

THE STATE
versus
HARDLIFE SIMANGO

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 17 July 2018

Criminal Trial (Mental Health Act- Special Verdict)

ASSESORS: 1. Mr Raja
2. Mrs Mawoneke

M. Musarurwa, for the State
C. Mukwena, for the defence

MWAYERA J: The accused a known mental patient appeared before the Court charged with the crime of murder as defined in s 47 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged by the State that on 2 June 2015 at Chadamoyo ‘B’ Village, Chief Garahwa, Chipinge, the accused person assaulted the deceased using two stones. The deceased sustained severe injuries from which the deceased died.

The State and defence counsels came up with a statement of Agreed Facts tendered as exh 1 by consent. Further submitted by consent was an affidavit of evidence marked as exh 2 by Dr Patrick Mhaka. The affidavit confirmed that the accused was mentally disordered at the time of the alleged crime. A Post Mortem report by Dr Brian Makumbe which concluded that the cause of death was due to Septicemia was tendered as exh 3 by consent. Weight certificate of the stones was also tendered by consent and marked as exh 4. Finally in evidence by consent, a sketch plan by the attending details was submitted as exh 5.

The circumstances surrounding the matter were captured in the statement of agreed facts paragraph 1-9.

Statement of Agreed Facts

- “1. The Accused person and the deceased used to reside at Chadamoyo Chitepo ‘B’ Village, Chief Garahwa, Chipinge.
2. The deceased and the Accused person are father and son respectively.

3. On the 2nd of June 2015 and at Chadamoyo Chitepo 'B' Village, Chief Garahwa, Chipinge, Accused person assaulted deceased using two stones several times on the head and deceased sustained severe injuries from which the deceased passed on.
4. Post Mortem was carried out and Dr Makumbe Brian compiled a post mortem report and concluded that cause of death was due to Septicemia.
5. Accused person was arrested and appeared before the Magistrates Court in Chipinge and was committed to Chikurubi Psychiatric Centre in terms of the Mental Health Act [*Chapter 15:12*].
6. On the 6th of July 2017, Dr Patrick Mhaka examined the Accused person at Chikurubi Psychiatric Centre and found him to be of a sound mind.
7. Dr Patrick Mhaka a Psychiatric gave his opinion and concluded that at the time of the alleged crime, the Accused was Mentally Disordered and therefore could not formulate the requisite *mens rea* to commit murder.
8. Dr Patrick Mhaka compiled his affidavit statement and will be produced as exhibit in court.
9. The State and Defence have agreed to urge court to proceed in terms of s 29 of the Mental Health Act [*Chapter 15:12*].”

Given the evidence presented we found no reason to disagree with both the State and defence counsel's position. The accused was not mentally stable when he committed the offence and as such could not formulate the requisite intention to murder his father. In the circumstances we found it appropriate for the court to return a special verdict that the accused is not guilty because of insanity, see *Pretty Matunga* HH23/13.

According to Dr Patrick Mhaka's affidavit, the Accused is now on medication for mental disorder. He is no longer psychotic and no longer has auditory hallucinations. Dr Patrick Mhaka examined him and found him to be of sound mind and thus fit to stand trial. However, as submitted by both counsels efforts to get a relative willing to stay with accused have not yielded positive results. Both the accused's parents are late and the accused's uncle, one Aaron Simango who attended court advised that the accused is also living with epilepsy and that he has problems of not taking his medicine regularly. This causes relapse in most cases. The accused then chases fellow villagers especially women. The uncle was reluctant to take the accused with him. Both counsels suggested further management. It is our considered view that the accused might be a danger to himself and society at large if he does not partake of his

medication regularly. He may still require further treatment and management for compliance so as to be guaranteed of not only his safety but also the community at large. See *S v Sonaiso Donald Khumalo* HB 61/06. The Institutionalisation is necessary for the benefit of the Accused and community as it will enable constant medical attention. The accused will then in due course be released by a suitable tribunal in terms of the law.

Accordingly, it is ordered that:

1. The Accused is found not guilty because of insanity.
2. The Accused be returned to Chikurubi Psychiatric Unit or any other such appropriate institution for the treatment and management until released therefrom by a competent body or health tribunal in terms of the law.

National Prosecuting Authority, State's legal practitioners
Tanaya Law Firm, accused's legal practitioners