Editorial note: Certain information has been redacted from this judgment in compliance with the law.

Case number 228, 230, 232/93

/al

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

CASSIMA ROMAN	Appellant 1
JAMES ARNOLDS	Appellant 2
KLAAS TIETIES	Appellant 3

and

THE STATE	Respondent

CORAM : NESTADT, F.H. GROSSKOPF JJA et KANNEMEYER AJA

DATE OF HEARING : 18 FEBRUARY 1994

DATE OF JUDGMENT :

JUDGMENT

KANNEMEYER AJA/.......

KANMEMEYER AJA :

The three appellants, together with two other accused, were charged with sodomy and murder. The offences were alleged to have been committed in the St Alban's Prison, Port Elizabeth on 12 March 1991. The victim in respect of both counts was one B.F.. The three appellants were accused numbers 2, 3 and 4 respectively before the trial court. Accused number 1, Hendrik Louwskieter, absconded before the trial commenced, and it accordingly proceeded against the remaining four accused only. The appellants and accused number 5, George Kiewiets, tendered pleas of not guilty on both counts. At the end of the State case the three appellants and Kiewiets were found not guilty and discharged on the count of sodomy. However the three appellants and Kiewiets were subsequently all found guilty of murder on count two. The three appellants were

sentenced to death while Kiewiets was sentenced to 20 years' imprisonment.

The three appellants now appeal to this Court in terms of section 316A(1) of the Criminal Procedure Act No 51 of 1977, as inserted by section 11 of Act No 107 of 1990, against both their conviction and sentences. Kiewiets is not on appeal before us.

The evidence discloses that the three appellants, Louwskieter, Kiewiets and the deceased were prisoners serving sentences in the St Alban's Prison, Port Elizabeth. They, and other prisoners, were detained in cell 2C. When, at about 6 a.m. on 12 March 1991, Sergeant April of the Correctional Services opened the outer door of cell 2C he found the body of the deceased in the ablution area. It appears that, from the outer door one passes through this area to reach the cell itself. April noticed that there was a prison uniform belt

fastened round the deceased's neck and that his tongue was protruding. There was blood on his neck. He tested the deceased's pulse and concluded that he was dead. He called Major Gouws and the two of them entered the cell itself. What then transpired will be mentioned later.

A post mortem examination of the deceased's body was carried out by Dr. J.R. Lang, the Chief District Surgeon of Port Elizabeth on 14 March 1991. He found that death had been caused by a "constricting force applied around the neck causing hypoxia." i.e. the force of the belt seen by April. Dr. Lang also found numerous incised wounds on the deceased's neck and face.

The case against the appellants was based primarily on the evidence of Willem Dickers, Hendrik Williams and Dumile Majola, fellow cell mates of the appellants and the evidence as to what occurred when Major Gouws and Sergeant April

entered the cell. The State also called a fourth inmate of the cell, Mark Anthony Ruiters, but his evidence was rejected by the trial Court with good reason.

The trial Court made strong credibility findings in respect of Major Gouws, Dickers and Majola. The credibility finding in respect of Williams, while not adverse, was more qualified than that of the other witnesses mentioned above.

The State' s evidence is that on the night of the occurrence, just before the lights in the cell were extinguished for the night, the three appellants, together with Louwskieter and Kiewiets, were sitting together in a circle in the cell, talking softly to each other. Both Williams and Majola depose to this fact and both say that those in the circle, including the three appellants, then stood up and went to the ablution area or bathroom, as it was referred to in the evidence. The

deceased was then called to join them. According to Williams he was called by Louwskieter while Majola says he was called by the first appellant. Be that as it may, the evidence is that the deceased went into the bathroom where the three appellants, Louwskieter and Kiewiets were together. The appellants, Louwskieter and Kiewiets were all members of the prison gang known as "the twenty eights". There is evidence that, when a group of members of this gang gather and hold a conversation in the manner observed by the State witnesses, they are usually planning some unlawful activity.

According to Majola, when Kiewiets entered the bathroom he had a razor blade in his possession. He and the second appellant then proceeded to cut the deceased's cheeks with this blade. The deceased later returned from the bathroom to the cell, bleeding from his cheeks. He walked to his bed and took a face cloth which he used to staunch

the bleeding from the cuts on his face. Kiewiets ordered the deceased back to the bathroom and kicked the witness Dickers awake, ordering him to clean up the blood which was on the floor in the area between the beds and which was referred to in evidence as the "pitch".

