

THE STATE
versus
RUTH DIANA WACHI

HIGH COURT OF ZIMBABWE
BACHI MZAWAZI J
CHINHOYI, 24 January 2024 to 5 February 2024.

Assessors: *Mrs. Mawoneke*
Mr. Mutombwa

Criminal Trial

K. Teveraishe, for the State
B. S. Ruchike, for the Accused

BACHI MZAWAZI J: Through a twist of fate an 82 year old octogenarian's life tragically came to an end at the hands of the accused. The accused, a female then aged 34 had a history of epileptic seizures. The condition or chemical imbalances that can be induced as a result of the seizures culminated into the accused losing control of her mental faculties. She started by conversing inaudibly to unknown invisible persons. The family decided to seek spiritual intervention and took her to a prophet's shrine. Her condition deteriorated prompting the accused to take to her heels with her mother in hot pursuit. The mother was outpaced by the younger woman. By the time the mother caught up the deed had already been done, it was too late.

She found the accused roaming around the deceased's yard naked, with the deceased bleeding profusely from the head leaning on the door of his hut. He was already visibly dead at the time. The murder weapons were identified as a blood ridden hoe and the deceased's own walking stick. This led to the arrest and subsequent murder charges against the accused.

Her stint in the psychiatric unit of Chikurubi prison confirmed her unstable mental condition and the steps that had been taken towards her cure. Release was also recommended.

This information is embodied in the forensic psychiatric nurse's affidavit marked exhibit 2 and the Chikurubi Superintendent communique to the National Prosecuting Authority marked exhibit 3 hereto.

All this documentary evidence was produced and tendered by consent with the inclusion of the autopsy report, sketch plan and murder weapons. Of note, the autopsy report confirmed the cause of death as head injury. This evidence necessitated the tendering of an agreed statement of facts by both counsels based on the clear evidence of mental disorder on the part of the accused at the time of the commission of the offence as produced before the court.

In terms of s29 of the Mental Health Act [*Chapter15:12*], once a court is satisfied that an accused person was suffering from a mental illness as recognized in terms of the Act, then that person can be acquitted on the basis of insanity. Accused person is accordingly found not guilty and acquitted because of insanity. A special verdict is returned. See *S-v-Charidza HMA10/17*.

In sentencing the accused, the court had occasion to observe the accused during trial. At times she would laugh for no apparent reason. She would also speak as when she felt, meaning she had no appreciation of the need to speak only when asked to or spoken to. Though the court was of the opinion that she could appreciate the proceedings, it could not help notice moments of disorientation on the part of the accused. Given, how the crime was committed and the submissions from the accused's mother in the sentencing enquiry, the court is of the view that it will not be prudent to release the accused into society as of now.

The accused's mother who exhibited both physical and mental strain during sentencing enquiry, said she was not yet in a position to receive and manage the accused. She unfortunately is gifted with another mentally unstable male child, a brother to the accused. She has challenges in looking after this sibling of the accused. Therefore, the two of them will make it a double toll and very cumbersome on her. In addition, she may not be able to afford the medication as she is financially incapacitated. She may also not be in a position to travel long distances to secure free medication at the distant medical faculty leaving the two

patients alone. Furthermore, she may fail to constantly monitor and supervise the intake of medication by the accused.

Over and above that, the court has also noticed that the recommendation for discharge was on the 20th of July 2022, two years ago. It does not reflect the accused person's current mental condition. There is need for a recent psychiatric evaluation report to sway the court into trusting the accused into society. There is need to look at the safety and protection of society and the accused herself before releasing individuals with known history of violent behavior as a result of their mental conditions, into society.

As a result, the court will proceed in terms of s29 (1) (a) as read with s35 of the Mental Health Act. The accused is committed to the Chikurubi Psychiatric Unit for further psychiatric evaluation. Her mental status has to be certificated by two psychiatric Doctors in terms of s35 of the Act before her release.

Saizi Law Chambers for the Accused.

National Prosecuting Authority for the State.