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

Case No: 20/93

N v H

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THABISO LOVEMORE DLAMINI Appellant

and

THE STATE Respondent

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In the matter between:

THABISO LOVEMORE DLAMINI Appellant

and

THE STATE Respondent

CORAM: SMALBERGER, NIENABER, JJA,
et VAN COLLER, AJA

HEARD : 15 NOVEMBER 1993

DELIVERED: 22 NOVEMBER 1993

JUDGMENT

SMALBERGER, JA:-

The appellant was convicted in the Natal Provincial Division by HUGO, J, and assessors of the rape and murder of a seventeen-year old girl, C.L.H. ("the deceased"). He was sentenced to eight

years' imprisonment on the rape count. On the murder count he was sentenced to death. The present appeal is directed solely against the latter sentence.

The deceased lived with her parents at Lynnfield Park in the district of Pietermaritzburg. On the morning of 29 December 1991 she went, as she was accustomed to do, for a walk in a wooded and relatively isolated area close to her home. Approximately two hours later her body was discovered in some bushes adjoining a road. She had been raped and brutally murdered. There were signs that she had been dragged some distance to the spot where she was found. A later post-mortem examination revealed that, apart from a number of scratches, bruises and contusions, she had six penetrating stab wounds of her neck, throat and chest. Three of these (taken individually) were potentially fatal. Her cause of death was recorded as "a penetrating incised wound [of the] throat".

There were, not suprisingly, no eye-witnesses to the events preceding the deceased's death. The appellant's conviction was based upon certain admissions made by him (including an admission that he had had intercourse with the deceased), a statement made to a police officer on 15 January 1992 (which was ruled admissible against him) and certain forensic findings which linked him to the attack on the deceased. The appellant did not testify at the trial.

The trial court held, on the evidence, that the appellant raped and thereafter fatally stabbed the deceased with direct intent to kill. This finding was not attacked on appeal. In his statement to the police the appellant sought to implicate one Bongani as a party to the rape and murder of the deceased. Despite the absence of any other evidence to this effect, the trial court felt itself unable to reject the notion that a second person may have been involved. The

presence of such a person would not, however, detract from the appellant's undoubted guilt, nor would it serve to lessen his moral culpability. No suggestion to the contrary was made on appeal.

It is required of this Court to determine whether, upon a proper consideration of all relevant mutigating and aggravating factors, the death sentence in casu is the only appropriate sentence.

The appellant comes from a low socio-economic background. He was twenty years old when the offences were committed. Much was made in argument of his youth and alleged corresponding immaturity. Intellectual and emotional immaturity is not uncommon in youth - a teenager is prima facie regarded as being immature. It is immaturity, rather than youth per se, that constitutes a mitigating factor. Despite his age the appellant was by no means a callow, unsophisticated youth. He was a person seasoned in

crime. He had five previous convictions (three for housebreaking and theft) and had already served a sentence of three years' imprisonment. He was in employment at the time. He was someone with experience of life and its vicissitudes. There is no question of his being influenced by an older person. Nothing in his actions or emotions at the time of, or subsequent to, the offences speaks of youthful immaturity on his part. If anything, the contrary is true. To the extent, however, that it might be said that he was somewhat immature, it would not amount to a significant mitigating factor in the present instance. At the same time it must be acknowledged that his age is relevant to the propriety of the death sentence (S v Dlamini 1992(1) SA 18 (A) at 31 H).

It can be accepted in the appellant's favour that the offences were probably not pre-planned and that his initial intention may have been only to rape the

deceased. That, however, does not detract from the fact that, as far as the murder was concerned, he had sufficient time to reflect on what he was about. The murder can only be seen as a cold-blooded, calculated act.

The appellant's prospects of rehabilitation are remote. It is arguable, on a narrow view, that as he has no previous convictions involving physical violence, he is not incapable of rehabilitation as far as any violent tendencies he may have are concerned. One must, however, look at the overall picture. He already has an impressive list of previous convictions for one so young. The horrific nature of the offence, his callous indifference to what he did, as evidenced by his conduct, and his total absence of remorse do not make him a serious candidate for reformation.

The aggravating factors present are weighty and largely self-evident. Paramount amongst these are

the nature of the crime committed and the circumstances of the offence. The deceased was a young girl on the threshhold of life. She posed no threat to the appellant. She had a perfect right to be out and about doing what she was without fear of losing her life. Her killing was a pitiless, senseless and brutal act accompanied by a significant degree of violence. The appellant had the direct intent to kill the deceased. His probable motive for killing her was a base one - to prevent her from later identifying him as her assailant. The appellant's previous convictions, to which I have referred, and apparent total lack of genuine remorse for his conduct are also aggravating factors.

While the aggravating factors totally overshadow any possible mitigating factors, it does not necessarily follow that the death sentence should be imposed. The question remains whether on the facts of the present matter the death sentence is the only

appropriate sentence. Any sentence imposed must necessarily reflect society's undoubted and understandable abhorrence of the crime committed by the appellant. While due and proper regard must be had to the appellant's personal circumstances and the objects of punishment, in matters such as the present the interests of the community at large and considerations of deterrence and retribution must needs come to the fore. On an overall conspectus of all relevant considerations I am of the view that the death sentence is the only appropriate one for the murder of the deceased. (Cf S v Sekgola unreported judgment of this Court delivered on 28 September 1993.) The appeal is dismissed.

J W SMALBERGER
JUDGE OF APPEAL

NIENABER, JA )
VAN COLLER, JA ) CONCUR