

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

SAZI KNOWLEDGE NDIMANDE Appellant

and

THE STATE Respondent

CORAM: RABIE, ACJ, HOEXTER et EKSTEEN, JJA

HEARD: 2 September 1988.

HANDED IN: 20 September 1988.

REASONS FOR JUDGMENT

EKSTEEN, JA :

There is no merit whatsoever in this appeal, and in my view the trial Judge ought never to have granted leave to appeal to this Court.

The evidence at the trial disclosed that on the night of 28th February 1987 the appellant, a man of 22 years of age, broke into the home of the 81 year old Mrs. Jameson in Field's Hill, Pinetown. Mrs. Jameson, a frail old lady, lived alone in her house and was utterly defenceless. In fact, after the appellant and his paramour, who stood trial with him, had entered the house they found Mrs. Jameson fast asleep in a chair in her lounge. After going to various other rooms in search of something to steal, the appellant and his co-accused returned to the lounge, where appellant woke Mrs. Jameson, grabbed her by the throat and dragged her to another room. In an attempt to stifle her cries he took a tracksuit top from his co-accused and tied it tightly round the neck of the deceased. When the deceased's neighbour, Mr. McInnes, who is an experienced yachtsman and mountaineer

well acquainted with knots, and a mechanical engineer with strong hands, tried to untie this garment the next day, he succeeded only with great difficulty. So tightly had it been tied that the face of the deceased had been constricted to such an extent as to create the impression that her face was merely an extension of her neck.

A post mortem revealed that her hyoid bone had been fractured, and bruises which could have been caused by the fingers of her assailant were found on her neck. She therefore died either as a result of manual throttling by the appellant, or more probably as a result of the strangulation with the arms of the tracksuit top.

The appellant, who gave no evidence in the main part of his trial, but who did so in that part where the existence of extenuating circumstances was investigated, conceded that he had broken into Mrs. Jameson's house and that he had attacked her in the way I have described.

It has been argued before us that the trial Court ought

to have found extenuating circumstances on a number of grounds. Firstly it was submitted that the trial Court ought to have had regard to the appellant's primitive background and lack of education. There was no evidence, however, to show that he grew up in primitive circumstances. On the contrary the appellant says that as a child he went to school and remained there until he attained Std. VIII in 1980. Thereafter he apparently began working in the urban areas of Natal. There can therefore be no substance in the submission that he was either primitive or uneducated.

Then it was submitted that the trial Court ought to have found that the appellant's intention to kill was dolus eventualis and that the killing was unpremeditated. I am satisfied that the trial Court was correct in coming to the conclusion that the appellant had the direct intention to kill, more particularly if one has regard to the way in which the tracksuit top was knotted round the neck of the deceased. The trial Court found in the appellant's favour that he may not have

had the premeditated intention to kill the deceased when he entered her house, but that he certainly entertained that intention when he attacked her. This socalled lack of premeditation can therefore not avail him as an extenuating circumstance at all.

It has also been submitted that the deceased's cries after she had been attacked may have caused the appellant to lose control of himself and to resort to tying her up as he did. Here again I do not consider there to be any substance in this suggestion. The appellant's decision to attack Mrs. Jameson was a deliberate one and he must have expected her to cry out as she did. It could therefore hardly have come as a surprise to him.

Finally we were referred to his youth and his allegation that he was hungry and in need of money. The appellant, as I have said was 22 years old - 21 at the time of the commission of the offence - and cannot be considered as a juvenile. His motive for committing this offence was the base

intention of robbing a defenceless old lady who lived alone in her house. This, on the evidence, the appellant might have been able to accomplish without attacking the deceased at all, as she sat sleeping in her chair. Yet he chose deliberately to wake her and attack her, presumably in order to steal. The suggestion that he was hungry and in need of money rests entirely on his own evidence which was rejected by the trial Court for good and sufficient reasons. But even if it may have been true it cannot, in my view, serve as an extenuating circumstance in the present case.

The trial Court was therefore fully justified in coming to the conclusion that there were no extenuating circumstances to this murder, I and would dismiss the appeal.

J.P.G. EKSTEEN, JA

I concur: The appeal is dismissed.

..... P.J. RABIE, ACJ

I concur: G.G. HOEXTER, JA