

THE STATE
Versus

GARIKAI CHIGODO

HIGH COURT OF ZIMBABWE

MWAYERA J

MUTARE, 4 JUNE 2018

Criminal Trial (MENTAL HEALTH ACT - SPECIAL VERDICT)

ASSESSORS: 1. Mr. Magorokosho
2. Mrs. Mawoneke

M Musarurwa, for the State

T Jakazi, for the accused

MWAYERA J: The accused appeared before the court charged with the crime of murder as defined in s 47 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is the State's contention that on 12 April 1997 and at Chabvukwa Village the accused unlawfully and with intent to kill or realising there was a real risk or possibility that death might result struck Kusterera Muyambo with a stick and log all over the body thereby inflicting injuries from which the said Kusterera Muyambo died.

In his response to the charge the accused stated that it happened but that when it happened he was unwell, which culminated in the court entering a plea of not guilty.

There being no disputed facts, the trial proceeded with the state and defence counsels submitting by consent a statement of agreed facts as exh 1. Further submitted by consent was an affidavit of evidence by Dr Walter Mangezi. The affidavit confirmed that the accused was mentally disordered and required further management in a long term special psychiatric institution. The post mortem report by Dr B Dhliwayo which concluded that the deceased Kusterera Muyambo died as a result of head injury following deep cuts to the head was also tendered as exh 3 by consent. Finally in evidence by consent, a sketch plan by the attending details was submitted as exh 4.

The circumstances surrounding the matter were aptly captured in the statement of agreed facts

“STATEMENT OF AGREED FACTS

1. The Accused is a male adult who ordinarily resides in Chabvukwa Village, Chief Musikavanhu in Chipinge.
2. On the 13th day of April 1997, and at Chabvukwa Village Musikavanhu in Chipinge the Accused approached Kutsera Muyambo (the Deceased), who was working in his fields with his family, with the intention of asking the Deceased why he was bewitching the Accused person.
3. The Accused was not satisfied with the response given to him by the Deceased and in anger, he began to assault the Deceased with a small stick on his back.
4. The Deceased took the stick from the Accused, after which the Accused picked up a log and continued to assault the Deceased all over his body.
5. The Accused left the Deceased lying in the field, badly injured but still breathing, to go home. -
6. Upon arriving at his house the Accused decided to return to the scene and upon arrival he again continued to assault the Deceased with a log all over his body.
7. The Deceased attempted to roll away to escape the assault and rolled down an escarpment where he died after landing on rocks at the bottom.
8. The Accused was admitted to Chikuribi Psychiatric Unit, following the commission of the offence that he is being charged with, from 1997 to 2001, after which he was discharged. The Accused was again examined in 2016 by Dr Mangezi, a duly registered Medical Practitioner employed as a Psychiatrist. He observed that the Accused became of sound mind after taking medications for Epilepsy and Mental Disorder. Dr Mangezi concluded, in terms of an affidavit that he deposed to on 1 December 2016 that the Accused was mentally disordered at the time of the commission of the offence, but that he was now fit to stand trial.
9. The Accused cannot properly be found guilty of murder as he lacked the requisite mental capacity at the time of the commission of the offence and should be appropriately dealt with in terms of the Mental Health Act [Chapter 15:12].
10. Dr Walter Mangezi recommended that the Accused be managed in a long term special psychiatric institution to assist in his rehabilitation and anger management.”

Given the evidence presented we found no reason to disagree with both the State and defence counsels’ position. We were moved to act in terms of the Mental Health Act [*Chapter 15:12*].

Given the accused’s stated mental condition we agreed to return a special verdict of not guilty because of insanity. As regards the accused’s fate after the special verdict again as correctly observed by both the State and defence counsels who addressed us, we found no basis and justification for discharging the accused person. This is moreso, when one considers the specialist doctor’s opinion that the accused still requires assistance to manage this mental condition. The accused requires management and rehabilitation at a psychiatric institution. It is our considered view that it is in the interests of the accused and society at large for the court not to prematurely release the accused. In the

circumstances of this matter, the institutionalization of the accused for further treatment and management is viewed as a protective measure that ensures the accused and community at large's safety while the interests of administration of justice is also safeguarded. See *S v Sonaiso Donald Khumalo* HB 61/06, *S v Zvoushe* HB 28/13 and also *S v Pretty Mutunga* HH 23/13. The institutionalization is an administrative measure which will enable his further management and release at the appropriate time by the Health Review Tribunal or other competent body as provided for by the Mental Health Act.

Accordingly having returned a special verdict that the accused is not guilty because of insanity and having found that the accused still requires institutionalization, for further treatment and management it is ordered that:

1. The accused is not guilty because of insanity.
2. The accused be returned to prison for transfer to Chikurubi Psychiatric Unit or such other appropriate institution for his continued treatment and management until discharged therefrom by a competent body.

A handwritten signature in black ink, appearing to be 'HDCY'.

*National Prosecuting Authority, state's legal practitioners Maunga
Maanda & Associates, Accused's legal practitioners*

