

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

JOSEPH JUNIOR BASA

Appellant

AND

THE STATE

Respondent

CORAM: CORBETT, HOEXTER, JJA et NICHOLAS, AJA

HEARD: 9 May 1986

DELIVERED: 16 May 1986

J U D G M E N T

NICHOLAS, AJA

JOSEPH BASA was convicted of murder. The trial

Court (NIENABER J and two assessors) found that there were

no

no extenuating circumstances and BASA was sentenced to death.

Leave was granted to appeal to this Court against the sentence "on the grounds that the Court erred in finding that there were no extenuating circumstances."

The facts may be briefly stated.

In August 1984 BASA consulted a witch-doctor in Pietermaritzburg. He told him that he had recently escaped from the Volksrust Prison. (It appeared from the form SAP 69 which was put in after his conviction that he had been sentenced on 21 March 1984 to 6 years' imprisonment.) He desired that the witch-doctor make him a medicine so that he would not be recognized by the police. He was told that for this purpose the heart, liver and

part

part of the intestines of a white person were required.

Thereafter he made the acquaintance of GLEN ERNEST LIGHTFOOT, who lived alone at 79 Havelock Road, Pietermaritzburg.

On 20 August 1984 BASA and LIGHTFOOT were sitting in the kitchen of LIGHTFOOT's house, reading and drinking sorghum beer. While LIGHTFOOT was engrossed in the book he was reading, and was under the influence of the beer he had drunk, BASA struck him a blow on the head, rendering him unconscious. He then strangled him. When LIGHTFOOT was dead, BASA opened him up and removed from his body the genitalia, the heart, the liver and some flesh from the abdomen. He put the parts in a plastic bag and gave them to the witch-doctor. On 8 October 1984 he was arrested

and

and immediately made a full confession.

In giving judgment on extenuating circumstances,

NIENABER J said that the Court found:

- "(1) that the Accused approached the witch doctor for his own selfish purpose in order to obtain the means to escape detection by the police;
- (2) that the Accused killed the deceased because he was instructed by the witch doctor to produce the heart and other parts of the body of a white person;
- (3) that he could only do so by murdering someone;
- (4) that he would not have killed the deceased if the witch doctor had not instructed him to do so;
- (5) that he accordingly acted under the influence of the witch doctor in killing the deceased;
- (6) that he allowed himself to be influenced because of his primitive belief in the power of witch craft."

The

The Court considered that these factors undoubtedly could and in fact did influence BASA's state of mind in the sense that he would not otherwise have killed LIGHT-FOOT. But this influence was not of such a nature as to reduce his moral blameworthiness. The motivating force was not belief in witchcraft but his own self-interest. He was seeking to use powers of evil to achieve his unlawful aim of trying to escape the consequences of his own criminal activities. He showed an utter disregard for the loss of an innocent human life in the attainment of a selfish purpose.

In his argument on appeal counsel for BASA did not suggest that in making its finding the trial Court

misdirected

misdirected itself or committed any irregularity. Nor did he suggest that the trial Court's conclusion was such that, on the evidence, it could not reasonably have been reached. There is therefore no basis on which this Court could interfere with the trial Court's finding that there were no extenuating circumstances.

The appeal is dismissed.

H C NICHOLAS, AJA

CORBETT, JA } Concur
 HOEXTER, JA }