

THE STATE
versus
TINEYI MAGEDHE

HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 25 JANUARY 2016

Criminal Trial

T. Mpariwa for the state
K. Manika for the accused

MAKONESE J: Accused who was aged 32 years old at the time of the offence appears in this court on a charge of murder. The allegation being that on 19 February 2013 and at village Nyoka, Chief Chiwundura, Gweru in the Midlands Province the accused wrongfully and unlawfully caused the death of Emily Dukwende a female adult, by striking her four times on the head with an axe handle. The accused pleaded not guilty to the charge and through his defence counsel indicated that at the relevant time he was suffering from mental illness. The court entered a plea of not guilty.

The state tendered a statement of Agreed Facts Exhibit 1 where the admitted facts which are common cause are that on 19 February 2013 the accused and the deceased who were both employed as domestic workers by Dani William Nyoka were left alone at the homestead. The accused then proceeded to where the deceased was cleaning the house and demanded to have sexual intercourse with her. When deceased refused accused was infuriated and struck the deceased on the back of the head with an axe handle. The deceased fell down bleeding profusely. Thereafter accused forcibly had sexual intercourse with the unconscious deceased. After achieving his purpose accused dragged the deceased's body into the house and fled the scene of the crime. He was later arrested by the police after surrendering himself and admitting the offence.

The state then tendered a Post Mortem Report number 146-146-2013 compiled by Dr Sanganai Pesanai who examined the remains of the deceased. He concluded that the cause of death was

(a) Subarchnoid haemorrhage

(b) Blunt force trauma

The Post Mortem Report is marked (Exhibit 2)

The murder weapon the axe handle was tendered into evidence as Exhibit 3. It weighs 0.88kg. Its measured length is 80cm and its circumference is 13.5cm.

The last Exhibit is the report by the psychiatrist Exhibit 4. This report by Dr Elena Poskotchinova, a psychologist based at Ingutsheni Hospital in Bulawayo indicates that accused was placed under observation between 30 July 2014 and 1 June 2015. He was examined on several different occasions. The report reflects that accused had a mental history dating back to 1998. His behavior was strange. He was emotionally withdrawn and had poor eye contact. He admitted suffering from auditory hallucinations (he heard male voices inside his head, with commands). In 2005 accused tried to kill his first wife but she escaped. In 2012 he married a second wife but she left him after three months. Accused sought treatment from a Madzibaba Apostolic Church in 2012. The conclusion of the psychiatrist is that at the commission of the offence, there is a reasonable possibility that accused was suffering from mental illness (Schizophrenia). He was mentally disturbed to such an extent that he could not be held liable for his actions. He is dangerous to society and needs a special verdict.

From the evidence presented before the court, we are indeed satisfied that there is sufficient evidence to indicate that at the time of the offence, the accused was suffering from mental disorder to such an extent that he could not be held criminally responsible for his conduct.

Accordingly the following order is made:

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

*National prosecuting Authority, the state' legal practitioners
Jumo, Mashoko and Partners accused's legal practitioners*