

THE PEOPLE v MUZATA SIFU (1990) S.J. (H.C.)

HIGH COURT
MUSHABATI, C.S., J, IN CHAMBERS
6TH NOVEMBER, 1990

Flynote

Review - Sanity of accused at time of commission of offence - Section 12 of the Penal Code

Headnote

The accused was charged and convicted by the Subordinates Court of the Second Class for the Mongu District of three counts of forgery and three counts of uttering. The accused altered the entries in his Standard Chartered Bank pass book to show higher balances and using the altered entries, withdrew some money on two occasions. During trial the accused found insane and incapable of giving evidence in his defence. He was accordingly detained at the President's pleasure in terms of Section 167 (1) and (3) of the Criminal Procedure Code, Cap 160. The case came before the High Court for confirmation of the order detaining the accused at the President's Pleasure.

Held:

- (i) In determining the sanity of the accused at the time of committing the crime, a trial court should apply its mind to the provisions of Section 12 of the Penal Code and comment as to whether such insanity renders the accused incapable of understanding what he was doing or of knowing that he ought not to do the act or make the omission.

Legislation referred to:

- (1) Criminal Procedure Code Cap. 160 - SS. 167, 337 and 338
- (2) Penal Code, Cap 146 - SS.12, 344(c), 347 and 352

JUDGMENT ON REVIEW

MUSHABATI , J.:

The accused was charged and convicted by the Subordinates Court of the Second Class for the Mongu District of three counts of forgery and three counts of uttering.

The gist of the prosecution case was that the accused altered the entries in his Standard Chartered Bank pass book to show higher balances.

The accused, after he had made such alternations, presented the said book at the bank in order for him to make some withdrawals on the basis of such altered figures. In fact he successfully withdrew some money on two occasions.

The undisputed facts of the case were that the said book had its entries altered. The accused presented the said book with altered entries for the purpose of withdrawing some money. The accused had a history of mental illness and in fact he was found unfit to give evidence in his defence.

The accused was found guilty but insane and detained at the President's pleasure in terms of Section 167 (1) and (3) of the Criminal Procedure Code, Cap 160. The case comes before me for confirmation of the said order in terms of Section 167 (2) of the Criminal Procedure Code. The trial court was satisfied that the accused at the time of the commission of the said

offences was insane or suffering from a disease of the mind as provided under Section 12 of the Penal Code, Cap. 146, though this was not explicitly stated by the trial Magistrate in her judgment. In any case the whole judgment was condensed in a few lines after the summary of evidence. This is a very unsatisfactory way of writing a judgment.

The trial court should have applied its mind to the provisions of Section 12 of the Penal Code and commented as to whether such insanity rendered the accused incapable of understanding what he was doing or of knowing that he ought not to do the act or make the omission. She should have made a finding on one or both of the above before making the special finding in terms of Section 167 of the Criminal Procedure Code. Mere insanity which does not produce any of the two states of mind is not enough for a special finding.

It is very unsafe for this court to make assumptions of what the trial court would have said had it addressed its mind to the provisions of Section 12 of the Penal Code. I cannot therefore, for this reason, allow the special finding by the trial Magistrate to stand. I am therefore, invoking the provisions of Section 337 and 338 of the Criminal Procedure Code, Cap. 160 to revise this case and it is so revised.

The special finding in terms of Section 167 (1) and (3) of the Criminal Procedure Code are set aside. A retrial before another Magistrate of competent jurisdiction is ordered. The accused shall be released from custody forthwith.

Retrial before another magistrate,
Accused to be released from custody.
