

166/84

Case no. 145/84

MC

LESOLO SOLOMON RAKOSA

and

THE STATE

JANSEN JA.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

Between

LESOLO SOLOMON RAKOSA Appellant

- and -

THE STATE

Coram: JANSSEN, VILJOEN, BOTHA, VAN HEERDEN
JJA et SMALBERGER AJA.

Heard: 16 NOVEMBER 1984.

Delivered: 30 NOVEMBER 1984.

J U D G M E N T

JANSEN JA :-

The appellant was convicted by VERMOOTEN J (and assessors) on circuit at Vereeniging of murder without extenuating circumstances and attempted robbery with aggravating circumstances. For the murder the appellant was sentenced to death and for the attempted robbery to 10 years imprisonment. He appeals against the sentence of death by leave of the court a quo.

There is also a special entry on the record, made by the trial judge at the request of the appellant, which relates to the following alleged irregularity: in coming to its conclusion the court relied on what the appellant was alleged to have said when called upon to plead in the magistrate's court, but the record of those proceedings

had /.....

had not been produced at the trial in terms of sec
234(1) of Act 51 of 1977.

The special entry may be dealt with summarily.

No notice of appeal has been filed in terms of sec 317
of Act 51 of 1977 and the matter is not properly before
us. But in any event a careful perusal of the evidence
and of the judgment of the court a quo shows that the
appellant's previous statement played no crucial part
in the evaluation of the appellant as a witness, and
also that no case could be made out that the irregularity,
if such, resulted in a failure of justice.

The circumstances of the murder can be stated
succinctly in the light of the evidence accepted by the

court /

court a quo. The appellant and two others planned to rob the deceased who conducted a butchery near his dwelling-house on a plot at Kaalplaats. They went to the deceased's house very early one morning and by a subterfuge enticed him into the butchery. There he was attacked. He resisted manfully, but was overwhelmed by the appellant who stabbed him at least once, fatally, with a knife he found lying in the butchery.

That murder was done is plain. It is said there are extenuating circumstances: the killing was not premeditated but on the spur of the moment; the appellant was not armed with any lethal weapon, but took what was to hand. And, no doubt, some allowance must

be /

be made for the stress resulting from the unexpectedly strong resistance offered by the deceased. However, bearing all this in mind, it is still impossible to overlook the fact that the appellant could easily have abandoned the enterprise, that the killing was unnecessary, that the appellant could easily have made his escape without resorting to fatal violence and that any stress was of his own making. This being so, there is no ground for holding in the particular circumstances of this case that the appellant is morally less deserving of the ultimate penalty.

The appeal is dismissed.

E.L. JANSEN JA.

VILJOEN JA)
 BOTHA JA)
 VAN HEERDEN JA)
 SMALBERGER AJA)

Concur.