

THE STATE
versus
MTSHUMAYELI GWEBU

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 20 MAY 2015

Miss *N. Ngwenya* for the state
Mr *P. Da Silva* with *Madzivire* for the accused

Criminal Trial

MOYO J: The accused person faces a charge of murder it being alleged that on 29 of November 2012, he assaulted his aunt, one Elda Gwebu with a machete for no apparent reason. The deceased later died in Hospital on 6 December 2012.

Eltima Sibanda witnessed the incident and she told the court that in fact when deceased was following her from behind and she was then attacked. At that stage she thought that it was a robber. She later learnt that it was the accused person who had attacked the deceased. The state summary was marked Exhibit 1, the affidavit by the police officer who identified deceased's body to the pathologist was marked Exhibit 2, the post mortem report was marked Exhibit 3, it gives the cause of death as

- 1) pulmonary oedema
- 2) herniated stomach into chest cavity
- 3) congenital malformation.

The psychiatrist's report prepared by Dr Elena Poskotchinova was marked Exhibit 4. It shows that accused had mental challenges (probably) schizophrenia at the relevant time and that he cannot be held legally responsible for his actions. He is however fit to stand trial. The machete that was used in the commission of the offence was marked Exhibit 5. The evidence of

the following witnesses was admitted into the court record in terms of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07].

- 1) Mika Ndlovu,
- 2) Canaan Gwebu
- 3) Casmel Masunda
- 4) Dr S. Pesanai

The evidence of Canaan Gwebu, the father of the accused also confirms the strange behavior of accused prior to deceased's death and points towards mental instability.

The evidence of Casmel Masunda the police officer who dealt with this matter also confirms accused's mental challenges, as the officer even failed to record a warned and cautioned statement from him. He also failed to take a finger print specimen from the accused person who was unco-operative and very violent.

Clearly the evidence on the record points towards mental instability and in the circumstances the court has no option but to return a special verdict in terms of section 29 (2) of the Mental Health Act [Chapter 15:12].

The accused person is accordingly found not guilty of the charge of murder by reason of insanity. However, because the court considers accused a danger to society he shall be committed to Mlondolozhi.

*National Prosecuting Authority's office, state's legal practitioners
Joel Pincus, Konson and Wolhuter, accused's legal practitioners*