

THE STATE
versus
JUDITH MUPELEFURAHA MULUMBA

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 30 October 2018

Criminal Trial (Mental Health Act- Special Verdict)

ASSESORS: 1. Mrs Mawoneke
2. Mr Mudzinge

Mrs J Matsikidze, for the State
HBRT Tanaya, for the accused

MWAYERA J: In this case precious human life was lost in circumstances where religious extremism was at play. Under the umbrella of exorcising demons, a nine year old was strangled to death. It is alleged by the State that on 14 June 2013 and at Tongogara Refugee Camp, Chipinge, Judith Mupelefuraha Mulumba unlawfully caused the death of Kubota Mupelefuraha Mulumba or realising that there was a real risk or possibility that the conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which Kubota Mupelefuraha Mulumba died. The accused pleaded not guilty to the charge.

From the summary of the State case and statement of agreed facts tendered as exh 1 by consent it is common cause the deceased and accused were related as they were sisters. It is also common cause that on the fateful day the accused who was at a church gathering with the deceased after the church service, started to “pray” for the deceased. The accused in a horrendous manner mounted on the deceased and inserted her fingers into the deceased’s mouth. She choked the deceased while at the same time shaking the deceased’s head vigorously. The accused believed she was praying to exorcise demons.

The witnesses in attendance also tried to stop the accused but failed. The deceased was choked to death and the remains were taken for post mortem. The Post Mortem Report compiled by Dr Mutetwa was produced as exh 3 by consent and cause of death was established

as cervical neck dislocation and asphyxiation. The unprovoked horrendous assault of the deceased is spine chilling. We were not surprised when the State and defence counsels came up with a statement of agreed facts and sought the court to proceed with the accused in terms of s 29 of the Mental Health Act [*Chapter 15:12*]. The respective counsel presented the Affidavit of evidence of Dr Walter Mangezi a duly registered medical practitioner, specialist psychiatrist. The Doctor formulated an opinion that the accused was mentally disordered at the time of commission of crime in 2013. At the time of commission of the offence the accused was a mental patient whose mental disorder manifested by being talkative, excessively reading the bible in a manner out of character and also being physically aggressive.

This culminated in the gruesome assault on the deceased under excessive stance to exorcise demons from a 9 year old. This behaviour which is out of the ordinary and normal occurred when the deceased was mentally disordered. The offence of murder requires establishment of both the *actus reas* and *mens rea*. In this case given the obvious mental disorder confirmed by Dr Mangezi the accused person cannot be said to have had the requisite intention to carry out the offence of murder. The psychiatrist Dr Walter Mangezi outlined that the accused responded well to the medicine for mental disorder administered on her since 2013.

The accused was subsequently released on bail in March 2014 and was viewed as being fit and of sound mind to stand trial. The accused, when she appeared in court before us impressed the court as an individual appreciating the proceedings. She tendered a plea of not guilty to the charge and given the history of mental instability, we acceded to the request by the respective State and defence counsels to retain a special verdict of not guilty because of insanity.

We were further addressed on post special verdict fate of the accused. It was clear as reflected in the statement of agreed facts that the accused was released on bail in 2014. She has been religiously taking the medication and has started her own family. She has a husband and two children. Further she stays in a refugee camp, Tongogara were the authorities there are aware of the condition and medicines are readily available.

This background information clearly portrays that the accused is no longer a danger to herself and to the members of the community. She does not, in our considered view require further institutionalisation as a protective measure for herself and the society at large. See *S v Pretty Matangi* HH 23/13 and also *S v Sinaiso Donald Khumalo* HB 61/06.

In the premises we accordingly order that:

1. A special verdict of not guilty because of insanity be and is hereby retained.

2. The accused is released to go and stay with her family at her official residence at Tongogara Refugee Camp.

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