

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

CASE NO: 190/91

In the appeal of:

PIET PIETERSEN

APPELLANT

and

THE STATE

RESPONDENT

Coram: CORBETT CJ, NICHOLAS et PREISS AJJA

Date heard: 19 NOVEMBER 1991

Date delivered: 29 NOVEMBER 1991

J U D G M E N T

The appellant, a farm labourer on a lonely cattle outpost in the district of Uniondale, lived in a cottage on the farm with a woman, Mietjie Smith, with whom he had been associated for several years. During May 1990 he appeared before van Heerden AJ and assessors in the Cape Provincial Division (Eastern Circuit Local Division). He was charged on five counts which included no less than three counts of murder. The remaining counts consisted of a charge of assault with intent to do grievous bodily harm, in which Mietjie Smith was the complainant, and a charge of theft which was bound up with the first charge of murder. For the sake of clarity I propose to refer to the three counts of murder as the first, second and third murder respectively.

The appellant, who was represented by counsel, pleaded guilty to all the charges save the one of assault with intent to do grievous bodily harm, but changed his plea to

one of guilty on that remaining count during the course of the trial. On the two less serious counts he was in due course sentenced to varying periods of imprisonment. On each of the three counts of murder, no extenuating circumstances having been found, he was sentenced to death. Leave to appeal against the death sentences was refused by the trial court but thereafter granted by this Court.

The powers of this Court on appeal against a death sentence, as derived from the Criminal Law Amendment Act 107 of 1990, have been outlined in a number of decisions of this Court, which it is unnecessary to discuss in detail. Briefly speaking, this Court is enjoined, after weighing up the aggravating and the mitigating factors present in the proceedings, to consider whether the sentence of death is the only proper sentence. The power is to be exercised even though the trial in the court a quo was completed before this Act was promulgated.

The first and second murders were committed by the appellant

several years ago. It was impossible to fix a more accurate date, nor was the identity of either of the victims ever ascertained. This uncertainty, however, does not affect the validity of the convictions. In regard to the third murder, the victim was a fellow-labourer on the farm, Piet Windvogel, also an elderly man.

The three murders bear a striking and chilling similarity.

In the first and second murders, the victim was an elderly stranger who happened upon the outpost and spent a little while in the presence of the appellant and Mietjie Smith.

Liquor was consumed in the form of wine and a local concoction. In each case the appellant unaccountably became aggressive, accused Mietjie of being a party to an attempt to have sex with each of the strangers and proceeded immediately to bludgeon the unresisting victims with a pick handle, and (although this portion of the evidence is by no means clear) in the case of the first murder to stab the victim with a knife as well. In the case of the third

murder the appellant, during the course of a social encounter where wine and brandy were consumed, suddenly accused the victim of nodding at Mietjie and without further ado attacked his victim and caused his death. There is some dispute as to whether an axe or a knife was used on this occasion. The third murder took place during February 1989. Almost immediately after the assault upon Piet Windvogel the appellant stabbed Mietjie on the left side of her face. I may mention that a medical examination of Mietjie revealed numerous scars which Mietjie said had been caused by stabbings, beatings and burning, inflicted upon her by the appellant during the course of their relationship.

At his trial the appellant said that in the case of both the first and second murders he had left the scene for a short while and returned to find the strangers having intercourse with Mietjie. This defence was rejected by the trial court and rightly so. It is not only inherently improbable, but it was roundly denied by Mietjie who was found to be a

credible witness. The trial court also found that a possible motive for these two murders was theft. In the case of the first murder the appellant took the victim's bicycle and sold it. In the case of the second murder he appropriated a pair of trousers and a jersey belonging to the victim and destroyed the rest of the victim's meagre possessions. What is undisputed is that the appellant compelled Mietjie to help him bury the victims on the farm. It was only because of the chance discovery of one of the graves and Mietjie's subsequent disclosures that the appellant was brought to book.

The fact of these senseless, brutal and relatively motiveless killings must have prompted a suspicion that the appellant might not be criminally responsible for his acts. At some time before his trial he must have been referred for investigation in terms of s 79 (2) of the Criminal Procedure Act 51 of 1977. The record of the trial is silent as to the circumstances in which this investigation was

initiated. It will be recalled that the purpose of this investigation, as appears from s 78(i) of this Act, was to ascertain whether the appellant suffered from a mental illness or mental defect which made him incapable of appreciating the wrongfulness of his act or of acting in accordance with an appreciation of the wrongfulness of his act. The report, signed by two psychiatrists, Dr Crafford and Dr Quail, was handed in at the commencement of the trial by agreement between the prosecution and the defence. In the result both psychiatrists were agreed that the appellant was not certifiable, was fit to stand trial and had the capacity to appreciate the wrongfulness of his actions at the time of the alleged offences.

