

THE STATE

Versus

LUCKY NCUBE

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr T.E Ndlovu and Mr S.L Bazwi

HWANGE 7 MARCH 2022

Criminal trial

Mrs M. Cheda, for the State

G. Musengi, for the accused

DUBE-BANDA J: The accused appears in this court on a charge of murder, as defined in section 47 of the Criminal Law (Codification and Reform) [Chapter 9:23]. It being alleged that on the 14 May 2021, accused unlawfully caused the death of Angel Nkomo (deceased) by stabbing her several times on the stomach and by slitting her throat with a knife intending to kill her or realising that there was a risk of possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility.

The accused pleaded guilty to the charge. Mr *Musengi* counsel for the accused explained that at the time of the alleged offence accused was suffering from a mental disorder, and therefore he cannot be held criminally liable for his conduct.

The State tendered into the record of proceedings a statement of agreed facts, which is before court and marked Annexure A. The statement reads as follows:

The State and the Defence are agreed that the following issues are common cause being that:

1. The accused was 19 years at the time this offence was committed and he resides at Ntombiyejele Ncube's homestead, Makuni Village, Chief Mabhikwa, Lupane.
2. The deceased was 5 years at the time she met her death and she resided at Concern Donga's homestead, Mapanda Village, Chief Mabikwa, Lupane.
3. On the 14 May 2021, and at around 07:00 hours, the deceased and her siblings were playing in the yard at their homestead.
4. Their grandmother Evelyn Mlalazi had gone to the fields.

5. The accused went to the homestead and grabbed the deceased by her legs and dragged her out of the yard to a nearby bush.
6. The accused stabbed the deceased 7 on the stomach and slit her throat with a knife.
7. After killing the deceased, the accused went back to their homestead where he was seen by his sister Emmaculate holding a blood sustained knife and his clothes had blood stains.
8. The accused disappeared into the bush.
9. The deceased was discovered by her grandmother Evelyn on her way home from the fields.
10. The accused later handed himself over to the police.

Prayer

The State and the Defence pray that the Honourable Court returns a special verdict in terms of section 29(2) (a) of the Mental Health Act [Chapter 15:12] since the accused suffered from mental disorder (Substance Induced Psychosis). Accused was mentally disturbed to such an extent that he could not be held responsible for his conduct.

The State tendered into evidence the post mortem report. It was compiled Dr Juana Rodriguez Gregori at United Bulawayo Hospitals on the 17th May 2021. The post mortem report is marked Exhibit The post mortem report list the cause of death as hypovolemic shock, laceration of the jagular artery and digorging. A report compiled by a Psychiatrist, Dr. Elena Poskotchinova stationed at Ingutsheni Central Hospital, Bulawayo is before court and marked Exhibit 2. The expert opined that at the time of the alleged crime, the accused was mentally disordered, i.e. suffering from Schizophrenia, Substance use Disorder. He did not appreciate the wrongfulness of his conduct. The report concludes thus:

In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder Schizophrenia, Substance use Disorder. He was mentally disturbed to such an extent that he should not be held legal responsible for his actions. He is dangerous to society and needs special verdict to return. He is fit to stand trial.

The evidence shows that the injuries inflicted on the deceased were caused by the accused. The accused stabbed the deceased seven times on the stomach and slit her throat with a knife. Further the post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

In the circumstances of this case, and having regard to the undisputed evidence before court, it is clear that at the time of the commission of the offence the accused was suffering from a mental

disorder and as such he cannot at law be held responsible for his conduct, i.e. the offence of murder. In the circumstances, it is appropriate for the court to return a special verdict, that the accused is not guilty because of insanity.

In the result, it is ordered as follows:

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 15:12).

National Prosecuting Authority, state's legal practitioners
Mvhiringi and Associates, accused's legal practitioners