19/92

CG Case no: 464/91

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

AMOS DOYILE Appellant

and

THE STATE Respondent

CORAM: **VAN HEERDEN, VAN DEN HEEVER et HARMS AJA**

HEARD: **27 FEBRUARY 1992**

DELIVERED: **12 MARCH 1992**

J U D G M E N T

VAN DEN HEEVER JA

This is a quasi-appeal in terms of sec 19(12) of Act 107 of 1990 against the sentence of death imposed on 9 November 1988 on the appellant in the Witwatersrand Local Division for the murder of Alec Michael Simpson on 27 July 1987, no extenuating circumstances having been found proved. A sentence of eight years' imprisonment was imposed at the same time for the robbery which was the motive for the murder and formed the basis of a second count. The trial court held that the participation in the attack upon the deceased by the appellant's paramour and co-accused, Sina Mashibini, had been less than that of the appellant, and that she had probably been under his influence. She was sentenced to fifteen years' imprisonment for the murder and eight for the robbery, the sentences to run concurrently.

The Simpson household at 52 Paarlshoop Street, which is a double storeyed building in Homestead Park in

the Johannesburg district, consisted of the deceased, his wife, and their daughter Irene.

The deceased was an obese, arthritic, dropsical, ailing, somewhat eccentric seventy-year-old who slept on the ground floor since he was unable to manage the stairs. He was very conscious of the need for security against intruders. The only entrance to or exit from the house was through a large motor gate and a smaller pedestrian one, both of which were electronically controlled from inside the house. When the deceased left home, he locked his wardrobe. The bunch of keys he carried included one of two for his bedroom door, since his daughter who kept the other had instructions to lock his bedroom before she too left home. The storeroom on the upper floor was likewise kept locked. He was very nervous of catching cold and so wore two of everything: two pairs of trousers, two jackets, even two (and on this day three) hats on top of

one another. He had bought a supply of small axes in bulk, for use in the garden, which he kept along with other small garden tools in his bedroom, locked in the wardrobe. And he never wore his lower dentures, so that according to Mrs Simpson meat prepared for him had to be soft, such as mince or sausage. He had had a serious heart attack about three months earlier, had a grossly enlarged heart and suffered from chronic heart failure. Despite this he still worked as a salesman at the City Deep Fruit Market.

Mrs Simpson had her own business: a shop. The daughter worked in a lawyers' firm as supervisor in the bonds department.

The pattern of their daily lives was that the deceased left home first, then the daughter whose task it was to lock his bedroom door after the bed had been made, and Mrs Simpson last. He would come home for lunch, the two women not.

Miss Mashibini had been taken on by the Simpsons as a live-in domestic servant earlier in July 1987. I refer to her in what follows as accused No 2. During her first few days on the premises she had no access to the interior of the house from the time that Mrs Simpson left home, until the deceased came back and let her in to prepare his lunch and carry on with the ordinary domestic chores. After the initial spell, however, she was not only no longer excluded in this fashion, but asked and obtained permission for her "boyfriend", the appellant, to sleep on the premises, he offering to sweep the garden once a week in return. He told both the women that he was a security guard in Langlaagte, and Miss Simpson that he had to fetch security dogs *en route* to work; to which end the deceased in the mornings gave him a lift to and dropped him off in town. In actual fact the appellant was unemployed, having walked out of his job as a security

guard with Springbok Patrols (Pty) Ltd on 22 June 1987 with his weekly wage of R164,00 and the company uniform.

On Monday 27 July 1987 the deceased left for work as usual at about 6h45. The trial court found that the appellant did not accompany him that day, and there is no reason to quarrel with that finding. Irene Simpson testified positively that she saw her father leave home unaccompanied, and that accused No 2 told her that the appellant had left very much earlier - having been let out of the premises by the deceased, she assumed. Accused No 2 was not taxed with having told her something to this effect, but did not corroborate the appellant who said that he had gone off with, by arrangement been picked up in town again by, and come home in due course with the deceased. She merely said that she did not know whether the two men left together, and had assumed that the appellant had returned with the

deceased. I return to this later.

Irene Simpson gave accused No 2 instructions for the day, which included doing by hand washing that had been put on to soak in the bathroom. She left as usual at 7h30 having locked her own wardrobe (in which she kept i.a. a pair of yellow rubber gloves) and her father's bedroom door. Mrs Simpson as usual was the last to leave.

During the course of the morning, at about 10h00, Miss Simpson telephoned home. Accused No 2 answered, and told her that everything was in order, the washing done, and that she was just starting to clean the house. (Accused No 2 in her evidence admitted that this conversation had taken place.) Mrs Simpson telephoned about an hour later. Neither then nor at later attempts did anyone react to her calls.