The conclusions arrived at by the psychiatrists were in my view somewhat qualified by a number of other findings which they recorded in their certificate in the following terms:

"While no delusions are present, he reports hearing voices which are indistinct, audible in his head rather than his ears, intermittent, and of some years' duration. It is felt that these are pseudo hallucinations and are not consistent with psychosis. Cognitive functions (viz. orientation, memory, judgement) are intact. His intelligence is assessed as being in the range of Mild Mental Retardation and this is confirmed on psychometric testing. Special investigations are consistent with the clinical findings.

79 (4)(b) 1. Clinical Diagnosis: NOT MENTALLY ILL
MIXED SUBSTANCE ABUSE
MILD MENTAL RETARDATION"

The trial court, having rejected the appellant's story of finding Mietjie in the act of intercourse with the first and second victims, duly found the appellant guilty of murder on each of the three counts. With that finding there can be no quarrel. Counsel for the appellant thereupon called Dr Crafford to give evidence in mitigation. The evidence went considerably further than the certificate to which Dr Crafford had been a party. This is understandable since the evidence was based upon further interviews and investigations. The evidence contains the following significant passages:

"A summary of the facts obtained from interviews conducted today (that was yesterday), and from the psychosocial is,

- i. that the accused has, from his adolescence, been a jealous and suspicious person.
- ii In a series of relationships with women, he has been physically violent towards them.
- iii He has been a week-end drinker for many years but holds his drink well.
- iv Throughout the twelve years of his relationship with Mietjie Smit, he has been extremely and abnormally jealous of her having imagined liasons with other men. Repeatedly and systematically over this period, especially at week-ends, when under the influence of alcohol, he has for trifling or no apparent reason accused her of infidelity and has then physically assaulted her, often until blood flowed.

"Having discussed the contents of this report with Dr. Quail, per telephone, my conclusions with which he concurs are,

- i. That the accused is a week-end drinker and has some stigmata of alcoholism
- ii That he has a severe personality disorder with mixed paranoid and antisocial traits. His jealousy, while not delusional, is pathological.
- iii. A reasonable possibility exists that his alcohol consumption over many years has aggravated his paranoid personality traits.
- iv The accused's low intelligence and paranoid personality it is felt, may have limited to a degree, his ability to exert sound social judgment in relation to the crimes he committed."

" There is a possibility on the basis of the CT scan that in this, in the patient, there has been an accelerated neuronal loss in the brain over a period of many years of alcohol consumption."

" ... alcohol is known, as a recognised neurotoxin and it's possible that, although there has not been clear collateral to the effect that the person, that the accused's personality traits over a period of time have been accentuated by alcohol consumption. In other words by organic factors.

Court: You put it no higher than the possibility? ---- Not higher than a possibility."

"The accused's personality is definitely pathological. His suspiciousness is pathological, his jealousy is pathological.

And the short term effects of alcohol? ---The short term effects of alcohol would disinhibit the accused towards aggressive acts, to a degree.

And combined with his personality traits and his low intelligence, what would the normal reaction be? --- Well I don't think the accused's reactions were at all normal"

"As I can understand the motivations for this crime, I can only understand them in terms of his suspiciousness and his jealousy."

"In general, what would the effect be of alcohol on a person with low intelligence and pathological personality traits? --- I think that somebody with low intelligence has fear options in situations where threatened to express his feelings verbally and would be more likely to express, generally speaking, his feelings in a physically aggressive manner rather than verbally. As to the ... (intervention). And under the influence alcohol, the disinhibitory effects of alcohol, to a greater degree."

"... it's very clear to me that the accused had a suspicious and very jealous - jealousy and suspiciousness were very much parts of his personality. And certainly his own account to me, and to other psychiatrists at Valkenberg Hospital, was that the motivation for his crimes were that in fact his wife, that he was in fact much older than his wife, that he was, she was much younger than he was, that in fact this had something to do with him being, the nature of the relationship was that he was jealous of

her."

"Dr Crafford, these facts that have been put to you by the Court, would they make any difference to your findings of the pathological personality traits of the accused? --- No I don't think so, I think that the accused has a severe personality disorder."

" Certainly his assaultive behaviour of his wife over years, his accusations of infidelity towards his common-law wife, are certainly abnormal and very pathological and are very maladaptive personality traits.

