

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between

MJOYINELWA BABA NGCOBO

APPELLANT

and

THE STATE

RESPONDENT

CORAM : HEFER, MILNE JJA et VILJOEN AJA.

HEARD : 1 SEPTEMBER 1988

DELIVERED : 5 SEPTEMBER 1988.

J U D G M E N T

HEFER JA :

During the period May to August 1986 the appellant
burgled several houses in Westville. On 22nd August

he entered a house situated at 19 Stanhope Crescent, Westville. Again his purpose was to steal. At the time Mrs Kathleen Dale, an 83 year old lady, was alone in the house. The appellant killed her and removed certain articles from the house. He was subsequently convicted in the Durban and Coast Local Division of Mrs Dale's murder, of theft (one count) and of housebreaking with intent to steal and theft on 4 counts. No extenuating circumstances were found relating to the murder and on that count he was sentenced to death but was granted leave to appeal against the sentence.

The only question to be decided is whether the court a quo correctly found that there were no extenuating circumstances.

Appellant's counsel relied on two factors which, he argued, serve to reduce appellant's moral blameworthiness. He described them as follows in his written heads of argument:

"(a) the appellant's youthfulness, (he was

21 at the time of the murder) including lack of education and sophistication, leading to immaturity;

(b) The lack of premeditation concerning the killing."

This argument requires no detailed discussion. Both factors referred to were considered by the trial court and I have not been persuaded that the court erred in rejecting them. How the deceased came to be killed, is described as follows in a statement submitted to the court in terms of sec 112 of Act 51 of 1977 :

"On the 22nd August, 1986 I went to a certain house at Westville. I entered a certain house with the intention of taking various goods.

I came across the deceased, who was standing in this house. I first saw the deceased when I was at the doorway to the house.

The deceased was shouting at me, so I stabbed her to keep her quiet. I stabbed her several times.

After I had stabbed her several times, she stood there, so I pushed her over.

After a short while, I felt the deceased and knew that she was dead.

At the time that I stabbed her, I intended to kill her and I know that to kill a person is unlawful."

Taking into account inter alia the appellant's motive and the callous way in which he murdered the deceased there is no reason to differ from the trial court's finding that his comparative youthfulness does not reduce his blameworthiness. Nor does the fact that he did not enter the house intent on doing murder; for the fact remains that he deliberately set about killing the deceased when he discovered that the house which he had entered, was occupied. Nothing prevented him, upon discovering her presence, from leaving the house without doing her harm.

Appellant's counsel also tried to make some point of what he referred to as the appellant's socio-economic circumstances. There is, however, no factual basis for counsel's submission in this regard.

The appeal is dismissed.

J J F HEFER JA.

MILNE JA)

VILJOEN AJA)
CONCUR