Mrs Simpson returned home at about 17h45. She found the stove on, the house full of smoke from the

frying pan on the stove, the telephone in the kitchen, one of three in the house, pulled out of its socket, the beds unmade, the washing not done, the house ransacked, the servant's quarters a jumble, accused No 2 and the appellant missing, and her husband dead in his bedroom. He was covered in blood. The fly of each of the two pairs of trousers he was wearing was open.

According to Dr Kemp who performed the post mortem examination, the physical condition of the deceased was incompatible with his having been able to put up any effective resistance to an attack. Death was due to injury to the tissues of his neck which was severely bruised and also had a number of incised wounds and a fractured hyoid bone. (The deceased's nose and one cheekbone were also broken.) There were not only a number of bruises on the body, particularly on the neck, face and head, but two human bite marks, several abrasions, and at least 18 incised wounds of the head

and neck, one of which damaged the carotid artery.

The police evidence and the state of the deceased's clothing justify the inference that the deceased was surprised while relieving himself in the toilet, on the floor of which the three hats he wore that day were found. There was blood outside the toilet, which adjoins his bedroom, and more blood spattered in the bedroom itself, which had been opened with the aid of his keys. Those were still in the door when Mrs Simpson came home. In the room was a bloodstained hatchet, the plastic cover of which lay on the floor at his bedside. On the bed, also stained with his blood, was the knobkierie he kept in the room. A kitchen knife with a little of his blood and one of his eyebrow hairs on it was also found. His wardrobe had been broken open. So had the upstairs storeroom and Miss Simpson's wardrobe.

There were fingerprints left by the appellant

found in the servant's quarters, but none of his in the house.

Accused No 2 was detained in respect of an unconnected incident on the train to Springfontein. She and the appellant left the train at that town. She was arrested first and he shortly afterwards, when the local police were informed that Johannesburg was looking for these two. They had with them two suitcases belonging to the Simpsons which had been removed from the storeroom in Paarlshoop Street after the door had been forced. These contained not only clothing belonging to the appellant which was stained with blood of the same group as that of the deceased and different from his own, but a pair of similarly stained yellow rubber gloves; also a new shirt, a pack of playing cards and some locks with keys missing from the deceased's room; along with probably the major part of Irene Simpson's wardrobe. Accused No 2 was wearing a further

contribution from that: slacks, a jacket and a blouse identified by Miss Simpson as her property. There was R400,00 odd in cash in the suitcase containing the appellant's possessions.

Both appellant and accused No 2 made statements on 29 July 1989 before the magistrate at Springfontein, which are exhibits H and J in the record, and again during proceedings in terms of sec 119 of the Criminal Procedure Act No 51 of 1977 before magistrate Bredenkamp at Langlaagte, in August. The record of those proceedings is exhibit E. And both testified at the trial.

The tale of each altered considerably as time went by. The trial court had no hesitation in rejecting appellant's exculpatory testimony in all its forms and labelling him a liar. The record bears out that that was inevitable. He conceded under cross-examination that he had given three irreconcilable versions of the

events leading up to and on that day. The latest version - in court - that he had acted in self defence because the deceased attacked him for no known reason when he asked for wages belatedly alleged to have been due to him (the attack also constituting provocation because it made the appellant very angry) cannot be classified other than as fiction: he had worked for appellant for three years; no, for four months; no, on six occasions; but admits that he did not contradict Miss Simpson on Saturday 25 July when she said "we don't have to feed you, because we don't employ you". In exhibit J he spoke of a promise by the deceased to give "die geld" on Monday, which in its context could have referred only to the wages of accused No 2 for work done to date. In exhibit E for the first time he mentioned having worked for appellant - "for four weeks" and for a wage, despite elaborately having created the impression, which accused No 2 also laboured under, that he was

(still) a security guard when he joined her in her quarters in Homestead Park.

It is unnecessary to analyse at length his evidence, or that of accused No 2, who was also an unsatisfactory witness trying to minimize her own part in the events leading up to and of that morning. For example, she testified that the axe used by the appellant was kept in the kitchen. She had used the blunt side of the head as a meat mallet while preparing to cook the deceased's lunch, and had it in her hand when, on her way from the kitchen to the pantry to fetch milk or water (!), she cannot remember which, she saw the appellant, who was wearing yellow gloves, in the passage in front of the toilet. He had deceased by the throat and took the axe from her by force - an unlikely story. According to the Simpsons no axe was kept in any kitchen drawer. The deceased was unable to chew meat requiring such brutal tenderizing. And the plastic

cover, similar to those encasing the other axes in the deceased's wardrobe, found on his bedroom floor, lends credence to the appellant's earlier allegation that she handed him the axe.

