

THE STATE
versus
FABION KUFAZVINEI

HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 26 JANUARY 2016

Criminal Trial

T. Mpariwa for the state
Ms T. Panacheche for the accused

MAKONESE J: On 9 January 2004 accused together with his brothers Elliot and Morelife Kufazvinei proceeded to the deceased's homestead. Accused who was aged 45 years at the time of the alleged offence armed himself with a 410 wellby shotgun. The accused and deceased had a long-standing dispute over land. As the accused and his companions approached the deceased's homestead the deceased fled in terror. The accused and his companions pursued and caught up with the deceased. Accused's brother grabbed deceased by his hand. Accused fired a shot hitting the deceased on the chest. Deceased managed to free herself and tried to escape. Accused caught up with her and shot her once in the head. Deceased ran into the house and locked herself inside. Accused and his brothers axed the door and got inside. Accused again shot deceased in the head and she died instantly. The matter was reported to the police leading to the arrest of the accused.

The accused now appears in this court on a charge of murder on these allegations. Accused has pleaded not guilty and tendered a plea of not guilty by reason of a mental illness. The court entered a plea of not guilty.

The state has read into the record of proceedings a statement of Agreed Facts (Exhibit 1) which summarized the circumstances surrounding the commission of this offence.

The state has also tendered a Post Mortem Report No. 015949 compiled by Dr. F Masalane at Kwekwe General Hospital on 12 April 2004 as Exhibit 2. The report indicates that the cause of death is:

- a) Laceration of both arms
- b) Gunshot wound of the chest
- c) Two gunshot wounds on the head.

The report by the Psychiatrist Dr Elena Poskotchinova is marked Exhibit 4. The report reflects that accused has a long history of mental illness dating back from the war of liberation. (1979-1980). The accused was taken to Zion Christian Church where he attended church services in a bid to control his mental problems. Accused got well at some stage but relapsed and left the church eventually. The accused has a history of drug and substance abuse, in particular he smokes mbanje drinks alcohol excessively. According to the report by the Psychiatrist the accused was diagnosed with acute psychosis in 2005. He was examined at Mlondolozhi Special Institution between 17 September 2012 and 5 November 2015 on various occasions.

The Psychiatrist opined that there was a reasonable possibility that at the time of the commission of this offence accused was suffering for a disease of the mind to such an extent that he could not be held criminally liable for his actions. The Psychiatrist indicates that accused is a danger to society and needs a special verdict returned.

We are satisfied that from the evidence presented before us, there is a reasonable possibility that at the time he convicted this offence, accused was suffering from mental illness to such an extent that he could not be legally held responsible for his conduct.

In the result, the following order is made:

- 1) Accused is found not guilty by reason of insanity.
- 2) In terms of section 29 (2) of the Mental Health Act [Chapter 15:12] accused is to be returned to prison for transfer to a Mental Institution for further treatment and care.

National Prosecuting Authority, state's legal practitioners
Gundu and Dube, accused's legal practitioners

HB 46-16
HC (CRB) 21-16