

THE STATE
versus
PATRICIA MAKURUMURE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 17 January 2011 and 19 January 2011 and 15 March 2011 and 4 May 2011
and 12 May 2011 and 1 February 2012

ASSESSORS

1. Mr. Chivanda
2. Mr Mhandu

E. Makoto, for the State
P.F Mutuso, for the defence

Criminal Trial

BHUNU J: The accused is charged with murder. She is alleged to have set her husband alight on 20 September 2009. On that fateful night the deceased got home drunk and proceeded to fall asleep. While he was fast asleep the accused set him alight thereby causing him fatal burns from which he died on 23 September 2009. The post mortem report confirmed death was due to respiratory failure due to the 85% degree burns which he sustained.

The accused admitted the facts in the main but tendered a special plea of diminished mental responsibility. She stated that when this occurred she was not in her sound and sober senses. She however had a vivid recollection of the events of that night.

She was examined by Mr Christopher Njanjeni a psychiatric Nurse with a Master's degree in psychiatric nursing majoring in psychiatric nursing and mental health issues. He is employed by the Zimbabwe Prison Service and has 20 years experience. His investigations established that the accused set her husband on fire as he slept after she had heard the voice of her late grant mother instructing her to kill her husband before he could kill her. She was confused as to the events surrounding the death of her husband.

Her family has a history of mental illness. Her father had suffered from mental illness at one stage. Her cousin sister suffered from epilepsy. An aunt had committed suicide by hanging.

The accused had problems sleeping. She hallucinated having healing powers as a member of the Johan Masowe Church. She would hear voices from God which helped her in her healing practices.

As a child she had suffered from fits but was treated by a spiritual healer without under going any other medical treatment.

That night as she slept beside her husband she persistently heard a voice saying, "You must kill your husband if you do not kill him he will kill you." That voice prompted her to set her husband alight killing him in the process.

Under cross-examination she had this to say:

"Q. When you killed the deceased you were aware you were killing him?

A. When I was hearing these voices I could see some short men and the deceased was now so short. So when I fought him I thought I was fighting those short men.

Q. How many were the short men?

A. One. He was now so short.

Q. Why did you kill him?

A. Because I was told that if I did not kill him he would kill me.

Q. So you did not kill him because of the marital problems?

A. Yes."

Mr Njanjeni diagnosed that the accused was suffering from epilepsy a neurological disease of the mind. He then recommended that the accused be subjected to an Electro Encephalogram test commonly known as an (EEG) test.

The accused was dully subjected to an EEG test by doctor Makanza who submitted a report. In interpreting the report Mr Njanjeni elaborated that it shows abnormal electrical firing in both temporal lobes. This is influenced by other factors such as sugar levels. When this happens it affects the patient who may hear voices which

others cannot hear. The voices are very powerful such that they can influence one to commit murder .or suicide.

The report shows abnormal electrical firing in the Lobe. This confirms that the accused suffered from bilateral epilepsy emanating from both sides of the temporal lobe. This explains the reason why the accused was hearing abnormal voices. This type of epilepsy leads to abnormal behaviour and criminal conduct.

From the above facts Mr Njanjeni concluded that the accused was suffering from temporal lobe epilepsy, a neurological disorder of the brain and was not in control of her faculties at the material time.

That conclusion is consistent with all the proven facts and the accused's irrational behaviour in killing the deceased for no apparent reason in the middle of the night as they lay in bed. That the accused was suffering from temporal lobe epilepsy was certified by empirical medical evidence that was never challenged at any stage. It is therefore, difficult to accept that the accused might be feigning mental illness because she was certified to be suffering from a disease of the mind which renders a person susceptible to violent criminal conduct of this nature.

The facts establish quite clearly that the couple was in an abusive and unhappy marriage characterized by domestic violence, strife and misery. On the fateful night they had had an altercation before retiring to bed. It was Mr Njanjeni the expert witness' undisputed evidence that such encounters can trigger an attack in people susceptible to temporal lobe epilepsy leading to irrational conduct such as displayed by the accused on the night in question.

While I accept NDOU J's sentiments in the case of *S v Munga* HB 68/03 to the effect that defenses of diminished mental responsibility ought to be treated with extreme caution as the defence is easy to fabricate but difficult to rebut, it ought to be distinguished from the present one.

In the *Munga* case (*supra*) expert evidence did not support the accused's assertion that he was mentally impaired at the material time so as not to be legally responsible for his conduct. At p 4 of the cyclostyled judgment the LEARNED JUDGE had this to say:

“From the expert evidence of Dr Poskotchinova the accused was free from any psychotic symptoms. He was orientated in all respects and there was no evidence of cognitive impairment. He denied any delusions and hallucinations of any kind. The doctor opined that due to alcohol and drugs that he had consumed the accused was in a state of diminished responsibility at the time of killing. We have already indicated that the alleged intake of alcohol and cannabis is a mere fabrication exposed as such by the credible testimony of Mrs Zingwa.”

To make matters worse in that case the accused refused to testify so that the credibility of his evidence regarding his mental status could be tested by way of cross-examination. In this case the accused gave credible evidence that was corroborated by empirical scientific evidence establishing on a preponderance of probabilities that when she allegedly committed the offence she was not mentally responsible for her conduct by reason of a disease of the mind.

We did not understand psychiatric nurse Njanjeni’s evidence to mean that in every case where a person acts while under the influence of temporal lobe epilepsy he will have no independent recollection of his conduct at the material time. We understood him to mean that this was the norm but there are exceptions otherwise he would not have concluded that the accused was suffering from temporal lobe epilepsy so as not to be legally responsible for her conduct at the material time.

Having regard to all the evidence placed before us I find on a balance of probabilities that when the accused set the deceased alight thereby killing him in the process she was suffering from a disease of the mind so as not to know the nature and quality of her conduct in this regard.

Section 29 (2) of the Mental Health Act [*Cap 15:12*] provides that:

“If a judge or magistrate presiding over a criminal trial is satisfied from evidence, including medical evidence, given at the trial that the accused person did the act constituting the offence charged or any other offence of which he may be convicted of 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 s 248 of the Criminal Law Code, the judge or magistrate shall return a special verdict to the effect that the accused person is not guilty because of insanity...”

Having regard to the totality of the evidence placed before this court I am satisfied on a preponderance of probabilities that when the accused killed the deceased by setting him alight she was mentally disordered or intellectually handicapped so as to have a complete defence at law.

She is accordingly found not guilty by reason of insanity.

Bherebhende Law Chambers, accused's legal practitioners
Attorney General's Office, State's legal practitioners