

NDIKIYANA MUGADHUYI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 11 June 2019

Criminal Trial

ASSESORS: 1. Mr Mudzinge
2. Mr Magorokosho

E Mvere, for the defence
M Musarurwa, for the State

MWAYERA J: The accused pleaded not guilty to a charge 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 and at Canlebury Farm Chief Mutasa, the accused unlawfully caused the death of Diana Sithole by assaulting her with an unknown object on the forehead and face 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 the injuries from which Diana Sithole died.

Both defence and state counsel proposed that we proceed with the matter in terms of the Mental Health Act. Their decision was informed by the medical evidence as expressed by Dr Patience Mavunganidze who examined the accused and compiled an affidavit in which she opined that at the time of commission of the offence the accused was mentally disordered. The doctor further gave opinion that after the accused's admission and treatment for mental illness he was now fit to stand trial as he is now of a sound mind and able to appreciate the criminal proceedings.

The state and defence counsel prepared a statement of agreed facts which outlined how the accused on the day in question, the fateful day assaulted the deceased on the head and face. From the summary and statement of agreed facts the attack was an unprovoked and

horrendous one. That manner of attack also informed the state and defence counsel's decision to proceed with the matter in terms of the Mental Health Act.

We found no basis not to agree with the state and defence's informed decision and thus proceeded with the matter in terms of s 29 of the Mental Health Act [*Chapter 15:12*]. The offence of murder which the accused is charged of consists of the *actus reas* and *mens rea*. The actions of physically assaulting are not in contention but the intention cannot be proved where it is a fact that the accused was mentally disordered and therefore was incapable of formulating the requisite intention. The essential elements would consist of unlawful and intentional killing. The requisite intention is absent because of the mental disorder which the accused suffered at the time of the commission of the offence.

Accordingly as prayed for by both the state and defence counsel we return a special verdict of not guilty by reason of insanity. Both counsels have recommended that the accused still requires further management and care and that both his parents are late, as such there is no one to assist him till he fully recovers.

It is ordered that:

1. The accused is not guilty by reason of insanity.
2. The accused be returned to Chikurubi psychiatric unit or any other psychiatric unit for further management till released by a competent tribunal in terms of the law.

National Prosecuting Authority, state's legal practitioners
Mvere, Chikamhi and Mareanadzo, defence's legal practitioners