

154/92

Case No 449/91

IN THE SUPREME COURT OF SOUTH AFRICA  
APPELLATE DIVISION

In the matter between:

DUMISANI JOSEPH MALUNGA

Appellant

and

THE STATE

Respondent

CORAM: HOEXTER, VIVIER et F H GROSSKOPF JJA

HEARD: 17 September 1992

DELIVERED: 17 September 1992

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TRANSCRIPT OF REASONS ORALLY DELIVERED IN OPEN COURT ON THURSDAY  
17 SEPTEMBER 1992 , BY HOEXTER JA AND CONCURRED IN BY VIVIER AND  
F H GROSSKOPF JJA.

HOEXTER, JA .....

HOEXTER, JA

On 8 August 1991 a court in the Natal Provincial Division consisting of Combrinck J and two assessors found the appellant guilty of the following crimes: two counts of murder, two counts of attempted murder, and one count of robbery. On each of the two murder counts the appellant was sentenced to death. This appeal is against the two death sentences only. The appeal has been argued by Mr Joubert as pro Deo counsel. This court is indebted to him for his assistance in the matter. He has said everything that might be said in support of the appeal.

The appellant's trial was the aftermath of certain events on 26 August 1988. On that date a carefully planned armed robbery was carried out by three men, acting in concert, at the premises of a bottle store at Reservoir Hills in the district of Durban. The appellant was one of the three robbers. He wielded a

home-made dagger with a long blade. The other two robbers were equipped with fire-arms.

The three robbers burst into the bottle store shortly before closing time and just as the last customer of the day was leaving. Amongst those present in the shop at the time were the manager of the store, Mr Reddy snr, his son, Mr Reddy jnr, and Mr S Moodley. Nobody offered the robbers the slightest resistance. Mr Reddy senior told the robbers that they might take what they wanted, but that they should harm nobody. The robbers nevertheless used unnecessary and indiscriminate violence before they left the shop with the money seized by them. Mr Moodley was shot in the right thigh. The appellant used his dagger to inflict fatal stab wounds both on the manager and his son. The appellant stabbed Mr Reddy junior in the shoulder near the neck. He died shortly afterwards. Mr Reddy senior was a sickly man of 62. The appellant

stabbed him in the abdomen. As a result of this wound Mr Reddy died some days later from cardiac failure. As the robbers were leaving the bottle store they noticed that Mr S Dhuki was following them. Thereupon one of the robbers shot Mr Dhuki in the chest.

The appellant has a bad record of previous convictions. These are mostly for housebreaking and theft. In 1981, however, he was sentenced to imprisonment for five years for robbery. Following his arrest in respect of the murders under consideration in this appeal, the appellant was released on bail in March 1990. In May 1990 the appellant and two others broke into the home of an elderly couple in Pinetown. The husband was 91 years old and his wife 84. In the course of the ensuing robbery the husband was shot and killed. In respect of the last-mentioned crimes the appellant was in June 1991 convicted of murder and housebreaking with intent to rob and robbery.

For the murder the appellant was sentenced to imprisonment for life. For the housebreaking and robbery he was sentenced to fifteen years imprisonment.

After the appellant had been convicted, his counsel fairly conceded that he was unable to call attention to any mitigating factors. On the other hand the aggravating factors in the case are many and obvious. In his judgment on sentence the trial judge remarked that in the case of the appellant any reformatory prospects were utterly remote. I agree with that assessment. Despite the fact that he is a comparatively young man it is clear that he is an evil person quite beyond redemption; and that he is prepared to kill for the sake of killing. Apart from the poor prospects of rehabilitation, this is the sort of case in which the claims of society are paramount. The trial judge considered that this was a case in which the death sentence was imperatively called for. I agree with

that finding. There is no reason for disturbing the sentences of death imposed by the trial judge.

To cover the eventuality that in the days that lie ahead the death sentence may, for whatever reason, not be carried out upon the appellant, I would make the following further comments on the case. The registrar of this court will transmit a copy of this judgment to the Chairman of the Release Board, c/o the Commissioner of Corrective Services, Private Bag 136 Pretoria 0001. In my judgment the appellant is a vicious killer against whose criminal propensities the public requires particular protection. The likelihood that the appellant, if he is again let loose on society, will perpetrate further killings is, I think, to be measured in terms of probability rather than mere possibility. Should the appellant not be hanged by the neck it is essential, so I consider, that he be kept in prison for as long as is legally possible.

The appeal is dismissed.

G G HOEXTER, JA

VIVIER JA )  
F H GROSSKOPF JA ) Concur