

**THE STATE**

**Versus**

**GLADWIN MOYO**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Ndlovu and Mr O.M. Dehwa

BULAWAYO 9 SEPTEMBER 2021

**Criminal Trial**

*B. Gundani*, for the applicant

*C.S. Ncube*, for the accused

**DUBE-BANDA J:** The accused appears in this court on a charge of murder, as defined in section 47(1) of the Criminal Law (Codification and Reform) [Chapter 9:23]. It being alleged that on the 16<sup>th</sup> September 2020, accused caused the death of Nyanga Moyo (deceased) by striking him all over the body using a stick and axe, once on the right leg, once on the left leg and once on the left arm intending to kill him or realising that there was a real risk or possibility that his conduct may cause the death of the deceased continued to engage in that conduct despite the risk or possibility.

The accused through his defence counsel tendered a plea of not guilty and averred that at the time of the alleged offence the accused was suffering from a mental disorder. It is contended that he must not be held criminally liable for his actions as he was suffering from a mental disorder at the material time.

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 be accepted by this court as being common cause:

1. The accused was aged 31 years at the time of the commission of the offence and the deceased was aged 92 years when he met his death. The deceased was accused's grandfather.

2. On 16 September 2020, the accused who was at deceased's homestead suddenly became quiet and responded in a harsh manner when talked to. At around 1000 hours accused left for an unknown place only to return at around 1800 hours carrying a pick and a shovel which he threw down and went away.
3. After some few minutes accused returned carrying a half brick and some stones and started pelting people at the homestead. Accused then charged towards the deceased, threw stones at him but missed him. Deceased grabbed his walking stick trying to stand up but he stumbled and fell down. The accused took the walking stick and assaulted deceased several times all over the body. The accused picked up an axe which was near a tree and struck the deceased once on the left leg and once on the left arm.
4. Modi Moyo, Valeliya Chauke, Cleopas Moyo and Mike Anderson Moyo apprehended accused and disarmed him of the axe. They then tied him with a rope.
5. Accused was taken to Guyu Police Station while deceased was ferried to Garanyemba clinic and then to Gwanda Hospital where he was further referred to United Bulawayo Hospitals where he died on the 14 October 2020.
6. Guyu Police who attended the crime scene recovered the stick and the axe used in the commission of the offence.
7. On 15 October 2020, Doctor Juana Rodriguez Gregori examined the remains of the deceased and concluded that the cause of death was:
  - a. Septic shock
  - b. Fracture of the radius and tibia.
  - c. Assault.
8. The accused was admitted at Mlondolozhi Special Institute in terms of section 26 of the Mental Health Act [Chapter 15:02] and was examined by Doctor Nemache Maware a Consultant Psychiatrist who opined that at the time of the alleged crime the accused was mentally disordered suffering from paranoid schizophrenia and that he did not appreciate the wrongfulness of his actions.
9. The State and the defence pray that a special verdict be returned in this matter in terms of section 29 of the Mental Health Act [Chapter 15:02] as the accused did not have mental capacity to commit the offence at the material time and as such should not be held criminally liable for his actions and conduct.

Certain documentary and real exhibits were placed before court by consent, these are: Affidavit in terms of section 278(3) of the Criminal Procedure and Evidence Act [Chapter 9:07] deposed by Witness Dube a member of the Zimbabwe Republic Police who identified the body of the deceased to the Pathologist Doctor Juana Rodriguez Gregori marked Exhibit 1; a Post Mortem Report number 165/129/2020 compiled by Doctor Juana Rodriguez Gregori at Mpilo Hospital Mortuary, on the 15 October 2020 marked Exhibit II; a Psychiatrist Report compiled by Dr. Nemache Mawere marked Exhibit III; an axe weighing 1.97 kg, with a blade measuring 17 cm in length, handle 74 cm, handle diameter 4.5 cm, marked Exhibit IV; and a stick weighing 500g, 95 cm long, with a diameter of 1.5 cm, marked Exhibit V.

The Post Mortem Report (Exhibit II) list the cause of death as: septic shock; fracture of the radia and tibia and assault. The Psychiatrist Report (Exhibit III) shows that a mental examination revealed that the accused had reduced sleep, auditory hallucinations, paranoid delusions (suspiciousness) and prefers to stay alone. He also experienced thought withdrawal. The expert opined that at the time of the alleged crime, the accused was mentally disordered, i.e. suffering from paranoid schizophrenia. He did not appreciate the wrongfulness of his actions. However, he is now fit to stand trial.

On the basis of the evidence that has been adduced before court we are indeed satisfied that the injuries sustained by the deceased were caused by the accused. The accused used the axe and stick before court as Exhibits 4 and 5 respectively to inflict the injuries. 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 adduced before court, it is clear that the accused was suffering from a mental disorder at the time he caused the death of the deceased such that he cannot at law be held responsible for his actions. In the circumstances, it is appropriate for the court to return a special verdict, being that the accused is not guilty because of insanity.<sup>1</sup>

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<sup>1</sup> The law provides in regulating the criminal liability of the mentally ill in s 29 (2) of the Mental Health Act. It states:

If a Judge or Magistrate presiding over a criminal trial is satisfied from the 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

In the result, the court makes the following order:

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 15:23).

*National Prosecuting Authority, state's legal practitioners*  
*Mabundu Ndlovu Law Chambers, accused's legal practitioners*

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handicapped so as not to be responsible for the act, the Judge or Magistrate shall return a special verdict to the effect that the accused person is not guilty because of insanity.”