**Uganda v Matte**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 17 June 1974

**Case Number:** 78/1974 (40/75)

**Before:** Nyamuchoncho J

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Insanity – Psychiatrist’s report that accused insane accepted by*

*prosecution – Whether any verdict possible – Trial on Indictments Decree* 1971, *s.* 44 (*U.*)*.*

[**Editorial Note:** Ss. 43 to 46 of the Trial on Indictments Decree 1971 are as follows:

“43(1) When in the course of a trial the High Court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness.

(2) Notwithstanding the provisions of subsection (1) of this section, if the court is of the opinion that it is expedient so to do and in the interests of the accused person, the court may postpone the inquiry mentioned in that subsection until any time up to the opening of the case for the defence and if before such inquiry is made the court acquits the accused person on the count or each of the counts on which he is being tried, the inquiry shall not take place.

(3) If, as a result of an enquiry made under this section, the court is of the opinion that the accused person is of unsound mind and consequently incapable making his defence it shall postpone further proceedings in the case.

(4) The court shall order the accused to be detained in safe custody in such place and manner as it may think fit and shall transmit the court record or a certified copy thereof to the Minister.

(5) Upon consideration of the record the Minister may by warrant under his hand directed to the court, order that the accused be confined as a criminal lunatic in a mental hospital or other suitable place of custody and the court shall give any directions necessary to carry out such order. Any such warrant of the Minister shall be sufficient authority for the detention of such accused person until the Minister shall make a further order in the matter or until the court finding him incapable of making his defence shall order him to be brought before it again in the manner provided by sections 44 and 45 of this

Decree.

44 I f any person confined in a mental hospital or other place of custody under section 43 of this

Decree is found by the medical officer in charge of such mental hospital or place to be capable of making his defence, such medical officer shall forthwith forward a certificate to that effect to the Director of Public Prosecutions. The Director of Public Prosecutions shall thereupon inform the court which recorded the finding against such person whether it is the intention of the State that the proceedings against such person shall continue or otherwise. In the former case such court shall thereupon order the removal of such person from the place where he is detained and shall cause him to be brought in custody before it in the manner described by section 45 of this Decree; otherwise the court shall forthwith issue an order for the immediate release from custody of such person.

45(1) Whenever any trial is postponed under section 43 of this Decree, the High Court may at any time, subject to the provisions of section 44 of this Decree, resume the trial and require the accused to appear or be brought before the court when, if the court considers him capable of making his defence, the trial shall proceed, or begin de novo, as appears expedient.

(2) Any certificate given to the Director of Public Prosecutions, under section 44 of this Decree may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

(3) If the court considers the accused still to be incapable of making his defence, it shall act as if the accused were brought before it for the first time.

46(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the High Court that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity.

(2) When a special finding is made under subsection (1) of this section the court shall report the case for the order of the Minister, and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

(3) The Minister may order a person in respect of whom a special finding has been made to be confined in a mental hospital, prison or other suitable place of safe custody.

(4) The superintendent of a mental hospital, prison or other place in which any criminal lunatic is detained by an order of the Minister under subsection (3) of this section shall make a report to the Minister of the condition, history and circumstances of every such lunatic at the expiration of a period of three years from the date of the Minister’s order and thereafter at the expiration of periods of two years from the date of the last report.

(5) On the consideration of any such report, the Minister may order that the criminal lunatic be discharged or otherwise dealt with.

(6) Notwithstanding the provisions of subsections (4) and (5) of this section, the Commissioner of

Prisons or the Chief Medical Officer may, at any time after a criminal lunatic has been detained in any place by an order of the Minister, make a special report to the Minister on the condition, circumstances and history of any such criminal lunatic, and the Minister, on consideration of any such report, may order the criminal lunatic be discharged or otherwise dealt with.

(7) The Minister may at any time order that a criminal lunatic be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which he is detained to either a prison or a mental hospital.”

It is clear from the judgment that there was never any question of the accused being incapable of making his defence and no order under s. 43 (4) detaining the accused. Accordingly, since the accused was not detained under s.43, there could not have been any information to the court by the Director of Public

Prosecutions under s. 44 nor any other by the court under that section. What happened was that the case came before the court under s. 46 and the court had first to decide whether the accused did the act complained of and only thereafter whether he was insane at the time, in which case the special finding must be made.

The court appears to have been misled by the special procedure under s. 64 whereby a legally represented accused can agree facts and documents. Nevertheless it is for the accused to raise the question of insanity, but only after a finding that he did the act complained of. That there are two stages is also made clear by s.43 (2) where the court had a discretion to postpone enquiry into the fitness of the accused to plead until the prosecution has shown a case upon which he should be put upon his defence.]

**Judgment**

**Nyamuchoncho J:** The accused, Gabriel Matte, is charged with the murder of his wife Kabugo by suffocation due to manual strangulation.

