THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

CASE NUMBER: 395/97

In the matter between:

ISAAC RIBA APPELLANT

and

THE STATE RESPONDENT

CORAM: **GROSSKOPF, PLEWMAN JJA and FARLAM AJA**

DATE OF HEARING: **7 MAY 1999**

DATE HANDED DOWN: **12 MAY 1999**

REASONS FOR JUDGMENT

PLEWMAN JA

This is an appeal, with leave granted by this Court, against the sentences imposed on the appellant in respect of his conviction

on charges of murder and robbery with aggravating circumstances. At the conclusion of argument and subject to one alteration in the sentence, the appeal was dismissed with reasons to be filed later. These are the reasons. Appellant was indicted on these charges in the Witwatersrand Local Division of the High Court together with three other accused persons. Appellant and two of his co-accused pleaded guilty to the charges and their trial was separated from that of the remaining accused. The sentence in appellant's case was one of life imprisonment in respect of the murder charge and fifteen years imprisonment on the robbery charge. In so sentencing the appellant, the learned judge directed that the effective term of appellant's imprisonment would be life imprisonment "plus fifteen years". While this formulation of the sentence is not addressed in the heads of argument filed on appellant's behalf, I will presently have to return to that aspect. The heads of argument address the question of sentence only on the basis that it must be reconsidered because the court *a quo* (so it was argued) over emphasised the seriousness of the offence and the retributive aspects of punishment

and perhaps with less conviction, on the ground that the sentence induced a sense of shock.

The facts may be garnered from the statement made by appellant. There were, as has been stated, originally four accused. It seems that appellant and his three co-accused were approached by a person identified as Shaun Mason, obviously the principal wrongdoer in this unhappy affair, to procure by a robbery a BMW 325 motorcar of a specific colour and year in return for a cash payment of R3000. Mason had already (by what means is unknown) located a vehicle which met his requirements. He instructed the four accused as to where this vehicle could be found. He provided them not only with the registration number of the vehicle but also with the name and address of the owner, a Mrs Marion Moore, wife of the deceased in the murder charge, her husband Mr Alfred George Moore, at the time a seventy two year old man. All four accused, who are relatively young men, fell in with the plan seemingly without any misgivings or qualms. This is a frightening indication of the state of affairs presently obtaining in

this country.

The appellant and his co-accused gathered on the date of the commission of the offences and proceeded to execute their commission. Appellant provided a vehicle in which they could travel to Mrs Moore's home and in which they could, as needs might dictate, escape if the occasion arose. At least two of the accused were armed at the time of the attack. At some earlier time the appellant himself had been in possession of a firearm but it is not established on the record that he was in possession of it at the time of the attack. He denied that he was. In his Section 112 statement appellant conceded that he foresaw the possibility that in the course of the robbery the victim or other persons might be shot and that he had reconciled himself to that possibility.

On their arrival at Mrs Moore's home the robbers established that the vehicle was not at that time parked at the premises. They therefore circled the surrounding area and as chance (or mischance) would have it observed the vehicle as it was being driven away from the local post office by Mrs Moore. They followed her. When

she reached her home she activated the remote control which opened the garage and she drove into the garage. The accused parked their vehicle and three of them, including appellant, entered the Moores' garage before the automatic door could close and accosted her. Her response was to scream and her screams alerted the deceased who was elsewhere in the residence. He hastened to her assistance. There was obviously little that he could do but he was in any event given no real opportunity to achieve much because one of the other assailants (accused no 1 at the trial), when he himself was not being attacked or threatened by the deceased, at a short distance shot him in the head killing him. Appellant and another of the assailants thereafter drove away in Mrs Moore's vehicle. Appellant was accommodated in the passenger seat. The getaway vehicle followed. The BMW was parked at a pre-arranged spot where it was to be collected by or for Shaun Mason. Indeed appellant later assisted in the recovery of the vehicle by Mason. The robbery and the killing it is clear were executed with cold blooded savagery.

A life sentence for a callous, senseless and brutal murder does not induce a sense of shock. Nor does a sentence of fifteen years imprisonment for robbery with aggravating circumstances. On this leg therefore the appeal cannot succeed. This leaves the question of whether the learned judge overemphasised the interests over the community. The corollary of that proposition would be that he paid too little attention to the appellant's personal circumstances. The appellant is a 25 year old man, unmarried but the father of a ten month old child whom he does not maintain. What is also important is that appellant is a matriculant and to that degree more fortunate than many other persons in the labour market, however difficult it may be at the present time. He had a clean record but this again suggests that he had every reason to keep it so. I recite these facts merely for completeness sake. It is clear from the learned judge's judgment on sentence that he was aware of all these facts and properly took them into account. He also had before him evidence of the appalling incidence of this type of offence in, particularly, the Gauteng region. Given that high

incidence of crime and the shocking facts of this case, I am by no means satisfied that he weighed the various factors to be taken into account in relation to sentence incorrectly. Quite apart from the consideration that the trial court is in the best position to assess the appropriate sentence, I believe that on the facts, the learned judge did not misdirect himself in any respect. Subject to a final consideration with which I will now deal, the appeal could not succeed.

The final issue is the direction that the sentences are to be cumulative. It would seem to me that the learned judge's attention could not have been directed to the provisions of s 32(2)(a) of the Correctional Services Act no 8 of 1959. This provides that separate sentences are, unless the court otherwise directs, to be served successively. There is however a proviso in the following terms:

> "Provided -
>
> (a) that any determinate sentence of imprisonment to be served by any person shall run concurrently with a life sentence or with an indeterminate sentence of imprisonment to be served by such person in consequence of being declared an

habitual criminal or dangerous criminal."

It follows that the learned judge's direction to the contrary had to be deleted. The Court's order was therefore one dismissing the appeal but correcting the sentence so as to bring it into compliance with the Act.

PLEWMAN JA

Concur:

Grosskopf JA)
Farlam AJA)