

THE STATE  
versus  
ZVIITEYI CHIMANIKIRE

HIGH COURT OF ZIMBABWE  
MWAYERA J  
MUTARE, 17 & 18 July 2018

**Criminal Trial (MENTAL HEALTH ACT – SECTION 29)**

ASSESORS: 1. Mr Chagonda  
2. Mr Chipere

*M Musarurwa*, for the State  
*C Maunga*, for the defence

MWAYERA J: The accused, a known psychiatric patient struck the deceased her sister an, also known psychiatric patient. The accused struck the deceased all over the body using a wooden stick thereby causing head injuries from which the deceased died as per the post mortem report tendered by consent of counsels as exh 3. The offence occurred on the 19<sup>th</sup> of December 2016 at House number 7708, Area 16, Dangamvura, Mutare.

The state and defence counsels came up with a statement of agreed facts tendered as exh 1 by consent. It was apparent from the statement of agreed facts that the respective counsels sought for the matter to be dealt with in terms of s 29 of the Mental Health Act [*Chapter 15:12*].

This was occasioned by the fact that there are no factual disputes in this case. The accused was mentally ill and could thus not have the requisite *mens rea* to commit the crime of murder. The offence requires both the *actus reas* and *mens rea* to be proved. The accused, is a known psychiatric patient as confirmed by a specialist, Dr P Mhaka (psychiatrist). The affidavit of evidence from the doctor shows that the accused's mental disorder challenges set in in 2008 and that at the time of commission of offence she was suffering from psychotic disorder. She from 2008 had been treated for the mental condition at Mutare Provincial Hospital. On the day of the commission of the offence the psychosis made her not to appreciate the wrongfulness of her conduct.

The accused was taken up for treatment after the fatal attack on her sister and after administration of medication for mental disorder she was certified by Dr Mhaka exh 2(a) fit and able to stand trial.

It is apparent from the common cause aspects and the statement of agreed facts that there is no doubt that when the accused fatally struck the deceased she was suffering from mental illness thus negating her ability to formulate the requisite intention to commit murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The law provides in regulating the criminal liability of the mentally ill in s 29 (2) of the Mental Health Act. It states:

“If a Judge or Magistrate presiding over a criminal trial is satisfied from the evidence including medical evidence, given at the trial that the accused person did the act constituting the offence charged or any other offence of which he may be convicted on the charge, but that when he did the act he was mentally disordered or intellectually handicapped so as not to be responsible for the act, the Judge or Magistrate shall return a special verdict to the effect that the accused person is not guilty because of insanity.”

In this case having regard to the undisputed evidence before the court it has been made clear that the accused was suffering from mental disorder at the time of the commission of the offence and as such she cannot at law be held responsible for the offence of murder. In her circumstances, it is appropriate for the court to return a special verdict that the accused is not guilty because of insanity, see *S v Pretty Matunga* HH 23/2013 and see also *S v Khumalo* HB 61/02.

The state counsel and defence counsel addressed us on the fate of the accused after the special verdict. We are indebted to both counsels for efforts made in contacting and bringing in to court some of the accused’s relatives. It was apparent from the submissions that accused was viewed as requiring further treatment and management for not only her safety but her grade 3 child, relatives and the community at large. We viewed the administrative institutionalisation as necessary for the benefit of the accused and community as it will enable constant medical attention and 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 such 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*  
*Maunga Maanda & Partners, accused's legal practitioners*