

THE STATE

Versus

GODWINS CHUMA

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr T.E Ndlovu and Mr S.L Bazwi

HWANGE 7 MARCH 2022

Criminal trial

Mrs M. Cheda, for the State

C. Muleaza, for the accused

DUBE-BANDA J: The accused appears in this court on a charge of murder, as defined in section 47 of the Criminal Law (Codification and Reform) [Chapter 9:23]. It being alleged that on the 7th June 2021, accused unlawfully caused the death of Henrietta Chuma (deceased) by striking her once on the head with an axe, intending to kill her or realising that there was a risk or possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility.

The accused pleaded guilty to the charge. Mr *Muleaza* counsel for the accused explained that at the time of the alleged offence accused was suffering from a mental disorder, and therefore he cannot be held criminally liable for his conduct.

The State tendered into the record of proceedings a statement of agreed facts, which is before court and marked Annexure A. The statement reads as follows:

The State and the Defence are agreed that the following issues are common cause being that:

1. The accused was 32 years of age at the time this offence was committed and he resides at Lawrence Chuma's homestead, Chisuma Village, Victoria Falls.
2. The deceased was 44 years of age and she resided at her homestead, Chisuma Village, Victoria Falls.
3. The deceased was accused's sister.
4. On the 7th June 2021 and at around 1800 hours, the deceased was at her home together with two children and grandchildren.

5. Accused together with their mother Tshambaja Chuma also arrived at deceased's homestead.
6. The accused, deceased and their mother had a discussion over the payment of the dip tank fees. Accused and deceased then had a misunderstanding over who should pay the fees, the accused wanted deceased to pay the fees whilst the deceased indicated that she had no money to pay the fees.
7. The accused and his mother left the homestead. After about 20 minutes, the accused went back to the deceased's homestead armed with an axe.
8. Without saying anything, the accused then struck the deceased once on the head with the axe and fled from the scene.
9. The deceased fell to the ground with the axe still embedded to her head. She was bleeding from the wound.
10. The deceased was referred to the hospital where she was admitted in the Intensive Care unit where she died on the 27 June 2021.

Prayer

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 mental disorder (Substance Induced Psychosis). Accused was mentally disturbed to such an extent that he could not be held responsible for his conduct.

The State tendered into evidence the post mortem report compiled by Dr I. Jekonya at Mpilo Hospital on the 29th June 2021. The post mortem report is marked Exhibit 1. The findings in the post mortem report lists the cause of death as brain damage, axe injury and assault by a psychiatric patient. Further the State tendered the axe that was used to stab the deceased. It is before court as Exhibit 3. It has the following measurements: length of wooden handle 60cm, circumference of wooden handle 13cm, length of axe blade 16cm, with of blade 6.5cm. A report compiled by a Psychiatrist, Dr. Elena Poskotchinova stationed at Ingutsheni Central Hospital, Bulawayo is before court and marked exhibit 2. The expert opined that at the time of the alleged crime, the accused was mentally disordered, i.e. suffering from probably schizophrenia. He did not appreciate the wrongfulness of his conduct. The report concludes thus:

In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder (probably schizophrenia). He was mentally disturbed to such an extent that he should not be held legal responsible for his actions. He is dangerous to society and needs special verdict to return. He is fit to stand trial.

The evidence shows that the injuries inflicted on the deceased were caused by the accused. He struck deceased with an axe on the head. Further the post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

In the circumstances of this case, and having regard to the undisputed evidence before court, it is clear that at the time of the commission of the offence the accused was suffering from a mental disorder and as such he cannot at law be held responsible for his conduct, i.e. the offence of murder. In the circumstances, it is appropriate for the court to return a special verdict, i.e. the accused is found not guilty because of insanity.

In the result, it is ordered as follows:

1. The accused is found not guilty and acquitted by reason of insanity.
2. The accused is hereby returned to prison pending transfer to Mlondolozhi Special Institution for further examination and treatment in terms of section 29(2)(a) of the Mental Health Act (Chapter 15:12).

National Prosecuting Authority, state's legal practitioners
Legal Aid Directorate, accused's legal practitioners