

THE STATE
versus
STEPHEN SAIDI

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 15 June 2017

Assessors: 1. Mr. Chidyausiku
2. Mr. Gweme

Criminal Trial

B Murevanhema, for the State
S Mpofu, for the Respondent

TSANGA J: The accused was charged with the crime of murder as defined in s 47 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The state alleged that on 23 April 2015, at plot 10 Tengwe Estates, Tengwe, the accused person unlawfully and intentionally caused the death of Ngwaru Katongomara. He had struck him on the head several times with a metal hoe intending to kill, or, despite realising that there was a real risk or possibility that his conduct might cause death, had continued to engage in that conduct thereby causing injuries from which the deceased died. The accused pleaded not guilty by reason of insanity.

The trial proceeded with the State and Defence counsels submitting a statement of agreed facts which the court admitted in evidence as Annexure 1. The agreed facts were that on the day in question the accused had asked for a cigarette from the deceased. The deceased did not have an extra cigarette. The accused had gone out of the kitchen, picked up a metal hoe and tried to strike the deceased who managed to escape. The accused had caught up with the deceased and had struck him several times on the head about 50 meters from his homestead. The deceased's body was discovered the next day by one Edinah Velinya whilst she was harvesting maize in her field. A post mortem examination was conducted and the

cause of death was revealed as a head injury due to assault. The agreed fact narrated that the accused was mentally examined and that the psychiatric report compiled by the psychiatrist pointed to mental challenge at the time of commission of the offence. In light of these agreed facts, a special verdict in terms of s 29 of the mental Health Act [*Chapter 15:12*] was therefore sought.

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

- a) The postmortem report as Exhibit 1. It was conducted by Dr Mupfukurirwa and confirmed as stated that the deceased who was assaulted with a hoe and incurred a skull fracture. He died as a result of the head injury.
- b) The psychiatric affidavit sworn to on the 24th of February 2017 by Dr Walter Mangezi was admitted as Exhibit 2. He examined the accused at Chikurubi Psychiatric Unit on the 16th of September 2016, the 4th of November 2016 and on the 19th of January 2017. He averred that Anusa Saidi, the accused's paternal uncle, had reported to him that Stephen Saidi developed mental illness in 2010 where he would talk to himself. In 2012 after defaulting treatment he had attacked a neighbor with an axe. He further averred that the medical certificates indicated the accused had auditory and visual hallucinations. Furthermore, the Chikurubi medical records equally indicated auditory and visual hallucinations which stopped when the accused took Haloperidol which is medication that stopped abnormal electrical discharges inside the brain. He therefore concluded in his report that at the time of the alleged crime the accused was mentally disordered. At the time of the last report he was deemed fit to stand trial.
- c) The hoe used by he accused to assault the deceased was admitted as exhibit 3.

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.

His counsel submitted that he had not had an opportunity to consult his relatives and to make arrangements for this release. With the last examination having been done in February 2017, it would be appropriate for the medical authorities to carry out an examination as to his suitability at this point to be released back into the community.

Accordingly, it is ordered that:

1. The accused is not guilty because of insanity.
2. In terms of s 29 (2) (a) of the Mental Health Act [*Chapter 15:12*] it is ordered the accused be returned to prison for transfer to Chikurubi Psychiatric Unit or such other appropriate institution for his continued treatment and management until discharged therefrom.

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