

THE STATE
versus
EMMANUEL MOROSI

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 14 JUNE 2016

Criminal Trial

Ms N. Ngwenya for the state
K. Dube for the accused

MATHONSI J: The accused person is facing two counts of murder, the first one arising out of the death of his estranged wife Janet Nyathi on 1 June 2005 at village 10 Nkankezi Area, Filabusi, while the second one relates to the death of an inmate at Khami Remand Prison on 5 January 2012. The second killing occurred at a prison cell which the accused was sharing with the deceased, Themba Nkiwane and another inmate Ethical Dube, while he awaited trial for the killing of his wife.

At the time that Janet Nyathi met her untimely death she was aged 18 years old while the accused was 20 years old. Despite their young ages, the two had managed to find time not only to get married and sire a child, they had also managed to quarrel over the death of their child and to separate.

It is alleged that on 1 June 2005, the two had an argument over the same issue as a result of which the accused had accosted the deceased at a watering hole in the presence of witnesses. As the deceased took to her heels, the accused is said to have given chase and stabbed her four times on the body with a spear and a knife killing her on the spot.

In the second count, it is alleged that the accused and the deceased were sleeping in the same cell but in different blankets on the night of 5 January 2012. During the course of the night the deceased quarrelled with a third inmate, Ethical Dube. The accused woke up and assaulted the deceased with fisticuffs while Ethical Dube throttled him as a result of which the deceased died.

The state has produced a medical affidavit by Dr Nemache Mawere who examined the accused person on 26 May 2016. In the doctor's opinion:

“---at the time of the alleged crime the accused was suffering from seizural disorder (which causes unprovoked violence and is episodic). He did not appreciate the wrongfulness of his actions on both occasions.”

The state has urged of us the return of a special verdict in consideration of the medical evidence. Significantly in his defence outline submitted earlier and orally by his legal practitioner in court the accused person stated that he is indeed a psychiatric patient and that at the time that he committed the first killing he had lost control of his mental faculties. That seems consistent with the medical evidence of the doctor which has been placed before us.

In terms of section 29 (2) of the Mental Health Act [Chapter 15:12], if the court is satisfied from the evidence, including the medical evidence, given at the trial that the accused person did the act constituting the offence charged but that when he did the act he was mentally disordered or intellectually handicapped so as to have a complete defence in terms of section 248 of the Criminal Law Code, it shall return a special verdict.

In light of the evidence that has been produced which is unchallenged, we are indeed satisfied that the accused person was mentally handicapped when he committed the two offences for which he is charged.

Accordingly, in respect of both counts, it is ordered that:

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

National Prosecuting Authority, the state's legal practitioners
Shenje and Company, accused's legal practitioners