

25

53/87

GRAND JURY REPORT	
VIA REGISTER	
RECEIVED	LIBRARY
1987-05-26	
REGISTER OF SOUTH CAROLINA	

Case no 551/86  
MC

GERALD ZINBONILE NJILO

and

THE STATE

VIVIER JA.

IN THE SUPREME COURT OF SOUTH AFRICA  
(APPELLATE DIVISION)

In the matter between

GERALD ZINBONILE NJILO

Appellant

- and -

THE STATE

Respondent

Coram: HEFER, SMALBERGER et VIVIER JJA.

Heard: 22 May 1987.

Delivered: 26 MAY 1987.

---

J U D G M E N T

---

VIVIER JA :-

The appellant was convicted by LAW J and two

assessors / .....

assessors in the Circuit Local Division for the Southern District of the Natal Provincial Division of murder and of robbery with aggravating circumstances. On the charge of murder no extenuating circumstances were found and the appellant was sentenced to death. On the charge of robbery the appellant was sentenced to 7 years' imprisonment. With the leave of the trial Judge he appeals to this Court against the finding that there were no extenuating circumstances and the sentence of death imposed upon him.

The body of the deceased, a 74 year old man, was discovered during the afternoon of 31 May 1986 in a sugar cane field near Umzinto next to the road between Umzinto and Shayamoya township

where / .....

where the deceased lived. He had been strangled with his own belt which was tied tightly around his neck. His underpants, trousers, shoes, woollen cap and wrist watch which he was wearing when he left his home earlier that day, were missing and he was dressed only in a shirt and khaki jacket. A post-mortem examination of the body revealed that the deceased had died of strangulation. The pressure applied by the belt had caused bleeding into the muscles of the neck, bruising of the larynx and a fracture of the thyroid bone.

At the time of his arrest a few days later, the appellant was wearing some of the deceased's missing items of clothing. When brought before a magistrate in terms of sec 119 of Act 51 of 1977, and again in his evidence at the trial,

he / .....

he admitted assaulting the deceased by hitting him on the throat with his fist and leaving him lying unconscious at the scene where the deceased's body was later found. He also admitted taking the deceased's wrist watch and the said items of clothing. According to the record of the proceedings in the magistrate's Court, the appellant there admitted that he had throttled the deceased while the latter was on the ground, but at the trial he denied that he had said so in the magistrate's Court and he denied that he had throttled the deceased. He then gave the following version of what had happened between him and the deceased. He said that at the beginning of May 1986 the deceased borrowed R20 from him, promising to pay him back the following week.

When / .....

When he asked for his money, the deceased denied owing him any money. At about 11 am on the day in question, he went from Umzinto to Shayamoya to look for the deceased. He was told that the deceased was not at home. On his way back, he met the deceased who was going home. He asked the deceased for his money but the latter refused to pay him. The deceased drew a stick and struck him on the side of the body. He punched the deceased on the chest and they grappled. They fell to the ground and got up again. He punched the deceased on the throat. The deceased fell down and lay still. He picked up a plastic bag containing clothing which the deceased had been carrying as well as the deceased's wrist watch

which / .....

which had landed on the ground, intending to keep the deceased's belongings until such time as he had been paid his money.

The appellant's version was rejected as false by the trial Court, which held that the appellant attacked the deceased with the intention of robbing him of his possessions and that he deliberately killed him in order to avoid identification. The trial Court found that the appellant took the said items of clothing from the deceased's body.

On behalf of the appellant two facts or circumstances were relied upon as constituting extenuating circumstances: that he acted under the influence of / .....

of liquor and that there was an absence of premeditation.

Both these factors were raised at the trial. In its

judgment on the question of extenuating circumstances,

the trial Court referred in detail to the appellant's

evidence regarding the amount of liquor he had consumed

on the day in question, and the effect this had on him.

He said that he started drinking juba at about 5 am

and continued until about 11 am. He was in the company

of other people and could not say how much he drank

himself. The liquor affected him to the extent that

he could not remember certain things. That afternoon

he fell asleep on the bus. In its judgment the trial

Court found that the appellant's evidence was not

truthful / .....

truthful and that he exaggerated the amount of liquor he had consumed. The trial Court accepted that the appellant may have consumed juba on the day in question, and concluded:

"We are of the view that it has not been established on a balance of probability that the accused was intoxicated and that intoxication had a bearing on his state of mind in doing what he did."

With regard to the absence of premeditation, the trial Court held that, although the appellant might not have planned the attack before he encountered the deceased, the killing was not a reflex action committed on the spur of the moment, but was a deliberate, calculated act.

Counsel / .....

Counsel for the appellant conceded that the appellant was an untruthful witness in regard to the quantity of liquor he had consumed prior to the murder. He submitted, however, that the trial Court over-emphasised the fact that the appellant had lied and failed to make sufficient allowance for the possibility that the appellant lied because he was illiterate and unsophisticated. I am unable to agree that the trial Court placed too much emphasis on the appellant's untruthfulness. Apart from his own evidence, there was no other evidence of any kind before the trial Court on which to base a finding that the appellant acted under the influence of liquor.

The / .....

The manner in which the appellant killed the deceased and robbed him of his possessions, certainly did not in any way suggest that he was acting under the influence of alcohol. Consequently the appellant's case that he acted under the influence of alcohol rested entirely on his own evidence. And that was so clearly untruthful that it was correctly rejected by the trial Court.

Counsel for the appellant next submitted that the trial Court misdirected itself in not regarding the absence of premeditation as an extenuating circumstance. As I read the trial Court's judgment on this aspect, it found that, although the appellant might not have formed the plan to rob and kill the deceased before he

encountered / .....

encountered the deceased, the murder was a calculated, deliberate act; committed in order to avoid identification. For this reason the trial Court did not regard the fact that the appellant had not planned to kill the deceased before he encountered the deceased, as an extenuating circumstance. In my view the trial Court did not misdirect itself in coming to this conclusion, nor is it one to which no reasonable Court could have come.

In my view there are no grounds for interfering with the finding of the trial Court that there are no extenuating circumstances. The appeal is dismissed.

---

W. VIVIER JA.

HEFER JA )  
SMALBERGER JA) Concur.