

CCC/

CASE NO 13/93

IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE

DIVISION) In the matter between:

DAVID JABULANI MPUTHI

APPELLANT

and

THE STATE

RESPONDENT

CORAM: NESTADT, NIENABER JJA et HARMS AJA DATE

HEARD: 2 SEPTEMBER 1993 DATE DELIVERED: 9

SEPTEMBER 1993

J U D G M E N T

NESTADT, JA:

This is an appeal against the death sentence. It was imposed by Broome J sitting on circuit in the Natal Provincial Division consequent upon the appellant

having been found guilty of murder.

The crime took place near Mhlumayo in the district of Klip River on 30 September 1991. The facts of the case are summarised by the trial judge in the following terms:

"(A) truck hired by Best Buy Cash & Carry which is Mr Vawda's operation, was in the Mhlumayo area delivering a large consignment of goods and receiving payment therefor. The amount of the day's taking was estimated at R9 000. Mr Vawda had hired the services of the Accused from Northern Natal Security to act as an armed guard to protect his employees and his goods. When the day's operations were complete and while the Accused was sitting in the back on the truck with Alfred and the other three Best Buy employees were in the cab with the driver of the hired truck, the Accused produced a firearm, shot and seriously injured Alfred who was on the back with him, the truck stopped, the occupants of the cab fled but as they did the Accused shot dead the deceased and fired a number of shots at Eric and Fakazi."

It should be added that the appellant was seen to take

the money and that it was never recovered; that the

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deceased was shot as he was fleeing from the truck; that he died as a result of a bullet wound of the head; and that the appellant was sentenced to various terms of imprisonment in respect of the other crimes disclosed in the description of what happened but that such sentences are not in issue in this appeal.

In favour of the appellant is the fact that he (aged 27) is a first offender.

A further possible mitigating factor is that the appellant's decision to steal the money, and in the process kill the deceased and shoot the others, probably arose only during the course of the journey. This is because the appellant had no prior knowledge of what duties he was being assigned to.

On the other hand the aggravating factors are manifest. The murder, which took place during the

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course of a robbery, was obviously committed with dolus directus. It was a callous killing. The deceased was shot as he was fleeing, probably so that he could not later identify the appellant. As the trial judge found, the appellant's conduct betrayed his position of trust; he robbed and shot the very people he was employed and paid to protect. This is a particularly reprehensible factor. There was a measure of premeditation in what he did. And as appears from the judgment a

quo this type of offence is a prevalent one. In my opinion these considerations override the mitigating factors referred to. They are such as to impel one to conclude that in the interests of society and having regard to the deterrent and retributive objects of punishment, the death sentence is the only proper one.

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The appeal is dismissed.

NIENABER, JA)

) CONCUR

HARMS AJA)

NESTADT, JA