

THE STATE  
versus  
JONES GUVHEYA

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 21 May 2019

**Criminal Trial (Mental Health Act 15:12)**

ASSESSORS: 1. Dr Sana  
2. Mr Chagonda

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

MUZENDA J: The accused was arraigned before us on a charge of murder and attempted murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The state alleged that on 20 December 2017 and at Guvheya homestead, Nyatsanza Village, Chief Mutasa, the accused unlawfully caused the death of Eugenia Guvheya by assaulting her with an axe handle all over the body 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 thereby causing severe injuries from which the said Eugenia Guvheya died. On the second count it is alleged that on the same fateful date the accused unlawfully attempted to cause the death of Christina Chidhakwa by assaulting her with an axe on the left side of the head thereby causing severe injury from which the said Christina Chidhakwa could have died.

When the 2 charges were put to the accused, he indicated to court that he admits what happened but that it occurred when he was mentally challenged. As a result pleas of not guilty were entered. The state and defence counsel advised the court that they had taken a position informed by the nature of accused's plea and the affidavit of Dr Patience Mavunganidze, a psychiatrist, to proceed in terms of S 29 of the Mental Health Act [*Chapter*

15:12]. The affidavit of Dr P Mavunganidze was tendered as evidence and was accepted by the court as exh 1 by consent.

A statement of agreed facts was tendered as an exhibit, it summarises the events as follows:

On 20 December 2017 at Guvheya homestead, Nyatsanza Village, Chief Mutasa, the accused assaulted the deceased with an axe handle all over the body. The deceased sustained severe injuries which caused her death. The accused went on and attempted to cause death of Christina Chidhakwa by assaulting her with an axe on the left side of the head thereby causing severe injuries from which the said Christina Chidhakwa could have died. Christina Chidhakwa was rushed to Bonda Mission Hospital for treatment and a medical report was compiled. The deceased's body was conveyed to Parirenyatwa Hospital Mortuary where a post-mortem examination was conducted by Dr Roberto Trecu. He concluded that the cause of death was due to (a) traumatic shock (b) spine and ribs fractures haemoperitaemic (c) multiple traumas due to assault. 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. The account given in the summary of the state case reflects a horrendous unprovoked assault consistent with a mental disorder in view of the fact that the deceased was accused person's grandmother. Complainant Christina Chidhakwa is her mother.

The state further produced the following by consent of the defence counsel:

- (i) Post-mortem report
- (ii) Medical report
- (iii) Certificates of weight
- (iv) Sketch plan
- (v) Axe handle and the axe.

Given the statement of agreed facts, the psychiatrist medical evidence and the circumstances under which the offence was committed, the court agreed with the state and defence counsels that the matter be handled in terms of the Mental Health Act. The circumstances call for the return of a special verdict of Not Guilty because of insanity.

It was also agreed between the state and the defence that accused still requires management, treatment and rehabilitation and in our view it would be improper to prematurely release him. Institutionalisation of the accused is ideal for his recovery.

Accordingly, it is ordered that:

- (a) Accused is found Not Guilty because of insanity.

- (b) The accused be returned to prison for transfer to Chikurubi Psychiatric Unit or such other appropriate institution for treatment and management until discharge therefrom by a competent body.

*National Prosecuting Authority, state's legal practitioners*

*Khupe & Chijara Law Chambers, accused's legal practitioners*