These traits are extremely fixed and they have certainly, have been very damaging to, not only to himself, but to the women he's been involved with in his relationship, in day to day living."

" If the suspicion is in his mind rather than, the slightest circumstantial event, for example if his wife was half an hour late from the shop, if that triggers off accusations and an assault on her, at other times she said to me that in fact there was no circumstantial event that triggered off his accusations of infidelity, that's not a rational thing. It is not

a rational thing."

"The more unfounded the suspicions, the greater my conviction that he does in fact have a personality disorder, that in fact his belief, his suspiciousness is rooted in his personality rather than events."

The above passages range over a wide field but they are in my view reconcilable. It seems to me that they indicate a condition of mind on the part of the appellant which leads him to exhibit unreasonable and unfounded jealousy towards women and, in this case towards Mietjie, especially when she was in the presence of another man and even in the most innocent of circumstances. It is unnecessary in my view to consider whether the excessive jealousy which the appellant displayed on each of the three occasions is pathological in origin or whether it stems from some other cause. It suffices to say that his reactions were so excessive and so unfounded, resulting in a virtual butchering of three

elderly unresisting victims, that there is good ground for treating him as a person whose judgment and control were deficient.

The court a quo was unimpressed by this evidence. Having rejected the version of actual intercourse put up by the appellant, the court came to the conclusion that extenuating circumstances did not exist.

In my view, the approach adopted by the court a quo is open to challenge. The rejection of the appellant's account does not, in my view, require that the fact of his disturbed judgment be ignored. It is significant that immediately before he launched his attack upon each of the victims, he accused Mietjie of sexual impropriety with them. Given his low intellect, he could hardly have been preparing an excuse for his unlawful conduct in advance. These accusations provide proof of his unreasoned and unreasonable fits of jealousy.

It is now appropriate to weigh up the aggravating factors and the mitigating factors. As to the former, it goes without saying that the appellant committed no less than three brutal and unprovoked killings. His victims were all elderly, innocent and defenceless men. He helped himself to some of their possessions and dumped the victims unceremoniously into graves which he dug on the farm. The killings were executed with cold and terrible efficiency. He showed no remorse and even tried to mislead the police in their investigations. The fact that he committed so serious a crime on no less than three occasions is in itself an aggravation. He is a man given to violence. His appalling treatment of Mietjie is one example, as is his record of previous convictions which contains a list of four offences, serious in nature, of which violence towards others is a hallmark. He is an undoubted danger to the community and there is clearly no prospect of his rehabilitation. He is already in his early fifties.

Against these features is the single factor of his excessive jealousy. In my view, however, it is the most important feature in this case. Exacerbated as it was by the consumption of alcohol, it is probable that his jealousy erupted in a frenzy of passion which reduced in him the ability to control his conduct. The very nature of some of the aggravating features which I have listed above, more especially the brutality of the killing, the similarity in their pattern, his treatment of Mietjie, the lack of provocation and (possibly) his past record of violent conduct, indicate a man of low intellect who became bereft of control. This solitary feature is in my view so marked and so significant that it should ordinarily suffice to avoid the imposition of the death penalty.

It has been argued that a sentence of imprisonment is inappropriate because the appellant might well constitute a danger to other prisoners. This possibility was tentatively

advanced by Dr. Crafford and then virtually abandoned. It does not appear from the record that any violent incident has occurred during his incarceration to date. Dr Crafford is in any event hardly able to testify about conditions in a goal. This is a matter about which it is unsafe to speculate. No doubt the prison authorities will have special regard to his psychological condition and will take such preventive steps as may be required.

I am of the view that this case merits lifelong imprisonment, the more so because there is no prospect that he will emerge from prison as a reformed and rehabilitated man. There are, of course, the other purposes of punishment, namely deterrence, prevention and retribution. There is a compelling need to deter others from committing offences of this nature. Society will not countenance such brutal and unprovoked conduct. For the same reasons the retributive effect of sentence requires recognition in the present case, as an imperative consideration. (S v MDAU

1991 (1)SA 169 (A), at p. 177 B-C). This is the type of situation where the circumstances call for punishment which is so severe that a lesser period of imprisonment will not suffice.

In the result the appeal against the sentences of death on Counts 1,3 and 5 succeeds. The death sentences are set aside and there is substituted in each case a sentence of imprisonment for life.



H.J. PREISS

ACTING JUDGE OF APPEAL

CORBETT CJ)

CONCUR

NICHOLAS AJA)