

THE STATE
versus
NELSON MWANDISANGUDZA

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 24 JANUARY 2018

Criminal Trial

W Mabaudhi for the state
Ms M Busayi for the accused person

MATHONSI J: The accused was aged 23 at the time of the commission of the offence on 7 February 2017. He is facing a charge of murder as defined in section 47 of the Criminal Law [Codification and Reform] Act [Chapter 9:23]. It is alleged that on 7 February 2017 and at house number 1918 Island Emganwini, Bulawayo he used an unknown object to strike his mother Spiwe Mwandisangudza on the head killing her instantly. The accused is pleading insanity which the state has acceded to.

According to the statement of agreed facts placed before us the deceased was indeed the accused's mother. She was aged 54 years and they both resided at house number 1918 Island, Emganwini in Bulawayo. At about 0600 hours on 7 February 2017 the two had a misunderstanding after the accused had thrown his mother's clothes out of the house. It was during the course of that misunderstanding that the deceased remarked that the accused had relapsed and needed to be taken to Ingutsheni Mental Hospital. The accused threatened to kill the deceased.

During the course of the day the accused attacked the deceased with a blunt object on the head killing her instantly. He wrapped the deceased's body with a blanket and placed it underneath the bed before fleeing from the house. He was only arrested two days later on 9 February 2017.

According to Dr S Pesanai a pathologist based at United Bulawayo Hospitals who examined the body of the deceased on 8 February 2017 the cause of death was extensive

subarachoid haemorrhage, blunt force head trauma due to assault. We have also had the benefit of the report compiled by Dr Nemache Mawere a psychiatrist based at Mlondolozzi Special Institute. He examined the accused person on 12 October 2017 and 7 November 2017 at Mlondolozzi Special Institute.

The doctor concluded as follows:

“In my opinion at the time of the alleged crime there is a reasonable possibility that the accused suffered from a mental disorder of schizophrenia. He did not appreciate the wrongfulness of his actions. The accused is fit to stand trial.”

Counsel have in light of the findings of the psychiatrist urged of us the return of a special verdict. We are of the view that this is a matter falling under the provisions of section 29 (2) of the Mental Health Act [Chapter 15:12] which enjoins this court where it is satisfied from the evidence presented at the trial that indeed the accused person perpetrated the act constituting the offence charged but that when he committed it he was mentally disordered so as not to be held responsible for his actions as provided for section 248 of the Criminal Law Code, to return a special verdict. We are so satisfied.

In the result it is ordered that;

1. The accused is hereby found not guilty by reason of insanity.
2. The accused shall be returned to prison for transfer to a special mental institution for treatment.

National Prosecuting Authority, the state’s legal practitioners
Ndove and Associates, accused’s legal practitioners