

CASE NO 302/91

/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

JEREMIAH MANDLEKOSI DLANZI

APPELLANT

and

THE STATE

RESPONDENT

CORAM: NESTADT, NIENABER JJA et NICHOLAS AJA

DATE HEARD: 15 SEPTEMBER 1992

DATE DELIVERED: 28 SEPTEMBER 1992

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J U D G M E N T

NESTADT, JA

This is an appeal against the death sentence.

It was imposed by CURLEWIS J sitting on circuit in the Transvaal Provincial Division consequent upon the appellant having been found guilty of murder.

The crime took place on a farm in the

district of Piet Retief on 24 December 1989. At about 9:30 that night the appellant arrived at the kraal of Mondli Gamede. He entered one of the huts there. Asleep inside was Gamede's grandson. He was Bongani Khoza, aged seven. The appellant stabbed him three times in the chest. Two of the wounds were on the left side. They respectively penetrated the heart and liver. The cause of death was the stab wound of the heart. Having committed what can only be described as this dastardly act, the appellant fled the scene.

The appellant's defence was an alibi. It having been rejected by the trial court, there was no explanation by the appellant for why he acted in this way. It appears from the State evidence, however, that the killing was connected with the fact that the appellant and the deceased's mother, a certain Samaria Mothe had, until shortly before the night in question, lived together as husband and wife. She then left him.

He did not know where she had gone. The appellant tried to trace her. He on several occasions sought information as to her whereabouts from Gamede (her father). Gamede told the appellant that he did not know where his daughter was. It would seem that the appellant felt that he was not being told the truth and that Gamede knew the whereabouts of his daughter. This angered the appellant. He threatened to kill Gamede and Gamede's wife. The inference in these circumstances is that the appellant, for some unexplained reason, killed the deceased because of the grievance he had formed against the grandparents and against the deceased's mother.

Plainly, what has been stated proclaims a number of seriously aggravating factors about this crime. The appellant's victim was an innocent, defenceless child. He was mercilessly stabbed three times as he lay sleeping. The murder was obviously

planned. And it was committed with dolus directus.

On the other hand, there are certain mitigating factors. The appellant was upset at Mothe's disappearance. He regarded Gamede as being responsible for his inability to find her. This infuriated him. Hence the threats to kill Gamede. The one State witness says the appellant "was fuming, he said he wanted to hit the old man". The appellant was thus in a highly agitated and emotional state of mind. He felt frustrated. At least these are inferences which it is reasonably possible to draw. So, too, it is reasonably possible that it was to give vent to his rage that he decided to kill Mothe's child; that in doing so he was taking revenge on her and Gamede. However heinous his act was, the appellant should be sentenced on the basis that he acted abnormally and in a frenzy. This, so it seems to me, must, in the circumstances of this matter, be regarded as reducing his moral blameworthiness. Add

to this the fact that the appellant, aged 43, has no previous convictions, and I do not think it can be said that the death sentence is the only proper sentence. The purposes of punishment will be better served by the imposition of a lengthy period of imprisonment.

The appeal succeeds. The death sentence is set aside. There is substituted therefor a sentence of 15 years' imprisonment.

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NESTADT, JA

NIENABER, JA     )  
                  ) CONCUR  
NICHOLAS, AJA    )