

THE STATE

Versus

NEWTON HOVE

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Matemba and Ms Baye
GWERU 17 MAY 2021

Criminal Trial

Ms N Chikuni, for the State
T Kamwemba, for the accused

DUBE-BANDA J: The accused appears in this court on two counts of murder, as defined in section 47(1) of the Criminal Law (Codification and Reform) Chapter 9:23. In count one, it being alleged that on the 8th January 2020, and at Village Madhiye, Chief Mazvihwa, Zvishavane, in the Province of Midlands, accused unlawfully caused the death of Blessed Hove (deceased 1) by striking her with an adze and stabbing her several times on the face, neck, legs, hands, stomach and back, intending to kill her or realising that there was a risk or possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility.

In count 2, it is alleged that on the 8th January 2020, and at Village Madhiye, Chief Mazvihwa, Zvishavane, in the Province of Midlands, accused unlawfully caused the death of Tanaka Kufa (deceased 2) by striking him with an adze and stabbing him several times on the chest, stomach, neck, abdomen and face legs, intending to kill him or realising that there was a risk or possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility.

The accused through his defence counsel has tendered a plea of not guilty and averred that at the time of the alleged offence the accused was suffering from mental disorder. It is contended that he may not be held criminally liable as he was suffering from a mental disorder at the material time.

The State tendered into the record of proceedings a statement of agreed facts, which is before court and marked Annexure A. The agreed facts are as follows:

1. Newton Hove (accused) was aged 30 years at the time of commission of the alleged offence. He resides at Village Madhiye, Chief Mazvihwa, Zvishavane in the Midlands Province.
 2. Blessed Hove (deceased 1) was aged 30 years at the time she met her death. Deceased number 1 was accused's sister and they resided at the same homestead.
 3. Tanaka Fufa (deceased 2) was aged 5 years at the time he met his death. The accused is deceased 2's uncle. Deceased 2 was deceased 1's son.
 4. On the 8th of January 2020, at around 1900 hours, the accused asked for his National Social Security Authority (NSSA) document from deceased 1. The accused wanted to access his funds. Deceased refused to give the accused the documents since the accused is a psychiatric patient.
 5. That did not go down well with the accused who responded by striking deceased with an adze and stabbing her with a knife on the face, neck, hip, leg, hands, stomach and back causing her death.
 6. After killing deceased 1, the accused proceeded to stab deceased 2 by striking him with an adze on the chest, stomach, neck, abdomen and face several times causing his death.
 7. A report was made to the police leading to the arrest of the accused person. Deceased 1 and 2's remains were taken to United Bulawayo Hospitals where Dr Juana Rodriguez Gregori conducted a post mortem examination. He concluded that the cause of death for deceased 1 was:
 - Acute anaemia
 - Hepatic and Kidney laceration
 - Stab wounds
- He also concluded that the cause of death for deceased 2 was:
- Acute anaemia
 - Pulmonary and hepatic laceration
 - Stab wounds
8. The accused was examined by a psychiatrist Dr N Mawere on 22/07/20; 27/07/20 and 12/08/20 at Mlondolozhi Special Institution.

9. Dr Mawere concluded that at the time of the commission of the alleged offence the accused was suffering from a mental disorder (schizophrenia and substance induced psychosis). He further stated that the accused was mentally disordered to such an extent that he should not be held responsible for his actions, and that he did not appreciate the wrongfulness of his actions.
10. The accused accepts the evidence of the State witnesses and contents of the post mortem report and psychiatrist report, and that at the time of the alleged offence, he was suffering from a mental disorder to such an extent that he should not be held legally responsible for his actions.
11. The state concedes that the accused was suffering from a mental disorder at the time of the commission of the alleged offence and that it is appropriate for the court to return a verdict of Not Guilty by reason of Insanity in terms of Section 29 (2) of the Mental Health Act Chapter 15:12.

The State further tendered two post mortem reports compiled by a pathologist, Dr Juana Rodriguez Gregori at United Bulawayo Hospitals on the 15th January 2020. The post mortem report in respect of deceased 1 is marked Exhibit 1. The findings in this post mortem report list the cause of death as: acute anemia; hepatic and kidney laceration; and stab wound. The post mortem report in respect of deceased 2 is marked Exhibit 2. The findings in this post mortem report list the cause of death as: acute anemic; pulmonary and hepatic laceration; and stab wound.

A report compiled by a Psychiatrist, Dr Nemache Mawere at Mlondolozhi Special Institution shows that the expert opined that at the time of the alleged crime, the accused was mentally disordered, suffering from schizophrenia and substance induced psychosis. He did not appreciate the wrongfulness of his actions. However, he is now fit to stand trial. The Psychiatrist Report is before court and marked Exhibit 3.

From the evidence that has been placed before court we are indeed satisfied that the injuries sustained by the deceased 1 and deceased 2 were caused by the accused. The post mortem reports show that the injuries inflicted by the accused caused the death of the two deceased persons.

In the circumstances of this case, and having regard to the undisputed evidence before court, it is clear that the accused was suffering from mental disorder at the time of the

commission of the offence and as such he cannot at law be held responsible for the two counts of murder. In the circumstances, it is appropriate for this court to return a special verdict, that the accused is not guilty because of insanity.¹

In the result, the court makes the following order:

1. The accused is found not guilty and acquitted by reason of insanity.
2. The accused is hereby returned to prison pending transfer to Mlondolozhi Special Institution for further examination and treatment in terms of section 29(2)(a) of the Mental Health Act (Chapter 15:23).

National Prosecuting Authority, state's legal practitioners
Tavenhave & Machingauta Legal Practitioners, accused's legal practitioners

¹ 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.”