's mother (Maria Mupini)'s testimony which is worth discussing is that she divorced accused's father because he wanted another child at a time that she could not conceive and that the man had

anger issues. She did not attribute that short temper to any form of mental illness. There is no indication that any of these persons were ever diagnosed with one form or another of mental disease. It is therefore not possible for the court to accept that there was a history of mental illness in the accused's family or that in those early years of her life the accused exhibited any signs of being afflicted by a disease of the mind.

The accused had a little respite when she fell in love with her husband, struggling in the formative years of their marriage but prospering thereafter. As a matter of fact she was subjected to serious physical, sexual and emotional abuse by her husband. His threat to take another woman as his second wife appeared to have been the last straw for her. We accepted the evidence that Lameck her husband, was an indiscriminate womaniser. He fell in love with many women but the accused said she was particularly hurt by his relationship with Memory and Chelsea. That was so because she was assaulted many times after asking her husband about Memory and that Lameck appeared serious about taking Chelsea as his second wife. From our analysis, Lameck's infidelity spanned more than a decade. It involved at least six identified women and many others who remained anonymous. The accused generally condoned her husband's immorality. In her own evidence, she thought it was all part of the marriage institution. It was the reason why she did not at any time report the physical abuse to the police. In that respect she rationalised her stay in the marriage in the face of abuse which a lot of women would not have been able to tolerate let alone condone. That rationalisation speaks volumes about her mental status. Besides angry outbursts here and there, we did not find any evidence of abnormal behaviour which she exhibited during all that time. If anything it was Lameck who showed signs of moral decadence which bordered on the abnormal. That the accused ended up with toxic thought processes on its own does not constitute mental disorder.

It is necessary that we also analyse her behaviour on the day she killed the children. We admit there had been a fight between the accused and Lameck earlier that day. That acrimony in their marriage was not new. The accused does not even say that it was that fight which triggered the murders. She went into town ostensibly to buy a cell phone line. She ended up calling Chelsea. She had memorised Chelsea's number. It only shows the amount of hate she had bottled up towards her. Chelsea poured vitriol on the accused by telling her how much Lameck loved her; that she was pregnant and would soon give him a baby boy; and that the accused's incapacity to bear male children was a permanent disability which Lameck could not stand. That angered the accused and justifiably so. But we are not here dealing with the defence of provocation. We are instead dealing with the defence of mental disorder.

In that anger, the accused proceeded home. What transpired there was striking. It is best described by what she stated in her warned and cautioned statement which was recorded at Chivhu on 24 November 2020 about two weeks after the murders. That statement was later confirmed by a magistrate. In it the accused did not allege any form of mental illness despite it being the earliest opportunity she had been afforded to defend herself against the allegations. Instead, she explained in graphic detail what had transpired. The message which runs across her statement is that she was angry and bitter about her husband's infidelity particularly when she stated that:

"I phoned the woman who was having an extra marital affair with my husband who responded in a way that aggrieved me. I arrived home and locked the gate. I went into the garage and took rat poison (2 pills) which was in the car and I ingested for me to die. I told my child named Amanda to lock all the doors which she did. I told Yolanda and Amanda to lie down on the reed mat and I was to lie on the bed in my bedroom since Liyanda and Glenda were asleep in their bedroom during the time I arrived from Econet shop. When I was now feeling weak, I got up and discovered that my children were now fast asleep. I took a knife from a small room which is within my bedroom where we used to keep some knives we were selling. I cut Amanda first on the throat who was fast asleep. I then cut Yolanda on the throat who was also fast asleep. I proceeded with the same knife to the room in which Liyanda and Glenda were where I started with cutting Liyanda and lastly Glenda. When I cut the children, I wanted them to die together with me since I had ingested poison so that they would not remain suffering. I wanted my husband to remain with nothing from the things we acquired together. I went to the bedroom and lit a fire for the whole house to burn. I got out of that room and proceeded to other rooms looking for a piece of wire for me to hang myself since I could realise that the poison was failing to kill me. I failed to find a piece of wire but the fire I had lit was now burning furious because I had burnt some curtains which we were selling. I heard people shouting from outside of my house saying, "this is fire." I went outside and started walking towards the police station but when I was now at the river, I fell since I was feeling weak but I vomited and that gave me a little strength to proceed to the police station. I fell down again when I entered inside the fence at the police station but I was given water by a child and drank and gathered strength to get to the charge office. I narrated to the officers who were in the charge office all that I had done."