The deceased then returned to the bathroom. What happened there is not clear, but the appellants, Louwskieter and Kiewiets later came back to the cell, leaving the deceased in the bathroom. When back in the cell the third appellant, according to Majola, removed his uniform belt and handed it to the second appellant. They, that is appellants number 2 and 3, then went back to the bathroom accompanied by Louwskieter and Kiewiets. Only Williams says that appellant number 1 went back to the bathroom on this occasion.

Certain of Williams' evidence, which was accepted by the trial Court, must be mentioned.

Although the appellants and Kiewiets were acquitted on the sodomy charge, it is clear that members of the 28-gang use younger prisoners for purposes of sexual gratification. The deceased was 21 years old at the time of his death. Williams says that when the appellants, Louwskieter and Kiewiets came back to the cell from the bathroom, Louwskieter said that his "cherry" was dead. All five of them then gathered at the beds of appellants number 1 and 3 and Kiewiets who slept next to each other. Williams says that at this stage he heard a snorting kind of noise in the bathroom where the deceased still was, whereupon the third appellant said "die naaier is nog nie dood nie". It was at this stage that the third appellant removed his belt and went with the others back to the bathroom. It must have been then that the deceased was strangled.

Thus, on the evidence of the State witnesses,

the whole episode on the night in question can be divided into three parts. First the deceased was ordered to the bathroom and his face was cut. Secondly, after he had gone to his bed to staunch the blood caused by these cuts, he was ordered back to the bathroom. What then happened there one does not know but it is apparent from Williams' evidence as to what Louwskieter said on coming back to the cell on this occasion and what the third appellant said when the snort-like noise was heard, that it was thought that the deceased was then dead. What had been done to him to lead to this assumption is not established since the only injury of a fatal nature found by Dr. Lang was the strangulation. There was some suggestion that the deceased had been stabbed with a home made awl which was subsequently found in the bathroom but Dr. Lang discounts the possibility of this having happened. The third stage was that when, after the snort-like

noise was heard, the deceased's assailants returned to the bathroom with the belt and administered the coup de grâce.

The appellants gave evidence. Appellant number 1 testified that he had gone to sleep shortly after 8 p.m. and woke again on the following morning when the bell was rung. Appellant number 2 said that he went to the bathroom to urinate. While he was there the deceased entered with a wild look and pushed him aside. He had a razor blade with him and, assuming that the deceased was about to attack him, he cut him with the blade. He returned to the cell but later again went to the bathroom to talk to appellant number 1 who was there at the time and then returned to the cell. He denies knowing anything about the death of the deceased. Appellant number 3 gave evidence at considerable length. He attempted to incriminate the other

accused while exonerating himself.

The trial Court came to the conclusion that the three appellants were bad witnesses and, on what appear to be substantial grounds, the evidence given by them was rejected in toto as being not only not reasonably possibly true but also as being false.

It is necessary next to consider events that took place after the deceased had been killed. Evidence for the State is that when the three appellants, Louwskieter and Kiewiets were together in the cell, they proceeded to pack their personal belongings. This, according to the evidence, is indicative of the fact that they appreciated that they would be moved from cell 2C to single cells when the crime was discovered and its perpetrators identified. However, appellant number 1 denied that he had packed his belongings and said that, after he had been removed to a single cell, he had

to ask to be taken back to 2C to get his belongings. In this he is supported to some extent by Warrant Officer Barnard of the Department of Correctional Services who was stationed at St Alban's Prison at the time. He was the official in charge of the single cell division and he says that the appellants and Kiewiets were placed in these cells. He confirms that a prisoner, on being confined to a single cell, normally brings his personal effects with him. However, he says that appellant number 1 later asked to be taken back to cell 2C to collect some of his belongings which had been left behind in that cell. This request was complied with and other prisoners in the cell handed him his clothes and toilet requisites through a window. He is unable to say whether appellant number 1 brought any of his personal belongings with him when he originally came to the single cells.

