

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

Saak no. 612/91

In the matter between:

JACK BAARDMAN Appellant

AND

THE STATE Respondent

Coram: BOTHA, F.H. GROSSKOPF, J.J.A. et NICHOLAS, A.J.A.

Heard: 19 May 1992

Delivered: 29 May 1992

J U D G M E N T

NICHOLAS, A.J.A. :

This matter concerns the sentence of death passed on Jack Baardman upon his conviction for murder.

The scene of the events which were unfolded at the trial was the farm Klipdrift in the district of Graaff-Reinet. The main characters were -

Christiaan Joubert, the owner of the farm.

Johanna Joubert, ("the deceased"), wife to the former, who also conducted a school on the farm for the children of Klipdrift and neighbouring farms.

Jack Baardman, a farm labourer, who was employed by Joubert at a wage of R120 per month plus rations.

Patricia Baardman, his wife.

Gert Nuvelde, another farm labourer.

Lenie Williams, the "houvrou" of the last-named.

The story opens on the morning of 1 September 1988. The deceased was teaching in the schoolhouse. Joubert was loading a truck with wool which he was to take to Port Elizabeth. He left in mid-morning and did not return to the farm until 11.30 that night. The farmhouse was then quiet and in darkness. In a small room outside the house which was called "the lobby", he found a letter which made him suspicious. He kicked open the door to the house. His wife was not there. He made inquiries from the labourers. Gert Nuveldt and Jack Baardman said that they knew nothing of the whereabouts of the deceased. Joubert asked Baardman about some scratchmarks which he noticed on his face and chest. Baardman replied that they had been caused when

he fell into a sluice while he was irrigating the lands.

At about 6 o'clock on the following morning (2 September 1988) Joubert reported the matter to the police. Captain Dicker arrived at the farm from Graaff-Reinet at about 9 a.m. and began to search and make enquiries. He questioned Baardman about the scratch on his face. Baardman's first explanation was that it had been caused in a fall, and then he said that it was from a pimple which he had scratched. Dicker arrested him. During the interrogation which followed, Baardman said that he would point out the place where the deceased's body was to be found. On that afternoon, he led Captain Vermeulen to an aardvark hole about 5/600 m. from the farmhouse. From it the deceased's body was unearthed.

Lenie Williams had gone missing about 3 months before this, on 5 June 1988. Her disappearance remained unexplained until 7 September 1988, when Baardman led Captain Nieman to an aardvark hole which he pointed out as the place where he had buried Lenie. A skeleton was unearthed, and it was taken to the mortuary.

Arising out of these events, Baardman was indicted in September 1988 in the South East Cape Local Division of the Supreme Court on two counts of murder; count 1 related to the deceased; count 2 to Lenie Williams. He pleaded not guilty but was found guilty on both counts and, no extenuating circumstances having been found, he was sentenced to death on each count. The trial judge (Van Heerden A.J.) refused leave to

appeal and a petition to the Chief Justice for leave to appeal was unsuccessful.

The sentences were subsequently considered by the panel appointed in terms of s. 19 of the Criminal Law Amendment Act, No. 107 of 1990. In respect of count 1, the panel found that in its opinion the sentence of death would probably have been imposed by the trial court had s. 277 of the Criminal Procedure Act, 1977, as substituted by s. 4 of Act 107 of 1990 ("the new s. 277") been in operation at the time sentence was passed. In respect of count 2, the finding was that in its opinion the sentence of death would probably not have been imposed. The sentence of death in respect of the murder of the deceased comes before this court in terms of ss. (12)(a) of s. 19, and the court is now re-

quired to consider the case in the same manner as if (i) it were considering an appeal by Beardman against his sentence, and (ii) the new s. 277 had been in operation at the time sentence was passed by the trial court.

The trial court rejected the evidence given at the trial by Beardman, finding that he was an extremely unsatisfactory witness, who, it was clear, at times made up his evidence as it suited him. His counsel candidly acknowledged (correctly, it is plain from the record) that there was little to be said to support an acceptance of his evidence. The trial court was satisfied beyond any reasonable doubt that Beardman intentionally killed the deceased and Lenie. That finding was plainly right. It is accordingly

unnecessary to analyse the evidence, but reference will be made to some features which bear upon the propriety of the death sentence in respect of the murder of the deceased.

On post mortem examination of the body of the deceased it was seen inter alia that there were multiple abrasions on the front of the neck, bleeding into the muscles of the neck and the thyroid gland and bruising of the glottis and the vocal chords. In the opinion of Dr. Lang, who conducted the post mortem, death was caused by an application of constricting force to the neck such as in throttling. Although he found no fracture or any external injury to the head, Dr. Lang found extensive bleeding into the deep tissues over the

entire scalp. This could have been caused by a blow to the head, or by the head coming into violent contact with the ground.

Dr. Lang also examined the skeletal remains of Lenie Williams, but could not ascertain the cause of death from anatomical examination only.