The many conflicting details of their various versions however do not matter. Of importance is that the appellant admits having used the axe on the deceased, and having throttled him more than once during an episode which started at the toilet, lasted some time and ended in deceased's bedroom. Of importance in the evidence of accused No 2 is her statement that the plan to murder the deceased and to steal his money had been mooted by the appellant on the previous Thursday, and that the appellant did not deny this testimony, merely "did not remember" making the proposal. She admits having used the knife found in the bedroom to assault the deceased, though claims to have done so ineffectively and only because the appellant commanded

her to do so and she feared him. She also admits what is sufficiently bizarre to make it unlikely that it was a product of her imagination: that she tugged the deceased's private parts - and she says, again, did so at the behest of the appellant. Both admit to taking money from the person of the deceased. Both admit to taking property from the house. The appellant admits to removing the pack of playing cards and shirt found in "his" suitcase after the deceased had been felled, and that he rested content with her removing such clothing as accused No 2 had a mind to appropriate.

The court a quo found that the murder was pre-planned by the pair of them, with robbery the motive. That finding too is unassailable. Without the co-operation of accused No 2, the appellant could not have converted his uttered intention into successful action. The untruthfulness of her cheerful assurance to Miss Simpson on the telephone that the housework was

well under way, can lead only to the inference that she had no intention of being there to face the music when her employer came home. That the appellant wore gloves is corroborated by the absence of any fingerprints of his in the house and the bloodstained gloves found in his possession. Since those gloves came from Miss Simpson's locked wardrobe, the appellant must have both broken into that in preparation for the deceased's homecoming, and been intent on leaving no identifying trace on the scene; which in turn made killing the deceased who could otherwise identify him, necessary.

The appellant carried out his plan to rob and murder with the assistance and concurrence of accused No 2, having picked a victim who was helpless. Not only was the deceased old and sick, as accused No 2 knew and the appellant must have heard from her, but the appellant at twenty nine was probably at the peak of his physical powers and a man who had listed boxing as his

hobby when applying for a job with the security services company the previous year. When he took the pack of playing cards and shirt after the deceased lay still on the bed, the appellant knew that the victim was dead as had been planned: he did not bother to disconnect the telephone in that room. Mr Bruinders' argument that the court **a quo** should have found merely **dolus eventualis** proved against the appellant, or something less, is untenable.

The conduct of the appellant was not only premeditated but singularly callous. The deceased was subjected to prolonged cruelty and indignity, the only conceivable reason for which is that the appellant tried to "persuade" him to reveal where he kept the money that the appellant expected or hoped to find. His victim was ambushed in his own home by people to whom he had shown kindness. The appellant himself was given some meals without there being any obligation, moral or otherwise,

on the Simpsons to do so. The deceased gave him lifts, gave him money to buy tobacco. The appellant's attitude is reflected not only in his having tortured, degraded and deliberately killed a defenceless old man for greed, but also in magistrate Bredenkamp's evidence that at the sec 119 proceedings "(het) hy amper met smaak vertel" of the violence of that morning, including how he throttled the deceased repeatedly.

The only factor that can be regarded as a mitigating one, is that he to all intents and purposes had a clean record save for two unrelated convictions for possession of dagga. For the rest he is mature, married, childless, and did not progress beyond standard five at school. In the application form referred to earlier which he completed before being taken on by Springbok Patrols, he claimed to have had previous appropriate experience with Westonaria. (Documents found in his possession when arrested indicate that he

was or had been a member of the Miners' and Allied Workers Union.) He in that form also claimed to be a suitable candidate for the post of a security guard because he wished to "fight crime".

Despite relatively humble scholastic achievements and probably a background of comparative poverty, he was found by the trial court to be of normal intelligence. His plan and the manner of its execution which included the wearing of rubber gloves support that conclusion. Though hailing from Cofimvaba in the Transkei, he is hardly a simple and unsophisticated peasant.

The evil of his deed is apparent from the above resumè of the facts established at the trial. The offence is in my view so grave that the interests of society outweigh those of this cold-blooded offender. Considerations of deterrence and retribution convince me that the sentence imposed by the trial court was not

only appropriate, but the only proper one for the murder of which the appellant was convicted.

The appeal is dismissed. The death sentence is confirmed.

L VAN DEN HEEVER JA

VAN HEERDEN JA)
) CONCUR
HARMS AJA)