The next evidence of events which occurred after the murder is that of Major Gouws and Sergeant April. After Sergeant April had found the deceased's body and raised the alarm Major Gouws of the Correctional Services, who was then on duty, went to cell 2C. After having seen the body of the deceased in the bathroom he then proceeded to the cell itself in which the inmates were still present. He ordered all the prisoners to move to the back of the cell. He then asked them who the people were who had killed the deceased, whereupon Louwskieter stepped forward to where Major Gouws was and four other prisoners followed him. Louwskieter then said that he and the other four were responsible for the death of the deceased. The other four were the three appellants and Kiewiets. They must have heard what Louwskieter said but according to Major Gouws, none of them said anything - there was no denial of

Louwskieter's allegation that they, with him were responsible for the deceased's death. He then established that those who had come forward were members of the 28-gang and that the deceased was not a member of a gang. The three appellants, Louwskieter and Kiewiets were then removed to the single cells. April substantially confirms Major Gouws' evidence as does Olckers. Williams, while confirming Major Gouws' evidence adds to it by saying that not only did Louwskieter say that they, the five who stepped forward, had committed the murder but that each one of them confirmed this. He also said that the five showed their prison cards to the major who looked at them and then returned them. Majola confirms Major Gouws' evidence that, when the latter asked who was responsible for the murder the five mentioned above stepped forward. However he says that none of them said anything to Gouws.

In giving evidence the first appellant admitted stepping forward but says he did this because Major Gouws asked who the cell monitor was and that he held that position. The second appellant admitted coming forward but says he did this because Major Gouws asked the members of the 28-gang to do so. The third appellant was to the same effect. Major Gouws admits that, after establishing that the appellants and the other two accused were 28-gang members, he asked whether any others in the cell were members of this gang whereupon some prisoners raised their hands but he denies that any came forward as a result of this question.

Major Gouws' evidence is relied upon by counsel for the State first to prove an admission of guilt by conduct on the part of the three appellants by stepping forward as they did and secondly to establish an admission of guilt by

silence when they did not react to Louwskieter's statement that they had been a party to the murder of the deceased.

In argument before us, counsel for appellants numbers 1 and 2 abandoned the stand the appellants had adopted in giving evidence and submitted that an alternative hypothesis could be deduced from the facts of the case viewed as a whole, namely that they had done something to the deceased, whether by sodomising him or cutting him with blades but that his eventual death was caused by someone else. In the circumstances, so the submission went, these two appellants thought that they had killed the deceased and that this explains their behaviour when Major Gouws asked who was responsible for the deceased's death. This submission cannot be accepted if the evidence of the State witnesses is taken into consideration that these two appellants were in the bathroom during the second stage and

that appellant number 2 went back during the third stage. Even accepting in the first appellant's favour that there is doubt as to whether he was in the bathroom when the actual strangling took place, he was clearly there during the first and second stages. During the second stage the evidence mentioned above establishes that when the appellants and the other two accused returned to the cell at the end of this stage it was thought that the deceased was dead. Whatever had been done to him in the bathroom during this stage, all three appellants and the other two accused were there in concert. Appellant number 1, even if he did not return for the final stage, associated with the others throughout. When he came forward and remained silent notwithstanding Louwskieter's statement he confirmed his association with the others in encompassing the death of the deceased. During argument it was also submitted that the

evidence that Louwskieter said that the appellants were party to the death of the deceased was hearsay. This is not so. The evidence of what Louwskieter said was not tendered to prove the truth of what he said but to show the appellants' reaction thereto, when it was said. Finally it was argued that the evidence should be excluded as being prejudicial to the appellants and insufficiently relevant; however the substantial relevance of this evidence is beyond doubt.

In Schmidt : Bewysreg, 3rd edition at pages 473 - 474 under the heading "Erkenning deur gedrag", the learned author deals with the case of S v Robertson en Andere 1981 (1) SA 460 (C) which involved a gang murder in a prison. When the commanding officer entered the cell the accused were standing near the body of the deceased and made certain admissions. The admissions and the position of the accused were not admitted because

there was a reasonable possibility that they were the result of duress exerted by other gang members. However at page 474 the learned author says:

> "As die bevelvoerder in Robertson gesê het: 'Sal diegene wat verantwoordelik is, vorentoe kom' en die beskuldigdes vorentoe getree het, sou dit wel neergekom het op erkenning deur gedrag."

Counsel for the three appellants attacked the evidence of Olckers, Williams and Majola because of discrepancies and contradictions in it. Mr Buchler, for the State, in his full and well reasoned heads of argument which have been of real assistance to us, has dealt with the points raised in the appellants' submissions and we are satisfied that, notwithstanding the criticism levelled at their evidence, the trial Court has not been shown to have erred in accepting it. The Court was conscious of these discrepancies and contradictions and, as mentioned above, accepted the evidence of the State witnesses with the exception of that of

Ruiters. The trial Court, in assessing the evidence of the inmates of cell 2C who gave evidence for the State, appreciated that they were deposing to events which took place almost a year before the trial which, they had observed from different positions. In his judgment, Rein A.J. also took cognizance of the mentality and background of the witnesses concerned and the fact that they did not all observe the same incidents.

