

THE STATE
versus
JESCA MARARE

HIGH COURT OF ZIMBABWE
MUSAKWAJ
MASVINGO, 13 October 2015

Assessors: 1. Mr Dhauramanzi
2. Mr Gweru

Criminal Trial

T. Chikwati, for the state
F. Chirairo, for the accused

MUSAKWAJ: The accused pleaded not guilty to a charge of murder. It is alleged that on 24 November 2013 and at Marufu village, Chief Nyakunhuwa, Zaka the accused unlawfully and intentionally killed Violet Mapondera by striking her once on the head and twice on the left hand with an axe.

The facts as summarised are as follows: On the fateful day Alice Severa was roused by loud bangs on the kitchen door. The accused was then heard threatening to kill Alice Severa and her daughter. Alice and her daughter barricaded the door to their room. When other people converged on the home it was discovered that the deceased had been badly injured. The deceased died shortly thereafter. The accused was subdued by her brother.

In her defence outline the accused did not dispute causing the deceased's death. Her plea was that at the material time she lacked mental capacity to commit the crime charged due to insanity. Her mental condition started in 2002 and she was treated at Ngomahuru Hospital. She committed the crime after she stopped taking medication.

The post-mortem report and a medical report on the accused were produced by consent. The post-mortem report by doctor Zimbwa noted the following injuries-
-deep cut from nasal bridge to left frontal area +/- 5cm, going through whole thickness of

scalp and skull bone.

-exposed brain tissue.

-two cuts on left arm +/- 3cm each with compound fracture of humerus.

The cause of death was given as severe head injury.

The report by doctor Mhaka reads as follows-

“Jesca’s first psychiatric episode was in 2003. She was treated at Ngomahuru Hospital. She then defaulted treatment as she thought she was now well. At the time of the offence she was not taking her medication. Around the time of the offence she had visual hallucinations (seeing things which are not there). She also had paranoid visual delusions (abnormal suspiciousness). Medical certificates indicate that she had auditory and visual hallucinations (hearing and seeing things which are not there). She is now on Haloperidol (medication for mental disorder). She is no longer hallucinating, she no longer has paranoid delusions. I have examined Jesca and have found her to be of sound mind. She now has insight to her illness and shows remorse for her offence.”

Doctor Mhaka concluded that at the time of the commission of the offence the accused was mentally disordered.

Evidence was led from two witnesses. Alice Severa is the deceased’s daughter in-law. She stated that the deceased retired for the night in a kitchen hut. Around 1 a.m. she heard two bangs on the kitchen door. She then heard a voice say; “I want to destroy the home.” The voice again said; “I want to kill Tsitsi’s mother and her child.” She identified the voice as that of the accused. She then heard footsteps.

The witness and her daughter braced themselves against the door to the room in which they were. The accused called out again; ‘Frank’s mother, I have killed Zimuto.’ Frank’s mother is the witness’s sister in-law and Zimuto was the deceased.

Alice managed to call Edson Marare the accused’s bother. Later the accused’s mother appeared. The witness’s sister in-law also appeared. When the accused’s brothers arrived they proceeded to the kitchen hut. Through illumination from a cell phone flashlight they saw the deceased in pool of blood and she was breathing faintly. She must have died before a vehicle came to convey her to hospital.

Alice also stated that her father in-law and the accused’s father were close friends. Whenever the accused was unwell she would visit their home and demand food. Sometimes she would take ash and charcoal from the fireplace and rub on her face and body. She would also travel to Jerera whilst naked.

The witness also recounted a bizarre incident involving the accused which however is based on hearsay. In 2012 the accused gave birth on her own. Thereafter she placed the child in a box and boarded an omnibus. She told the crew to place the box on the carrier. Later some hospital staff visited the village looking for the accused's relatives.

Thomas Marare the accused's brother also testified. He stated that the accused exhibited signs of mental illness in 2000 after she gave birth. The accused's husband brought her home and reported on her bizarre behaviour. Their parents consulted a prophet and she improved.

In 2002 the accused gave birth to another child and her mental condition deteriorated. The family consulted traditional healers to no avail. She was taken to Ngomahuru Hospital and she stabilised. Thereafter her condition would fluctuate. She left her husband and went back to her family. She would sing and threaten to go away.

Thomas stated that on some occasions the accused was violent. He was the only one who could restrain her. He and her father were once bitten by the accused when they were restraining her.

He also confirmed the incident of the baby that the accused gave birth to and had it placed on the bus carrier. He also stated that the accused never used to be violent against the public.

Thomas also confirmed attending the scene of the deceased's killing. The body was behind the door. He noted the injuries and bleeding. He went to another home where he found the accused sleeping on a bench. When she woke up and he questioned her she asked who he was. Although the accused struggled he subdued and bound her with a rope. Later the accused said she was asleep with the deceased when an intruder came. The accused then took an axe and attacked the intruder. She said she believed that the person she attacked was alive and suggested that the person be taken to hospital. The witness also stated that they are now not able to control the accused.

The accused did not testify. In light of the evidence of insanity both counsels submitted that a special verdict be returned in terms of s 29 (2) of the Mental Health Act [*Chapter 15:12*]. The provision in question states that:

“If a judge or magistrate presiding over a criminal trial is satisfied from 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 to have a complete defence in terms of section 248 of the Criminal Law Code, the judge or magistrate shall return

a special verdict to the effect that the accused person is not guilty because of insanity, and may—

- (a) order the accused person to be returned to prison for transfer to an institution or special institution for examination as to his mental state or for treatment; or
- (b) if the judge or magistrate considers that, had the accused person been convicted of the offence concerned, he would not have been sentenced to imprisonment without the option of a fine or to a fine exceeding level three, order—
 - (i) the accused person to submit himself for examination and additionally, or alternatively, treatment in any institution or other place in terms of Part VI; or
 - (ii) the accused person's guardian, spouse or close relative to make an application for the person to be received for examination and additionally, or alternatively, treatment in any institution or place in terms of Part VII or Part VIII;
and may give such orders as may be appropriate for the accused person's release from custody for the purpose of such examination or treatment; or
- (c) if the judge or magistrate is satisfied that the accused person is no longer mentally disordered or intellectually handicapped or is otherwise fit to be discharged, order his discharge and, where appropriate, his release from custody.”

The evidence before us leaves no doubt that the accused was mentally disordered at the time of commission of the offence. Despite her recovery there is risk of relapse from defaulting on her medication. The family does not appear to be willing to take her if she is discharged. Therefore the court will not order her immediate discharge. She will have to be returned to an institution where in due course the Mental Health Review Tribunal will determine the case for her discharge.

It is therefore ordered as follows-

- (a) A special verdict is hereby returned to the effect that the accused is found not guilty by reason of insanity.
- (b) The accused shall be returned to Chikurubi Psychiatric Unit in terms of s 29 (2) (a) of the Mental Health Act.

National Prosecuting Authority, legal practitioners for the state
Saratoga Makausi Law Chambers, accused's legal practitioners