57/84

221/83

N.v.H.

VUSI THOMAS BUTHELEZI v THE STATE

HOWARD, AJA :-

221/83
N.v.H.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

VUSI THOMAS BUTHELEZI Appellant

and

THE STATE Respondent

CORAM: MILLER, JA, SMUTS, et
HOWARD, AJJA

HEARD: 18 MAY 1984

DELIVERED: 25 MAY 1984

J U D G M E N T

HOWARD, AJA :-

The appellant was the second of two accused who were tried in the Witwatersrand Local Division

by / .....

by a Judge and assessors on charges of murder (count 1), malicious injury to property (count 2), robbery with aggravating circumstances (count 3), unlawful possession of a firearm (count 4) and unlawful possession of ammunition (count 5). On count 1 the appellant was found guilty as an accessory after the fact to the crime of murder and sentenced to 10 years' imprisonment. He was found guilty as charged on count 2 and received a further 4 years' imprisonment for that offence. He was acquitted on the remaining counts. Accused No 1 was found guilty as charged on counts 1, 2, 4 and 5, and not guilty on count 3. He was sentenced to death for the murder, to 4 years' imprisonment for

malicious injury to property and a further 2 years' imprisonment for unlawful possession of the firearm and ammunition.

An application to the trial Judge having been refused, the appellant was granted leave by this Court to appeal against the sentences imposed upon him.

The relevant facts are not in dispute. During the evening on 28 November 1981, in Johannesburg, a motor vehicle driven by accused No 1 collided with and damaged a motor car which was owned and driven by the deceased, a Chinaman named Gee-Keen Fung. The deceased demanded R500 as compensation for the damage to his car and threatened to report the matter to the

police / .....

police if accused No 1 did not pay. Accused No 1 agreed to pay. He got into the deceased's car and directed him to certain premises in Denver on the pretext that his money was there. He left the deceased seated in the car and entered the premises, not to fetch money, but a loaded firearm which he kept in a steel box that he shared with the appellant. The appellant was present at the time and followed accused No 1 out of the premises to where the deceased was waiting. Accused No 1 thereupon shot and killed the deceased as he sat behind the steering wheel of his car. Thereafter accused No 1 and the appellant drove the car with the deceased's body in it to a deserted

mine-dump. There they removed the body from the car, poured petrol over the body and the car and set both alight. They did so in order to destroy evidence of the murder. Their clothes caught alight in the process and accused No 1 sustained fairly serious burns. The appellant took accused No 1 to hospital where he was admitted for treatment, fetched him from the hospital the next day and continued to associate with him until his (appellant's) arrest on 2 December 1981.

In his reasons for sentence in respect of the appellant (accused No 2) the trial Judge said:-

> "Accused No 2 has been found guilty of being an accessory to the crime of murder on count 1 and he has also been found guilty on count 2,

of / .....

> of malicious injury to property. It is true that he has no previous convictions and he is a relatively young man. I must also have regard to the fact that he found himself in the situation where he may well have gone outside merely to see what was happening and that No 1 accused then fired and killed the deceased. Thereafter he took part, knowing exactly what had been done, he took part in an attempt to destroy very valuable evidence that the police would be seeking, knowing full well what had happened. I am inclined to agree with the State Prosecutor that that is a serious crime."

Those reasons do not reveal any misdirection that might vitiate the trial Judge's decision on sentence.

Nevertheless the disparity between the sentences which he imposed and what we consider to be appropriate punish= ment is such that we are entitled and obliged to intervene.

Giving / .....

Giving full weight to the serious nature of the appellant's actions as an accessory after the fact to a cold-blooded murder which he had witnessed, I think that 7 years imprisonment would have been adequate punishment on count 1. And as the burning of the motor car not only formed the subject matter of count 2 but was also one of the acts committed by the appellant to cover up the murder, the sentence on that count clearly should have been ordered to run concurrently with the sentence on count 1. The result is that we would have sentenced the appellant to an effective 7 years' imprisonment instead of the total of 14 years which the trial Judge imposed.

The / .....

The appeal is allowed. The appellant's sentence on count 1 is reduced to 7 years' imprisonment and it is ordered that the sentence on count 2 will run concurrently with the sentence on count 1.

J A HOWARD

ACTING JUDGE OF APPEAL

MILLER, JA)
) CONCUR
SMUTS, AJA)