If one thus rejects the evidence of the appellants and Kiewiets as false one is left with the evidence of the State witnesses which was properly accepted by the trial Court. On this evidence the guilt of the appellants is proved beyond reasonable doubt. Even if one does not accept Williams' evidence that appellant number 1 went into the bathroom when the deceased was finally killed the evidence as a whole is sufficient to establish that he was

party to the

agreement to kill the deceased and took a part, during the second stage, in order to accomplish this end.

Before passing from the conviction of the appellants to the question of sentence there remains a matter which must be considered although it was not raised before us.

After the three appellants and Kiewiets had been convicted the evidence of a psychologist was led in respect of appellants number 2 and 3. Thereafter the Court called a psychologist employed by the Department of Correctional Services. When his evidence was concluded counsel for the three appellants and for Kiewiets addressed the Court in mitigation of sentence. When these addresses had been completed, counsel for Kiewiets called him to give evidence. After his evidence in chief had proceeded for some time certain questions were put to him concerning the activities of gangs in

prisons. He became ill at ease and his evidence was scarcely audible. At this stage his counsel made an application that the other accused, i.e. the three appellants, should be removed from the Court so that, as I understand it, Kiewiets would feel free to talk without fear of retribution. A discussion took place between the learned Judge a quo and counsel who then appeared for the State, who vehemently opposed the application. The learned Judge then held that he had a "discretion in these matters" and ordered that "those three accused can be accompanied down to the cells". Counsel for the three appellants stated that they had no objection to this procedure being adopted. The learned Judge did not have the discretion which he purported to exercise and the question now arises as to what effect his ruling has on the conviction of the appellants.

Section 158 of Act No 51 of 1977 provides

that:

> "Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused."

Section 159 of the Act provides the circumstances in which criminal proceedings may take place in the absence of the accused. The fact that a witness, be he an accused or not, is inhibited by fear from giving evidence in the hearing of the accused or other accused is not one of the circumstances provided for by this section. Section 158 is peremptory. Neither an accused nor his legal representative can waive this fundamental right. Even if the accused's legal representative is present throughout the accused's absence, the irregularity remains. The requirement that the accused should be present is applicable until the trial is completed. See: Hiemstra : Suid-Afrikaanse Strafproses 5th edition page 408 and the

cases there cited. However section 322(1) of Act No 51 of 1977, dealing with the powers of a court of appeal, provides that:

> "notwithstanding that the court of appeal is of opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record of proceedings, unless it appears to the court of appeal that a failure of justice has in fact resulted from such irregularity or defect."

In my view the irregularity committed by the Judge a quo has not resulted in a failure of justice. It occurred after the appellants' counsel had pleaded in mitigation on their behalf. Their counsel were present throughout and had the evidence of Kiewiets required any reply or comment by them the Court would, doubtless, have allowed them to be called as Kiewiets was called, after his counsel had pleaded in mitigation. The evidence given in mitigation by Kiewiets could not have had any prejudicial effect on the appellants, who had

already been convicted when it was given.

Thus the irregularity is not fatal to the conviction of the three appellants on the count of murder, and the convictions must thus be confirmed.

I turn now to the question of the death sentences imposed on all three appellants. Mr Spruyt for the first and second appellants, submitted that the learned Judge a quo was guilty of a serious misdirection in respect of sentence by sentencing Kiewiets to twenty years' imprisonment and the appellants to death when their co-accused was no less blameworthy than they were. He referred to S v Goldman 1990 (1) SACR 1 (A) in support of this submission. In that case, at page 3d-e, Smalberger J.A. said:

> "Although it is trite that sentences should be individualized, our courts generally strive for uniformity of sentences in cases where there has been a more or less equal degree of participation in the same offence or offences by participants with roughly comparable

> personal circumstances."

and at page 4d-e he said:

> "Despite the serious nature of the crimes committed the sentence imposed upon accused No 1 cannot be said to be unreasonable or clearly inappropriate. Having regard to their relatively equal degrees of participation and moral blameworthiness and their comparable personal circumstances, the sentence imposed upon the appellant, compared with that of accused No 1, is disturbingly inappropriate and interference therewith is fully justified (S v Marx 1989 (1) SA 222 (A)). A comparison with the sentence imposed on accused number 3 leads to the same conclusion."

