

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

MSHIMANE JOHN NDABENI Appellant

AND

THE STATE Respondent

Coram: HOEXTER, HEFER et EKSTEEN, JJ A

Heard: 13 November 1989

Delivered: 13 November 1989

TRANSCRIPT OF REASONS DELIVERED ORALLY IN OPEN
COURT AT NOON ON 13 NOVEMBER 1989

EKSTEEN, JA :

The appellant was convicted on two counts of
murder, one of attempted murder and one of robbery with

aggravating circumstances. No extenuating circumstances were found on the first two counts and the appellant was sentenced to death. He now comes on appeal to us on his convictions on all counts. We are indebted to Mr. Munks for arguing his appeal before us pro deo.

The evidence against the appellant was entirely circumstantial, and it was submitted to us that it was insufficient to prove his guilt beyond a reasonable doubt. I do not agree. The evidence in my view is overwhelming and leads one to the inevitable conclusion that the appellant was indeed the perpetrator of these terrible crimes.

In the first place the evidence discloses that a kist containing i.a. 3 blankets was removed from the deceased's hut on the night she was murdered. It was

found some small distance from her hut and the blankets had been removed. The very next morning the appellant was proved to have been in possession of these 3 blankets when he left his paternal home - some 2 km. from the deceased's home. Appellant readily conceded his possession of the blankets but claimed that they were his - bought at a shop in Matubatuba. On an investigation of the evidence he was shown to have been patently untruthful on this score. The blankets were positively identified by the deceased's husband. This possession of the blankets taken from the deceased's home on the night she was murdered, so soon after the event, in itself, taken together with the transparent untruthfulness of the appellant, seems to me to warrant his conviction.

But that was not all. A few days after the murder a bloodstained overall was found in a cardboard box in the appellant's room. His father deposed to it having belonged to the appellant. Again he falsely denied that it belonged to him. It was submitted to us that the blood on the overall may have come there in an innocent manner during the course of the appellant's employment with the road building contractor for whom he worked. But if this were so then there would seem to have been no reason whatever for the appellant to have told lies about it. His lies here again point strongly to the inference that the overall became stained with the blood of his victims on the night of the murder.

Then finally it was proved on the evidence

that some 2 weeks after the murder, when the appellant was taken to his kraal by the police, he produced a cane knife from among the shrubs at his home. The crimes, on the district surgeon's evidence, were probably, committed with just such an instrument.

On all the evidence it seems to me that the trial Court was fully justified in coming to the conclusion that the guilt of the appellant had been proved beyond a reasonable doubt.

No extenuating circumstances have been shown to exist for this brutal offence.

In the result, therefore, the appeal is dismissed.

HOEXTER, JA - I concur

HEFER, JA - I concur

J.P.G. EKSTEEN, JA

G.G. HOEXTER, JA

J.J.F. HEFER, JA