

STATE  
versus  
PATRICK MAFAKE

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 16 July 2019

ASSESSORS:           1. Mrs Mawoneke  
                              2. Mr Chipere

**Criminal Trial (Section 29. Mental Health Act [*Chapter 12:12*])**

*M Musarurwa*, for the State  
*K. G Muraicho*, for the accused

MUZENDA: The accused was charged with the crime of Murder as defined in s 47 (1) (a) or (b) of the Criminal law (Codification and Reform) Act [*Chapter 9:23*] where the state alleges that on 29 May 2017 at Dzingire Village, Chief Muusha, Chimanimani, the accused unlawfully caused the death of Loyce Mafake by assaulting her several times all over the body using a log intending to kill her resulting in injuries on the chin, left cheek and on the side of left eye from which she died.

The accused pleaded guilty but a plea of not guilty was entered, he added and qualified the plea by stating that he was not mentally stable when he committed the offence. The state and defence prepared and produced a statement of agreed facts which were admitted by the court and labelled exh 1. According to the agreed facts the accused is a male adult who resides at Dzingire Village, Chief Muusha Cimanimani in Manicaland province. The deceased, Loyce Mafake was his mother residing with accused during her lifetime. On 29 May 2017 the accused assaulted the deceased with a log all over the body resulting in the deceased sustaining severe injuries on the chin, left cheek and on the side of the left eye. The deceased died on the spot. Her body was conveyed to Chipinge mortuary. On 31 May 2017 Doctor K. P Guvheya carried out a post-mortem examination and concluded that the cause of death was due to basal skull fracture due to severe head injury. He compiled a post mortem report. At the time of the

commission of the offence the accused person was mentally disordered and unable to control himself such that he lacked criminal responsibility. The account given in the summary of the state case reflects a horrendous unprovoked assault consisted with mental incapacitation in view of the fact that the deceased was accused's mother. Doctor Patience Mavunganidze, a psychiatrist formulated the expert opinion that the accused was mentally challenged at the time of the alleged offence, she further pointed out that accused is now fit to stand trial.

The state proceeded to produce the following as exhibits by the consent of the defence:

- (a) The psychiatric report, marked exh 2.
- (b) Post-mortem report No. 114363 C marked exh 3
- (c) Weight certificate of the wooden log marked exh 4
- (d) The sketch plan marked exh 5
- (e) The wooden log weighing 1.5 kg marked exh 6

Having looked at all the evidence led and produced by the state and also looking at the position taken by both the state and the defence we are of the unanimous view that this is a suitable case for the return of a special verdict to the effect that the accused is not guilty by reason of insanity as contemplated in s 29 (2) of the Mental Health Act [*Chapter 15:12*].

The accused has not yet fully recovered and in consultation with the father of the accused Mr Wilson Mafake, it was also concluded that accused needs further medical treatment.

Accordingly the following order is returned:

In terms of s 29 (2) (a) of the mental Health Act [*Chapter 15:12*] the accused person is committed to Chikurubi Psychiatric Unit until he is discharged by a competent authority.

*National Prosecuting Authority, State's legal practitioners  
Mugadza, Chinzamba & Partners, accused's legal practitioners*