

REPUBLIC OF NAMIBIA

REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: CC 07/2015

In the matter between:

THE STATE

and

SIEGFRIED UIRAB

ACCUSED

Neutral citation: *The State v Uirab* (CC 07/2015) [2016] NAHCMD 96
(06 April 2016)

Coram: LIEBENBERG J

Heard: 01 April 2016

Delivered: 06 April 2016

Flynote: Criminal procedure – Trial – Mental state of accused – Provision in s 79 (1)(b) of Criminal Procedure Act 51 of 1977 that court obliged to have at least two psychiatrists appointed not obligatory – Court has discretion –

Seriousness and particulars to be considered – Facts of present case warrant a re-assessment by two psychiatrist.

Summary: The accused is charged with the offences of murder, attempted murder, and assault by threat, all of which arose from an incident during which the accused killed his biological mother by hitting her several times in the head with an axe. He thereafter and for no apparent reason struck his sister also in the head with the same axe. Two months before the incident the accused had been diagnosed with substance-induced psychosis which appears to have been brought on by the abuse of alcohol and cannabis. Evidence showing that psychosis only being present during use of substances. During assessment in terms of ss 77 and 78 the accused denied having used any substance or the hearing of voices at the time of committing the offences. A finding was made that accused is triable and accountable for his actions, based on information furnished by the accused. Psychiatrist during testimony saying that, in view of the accused's evidence at the trial that he claims to have been engulfed by a spirit who directed his actions, he was probably under the influence of a substance which affected his perception and thought process. In view thereof, considered together with a history of substance-induced psychosis; evidence of accused acting out of character prior to the incident; the lack of motive for killing the deceased; and the bizarre and out of the ordinary testimony of the accused, the court concluded that the accused be re-assessed by two psychiatrists as laid down in s 79 (1)(b) of Act 51 of 1977.

ORDER

1. That in terms of ss 77 (1) and 78 (2) of Act 51 of 1977 and in respect of the accused, Siegfried Uirab, his capacity to understand court proceedings so as to make a proper defence

and his criminal responsibility be enquired into and reported on in accordance with s 79 (1)(b) of the Act.

2. The Medical Superintendent of the Windhoek Central Hospital is directed to appoint two psychiatrists of which one is not in full-time service of the State to conduct the relevant enquiry.
3. A copy of the record of the proceedings together with copies of Exhibits 'A', 'B', 'C' and 'N' as well as a copy of this judgment to be made available to the Medical Superintendent of the Windhoek Central Hospital.
4. Proceedings adjourned to 27 April 2016 at 9:00 (Mentions Review Roll)
5. Accused remanded in custody.

RULING

LIEBENBERG J:

[1] The accused was indicted on charges of murder, attempted murder and assault by threat to which he pleaded not guilty.¹ After evidence was heard proceedings were adjourned for closing submissions, at which stage defence counsel, Mr *Ipumbu*, raised a point *in limine* as to the legality of the psychiatric report issued by only one psychiatrist, Dr Ndjaba. After argument was heard, the court intimated to counsel that the court reserved its ruling and that it would be incorporated in the judgment.

[2] However, whilst preparing judgment and with the benefit of having heard counsels' closing submissions, I have, after due consideration of the testimonies of Ruth Uiras, Dr Ndjaba, and the accused, come to the conclusion that the court, in view of the peculiar facts of the case and the

¹He initially pleaded guilty on count 1 (murder) but a plea of not guilty was entered as the accused raised a defence.

somewhat contradicting evidence of Dr Ndjaba, should not readily decide the guilt of the accused on the findings of a single psychiatrist.

[3] The facts of the present case is almost similar to that of *S v Hansen*² in which the court, after convicting the accused, had to decide an application by the defence for a second referral of the accused for psychiatric observation as provided for in s 79 (1)(b) of the Criminal Procedure Act (the Act), despite an earlier finding by a single psychiatrist that the accused indeed had the ability to understand Court proceedings to the extent that he would be able to handle his defence adequately; furthermore, that according to available particulars, he had the ability at the time of the alleged offence to realise the wrongfulness of his actions and to act in accordance with such appreciation.