However, in S v Marx (supra) at page 226 A - B Smalberger J.A. remarked:

> "Waar die ligter vonnis egter as onredelik of duidelik onvanpas aangemerk kan word, en die swaarder vonnis in al die omstandighede 'n gepaste een is, sou ingryping met, en versagting van, laasgenoemde vonnis nie geoorloofd wees nie, desondanks die wanbalans wat die vonnisse betref. Geregtigheid vereis dat gepaste strawwe opgele moet word."

In the unreported case of Meshack May and three others v The State heard in this Court on 15 May 1993, (Case No 594/92), F.H. Grosskopf J.A.

reiterated the above approach and continued, at page 21 of the typed judgment:

> "In die onderhawige geval is die doodvonnis na my oordeel die enigste gepaste vonnis vir appellants 1 en 3. Waar appellants 2 en 4 in gelyke mate aan dieselfde moord deelgeneem net, was die doodvonnis na my mening ook in hulle geval die enigste gepaste vonnis, nieteenstaande die feit dat hulle geen vorige veroordelings net nie. Na my oordeel was die vonnisse van gevangenisstraf wat appellante 2 en 4 opgelê is, dus nie die gepaste vonnisse nie. Hierdie hof is egter nie bevoeg om in te meng met appellante 2 en 4 se vonnisse nie. Waar hierdie hof eenmaal bevind dat die doodvonnis die enigste gepaste straf vir appellante 1 en 3 is - en dit is 'n bevinding wat nie ligtelik gemaak word nie - volg dit dat enige ander vonnis inderdaad nie die gepaste vonnis vir hulle is nie. In die omstandighede sou enige inmenging met die vonnisse van appellante 1 en 3 myns insiens nie geregverdig wees nie. Dit sou trouens in stryd wees met die basiese beginsel dat geregtigheid die oplegging van gepaste strawwe vereis. Gelykberegtiging beteken immers nie dat misplaaste toegeeflikheid teenoor een mededader ook die ander mededader moet bevoordeel waar sy vonnis in alle opsigte 'n billike en gepaste vonnis is nie. In al die omstandighede van hierdie saak is daar na my mening ook geen billikheidsoorwegings wat vereis dat daar met die doodvonnisse van appellante 1 en 3 ingemeng word nie."

Accordingly, if it should be found that, in respect of the three appellants, the death sentence is the only proper sentence, their sentences must be confirmed. The fact that a lighter sentence was imposed on Kiewiets who was as morally blameworthy as they were cannot affect their sentences. One must thus determine whether the death sentence is indeed the only proper sentence in respect of the three appellants. If this Court would not itself have imposed the death sentence, the death sentence imposed by the Court a quo must be set aside but not otherwise.

The trial Court found intention, in the form of dolus directus present in respect of all three appellants. Its finding in respect of the second and third appellants is manifestly correct but as far as the first appellant is concerned different considerations arise. In view of the fact that Williams is the only State witness who says that

appellant number 1 went to the bathroom during the third stage of the occurrence and in the light of the credibility findings in respect of this witness, number 1 appellant's position should be approached on the basis that he did not go to the bathroom during that stage and thus is not proved to have taken part in the actual killing of the deceased. In the result his intention was that of *dolus eventualis*. This, however, does not mean that the lesser intention which he had constitutes a mitigating factor. In May's case (*supra*) F.H. Grosskopf J.A. referred to the judgment of Smalberger J.A. in the unreported case of *S v Francis*, delivered on 18 May 1993 where the learned Judge found "that the appellant foresaw the death of one or both of the victims as a strong probability - one almost bordering on certainty". In view of this finding the Court concluded that:

> "Because of the appellant's high degree of foresight the absence of *dolus directus* cannot

constitute a mitigating factor."

In my view similar considerations apply to the first appellant in the present case. When appellants number 2 and 3 went to the bathroom with the belt he must have foreseen what was about to happen and must have realized that the unsuccessful attempt to which he was a party was now to be consummated. He associated himself therewith.

The evidence in mitigation of the psychologist Minnaar was not accepted by the trial Court. He based his conclusions on what the two appellants he interviewed told him, without in any way attempting to verify this information. The record of the proceedings was available but he did not read it. The appellants concerned did not confirm the facts allegedly conveyed by them to Minnaar under oath. In my view the trial Court correctly found that Minnaar's evidence did not establish any mitigating factors.

