

THE STATE

versus

LAMECK CHARIDZA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 2 March, 2017

Assessors

1. Mr P.N. Dhauramanzi
2. Mr S. Mutomba

Criminal Trial

Mr T. Chikwati, for the state
Mr O. Mafa, for the accused

MAWADZE J: The accused was arraigned for contravening section 47(1) of the Criminal & Law (Codification and Reform), Act [*Chapter 9:23*] which relates to murder.

The facts of the matter are largely common cause.

The then 30 year old accused was a mental patient at the time of the commission of the offence. The now deceased was then aged 24 years. They were both neighbours and friends.

On 3 June 2016 and at Mupagamuri Primary School in Chivi, Masvingo both accused and the now deceased were from a beer drink and were apparently both intoxicated. This can be ascertained from the nature of the dispute or misunderstanding they had. The now deceased was calling himself “Chibaba” a phrase or term popularised by a local urban groove musician called Soul Jah Love. The accused took offence and ordered the now deceased to stop calling

him (the deceased) “Chibaba”. The now deceased then picked a stone and struck the accused on the head causing him to bleed profusely. The accused in turn force marched the now deceased to one Nyandoro’s homestead wielding a 2.5 m long log. At Nyandoro’s homestead accused severely assaulted the now deceased with the log all over the body causing multiple bruises, a loose hypermobile neck, broken left arm and other internal injuries. The accused was only stopped from assaulting the now deceased by one Nyandoro who disarmed the accused and took the two to Berejena police base and then to Berejena clinic where both were ferried to Matibi Mission hospital. The now deceased was pronounced dead on arrival at Matibi Mission hospital and the accused was treated and discharged. The post mortem conducted on the deceased showed that the cause of death was cervical subluxation.

It is clear from the facts that accused is a mental patient. Both Counsel for the State and accused conceded to this fact. The affidavit by Dr Patrick Mhaka – ‘Exhibit 3’ confirms this fact. As per that report accused had a long standing history of mental illness dating back to 1997 when he experienced his first psychiatric episode. As a result, the accused was admitted at Ngomahuru Psychiatric hospital for some time and subsequently discharged. The accused continued to receive treatment at a local clinic. According to the doctor who examined the accused the accused was psychotic (sign of mental disorder) and suffered from auditory hallucinations (hearing voices in his head). As result accused was put on medication for mental illness until he was no longer hallucinating and psychotic. The doctor although certifying that the accused was now fit to stand trial made a finding that when accused committed the offence of murder he was mentally disordered. Accordingly, we returned a special verdict to the effect that the accused is not guilty because of insanity as is provided for in s 29(2) of the Mental Health Act [*Cap 15:12*].

The next issue we considered is how to deal with the accused after returning a special verdict. The court is guided by the provisions of s 29(2)(a) to (c) of the Mental Health Act [*Cap 15:12*] which gives the court three options on how to deal with the accused.

We note with great concern that cases of murder committed by mentally ill persons are worryingly prevalent especially in Masvingo.

In our view they may be great need for the society in general and relatives in particular to closely monitor those members of our society who are mentally disordered. This is to ensure

that they do not take alcohol or other intoxicating drugs. If they are on treatment it is important to ensure that they religiously adhere to treatment to avoid relapsing.

In this particular case the accused was consuming alcohol despite his known mental state. As a result, a life was lost over a silly and petty dispute sparked by the now deceased who was the initial aggressor.

From the facts before us the accused was also known to be of violent disposition. In fact, it is said he once burnt a neighbour's house for no apparent reason. It is therefore our considered view that we have a duty to protect the society from the accused and also protect the accused himself. In the circumstances it would be foolhardy to release the accused back into society. There are a number of reasons why this would be improper.

The accused was last examined by a psychiatrist as per Exhibit 3 on 1 August 2016, some 6 months ago. The purpose of that examination was to determine if accused was not fit to stand trial. No examination was carried out to determine whether accused was now fit to be released back to society. A lot may also have happened from August 2016 to date in relation to the accused's mental state. We do not have sufficient evidence or information as to whether it would be safe and in the interest of justice to release the accused back into society. The proper course of action to take is to send the accused back to Masvingo Prison so that he would be transferred to Chikurubi Prison Psychiatric Unit for examination and or treatment. Thereafter the accused can only be released back into society after a proper evaluation by the experts who would be satisfied that accused is no longer a danger to himself or to society. As a court and on the evidence before us one cannot guarantee that accused would not relapse and that these tragic events would not recur.

Accordingly, it is hereby ordered that the accused be returned to Masvingo Prison and thereafter to be transferred to Chikurubi Prison Psychiatric Unit for examination and or treatment in terms of s 29 (2)(a) of the Mental Health Act [*Cap 15:12*] and to be released in accordance with the provisions of the said Mental Health Act [*Cap 15:12*].

National Prosecuting Authority, counsel for the State

Mutendi & Shumba, pro deo counsel for the accused