The accused's statement is different from her oral testimony in court in material respects. In court she said that when she got home she took tablets of rat poison from the boot of the family car. She ingested three of the tablets. She then laced her children's drinks each with a single tablet, called them and directed them to take the poison. It means she had at least seven tablets. After taking the poison they all went to sleep. This is contrary to what appears in her statement as illustrated above. Therein there is no mention that she laced the children's drinks and ordered them to drink the poison. Further in her testimony in court, the allegation which appears in the statement regarding her attempt to hang herself inside the house is conspicuous by its omission. What that means is that for some reason, the accused was lying in one or the other of her statements. The law is clear that a witness who lies in one part of her testimony cannot expect the court to believe his/her testimony in another part.

Even if the court were to accept the account that the children ingested rat poison the accused did not explain to us why she kept the toxin in the boot of the car. The only inference we could draw was that she had long planned the murders. When she started feeling helpless, she decided that she was not going to die and leave the children alive. She literally slaughtered all of them. She did that as a result of misguided love that if she could not look after her children no one could. Our understanding of the mental disorder principles is that the accused's actions which speak to the mental disorder are usually inexplicable. In this case however, all the accused's actions are explicable. They are explainable on the basis of the acrimony which existed between her and her husband. They are equally explainable on the ground of the bitterness she harboured towards her husband's mistresses particularly Chelsea who seemed the most likely candidate to succeed her as Lameck's wife. She admits in her statement and in her oral evidence that she killed the children to spite her husband. In essence she admitted that she employed a scorched earth approach because she wanted "*my husband to remain with nothing from the things we acquired together.*" It is unfortunate she considered her children to be part of those acquisitions. Our view is supported by the accused's behaviour after the killings. She set the house on fire with the children's bodies inside. She walked to the police station and handed herself over. She took with her certificates of insurance covering the children's funerals. That behaviour made us wonder whether indeed the accused wanted to commit suicide. If she did, like she alleges, she had all the opportunity to do so without hindrance. She did not make as sure of her death as she did with those of her children. She gave herself an opportunity for survival putting paid to her claim that she desperately wanted to die with her children. She excuses her failure to die with the claim that she could not find a wire to hang herself with. Yet she could have used anything other than a wire to hang herself. Alternatively, she could have left herself to be consumed by the inferno she had started inside the house. She didn't take any of the options. She was clearly afraid of the fire which she described as ferocious. Our finding is that she simply used the children as pawns in the matrimonial wrangle. In the processes she callously murdered them in her moronic belief that by doing so she would get even with her husband and his mistresses. As shown, the accused with an amazing amount of detail, fastidiously chronicled what transpired until she killed the children. It is very difficult to accept her suggestion that she did not know what she was doing when she gave details which she could not have appreciated if she had not known what she was doing or appreciated the wrongfulness of her conduct. After the murders and when she got to the police station she alleges that she does not remember what transpired thereafter. With the defence of mental

disorder it must be shown that the prohibited act itself was done under circumstances where the accused cannot be held accountable for it. Amnesia which sets in after that act is done is not relevant and must not be considered.

We accept that shedding tears is not the only way to express emotional trauma but in addition to not shedding tears the accused struck us as a fearless and a somewhat cold-hearted individual. Admittedly, a mother can kill her child but to kill four of them, one after another in such cold-blooded manner typifies a woman who had a determined resolve to achieve her selfish purposes. The pictures which were presented to the court depicted the state of the children's bodies in death. Their throats were slit open and bloody. Two of them appeared like they were tied together by a chord. The other two's bodies were completely charred.

From the totality of the evidence before us, we conclude that the accused failed to prove on a balance of probabilities that she was mentally disordered or intellectually handicapped at the time she killed her children. She made unsubstantiated assertions regarding her family's alleged history of mental illness. Her evidence in her statement to the police and her oral testimony before us materially contradicted. The medical evidence which she submitted was totally unreliable. The state on its part adduced sufficient evidence aided by the medical testimony of Doctor Patrick Mhaka which disproved the accused's defence of mental disorder at the critical time.

It is on that basis that we are convinced that the state managed to prove its case against the accused person beyond reasonable doubt.

Accordingly, the accused is found guilty of the four counts of murder as charged.

*National Prosecuting Authority, State's legal practitioners
Muvirimi Law Chambers, Accused's legal practitioners*