Then it was submitted that the prison subculture of gangs with codes of behaviour to which members are subjected constituted a mitigating factor. It has repeatedly been held by this Court that the presence of a prison sub-culture is, in respect of sentence, a neutral factor. It is only when that sub-culture so affects the motives and behaviour of the prisoner that his moral blameworthiness is reduced thereby, that it becomes a mitigating factor. See: S v Mongesi en Andere 1981 (3) SA 204 (A) at 212 A - E; S v Masuku and Others 1985 (3) SA 908 (A) at 915 B - G; S v Malqas en Andere 1991 (1) SA SACR 284 (A) at 293h -294b.

In S v Malgas (supra) F.H. Grosskopf J.A.remarked at pages 293j to 294b:

> "Anders as wat die geval by die bewys van versagtende omstandighede was, rus daar geen bewyslas op 'n beskuldigde om strafversagtende faktore te bewys nie. (Vgl Nkwanyana se saak supra.) 'n Beskuldigde moet egter daardie strafversagtende faktore waarop hy wll steun,

> opper, en hy moet 'n behoorlike feitebasis daarvoor lê deur al die getuienis waaroor hy op die betrokke faktor beskik, aan te bied -tensy dit natuurlik reeds uit die getuienis blyk (Vgl weer Nkwanyana se saak, supra). Dit net die appellants in die onderhawige saak nie gedoen nie. Die Staat was gevolglik nooit geroepe om weerleggende getuienis met betrekking tot die nadelige invloed van die sogenaamde gevangenis-subkultuur op die geestesvermoens of gemoedere van die appellant aan te bied nie."

In the present case the appellants failed to establish any factual basis for a finding that their behaviour was influenced by such a subculture. As mentioned above, Minnaar's evidence based on what the second and third appellants told him was not accepted, correctly in my view, by the trial Court. The appellants themselves did not give evidence in mitigation of sentence and nothing emerges from their evidence on the merits which constitutes a factual basis to suggest that their blameworthiness was reduced by reason of this subculture. It, therefore, cannot constitute a

mitigating factor.

All three of the appellants have bad records. The first appellant has nine previous convictions of housebreaking with the intent to steal and theft and one each of assault with intent to do grievous bodily harm, theft, possession of a dangerous weapon and robbery. Appellant number 2 has two previous convictions of housebreaking with the intent to steal and theft, five of theft, three of robbery, three of assault with the intent to do grievous bodily harm and one each of possession of a dangerous weapon, malicious injury to property and rape. The third appellant has seven previous convictions of assault with intent to do grievous bodily harm, three of theft, two of housebreaking with the intent to steal and theft and one each of culpable homicide and sodomy. In view of the above records and their present convictions, there is no real prospect of the rehabilitation of any of the

appellants.

This was, in any event a brutal murder. It was premeditated and when, during the second stage, the deceased's assailants failed to achieve their object, they returned to complete it. It was an attack on a young man who had given them no cause to assault him. He had no chance of defending himself against a group of men determined to kill him. The appellants have shown no remorse; indeed when April found the deceased' s body and ran to report the matter, the appellants, Louwskieter and Kiewiets according to Williams, laughed and made a joke of the incident. One said of April "Kyk hoe hardloop die vark, hy is ook bang."

In my view there are no mitigating factors present in this case and the aggravating factors are overwhelming. This does not, of course, in itself mean that the death sentence is the only proper one. However this is a case in which the

interests of society play a predominant role. In the Malgas case (supra) at 296d F.H. Grosskopf J.A. said:

> "In die lig van die vorige veroordelings van die appellante, en gesien die gedrag van die appellante ten tyde van, en direk na, die moord op die oorledene, is daar na my oordeel geen redelike vooruitsig van hervorming nie. 'n Verdere termyn van gevangenisstraf skep trouens die wesenlike gevaar dat die appellante nog dergelike moorde in die gevangenis sal pleeg."

In S v Eiman 1989 (2) SA 863 (A) at 873 A - B Steyn J.A. said:

> "Ons Howe het alte dikwels te doen met sogenaamde 'tronkmoorde', by vele waarvan gewelddadige psigopate betrokke is. Die gevangenisgemeenskap is ook geregtig om teen sulke gevare beskerm te word. Die geleerde Verhoorregter het hierdie aspek tereg in ag geneem."

In the light of the above the death sentence is the only proper sentence in respect of all three appellants.

The appeals of all three appellants against their convictions and sentences of death are dismissed.

D D V KANNEMEYER

ACTING JUDGE OF APPEAL

NESTADT JA]

] CONCUR

F H GROSSKOPF JA]