

THE STATE**Versus****SIFISO JEHOVA FALAMI JUBANE**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr Sobantu & Mr Ndlovu
HWANGE CIRCUIT COURT 5 MARCH 2018

Criminal Trial

Mrs Gorerino for the state
Miss J. Change for the accused

MAKONESE J: The accused appears in this court on a charge of murder. It being alleged that on the 19th October 2016 and along Old Victoria Falls Road near St Lukes Hospital in Lupane, the accused struck Misimuzi Mpofu once on the forehead with an axe intending to kill the deceased. The accused through his defence counsel has tendered a plea of not guilty and averred that at the time of the alleged offence accused was suffering from mental illness. Accused contends therefore, that he may not be held criminally liable as he was suffering from a disease of the mind at the material time.

The state tendered into the record of proceedings the outline of the state case which now forms part of the record. The agreed facts are that on the day in question the deceased who was aged 18 years at the time he met his death was in the company of Morris Moyo and Mitchel Sithole. They were on their way home from Zvangendaba High School, St Lukes, Lupane and while the two were walking along Victoria Falls road, accused suddenly and without warning charged at the deceased and his friends. The accused pounced on the deceased and struck him once on the forehead with an axe. Deceased fell to the ground unconscious facing upwards with the axe still embedded in his forehead. The accused removed the axe and proceeded to his homestead. Mavis Moyo and Mitchel Sithole ran to St Lukes Business Centre where they made a report to Constable Samuel Ncube and Constable Dhliwayo. Deceased was ferried to St Lukes Hospital, where he died upon admission.

The state tendered a post mortem report compiled by a pathologist, Dr Sanganayi Pesanai at United Bulawayo Hospitals on the 21st of October 2016. The findings in the post mortem report list the cause of death as:

- (a) severe brain damage
- (b) depressed skull fracture
- (c) chop wound
- (d) assault

On external examination the pathologist observed that the body of the deceased was decomposing, with blotting and blistering.

A report compiled by a Psychiatrist Dr Elena Poskotchnova at Ingutsheni Central Hospital reveals that accused had prior to this incident a history of mental illness. Accused was suffering from schizophrenia associated with comorbid substance use disorder. An examination on accused on 14th June 2017 revealed that accused was psychotic, mostly in the form of delusion of grandiose, persecution and auditory hallucination. Accused wore a serious face, spoke to himself with pressure of speech. He believed that he had twenty wives and twenty eight children. He expressed the belief that he possessed extra powers from God. He admitted his crime saying that he got an instruction from certain voices to go and protect his daughter. The report concludes that there is a possibility that at the time of the alleged offence accused was suffering from a mental disorder to such an extent that he could not be held criminally responsible for his actions.

The state further produced the physical exhibit, namely the axe that was used to inflict the injuries that led to the death of the deceased. The axe weighed 1.4kg, with a handle 78cm long, and a blade 5.5cm wide and 14cm long.

The evidence of the following state witnesses as it appears in the state outline, was admitted into the record by way of formal admissions in terms of s314 of the Criminal Procedure and Evidence Act (Chapter 9:07) namely;

- (a) Morris Moyo
- (b) Mitchel Sithole
- (c) Constable Samuel Ncube
- (d) Dr S. Pesanai

The accused who appeared to comprehend the proceedings wore a serious face throughout.

From the evidence that has been placed before the court we are indeed satisfied that at the time the accused struck the deceased with an axe, there was a reasonable possibility that he was suffering from a disease of the mind to such an extent that he could not be criminally liable for his conduct.

In the result, and accordingly, the court makes the following order:

1. The accused is found not guilty and acquitted by reason of insanity.
2. The accused is hereby returned to prison pending transfer to Mlondolozhi Special Institution for further examination and treatment in terms of section 29(2)(a) of the Mental Health Act (Chapter 15:23).

National Prosecuting Authority, state's legal practitioners
Mavhiringi & Associates, accused's legal practitioners