

THE STATE
versus
VIOLET KUDOMA

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 9 July 2019

Criminal Trial (Mental Health Act)

ASSESORS: 1. Mr Magorokosho
2. Mr Chipere

M Musarurwa, the State
T. T Sigauke, for the Accused

MWAYERA J: The accused pleaded not guilty to a charge of murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged that on 24 June 2017 at Kanyangira Village, Chief Makoni, Rusape, the accused unlawfully caused the death of Emily Kudoma by striking her with two bricks on the head twice intending to kill her or realising that there was a real risk or possibility that her conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which Emily Kudoma died.

The brief facts informing the charge are that the deceased and accused were mother and daughter respectively. They were staying together at Kanyangira Village. On 24 June 2017 the accused struck the deceased with two half bricks on the head leading to the deceased sustaining head injuries which caused her death. The state and defence counsel prepared a Statement of Agreed Facts in which they lay out how the accused struck the deceased. The Statement of Agreed Facts revealed that at the time of the commission of the offence the accused was mentally disordered and thus unable to control her self such that she lacked criminal responsibility.

Both counsels proposed that the matter proceeds in terms of the Mental Health Act [*Chapter 15:12*] and sought a prayer of a special verdict of Not Guilty by reason of insanity to be considered. The affidavit of evidence by Dr Patience Mavunganidze a medical practitioner and psychiatrist was tendered as exh 5 by consent. The doctor expressed opinion

that at the time of the commission of the offence the accused suffered mental disorder which made her unable to appreciate the wrongfulness or otherwise of her actions. The doctor further opined that after undergoing treatment and management the accused was fit to stand trial.

Also tendered in evidence was the post mortem report exh 1, referred to by Doctor Thomas Nyamudya who concluded that cause of death was intracranial haemorrhage. The certificate of weight of the bricks used to strike deceased weighing 4,35 kg was tendered as exh 3 by consent and also the bricks tendered as exh 4. The sketch plan showing the general layout of the scene of crime as observed by attending police details through indications from witnesses was also adduced in evidence as exh 2 by consent.

Having considered the evidence adduced and the statement of agreed facts, we reached a conclusion that the accused was mentally challenged at the time of the alleged commission of the offence. She could thus not have the capacity to appreciate and formulate the requisite intention to commit murder.

In the premises, a special verdict of not guilty by reason of insanity has to be returned. The defence and state counsel made further submissions as regards the fate of the accused after the special verdict. We must comment that the fate of an accused after the special verdict in terms of the Mental Health Act [*Chapter 15:12*] is to be considered. The consideration of the fate after the special verdict is in our view important as an administrative measure to ensure protection of not only accused but the community at large.

In this case counsel for the accused with the concurrence of the State counsel urged the court to consider retention of the accused to a psychiatric unit for further management and treatment as there is no one readily available to accept and assist the accused with regular intake of her medicine. The accused's deceased mother was the guardian of the accused. In the circumstances, it is desirable that for accused and the community protection the accused gets special assistance at the appropriate institution.

Accordingly 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 such suitable institution for further management and treatment till she is released by a competent tribunal in terms of the law.

*National Prosecuting Authority, State's legal practitioners
Gonese and Ndlovu, accused's legal practitioners*