The accused has admitted killing his wife. In his plea he said: “I killed her but I did not know what I was doing”. He has thus set up the defence of insanity.

The accused’s defence of insanity is supported by medical evidence. Dr. Kasasa who examined the accused two days after he was arrested made the following report on the accused’s mental condition:

“The accused’s mental condition appeared to be abnormal in that he suffered from delusions and hallucinations . . . he lacked concern for any crime he might have committed. He believed that he was suffering from mental and sexual sickness due to magical powers.”

Dr. Kikwanguyira a psychiatrist, Butabika Mental Hospital, examined the accused on two occasions and concluded thus:

“I am of the opinion that Gabriel Matte is suffering from a psychological disorder known as Recurrent Organic Psychosis in its remitting form.

In his present state he is fit to plead and instruct his counsel.

I am also of the opinion that at the time the accused committed the alleged crime he might have been

labouring so much under the above mentioned disease of his mind that he was not understanding whether or not what he was doing was wrong.”

The trial started as usual with the preparation of the memorandum under s. 64.

The evidence of nine prosecution witnesses was admitted as well as the psychiatrist’s report. Then Mr.

Kagaba for the prosecution told the court that he was closing the prosecution case. Mr. Rubaale for the

defence contended that the accused’s defence is supported by the psychiatrist’s report which has been admitted; he cannot, therefore, be convicted as charged. To this Mr. Kagaba replied that the prosecution is seeking the verdict of not guilty of the act charged by reason of insanity. I asked Mr. Kagaba whether it was proper for the court to return a verdict which is already agreed upon. Moreover I doubted whether this was a proper procedure to follow in view of the provisions of s. 44 of the Trial on Indictments

Decree. Accordingly, I did not call upon the accused to enter upon his defence and reserved my ruling.

In every criminal trial, a plea of not guilty raises an issue to be determined between the State and the accused. In this case the plea leaves no issue to be determined in view of the acceptance of the conclusions of the psychiatrist. It is also doubtful whether the prosecution could abandon its role of proving the guilt of the accused and ask for what is essentially an acquittal. Now that the prosecution no longer wants to prove the guilt of the accused, what is the case for the prosecution? Has it proved murder? And what is it that the accused must explain in his defence that the court does not know? The usual procedure to be followed by the prosecution when it cannot prove the charge is either to withdraw the charge against the accused or to offer no further evidence. The prosecution has in this case adopted neither of these courses, it is asking for a special finding under s. 46 of the Trial on Indictments Decree which essentially is an acquittal. Is this the proper course to follow? A somewhat similar situation arose in the case of *Republic v. Mandi* [1963] E.A. 153. In that case the accused was charged with murder and at the opening of the trial his counsel intimated that the accused was prepared to plead guilty to a charge of manslaughter. The prosecution, however, declined to accept this plea on the ground that the prosecution proposed to establish that the accused was insane when the alleged offence was committed.

Murphy, J. said at p. 154:

“I have had some doubt whether this was a proper attitude for the prosecution to adopt. In the recent English case of *R. v. Price*, [1962] 3 W.L.R. 1308 in which the defence was one of diminished responsibility . . .

Lawton, J. ruled that the Crown was not entitled to invite the jury to consider the issue of insanity.” . . .

“The matter is not free from doubt, but it appears to me to be at least questionable whether, even if it be permissible for the prosecution to raise the issue of insanity in the course of a trial, it is proper for the case to be presented at the outset as one in which the only verdict asked for is that of guilty but insane.”

The *Mandi* case is distinguishable from the instant case in that, in that case there were two alternative verdicts on which the prosecution and the defence are agreed on the verdict, a verdict which can only be arrived at in the normal way by rejecting the prosecution case and accepting the defence. By accepting the defence of insanity, the prosecution must be taken to have abandoned its case; accordingly the accused’s guilt has not been proved. This appears to me to be the legal position. I therefore cannot call upon the accused to enter on his defence. It is a waste of time. In my opinion there is no issue to put to the assessors on which they can usefully give an opinion, equally, there is no issue for the determination by the court. Although the course adopted by the prosecution is not free from doubt, as *Mandi’s* case shows, in this case I do not have to decide that issue. It can be decided by following the provisions of s.44 of the Trial on Indictments Decree. This section empowers the Director of Public Prosecutions on receipt of a certificate by a medical officer in charge of a mental hospital to decide whether or not to proceed with the charge. This was a proper case for which he should have opted not to proceed with the charge. The continuation of the proceedings in this case would serve no purpose. The accused was observed by Dr. Kikwanguyira, psychiatrist. In his report he described his mental condition as good in all respects, so that the question of detaining him, because of the verdict, in a mental hospital is ruled out by the psychiatrist’s report. Verdict or no verdict, the accused must be released. He cannot be detained as a criminal lunatic. Accordingly, under s. 44 I order that the accused be forthwith released from custody.

*Order accordingly.*

For the State:

*TK Rubaale*

For the accused:

*V Kagab*