

THE STATE
versus
REGIS MATSORINGA

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 11 May 2023

Criminal Trial

Assessors: Mr Barwa
Dr Mushonga

C Mutimusakwa, for the State
T Rukwanda, for the accused

MUNGWARI J: The accused appeared before us charged with the crime of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The State alleged that on 19 December 2021 at Chifukura Village in Mudzi, he unlawfully and with intent to kill, or realizing that there was a real risk or possibility that his conduct may cause death, continued despite the risk and struck his biological father, Michael Matsoringa (the deceased) with a stone on the head thereby causing mortal injuries.

The accused pleaded not guilty due to insanity and qualified this by stating in his defence that he was mentally unstable when he committed the offence. The State accepted the plea and in pursuance thereof, the parties prepared a statement of agreed facts which was admitted by this court and marked Annexure “A”.

The agreed facts reveal that the accused is a mental patient and the son of the deceased. On 19 December 2021, the accused asked the deceased for help in transporting building logs. However due to the accused’s peculiar behavior, an argument erupted between the two men as they walked together. The deceased pushed the accused, prompting a brazen retaliation from the accused who threw a stone at the deceased and it landed at the back of the deceased’s head. This resulted in the deceased bleeding from the ears and nose causing instant death. The accused concealed the body of the deceased with leaves and branches and ironically left it in the forest close to the deceased’s homestead where it was guaranteed to be found in no time.

He continued his journey alone and when questioned about the whereabouts of the deceased, professed ignorance. The offence came to light when a search party organized by the village head discovered the deceased's body lying at the roadside in the forest. Subsequently, the accused was arrested, and the stone used to bludgeon the deceased was recovered by the police. An autopsy conducted on the deceased's remains determined that his cause of death was brain damage, subarachnoid haemorrhage in the left hemisphere and severe head trauma. A post mortem report compiled on the doctor's findings was admitted by consent of the defence and marked as Exhibit Number 1.

It is common cause that the accused is a mental patient who received a diagnosis in March 2021. Both the State and defence counsels acknowledged this fact. Supporting this contention, is an affidavit, sworn to by Mr Christopher Njanjeni a psychiatric nurse practitioner. The affidavit, Exhibit Number 2 outlines the accused's history of mental illness. According to Mr Njanjeni, the accused's mental health issues began in 2012 when he started abusing drugs. In 2021 the accused graduated to abusing crystal meth, which led to the manifestation of mental illness symptoms. These symptoms included auditory and visual hallucinations, as well as delusions of grandeur, where the accused imagined himself as a political ruler in Zimbabwe. Additionally the accused would embark on long aimless journeys on foot without informing anyone of his intentions. Mr Njanjeni further stated that the accused has undergone treatment and is currently stable on Haloperidol and Carbamazepine. While the nurse practitioner certified that the accused is now fit to stand trial, he also concluded that at the time of committing the murder, the accused was mentally disordered due to drug misuse. As a result, the accused cannot not be held accountable for his own actions.

Following the production of the psychiatrist's report, the state also produced with the defence's consent Exhibit Number 3, which includes the murder weapon, a stone and a certificate of its weight. The small stone weighs only 0,34 kg.

Based on the statement of agreed facts, supported by the evidence led and the exhibits produced by the state we are in agreement with the State's concessions. Accordingly, we hereby return a special verdict: The accused is not guilty by reason of insanity as is provided for in s 29(2) of the Mental Health Act [*Chapter 15:12*].

In determining the fate of the accused following the return of a special verdict, we are mindful that as a court we are guided by the provisions of s 29(2) of the Mental Health Act [*Chapter 15:12*].

The drug pandemic has had and continues to have devastating effects on our society, wreaking havoc on individuals, families and communities. Particularly concerning is the alarming increase in cases of murder committed by individuals who suffer from untreated mental illness compounded by substance abuse. *In casu*, the accused had a long history of mental illness resulting from drug abuse. He then tragically took the life of his own father. There are few tragedies more heart-wrenching than the loss of a life at the hands of one's own child.

Elizabeth Gariza, the biological mother of the accused testified and expressed her unease at the prospect of the accused being released back into society. According to Elizabeth Gariza, the accused's illness was always evident through his aggression towards her, other family members or anyone he had conflicts with. She made it clear that the accused had terrorised her for an extended period, and that his drug addiction was a cause for concern. As a result, she had lived in fear of him and was still fearful of him. Her fear of the accused was palpable, to the extent that she avoided direct eye contact with him while testifying.

She admitted that she lacked the knowledge and resources to assist the deceased due to her limited understanding on mental health issues. She is an unsophisticated village woman with no training of any sort. She feared that without proper monitoring he might relapse. She implored the court to ensure that he gets the necessary assistance that he needs and only to only release him when he is certified as mentally fit.

Elizabeth Gariza's testimony is a poignant example of the challenges faced by ordinary members of society due to a lack of understanding about mental health. It is crucial therefore, to raise awareness on mental health issues among both the general public and caregivers in order to help them to recognise the signs and symptoms of mental illness and to seek to appropriate treatment. Caregivers should be educated about the significance of medication adherence and should be encouraged to provide support to individuals with mental illness aiding them in effectively managing their condition as opposed to being fearful of them. It is evident that the accused had become a threat to both his family and the community at large. It is therefore our responsibility to safeguard both the accused and society from any potential harm.

We have before us the pre-trial psychiatric report, Exhibit Number 3 which indicates that the accused was last examined on 18 January 2023 approximately 4 months ago. This examination determined the accused's fitness to stand trial and outlined his mental state at the time of commission of the offence. No further examination has been conducted since then to

determine if the accused is now fit for release into society. It would have greatly assisted us if we had a recent medical report outlining the accused's current state of recovery and readiness for reintegration back into society.

Given the totality of the evidence before us, we cannot guarantee that the accused will not relapse and it is imperative that we take measures to prevent any recurrence of these tragic events. The appropriate course of action therefore, is to send the accused back to Remand Prison and arrange for his transfer to Chikurubi Psychiatric Unit for examination and possible treatment. Only after a proper evaluation by experts and confirmation that the accused no longer poses a danger to himself or society can he be released back into society.

Accordingly, it is ordered that the accused be returned to Harare Remand Prison and transferred to Chikurubi Psychiatric Unit for examination and or treatment in terms of s 29(2)(a) of the Mental Health Act. The accused can only be released in accordance with the provisions of the said Mental Health Act [*Chapter 15:12*].

*National Prosecuting Authority, State's legal practitioners
Dube-Tachiona & Tsvangirai, accused's legal practitioners*