

32/92

CASE NO 278/91

/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

LESLIE BASIL SIMONS

APPELLANT

and

THE STATE

RESPONDENT

CORAM: NESTADT JA, NICHOLAS et HARMS AJJA

DATE HEARD: 17 MARCH 1992

DATE DELIVERED: 20 MARCH 1992

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J U D G M E N T

NESTADT, JA:

This appeal against the death sentence for murder is before us consequent upon the panel having in terms of sec 19(12)(a) of the Criminal

Law Amendment Act, 107 of 1990 decided that the sentence of death would probably have been imposed by the trial court.

The facts appear from the judgment of WILSON J sitting in the Durban and Coast Local Division as also from a judgment of this Court (given before Act 107 of 1990 came into operation) dismissing an appeal against the conviction and sentence. It appears that on the morning of 29 July 1987 the appellant killed the deceased, who was his wife, by striking her many times with a pick handle. The trial judge found that having previously threatened to kill the deceased, he attacked her in their matrimonial home because she had laid a charge against him alleging that he had raped her six-year-old daughter. His trial on this charge was due to be heard in a regional magistrate's court on 13 August 1987, ie

within about two weeks of the murder. He was subsequently convicted on this count by the trial court and sentenced to ten years' imprisonment. In his judgment WILSON J said the following:

"In our view he must have and he did realise the extreme gravity of the charge against him...(W)e are satisfied that he in fact made the threats that he did, that is that he would kill the deceased if the case proceeded against him, and that the cause for the final fatal assault was the insistence of the deceased that the case was going on, or perhaps rather, her refusal to co-operate with him."

We have now to reconsider the matter and decide whether the death sentence is the only proper sentence. In support of a negative answer Mr Jansen on behalf of the appellant, whilst conceding that the appellant's version, namely, that on the morning in question he had found the deceased in bed with another man, had been rightly

rejected, argued that no clear motive for the crime had been established; all that was known was that the appellant experienced an emotional outburst of some kind; that his threats to kill the deceased had not been seriously made; that he was a drug addict and that this factor taken together with his alleged deprived background operated in mitigation; it was also possible that he was under the influence of liquor at the time; his previous convictions (for inter alia robbery) did not exclude the possibility of reformation; in any event this was not a case where the death sentence was imperatively called for. It was suggested that a sentence of life imprisonment would be an appropriate punishment.

I accept that appellant's previous convictions are not of moment. Nevertheless I am unable to agree with the argument. In my opinion

there is no warrant for disturbing any of the trial judge's factual findings. They were endorsed by this Court which held that appellant's conduct was rational throughout the assault of the deceased. To find there was some other motive for the crime or some other reason for what may be accepted to be an emotional outburst requires us to indulge in impermissible speculation. It is clear that neither drugs nor liquor played any meaningful role in causing the appellant to act as he did. Some reliance was placed on a Nicro report which was placed before the panel when the appellant's case was considered by it. But being based on appellant's false version of what took place, there is nothing in it which can assist him. So in the result this is a case where there are really no mitigating factors.

That per se does not mean that the death

sentence is the only proper sentence. There are however a number of aggravating factors. To begin with, and as indicated, the motive for the crime was a base one, viz to prevent the deceased from continuing with the rape prosecution against him. Appellant, aged 33, is a mature person. His attack on the deceased was a particularly brutal and ferocious one. It was a sustained attack committed with dolus directus. The deceased was a defenceless victim. His actions were not only cruel but callous; he ignored her cries for help; afterwards when he left the house, he locked the door. The cumulative effect of these factors are in my opinion such that the interests of society demand the death sentence as the only proper sentence.

It was however submitted that we should mero motu consider remitting the matter to enable

