

THE STATE

Versus

CLEMENT SIBANDA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr Mashingaidze and Mr Ndlovu
BULAWAYO 14 MARCH 2023

Criminal Trial

K. Shava, for the state
V. Ndlovu, for the accused

MOYO J: The accused faces a charge of murder it being alleged that on the 1st of March 2022, and at his own homestead Halale village, Matobo the accused struck Langton Ngwenya once with an axe on the center of the head and thereby causing his death. The accused pleaded Not Guilty by reason of insanity. The state accepted the plea and together they drew a statement of agreed facts which was tendered into the court record and marked Exhibit 1. It reads as follows:-

The state and the defence are agreed that the following issues are common being that:-

1. The accused is a male adult and was aged 39 years at the time of the commission of the offence and resides at his own homestead, Halale Village, Matobo.
2. The deceased, Langton Ngwenya was aged 29 years old at the time he met his death and used to reside at Trevor Ngwenya's homestead, Halale Village, Matobo at the time he met his death.
3. The accused person and deceased were not related.

4. On the 1st of March 2022, at around 2000 hours, the deceased confronted the accused at his homestead, accusing him of having a love affair with his wife. The deceased was threatening to kill the accused.
5. The accused and the deceased were found arguing by one Lukas Moyo. The accused was holding an axe with a wooden handle and deceased was holding a traditional hone-made wooden stool whilst pushing and shoving each other.
6. Lukas Moyo tried to refrain the two from fighting but instead accused threatened to strike him with his axe. Lukas Moyo ran away leaving the two at the homestead.
7. Minutes later, Getrude Sibanda arrived at the scene and found the two pushing and shoving and in possession of their weapons. She also tried to refrain the two from the altercation but could not contain them.
8. The accused struck deceased once on the centre of the head with an axe and deceased fell to the ground and his head rested on the traditional home-made wooden stool.
9. The deceased sustained a deep wound on the centre of the head and he started bleeding profusely.
10. The deceased was then ferried to Natisa Clinic where he was attended to by the nurses.
11. The deceased's condition deteriorated and was later transported to Maphisa Hospital where he was admitted.
12. On the 2nd day of March 2022, the deceased succumbed to his injuries and passed on.
13. The matter was reported to the police. Accused was then arrested and charged with the crime of murder as defined in section 47 of the Criminal Law (Codification & Reform) Act (Chapter 9:23).
14. On the 3rd day of March 2022, Doctor Juana Rodriguez Gregori examined the remains of the deceased and compiled his findings in Post Mortem Number 248-188-22 wherein she opined that the cause of deceased's death was;

1. Encephalic Dislaceration
2. Chop wound
15. The accused was seen and examined on numerous occasions by Doctor Elena Poskotchinova at Mlondolozhi Forensic Institution, in Bulawayo.
16. As a result of the clinical examination, Doctor Elena Poskotchinova concluded that, while accused is fit to stand trial, at the time of the commission of the offence, he was mentally disordered in that he was suffering from schizophrenia and substance use disorder, and as such, did not appreciate the wrongfulness of his actions.
17. The state and defence pray that a special verdict be returned in this matter, in terms of section 29 of the Mental Health Act (Chapter 15:12), as the accused did not have the capacity to commit the offence at the material time and as such should not be held criminally liable for his actions and conduct.

The post mortem report gives the cause of death as encephalic dislaceration, chop wound.

From the facts before us, the accused cannot be held criminally liable for his actions and as a result he is found Not Guilty by reason of insanity and is accordingly acquitted. However, he remains a danger to society as stated in paragraph 5 of the psychiatrist affidavit. He has also defaulted treatment more than once, meaning he needs to be retained at an institution for continual supervision and also to protect members of the public from any violent behaviour he may exhibit following a relapse.

He is accordingly committed to Mlondolozhi Mental Health Institution.

National Prosecuting Authority, state's legal practitioners
Makiya and Partners, accused's legal practitioners