

THE STATE

Versus

REMARKS NDLOVU

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 5 & 6 OCTOBER 2021

Criminal Trial

T.M. Nyathi for the state

M. R. Petkar for the accused

MAKONESE J: The accused person appeared in this court facing a charge of murder in contravention of section 47 (1) (a) of the Criminal Law (Codification & Reform) Act (Chapter 9:23). The accused denies the charge. He avers that at the time of the commission of the crime he was suffering from a mental disorder to such an extent that he was not able to appreciate the consequence of his conduct.

The agreed facts are that accused was aged 24 years old at the time of the commission of the offence. The deceased was aged 74 years at the time of her demise. The deceased was accused's paternal grandmother. At the material time accused person was residing at Sithombile Ncube's homestead, Halauba Village, Sun Yet Sen. On the 25th of October 2019 at around 1800 hours the accused person left the verandah of his bedroom hut and followed the deceased into her bedroom. Accused was armed with an axe. Without any apparent motive the accused struck the deceased once on the forehead and once on the back of the head resulting in the deceased sustaining a deep cut on the forehead and the back of the head. The deceased collapsed. She was ferried to St Joseph Mission Hospital for treatment. She was subsequently transferred to Maphisa District Hospital for further treatment and care. She died at United Bulawayo Hospitals on the 31st October 2019. She had succumbed to the injuries sustained in the attack by the accused.

On the 5th of November 2019 Dr Juana Rodriguez Gregori carried out a post mortem on the remains of the deceased at United Bulawayo Hospitals. He opined that the cause of death was:

- (a) Cerebral edema
- (b) Encephalic contusion
- (c) Head trauma

On 18th August 2021 Dr Nemache Mawere, a psychiatrist based at Mlondolozi Special Institution compiled a psychiatric report indicating that at the time of the commission of the offence, the accused person was mentally disordered and suffering from substance induced psychosis. The psychiatrist concluded that at the time of the commission of this offence accused did not have the requisite mental capacity to render him criminally liable for his conduct. From this report it is clear that accused had a normal childhood. He attended school up to Grade 7. As he grew up, however, he resorted to drug and alcohol abuse on a daily basis. Accused informed the psychiatric that at the time he committed the offence he believed that the deceased was bewitching him as he was not progressing well in life.

The state produced the physical exhibit, an axe with a wooden handle. Its total measured length is 85cm. The blade is 17.8cm, with a width of 78cm. The axe weighs 1.7kg.

From the evidence presented before us we are satisfied that at the time of the commission of the offence, the accused was suffering from a mental disorder to such a degree that he was incapable of having the mental capacity to appreciate the wrongfulness of his act.

It is saddening to note that cases of murder, arising from drug and substance abuse are on the increase. Young persons are exposed to dangerous substances and various types of harmful drugs that are leading to mental disorders. This court believes that there is urgent need to adopt a robust approach to issues of mental health as well as drug and substance abuse.

In the result, court therefore makes the following order:

1. The accused is found not guilty by reason of insanity in terms of s29 of the Mental Health Act Chapter 15:02).
2. The accused is to be returned to prison pending transfer to Mlondolozi Special Institution for further examination and care.