

THE STATE
versus
WONDERFUL MAKARICHI

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 26 February 2019

Criminal Trial (Mental Health Act- Section 29)

ASSESORS: 1. Mr Chagonda
2. Mr Chipere

M Musarurwa, for the State
T Mafusire, for the accused

MUZENDA J: The accused was arraigned before the court on a charge of murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*]. The State alleged that on 1 August 2017 and at Zisani Village, Chief Makoni, Rusape, the accused unlawfully caused the death of Phillip Makarichi by assaulting him with a stone on the head intending to kill him or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility thereby causing injuries from which the said Phillip Makarichi died.

In the response of the charge, the accused pointed out that he admitted what happened but that it occurred when he was mentally challenged. As a result, a plea of not guilty was entered. The State and defence counsels advised the court that they had taken a position informed by the nature of the accused's plea and the affidavit of Dr Patience Mavunganidze, a psychiatrist. They took a position that we proceed with the matter in terms of s 29 of the Mental Health Act [*Chapter 15:12*]. The affidavit of Dr Patience Mavunganidze was tendered as evidence and was accepted by the court as exh 1 by consent.

A statement of agreed facts was tendered as exh 2 by consent. On 1 August 2017, the accused struck the deceased using a stone on the head. The certificate of weight was tendered as exh 4 by consent and the stone weighed 5.17 kg. The deceased sustained severe injuries

which caused his death. It is also clear from the statement of agreed facts that following the arrest of the accused for the offence of murder, the accused was examined by Dr Patience Mavunganidze who concluded that at the time of the commission of the offence, the accused was mentally disordered and thus could not formulate the requisite *mens rea* to commit murder. The State produced the following by consent of the defence counsel, the post mortem report, the certificate of weight, the sketch plan and all these were admitted as exhibits.

Given the common cause of the evidence presented and the circumstances of the commission of the offence, we agreed with the State and defence counsels that the matter be handled in terms of the Mental Health Act [*Chapter 15:12*]. The circumstances call for the return of a special verdict of not guilty because of insanity.

The State and the defence counsel agreed in consultation with Bornface Makarichi, a brother to the accused as well as Lucia Changa, Bornface's wife, that the society where the offence was committed was not yet ready to accept and accommodate the accused. The village head who was also in court was consulted and he confirmed the position of the community. The accused still requires management, treatment and rehabilitation and it would be improper to prematurely release him.

Our considered view is that institutionalisation of the accused is imperative and protective measures be put in place to guarantee his safety and recovery. The accused will be released at the ripe time by a competent body or Health Review Tribunal as provided for by the legislation.

Accordingly, it is ordered that:

1. The accused is not guilty because of insanity.
2. The accused be returned to prison for transfer to Chikurubi Psychiatric Unit or such other appropriate institutions for treatment and management until discharge therefrom by a competent body.