

THE STATE

Versus

ZILOLWAZI SIQEDENI NDLOVU

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr P. Damba and Mr J. Sobantu

BULAWAYO 26 MAY2021

Criminal Trial

T. Muduma for the state

Miss A. Ndlovu for the accused

MAKONESE J: The accused was aged 50 years at the time of the commission of the offence. The deceased was aged 3 years at the time he met his death. The accused appears in this court facing a charge of murder in contravention of s 47(1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The accused admits committing the murder but alleges that she lacked the requisite mental capacity to commit the offence by reason of insanity. The state and defence have filed a statement of agreed facts narrating the events leading to the murder. On 20th June 2019 and at around 0300 hours the accused and deceased were sleeping in their bedroom at Anele Ncube's homestead, Malandu Village, Sun Yet Sen. Accused woke up and strangled the deceased using a woollen hat which she tied around the deceased's neck. Accused placed the body inside a travelling bag and concealed it with clothes. On 20th June around 1900 hours Thandi Moyo who is a neighbour to the accused sent her son Germany Ncube to go and check on the accused who is an HIV patient. Accused had been behaving strangely the previous day. Upon arrival at deceased's home, Germany found deceased hallucinating saying the deceased had been taken by angels. The accused requested to phone her husband who is employed Metal Ventures Mine. Germany N went to his mother and informed her that the accused was behaving in a strange manner. The two then proceeded to accused's place of residence where they found Nkosilathi Sibanda. Accused then asked Germany and Thandi Moyo to leave the room for she wanted to speak with her husband in private. Accused then revealed to her husband that she had killed the deceased by strangulation. Accused was handed to a member of the police constabulary who attended the scene. The matter was reported to Zimbabwe Republic Police Sun Yet Sen who arrested the accused. Police officers opened accused's travelling bag and found deceased's remains with a woollen thread around the neck.

The state tendered into the record a post mortem report compiled by Dr S. Pesanai. The report reveals that the cause of death was:

- (a) Asphyxia
- (b) Strangulation
- (c) Assault

By consent of counsel for the state and the defence a Psychiatrist's report compiled by Dr Rodriguez Cordon Andres was tendered into the record. The report indicates that the accused did not have a history of mental illness. She did not consume alcohol. She is HIV positive. She was behaving strangely before the murder. She suffered from hallucinations. She had transient psychosis. In his opinion, the psychiatrist concluded that at the time of the commission of the offence the accused was mentally disordered, suffering from neurocognitive disorder (transient psychosis). She did not appreciate the wrongfulness of her actions at the material time.

Counsel for the accused, *Miss A. Ndlovu* sought to persuade the court to order a release of the accused in terms of section 29(2) (c) of the Mental Health Act (Chapter 15:12). We pointed out that at this stage of the proceedings, the court did not have further medical evidence to suggest that accused had sufficiently recovered to be returned to society. *Miss Ndlovu's* assertions were primarily based on the fact that the Mental Health Tribunal was not functional and that the accused was likely to spend inordinate time in a special institution without medical attention and further assessment.

Mr Muduma, appearing for the state did not make substantive argument on the matter and left it to the court to decide.

On the facts presented to use we are satisfied that the accused lacked sufficient mental capacity to appreciate the wrongfulness of her actions at the material time. She could not be held criminally liable for her conduct. A special verdict is appropriate. As for the release of the accused into society, this court shall leave that to the mental health practitioners and make an appropriate order to take into account the concerns raised by counsel for the accused. It would not be proper to rely on submissions from the bar in the absence of accurate and reliable medical expert evidence on accused's current mental state.

It is important for this court to highlight that cases of violent murder committed by mental patients are on the rise. There needs to be adequate mental health care afforded to persons such as the accused. There needs to be mechanisms to follow up on those detained in terms of the Mental Health Act. Where appropriate, persons committed to person in terms of the special verdict ought to be assessed and released where this is deemed safe and appropriate. In the end, the courts are not equipped to release persons back into society unless there is sufficient and cogent evidence from expert mental health practitioners indicating that accused persons have recovered and are no longer a danger to society.

In the circumstances, and accordingly the following order is made:

1. The accused is found not guilty by reason of insanity in terms of s29 of the Mental Health Act (Chapter 15:21).
2. The accused shall be returned to prison pending transfer to Mlondolozhi Special Institution for further examination and care.
3. The accused shall immediately be reviewed by a Psychiatrist and a report shall be submitted on her mental condition and suitability for early release.

National Prosecuting Authority, state's legal practitioners
Webb, Low & Barry accused's legal practitioners