

THE STATE
versus
MEMORY CHAHWANDA

HIGH COURT OF ZIMBABWE
BACHI MZAWAZI J
CHINHOYI, 23 January 2024 to 6 February 2024.

Assessors: *Mr. Manyangadze*
Mr. Kamanga

Criminal Trial

Mr. G. T. Dhamusi, for the State
Mr. J. Mangeyi, for the Accused

BACHI MZAWAZI J: This is a murder case involving two vulnerable persons. The deceased a mere eleven months old infant was struck to death by the accused a well-known young female mental patient. Resultantly accused has been charged with murder under s47 (1) of the Criminal Law Codification and Reform Act [*Chapter 9:23*].

Evidence has been placed on record in the form of documentary exhibits illustrating that she had been detained in a mental psychiatric unit of the National Prisons and has been declared fit to stand trial. Several other documents, which include an affidavit from a forensic psychiatric nurse, stationed within the precincts of Chikurubi Prisons, were produced in support of the accused mental disposition.

As such, a statement of agreed facts from the parties has been tendered as annexure A. In terms of that statement, it is alleged that on the 23rd of July 2021 at Village 9B Kanyaga, Kenzamba, the accused person picked a hoe and struck the deceased, one on the head without warning. When she was to execute a second blow she was apprehended and restrained by a relative who happened to be nearby. The baby died instantly. The submitted post mortem report describes the cause of death as traumatic brain injury.

As had already been noted the report from the forensic nurse, exhibit 2 indicated that the accused had undergone mental health treatment and was on continuous medication at the psychiatric unit at Chikurubi. It is accompanied by recommendations that the accused is fit for discharge in the custody of her father.

In such cases, where there is clear uncontroverted evidence that the accused was mentally incapacitated at the time of the commission of the offence, the court is left with no choice but to return a special verdict. Moreso, when the court is also satisfied that from the manner the offence was committed, a motiveless killing of an innocent soul, and for the history of mental disability then the accused cannot be held liable for her actions at the time of the commission of the offence.

In terms of s29 (2) of the Mental Health Act [*Chapter 15:12*], if a Judge presiding over a criminal trial is satisfied from the evidence, including medical evidence, given at the trial that the accused person did the act constituting the offence charge or any other offence of which he or she may be convicted on the charge, but that when he did the act he was mentally disordered or intellectually handicapped so as to have a complete defence in terms of s227 of the Criminal Law Code, the Judge shall return a special verdict to the effect that the accused person is not guilty because of insanity.

Accordingly, the accused is found not guilty of murder as charged because of insanity. A special verdict is returned.

For the sentencing judgment which has been incorporated into the main judgment. Reliance has been placed on the cases of *Jesca Chisemwa-v-The State HB 185/18* and *The State-v-Charidza HMA 10 of 2017*.

Information gathered in terms of s12 of S.I 146/23 the sentencing enquiry, from the father revealed that though mentally disoriented the accused never exhibited violent behavior prior to this incident. Her mental illness manifested in the form of her transcending into an unknown imaginary world and conversing with invisible persons including her ancestors. It was also learnt from that enquiry that the family believed in supernatural and spiritual healing

methods hence the neglect of the medical route. The court had the privilege to learn that although the accused had been detected mentally unstable several years back upon her unceremonious return from her husband who had relocated to South Africa, no medical intervention had been sought.

It follows, that the sentencing judgment has taken into account the recommendations from the forensic psychiatric nurse alongside evidence led in the sentencing enquiry and submissions made by counsel from both sides. The father of the accused spoke on his own behalf and that of other members of his family. He is of advanced age, in his seventies. He stays with several of his grown children at the same homestead where the crime was committed. He was prepared, to take the accused back home. His parental love overtook and overshadowed all the security and safety concerns of all the other occupants of his house. He also indicated that he is financially incapacitated to continue purchasing the required drugs and may not be in a position to constantly monitor the intake of the relevant medicines by the accused given their sexes. It would be easier with a male child than with a girl culturally.

Mr Mangeyi for the accused pleaded with the court to give the accused an opportunity to integrate with her family as she was no longer showing signs of mental illness. The court was urged to take into account the psychiatric's letter of discharge and recommendations as proof certifying the mental state of the accused.

On assessment, the court indeed noticed from a lay person's point of view that the accused on all the occasions she had appeared before it she was sane. She could follow and appreciate all the proceedings. She must have been in her lucid state of mind. This observation by the court was capitalized by the defence in support of their argument for accused's release from detention.

Notwithstanding, that, the court took into account, that the accused was described as having bipolar disorder by the forensic psychiatric nurse and still on medication. This entails that, for as long as the accused takes her medication constantly and religiously, she may not have a relapse. She may not pose any danger to any member of her family or society.

In that regard, the court had to weigh and counter balance factors in favour of the accused person's release into the unsuspecting society or detention for further psychiatric examination.

As such, the court took into account firstly, that the accused firstly, has been diagnosed with bipolar disorder. This condition is associated with or characterized by episodes of low and manic high mood swings. Undoubtedly, the accused was under the high end of her mental state when this offence was committed. Therefore, there is no telling when the dangerous mode may erupt or what will trigger it if accused is released.

Secondly, it is evident, that the main reason the mental disturbance has not manifested during her stay in the psychiatric unit, is because of the constant supervision and monitoring by expert personnel. In detention, she religiously takes her medicine. The father said he may have physical challenges to go and obtain the required mental health drugs at the closest health facility which by their standard is a considerable distance away.

This coupled with set belief in other spiritual means as the cause and the cure of the mental illness projects a picture of the accused failing to take the medicine consistently as required. As a result, she may relapse and pose a danger to herself, her family and the community at large.

In addition, the forensic psychiatric nurses' recommendation for discharge was compiled on the 11th of May 2022. The accused stood trial on the 23rd of January 2024. A considerable period of time had passed since the last mental examination and evaluation. Reliance cannot be placed on this document alone. A much recent document would have swayed the court otherwise.

Further, the court is of the view that an involvement of two doctors as envisaged by s35 of the Mental Health Act will give a conclusive report on the mental status of the accused before we gamble with dangers attached to release of such a mentally vulnerable person into society.

Whilst the court is alive to the fact that accused had taken a long-time awaiting trial, it cannot ignore the fact that a discharge by one competent person may be as a result of financial

constraints on the holding institution amongst other factors. The court has to tread more carefully. Accordingly, the court will proceed in terms of s29 as read with s35 of the Mental Health Act. Though the accused seems mentally stable but from the above reasons an updated mental evaluation is called for. The accused's release shall be in terms of s35.

Accused person is committed to the Chukurubi Psychiatric Institution for further evaluation until certified mentally stable in terms of s35 of the Mental Health Act [*Chapter 15:12*].

Mangayi Law Chambers for the Accused.

National Prosecuting Authority for the State.