

THE STATE

Versus

ORDETTA MPOFU

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr P. Damba & Mr J. Sobantu

BULAWAYO 26 MAY 2021

Criminal Trial

B. Maphosa for the state

T. Chimusaru for the accused

MAKONESE J: The accused was aged 44 years at the time of the commission of the offence. The deceased was her husband. He was aged 52 years when he met his demise. The accused appears in this court facing one count of murder in contravention of s 47(1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The accused tenders a plea of not guilty but avers that at the time of the commission of the offence she was suffering from a mental defect. She did not appreciate the consequences of her actions and was not criminally liable. The state and the defence have tendered into the record of proceedings a statement of agreed facts.

The facts of the matter are these. On 10th April 2020 and at around 1945 hours and at 4546 Emganwini Township deceased was watching television with the accused and their three minor children. One of the children changed the television channel. This did not amuse the accused. An argument ensued between the accused and her children. The deceased remained silent. Accused demanded that deceased should reprimand the children. The deceased indicated his unwillingness to get involved in the matter. He proceeded to the bedroom to sleep. At around 2130 hours, without warning, accused armed herself with an axe and confronted the deceased in the bedroom. Accused struck the deceased three times on the head with the axe. The deceased died instantly. He sustained fatal injuries in the assault. Accused exited the bedroom and informed her daughter Sisaskosi that she had killed her husband. A report was made to the police. The body of the deceased was conveyed to United Bulawayo Hospitals for a post mortem report. The findings of the pathologist were that the cause of death was:

1. Encephalic dislaceration
2. Cranial burst
3. Chop wound

The state tendered a report compiled by a Psychiatrist Dr Nemache Mawere. He concluded that the accused had a long history of mental illness dating back to 2010. He opined that accused was suffering for schizophrenia. She had symptoms of depression and

was not taking her medication at the relevant time. In his opinion the accused did not appreciate the wrongfulness of her actions at the time she committed the offence.

From the evidence placed before the court, we are satisfied that the accused could not be held criminally liable by reason of mental illness. The death of the deceased was tragic. Unfortunately, cases of this nature are on the rise. There is urgent need for adequate treatment and care to be provided to mental patients.

In the circumstances and accordingly the following order is made:

1. The accused is found not guilty by reason of insanity in terms of s29 of the Mental Health Act (Chapter 15:12).
2. The accused is to be returned to prison pending transfer to Mlondolozhi Special Institution for further treatment and care.

National Prosecuting Authority, state's legal practitioners
Dube-Tachiona, Tsvangirai, accused's legal practitioners