

443/82

N.v.H.

SIPHO GOODENOUGH NDODA MLAMBO

and

THE STATE

MILLER, JA : -

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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :

SIPHO GOODENOUGH NDODA MLAMBO

Appellant

and

THE STATE

Respondent

CORAM: MILLER, HOEXTER, et

VAN HEERDEN, JJA

HEARD: 6 MAY 1983

DELIVERED: 11 MAY 1983

J U D G M E N T

MILLER, JA :-

The appellant was convicted of murder

in the Durban and Coast Local Division (BROOME, J.

and two assessors). No extenuating circumstances having been found, the trial Judge sentenced him to death. He comes on appeal against the sentence only, by virtue of leave granted by the trial Judge. The argument advanced in support of the appeal was that the Court a quo ought to have found that there were extenuating circumstances.

The relevant facts may be briefly stated.

The appellant, a young man of about 23 years, while in the company of a friend, Elijah, became concerned in an argument with a girl. The appellant threatened to hit the girl and called her a prostitute. This apparently angered a group of

boys /

property. The appellant then turned towards her, stabbed her in the chest with a sharpened iron rod (which he had carried on his person during the afternoon) and then ran away. The resultant wound penetrated the right ventricle of the heart and was the cause of death.

These are the stark facts which confronted appellant's Counsel on appeal and made his task of persuading us that the trial Court erred when finding that there were no extenuating circumstances an extremely difficult one.

What was emphasized by Mr Jappie, on the appellant's behalf, was that the killing of the deceased was not /

was not at all premeditated but was the result of a sudden impulse; it was said to be, in Counsel's words, "a senseless act", committed on the spur of the moment, while the appellant was still angry and excited because of the earlier incident, and with no motive. But it was certainly a very deliberate act. There is nothing to show, or to suggest, that the appellant was not fully aware of what he was doing. The earlier incident in which the boys were involved had occurred an appreciable time before and, indeed, even the subsequent pursuit of the boys was apparently abandoned when the appellant stopped in the yard of the deceased's premises. What prompted the sudden assault upon the

seated /

seated, defenceless woman was her fully justified admonition to leave her premises. This apparently bred resentment in the appellant to which he gave expression by plunging a sharpened iron rod into her chest.

Our attention was also drawn to the fact that the trial Court had not found that there was a direct intention to kill but that "the intent was of dolus eventualis". Accepting for purposes of this judgment, in favour of the appellant, that this is a case of dolus eventualis, I cannot find that the trial Court was not justified in concluding that there were nevertheless no extenuating circumstances.

The /

The appeal is dismissed.

S MILLER

JUDGE OF APPEAL

HOEXTER, JA)
)
VAN HEERDEN, JA)

CONCUR