[4] In the present matter, counsel adopted the same argument as in *Hansen*, namely, that s 79 (1)(b) prescribes in peremptory terms that the enquiry be conducted by *two* psychiatrists, whereas he had only been assessed by one. From a reading of *Hansen*, it is clear that the *dictum* in that case does not support the argument put forward by counsel. In fact, it states the contrary where the relevant part reads:

'A reading of this section clearly shows that where the accused is charged with an offence and I quote "for which the sentence of death may be imposed", then it is obligatory on the Court to follow the prescribed procedure as set out by s 79(1)(b). However, in Namibia the death penalty was abolished by our Constitution so that it seems to me there is no instance where this Court is obliged to follow this procedure and this procedure shall only be followed where this Court, for certain reasons, may direct that it be followed. It is therefore this Court which must decide whether to accept this report by Professor Van Rensburg, or on the application of the defence, to again refer the accused for further observation according to the provisions of s 79(1)(b)'. (Emphasis provided)

[5] I respectfully endorse the aforesaid findings from which it is clear that the decision whether or not to have the enquiry conducted by one or two psychiatrists, lies within the discretion of the court referring the accused for

²1994 NR 5 (HC)

psychiatric observation. It would further appear from the judgement that in cases where the accused faces a serious charge for which severe punishment is likely to be imposed, the interest of justice would best be served if the enquiry is conducted by two psychiatrists,³ and not only by one.⁴ In instances where the accused is charged with less serious offences, and the accused not being at risk of receiving a lengthy custodial sentence, an enquiry by only one psychiatrist should suffice. However, it remains in the discretion of the court.

[6] In deciding the current matter as to whether or not, in the light of the present facts and particulars, the accused should again be referred for psychiatric observation, but this time by two psychiatrists, regard is had to the following:

- (a) The evidence of the accused's sister, Ruth, that he had been acting out of character prior to the commission of the offences under consideration (since 2009);
- (b) Evidence that the accused had been admitted in September 2013 at the psychiatric unit of the Windhoek Central Hospital for a period of two weeks and diagnosed with substance-induced psychosis, barely two months prior to the commission of the offences charged;
- (c) The testimony of Dr Ndjaba to the effect that she, in view of allegations that the accused had abused both alcohol and cannabis, believed (suspected) the accused to have been under the influence of these substances on the relevant day, which brought about thought and perceptual disturbances i.e. that he was possessed by a spirit.
- (d) The accused's testimony being bizarre and inconsistent with his plea explanation and denial of his instructions to counsel on material aspects of his defence.
- (e) The lack of motive when killing his own mother and attacking his sister with an axe.

³In terms of s 79 (1)(b)

⁴In terms of s 79 (1)(a)

[7] Though clear from the report and the testimony of Dr Ndjaba that the accused's substance-induced psychosis was merely a temporary mental disorder brought about by the abuse of alcohol and cannabis, it seems to me that, in view of evidence that the accused had been smoking immediately prior to the incident, considered together with his evidence that he had shortly before that smoked a mixture of tobacco and cannabis, the possibility cannot be excluded that the substance, so used, caused the accused to relapse, resulting in thought and perceptual disturbances. Furthermore, in view of Dr Ndjaba's evidence that persons under observation would not readily admit that they abuse alcohol or drugs, it seems to me that not too much should be read into the report where it states that the accused, at the time of committing the offences, denied having been under the influence of any substance; also the fact that he denied having heard voices.

[8] Based on the aforesaid, I have come to the conclusion that, in fear of wrongly convicting the accused on serious charges which are likely to attract lengthy custodial sentences, it would be in the interest of justice to have the accused's criminal capability re-evaluated by two independent psychiatrists, as laid down in s 79 (1)(b) of the Criminal Procedure Act, 51 of 1977. A copy of the record of the proceedings, together with the psychiatric report (Exhibit 'N'); Section 115 plea explanations (Exhibits 'A' and 'B'); and Summary of substantial facts (Exhibit 'C') might be of assistance to the psychiatrists conducting the enquiry.

[9] The accused further has the right to appoint a psychiatrist of his own choice as provided for in s 79 (1)(b)(iii) of the Act.

[10] In the result, it is ordered:

1. That in terms of ss 77 (1) and 78 (2) of Act 51 of 1977, in respect of the accused, Siegfried Uirab, his capacity to understand court proceedings so as to make a proper defence

and his criminal responsibility be enquired into and reported on in accordance with s 79 (1)(b) of the Act.

2. The Medical Superintendent of the Windhoek Central Hospital is directed to appoint two psychiatrists of which one is not in full-time service of the State to conduct the relevant enquiry.
3. A copy of the record of the proceedings together with copies of Exhibits 'A', 'B', 'C' and 'N' as well as of this judgment to be made available to the Medical Superintendent of the Windhoek Central Hospital.
4. Proceedings adjourned to 27 April 2016 at 9:00 (Mentions Review Roll).
5. Accused remanded in custody.

JC LIEBENBERG
JUDGE

APPEARANCES

STATE

F Sikerete-Vendura

Of the Office of the Prosecutor-General,
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ACCUSED

T Ipumbu

Of Titus Ipumbu Legal Practitioners,
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