

STATE  
versus  
ISAAC MATSIKA

HIGH COURT OF ZIMBABWE  
TSANGA J  
HARARE, 17 July 2017

Assessors: 1. Mr. Mtambira  
2. Mr. Gweme

**Criminal Trial \* Special Verdict**

*F.Zacharia*, for the State  
*N.A.M Nhemachena* for the accused (*pro-deo*)

TSANGA J: The accused was charged with the crime of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The state alleged that on the 24<sup>th</sup> of January 2015 at Mutengwa village, Chief Neshangwe, Sadza, the accused unlawfully and with intent to kill, struck Besta Mashonganyika with a hoe once on the back of the head killing her instantly.

This fact was not disputed. The state was however clear in its summary of evidence, that the accused was a well-known mental patient. The matter therefore proceeded in terms of s 29 of the Mental Health Act [*Chapter 15:12*] by consent of the state and defence counsel. An agreed statement of facts which the court admitted in evidence as Annexure 1 was produced by both parties. It captured the material facts surrounding the murder as follows:

1. The accused person was staying at Mutengwa village, Chief Neshangwe, Sadza with his aunt aged 84 years.
2. On 24 January and at around 19:00 hours, the accused took a hoe from his bedroom and proceeded to his aunt's bedroom.
3. The accused struck his aunt with the hoe on the left side of the forehead.
4. His aunt fell on her face and the accused struck her for the second time at the back of her head thereby killing her instantly.
5. On the 25<sup>th</sup> of January at around 07:00, the accused left the homestead and went to a nearby mountain leaving the body of the deceased.
6. The offence was discovered by Lillian Mupatwa who alerted neighbours at around 15:00 hours leading to the arrest of the accused.

7. Deceased's body was taken to Sadza District Hospital where a postmortem was conducted by Doctor Tapiwa Mutukwa. He concluded that death was due to **head injuries secondary to trauma with a sharp object.**
8. Accused who is a mental patient was examined by Doctor Walter Mangezi who concluded that at the time the alleged crime was committed, the accused was mentally disordered.

In addition to the statement of agreed facts, the following documents were produced by consent:

- a) The postmortem report as Exhibit 1.
- b) The affidavit by Doctor Walter Mangezi dated 5 December 2016 as Exhibit 2.

He certified that he had examined the affidavit by the accused's paternal uncle, Lovemore Matsika and he had also had a look at the accused's February 2015 medical certificates. He had also examined medical records from Chikurubi, in particular the EEG (electroencephalogram) results being a test that measures abnormal electrical activity in the brain.

The following captures in his words, the results of his examination of all the above:

"Lovemore Matsika gives a history that Isaac Matsika failed all his subjects at school. Lovemore Matsika noted Isaac's first sign of mental illness in 1992. Isaac would sometimes hear voices in his head. The medical certificates indicate Isaac Matsika was aggressive and confused. The Chikurubi medical records indicate Isaac had auditory hallucinations (hearing voices inside his head). Isaac Matsika's auditory hallucinations stopped after taking chlorpromazine (medication for mental disorder) and Carbamazepine (medication for epilepsy). The EEG results were abnormal indicating epilepsy. I examined Isaac Matsika and note he is now of sound mind. In my opinion at the time of alleged crime the accused was mentally disordered. Isaac Matsika was charged with rape in 2001 and now murder. I recommend Isaac be managed for a longer time for rehabilitation in a Special Psychiatric Institution".

The state and defence counsels submitted that the totality of the evidence showed that the accused was not criminally responsible for his actions by reason of his mental defect. They moved the court to act in terms of s 29 (2) of the Mental Health Act [*Chapter 15:12*]. We were in agreement with the State and Defence submissions and accordingly found the accused not guilty because of insanity and returned a special verdict as required by law.

The psychiatric report that was placed before this court is clear that he needs to be managed for a longer time. Indeed the accused showed in his response to questions put to him in court, strong signs of mental illness. The court accordingly orders in terms of s 29 (2) (a) of the Mental Health Act that the accused be returned to prison for transfer to Chikurubi

Psychiatric Unit or such other appropriate institution for his continued treatment and management.

*National Prosecuting Authority; State's Legal Practitioners  
Mvingi & Mugadza; Accused's Legal Practitioners (Pro deo)*