

THE STATE

Versus

FRANK SHINYA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mrs Baye and Mr Matemba
GWERU 18 SEPTEMBER 2023

Criminal Trial

Ms L.C Mamombe, for the state
Ms C. Hamadziripi, for the accused

MOYO J:- Accused faces a charge of murder, it being alleged that on the 23rd of October 2020 and at Village Zinyoro, Headman Zinyoro, Chief Chirumhanzi, the accused person unlawfully caused the death of Learnmore Maphosa by striking him on the head and all over the body several times with logs intending to kill him and thereby causing his death.

Accused pleaded Not Guilty by reason of insanity. State counsel accepted the plea and the parties drew and tendered a statement of agreed facts. It was duly marked and it reads as follows:-

- 1) FRANK SHINYA (hereinafter called the accused person) was aged 28 years at the time of the commission of the alleged offence. He resides at Zinyoro Village, Headman Zinyoro, Chief Chirumhanzu in the Midlands Province.
- 2) LEARNMORE MAPHOSA (hereinafter referred to as deceased) was aged 7 years old at the time he met his death. He resided at Zinyoro Village, Headman Zinyoro, Chief Chirumhanzu, in the Midlands Province.
- 3) On the 23rd October 2020 and at around 0700 hours at Zinyoro Village, Chief Chirumhanzu the deceased was sent by Esnath Chigohodze, his grandmother to go and guard the fields. The accused then approached the deceased and assaulted him all over the body using a log. The deceased collapsed and became

unconscious as a result of the assault. The accused person took the two logs and hid them in his homestead.

- 4) On the same day at about 0900 hours, Esnath Chigohodze proceeded to the fields in order to serve breakfast to the deceased and found the deceased lying unconscious in the field. She called Sirivhanosi Zvidzai, Blessing Madhara and Tendai Zvidzai who came and tried to resuscitate the deceased.
- 5) The matter was reported to the police leading to the arrest of the accused.
- 6) On the 2nd November 2020, Dr. Laurelein Malagon Martinez examined the remains of the deceased and concluded that the cause of death was:-
 1. Global Subarachnoid Haemorrhage
 2. Multiple Cranial Fracture
 3. Severe Head Trauma
- 7) The accused person was examined by a psychiatrist Dr. Elena Poskotchinova on 5/11/21, 16/12/21, 19/02/22, 13/03/22, 12/01/22, 9/07/22 and 9/08/22 at Mlondolozhi Forensic Institution.
- 8) Dr Elena Poskotchinova concluded that at the time of the commission of the alleged offence, the accused was suffering from Schizophrenia. She concluded that the accused was mentally disturbed to such an extent that he should not be held legally responsible for his actions.
- 9) The state concedes to the fact that the accused person was suffering from a mental disorder at the time of the commission of the offence and it is appropriate for the court to return a special verdict of Not Guilty by reason of insanity in terms of Section 29 (2) of the Mental Health Act Chapter 15:12.

The state also tendered the post-mortem report and the psychiatrist's report. They were duly marked. Also tendered were the logs that were allegedly used in the commission of the offence. They were duly marked.

From the evidence before this court, it is our conclusion that the accused person was mentally challenged at the time of the commission of the offence and therefore a special verdict must be returned. He is a danger to society and must be committed to a special institution.

I accordingly make the following order:-

- 1) The accused person is found Not Guilty of murder by reason of insanity.
- 2) Accused is committed to Mlondolozhi Special Institute as he is a danger to society.

National Prosecuting Authority, state's legal practitioners
MSU Legal Aid Clinic, accused's legal practitioners