

THE STATE

Versus

UPENYU ZHOU

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J with Assessors Mr Matemba and Ms Baye
GWERU CIRCUIT COURT 17 MAY 2021

Criminal Trial

M. Ndlovu, for the State
Ms T. Musoso, 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 16th January 2019, and at Jindu River, Village Machovha, Chief Chingoma, Mberengwa, accused unlawfully caused the death of Bhaureni Banda (deceased), by forcing three sticks into the anus of the deceased, intending to kill him or realising that there was a risk of possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility. The accused through his defense counsel has 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 may 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:

1. Upenyu Zhou (accused) was aged 20 years at the time of commission of the alleged offence. He resides at Village Machovha, Chief Chingoma, Mberengwa, Midlands Province.
2. Bhaureni Banda (deceased) was aged 9 years at the time he met his death.
3. The deceased was accused person's nephew.
4. On the 16th January 2019, at about 1000 hours, the deceased left home to herd goats. The accused came along.

5. At the grazing area, the accused person got hold of the deceased, and forcefully inserted three sticks into the deceased's anus. This resulted in the death of the deceased.
6. Thereafter the accused placed the body of the deceased into a pond that had water. The accused person sat on a rock that was near the pond.
7. At about 1200 hours, Nyasha Banda followed the deceased and the accused to the grazing area. He found the accused sitting on a rock alone and observed deceased's body floating on the pond. Nyasha Banda rushed into the pond in an attempt to rescue the deceased, and abandoned the rescue on realizing that the deceased was dead.
8. The matter was reported to the police leading to the arrest of the accused.
9. On the 22nd January 2019, Dr Roberto Lara Diaz examined the remains of the deceased at Bulawayo United Hospitals, and concluded that the cause of death was:
 - i. Septic Shock
 - ii. Peritonitis
 - iii. Three penetrating sticks into the anus.
10. The accused was examined by a psychiatrist, Dr. N. Mawere on 30 July 2019; 22 October 2019; and 18 March 2020, at Mlondolozhi Special Institution.
11. Dr Mawere concluded that at the time of the commission of the alleged offence, the accused was suffering from a mental disorder (Mental Retardation and Temporal Lobe Epilepsy). He further stated that accused was mentally disordered to such an extent that he did not appreciate the wrongfulness of his action.
12. The accused accepts the evidence of the state witnesses and the contents of the post mortem report that at the time of the alleged offence, he was suffering from a mental disorder to such an extent the he should not be held legally responsible for his actions.
13. The State concedes to the fact that the accused was suffering from a mental disorder at the time of the commission of the alleged offence and it is appropriate for the court to return a verdict of Not Guilty by reason of insanity in terms of section 29(2) of the Mental Health Act [Chapter 15:12].

Further the State tendered a post mortem report compiled by a Pathologist, Dr Roberto Lara Diaz at United Bulawayo Hospitals, on the 22nd January 2019. The post mortem report is marked Exhibit 1. The findings in the post mortem report list the cause of death as: septic shock; peritonitis; and three penetrating sticks into the anus.

A report compiled by a Psychiatrist, Dr Nemache Mawere at Mlondolozhi Special Institution shows that the Electroencephalogram (EEG) report confirmed evidence of seizural activity in the brain of the accused (Abnormal EEG). The expert opined that at the time of the alleged crime, the accused was mentally disordered, i.e. suffering from (Mental Retardation and Temporal Lobe Epilepsy). He did not appreciate the wrongfulness of his action. However, he is now fit to stand trial. The Psychiatrist Report is before court and marked Exhibit 2.

From the evidence that has been placed before court we are indeed satisfied that the injuries sustained by the deceased were caused by the accused. 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 the accused was suffering from a mental disorder at the time of the commission of the offence and as such he cannot at law be held responsible for his actions, i.e. the offence of murder. In the circumstances, it is appropriate for the court to return a special verdict, that the accused is not guilty because of insanity.¹

In the result, the court makes the following order:

1. The accused is found not guilty and acquitted by reason of insanity.

¹The 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 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.”

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
Kwande Legal Practitioners, accused's legal practitioners