

THE STATE

Versus

OBEDIENCE NCUBE

IN THE HIGH COURT OF ZIMBABWE

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

BULAWAYO 10 SEPTEMBER 2021

Criminal Trial

T. Muduma, for the applicant

Ms. S. Mkhwananzi, 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 10th May 2019, at Limon Ncube's homestead, Sikhamaswe Village, Sun Yet Sen the accused stabbed Liaza Ndlovu (deceased) once on the chest, once on the right palm, once on the right ear and once on the right side of the neck intending to kill her 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 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 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 have agreed that the following issues are common cause being that:

1. The accused was aged 25 years at the time of the commission of the offence.
2. The deceased was aged 21 years at the time she met her death.
3. The accused and the deceased were husband and wife.

4. On the 10th of May 2019 at around 1700 hours, the accused checked on the cell phone of the deceased where he discovered a message which he could not read since he was illiterate.
5. Accused sought for assistance from his sister Sizalokuhle Ncube who could not assist him read the message. The accused suspected that the message could be coming from deceased's boyfriend. The accused took the cell phone of the deceased and put it in his pocket.
6. The deceased requested for her cell phone but the accused refused with it. The deceased kept on following the accused requesting for her cell phone while accused refused with it.
7. Later in the kitchen accused tripped deceased and she fell on the ground. The accused armed himself with a kitchen knife and a struggle ensued resulting in the accused stabbing the deceased once on the chest, once on the right palm once on right side of the neck.
8. From there accused attempts to commit suicide by stabbing himself on the stomach he fell down after walking for a short distance.
9. Later accused and deceased were taken to Sun Yet Sen Police where the deceased filed a report of domestic violence. They were later referred to Tshelanyemba Hospital for treatment.
10. The deceased was further referred to Maphisa District Hospital where she was later referred to UBH where her condition worsened and died on the 12th of May 2019.
11. On the 15th of May 2019 a post mortem was compiled by Dr Pesanai and concluded that the cause of death was:
 - a. Haemorrhage shock.
 - b. Perforated right ventricle heart.
 - c. Stab wound left.
 - d. Assault.
12. Both the State and Defence Counsel agree that accused be found not guilty of murder because of insanity in terms of S.29(2)(a) of the Mental Health Act.

Certain documentary exhibits were placed before court by consent, these are: a Post Mortem Report number 510-509-2019 compiled by Doctor S. Pesanai at United Bulawayo Hospitals Mortuary, on the 15 May 2019, marked Exhibit I; and a Psychiatrist Report compiled

by Dr. Nemache Mawere, marked Exhibit II. The Post Mortem Report (Exhibit I) list the cause of death as: haemorrhage shock; perforated right ventricle heart; stab wound left and assault. The Psychiatrist Report (Exhibit II) shows that at the time of the commission of the offence the accused was mentally disordered, suffering from Temporal Lobe Epilepsy (TLP). 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 a kitchen knife to inflict the injuries on the deceased. 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. 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.¹

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).

¹ 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 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.”

National Prosecuting Authority, state's legal practitioners

Sansole and Senda Legal Practitioners, accused's legal practitioners