Around the upper cervical vertebrae, however, he found a piece of material with a double hitch knot tied in the form of a ligature, and a hemp cord also tied with a double hitch knot.

Baardman's wife, Patricia, had at one time been employed in the Joubert household at a wage of about R80 per month, but the deceased dismissed her for dishonesty. Her place was taken by Lenie Williams,

who was described by Joubert as an outstanding worker.

On the Sunday of her disappearance, Lenie left the farmhouse at about 11 a.m., before she had finished her work.

When she did not return, Joubert asked Gert Nuveldt where

she was, but he did not know. On the Tuesday Joubert

took Gert in his bakkie to the neighbouring farms and

families, but without result. Constable Holtzhausen

came out to investigate the matter but his enquiries

were fruitless. Lenie was never seen again.

The letter which Joubert found in the "lobby" was not in the deceased's handwriting. It was proved that it had been written by Baardman's niece, Sophie Adams, at his dictation, about a week before 1 September 1988. It read as follows:

"Chrisjan, ek het n oproep ontvang van Lenie. Sy is in die Kaap. Sy het my alles vertel dat jy met haar wou omgang. Sy het gesê nee en jy het haar R100 aangebied en sy het dit (onleesbaar) die rede waarom sy weg is, is dat Gert haar geskel het en haar wou doodmaak omdat sy vertel het van jou en haar. Ek het hom gevra of dit so is, hy het gesê ja dit is so. Ek het nagedink en besluit om na my mense toe te gaan. Jy moet nie dink ek gaan jou vryheid gee nie. Ek vat net my klere maar ek los die geld en alles vir my kinders na. Ek het jou vertrou by alles, maar jy het my tyd verspeel om n ander persoon lief te hê. Ek moet my geld met jou kinders deel wat ek vir jou kinders kon gespaar het. Moet my nie agtervolg nie, want jy gaan spyt wees. Geen polisie agter my nie."

The principles to be applied when a court considers the imposition of sentence of death under the new s. 277 have been considered by the Appellate Division in a number of reported cases, and it is un-

necesssary to repeat them here.

The first enquiry is into the presence of aggravating factors. In this case they are manifest.

To judge from the injuries she sustained, Baardman's attack on the deceased must have been a violent and brutal one. So far from the attack being provoked, as Baardman said in a statement he made to a magistrate, it was planned a week beforehand, when the letter Ex. C was written, at his dictation, to be used after the deed had been completed. The deceased was a defenceless woman, and the killing was of a piece with that of Lenie, whom Joubert described as "n ver-skriklike klein mensie".

The trial court found that the evidence

did not reveal what Baardman's motive was for killing either the deceased or Lenie, but stated that proof of motive was not indispensable for a conviction. That is of course true, but the motive with which a murder is committed is highly relevant to the appropriateness in the particular case of the sentence of death. The scenario suggested by counsel for the State was that Lenie was killed in order that Patricia should regain her former employment. When three months had passed after Lenie's death without Patricia's reinstatement, Baardman took his next step - the removal of the deceased, who had dismissed Patricia. With the deceased out of the way, Joubert might reinstate Patricia, who when employed had been making an appreciable contribu-

tion to the income of the Baardman family. The letter Ex. C was written primarily to explain the disappearance of the deceased, but also to convey to Joubert that Lenie would never return. The trial court characterized this scenario as mere speculation but I think that it can legitimately be inferred. It is consistent with all the proved facts, and the proved facts are such that they exclude every reasonable inference from them save this one. Baardman did not take the trial court into his confidence in regard to his motive and no other motive can be suggested. The crime was not committed on impulse, but was planned by a man whom Ex. C shows to be intelligent and calculating. On post mortem examination there was no evidence of forcible entry

into the vagina. There was nothing to suggest robbery as the motive. It is clear that the killing of the deceased formed part of a pattern. It was followed by a cunning ruse to cover it up, although Baardman plainly did not appreciate that Ex. C would be exposed as a forgery by the handwriting.

Counsel for the appellant valiantly tried to show that there were mitigating factors present in the case. He said that Baardman, who was 27 years old, was a first offender with no background of violence. Even so, his conduct in this case shows him to be a cold and calculating killer, prepared to ruthlessly remove any obstacle to Patricia's reinstatement.

Counsel submitted that he was a family man with a wife

and a child, and a quiet, withdrawn person who constituted no danger to the community. Yet within three months he throttled both the "houvrou" of Gert Nuveldt and the wife of Joubert. Counsel submitted that he gave his full co-operation to the police, which could be seen as a sign of remorse. But any such feeling did not persist, because in his evidence at the trial he told a story (plainly false), according to which Joubert was his wife's murderer. Finally it was submitted that he got no benefit from his deeds. That is so, but that was because of the miscarriage of his scheme to obtain Patricia's reinstatement.

There were no mitigating factors. This was an extreme case. It imperatively called for the

imposition of the ultimate penalty.

The sentence of death is confirmed.

H.C. NICHOLAS, A.J.A.

BOTHA, J.A.)
F.H. GROSSKOPF, J.A.) concur