

STATE
versus
GEORGE PFUMBWA

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 26 November 2019

Criminal Trial (Section 29. Mental Health Act [*Chapter 15:12*])

ASSESSORS: 1. Mr Magorokosho
2. Mr Raja

M Musarurwa, for the State
B Majamanda, for the Accused

MUZENDA J: The accused was charged with the crime of Murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] and the state alleged that during the period between 18 and 19 August 2018 and at Plot 47, Zunidza Resettlement, Nyazura, the accused unlawfully caused the death of Patricia Makoni by assaulting her all over the body using an unidentified object intending to kill her, or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Patricia Makoni died.

The accused admitted to causing deceased's death but qualified his admission by stating that he was mentally challenged when he committed the offence. We hence entered a plea of Not Guilty to the charge of murder.

The state and the defence produced a statement of agreed facts which was admitted by this court and marked Annexure "A". According to the statement of agreed facts, accused is a male adult who resides at Plot 47 Zunidza Resettlement Area, Chief Makoni, Nyazura. The deceased, Patricia Makoni, was a female adult who resided at the same address with that of the accused, she was accused's wife. During the period between 18 and 19 August 2018, at the said Plot 47 Zunidza Resettlement Area, the accused assaulted the deceased all over the body using an identified object. The deceased died on the spot. On 23 August 2018 Dr. Aisa

Serrano Gomez carried not a post mortem examination of the deceased's body and concluded that the cause of death was due to:

- (i) hypovolemic shock
- (ii) severe haematoma in both thighs and
- (iii) multiple injuries and contusions.

At the time of the commission of the offence, the accused was mentally disordered and unable to control himself, such that he lacked criminal responsibility. Dr. P. Mavunganidze a psychiatrist formulated the expert opinion that the accused was mentally challenged at the time of the alleged offence, and further pointed out that accused is now fit to stand trial.

The state proceeded to produce the following exhibits by consent of the defence.

- (i) The psychiatrist report, exh 1
- (ii) Post-mortem report exh 2.

Having looked at the evidence led and exhibits produced by the state, and further looking at the statement of agreed facts we are of the agreed view that this is a suitable case for the return of a special verdict to the effect that the accused is not guilty by reason of insanity as contemplated in s 29 (2) of the Mental Health Act [*Chapter 15:12*].

Accordingly the following order is returned:

In terms of s 29 (2) (a) of the Mental Health Act, [*Chapter 15:02*] the accused person is committed to Chikurubi Psychiatric Unit, until he is discharged by a competent authority.

National Prosecuting Authority, state's legal practitioners
Zimbabwe Lawyers for Human Rights, accused's legal practitioners