

IN THE HIGH COURT OF SOUTH AFRICA
{TRANSVAAL PROVINCIAL DIVISION}

NOT REPORTABLE

Date: 11/4/2005

In the appeal of

Appeal no A1959/04

JOHN CHARLES HOARE

Appellant

and

THE STATE

Respondent

JUDGMENT

HARTZENBERG ADJP:

[1] The appellant, his mother and one Mokoena were found guilty of the murder of one Steven John Harvey in the Vereeniging circuit court. They were each sentenced to life imprisonment. The appellant, with leave of the Supreme Court of Appeal, appeals against the sentence.

[2] The appellant was accused no.2 in the court *a quo*. His mother, Lynn Catherine Harvey, was accused no.1 and Mpho Paulus Mokoena was accused no.3. Accused no.1 and accused no.3 both pleaded guilty to murder. The appellant

pleaded guilty to contravening section 18 (2) (b) of Act 17 of 1956. He admitted that he had incited accused no.3 to kill the deceased. Despite an application for a separation of trials by the State, he together with the other accused, was found guilty of murder.

[3] The deceased was the husband of accused no.1 and the stepfather of the appellant. It was common cause that the appellant procured the services of accused no.3 to murder the deceased. He initially offered to pay him an amount of R40 000 and subsequently increased the offer to R60 000. On the night of 24 September 1999 accused no.3 brutally stabbed the deceased to death. The deceased was heavily under the influence of liquor after having been fed alcohol to excess by some of his family members.

[4] The case in mitigation by accused no.1 was that the deceased, who was an alcoholic, maltreated her and abused her sexually over a long period of time. She maintained that she did not have a place to go to if she was to leave him. The appellant who at the time was 23 years old, in

mitigation also relied upon the behaviour of the deceased against his mother, their tempestuous and unhappy marriage and the various incidents of violence by the deceased upon accused no.1. His case was further that he could not stand the abuse of his mother and that that was what prompted him to obtain the services of accused no.3 to do the vile deed.

[5] Bosielo J analysed the evidence in great detail and correctly came to the conclusion that accused no.1 exaggerated the bad behaviour of the deceased. He accepted the evidence of the sister of the appellant to the effect that the deceased was not violent by nature and that he really had to be pushed to extremes to lose his temper. Possibly he overstated the situation by calling him a loving old person. He cannot really be criticized for doing so because it was not only the deceased who was violent against the other members of the family. He was sometimes on the receiving end of assaults. The appellant himself assaulted the deceased. The learned judge accepted

that the marriage relationship between accused no.1 and the deceased was turbulent but did not lose sight of the fact that they had been living together for a very long time and that it was strange that if she found it unbearable that accused no.1 chose to live with the deceased for so long. Important aspects of the evidence highlighted by the learned judge were that the murder was a premeditated one and about the fourth of different plots over a prolonged period of time over more than three years by the family to get rid of the deceased and the fact that the murder was committed so that the family could benefit financially from it.

[6] The basis of the appellant's appeal is the fact that the learned judge in imposing sentence mentioned that the youthful age of the appellant and his emotional relationship with accused no.1 caused him grave unease and anxiety. It is contended that the following factors should have persuaded the learned judge that substantial and compelling circumstances existed to impose a lesser sentence than the prescribed minimum sentence of life imprisonment in terms

of section 51 read with part 1 of Schedule 2 of Act 108 of 1997:

(a) That he was 23 years of age and allegedly not mature enough to resist the influence of his mother upon him.

(b) That he was a first offender, unmarried and the father of a 5 year old daughter born from an extra-marital relationship.

(c) That although he left school halfway through standard nine, he had a stable working record and worked as a foreman for three uninterrupted years.

(d) That apparently he does not have an alcohol or drug abuse problem.

(e) That he comes from a humble background where violence and physical and sexual abuse were of the order of the day. His sister, with two extra-marital children, was chased away from home and was only allowed to return when her relationship broke down.

(f) That he offered to find a killer to relieve his sister of the burden of having to kill the deceased, his mother having manipulated them into accepting that the only way out was to kill the deceased, his mother being "intelligent, dominant, domineering and manipulative".

(g) That he procured accused no.3 out of a misplaced loyalty towards his mother and sister.

(h) That the court *a quo* took too harsh a view of his failure to withdraw from the plan, having had time for reflection and to change his mind.

(i) That he was shocked when he saw how brutally the deceased was killed.

[7] When one analyses the submissions it boils down to an argument that the appellant as a relatively young person was persuaded by the circumstances in which they lived, by a manipulative mother and by a desire to protect his sister from murdering the deceased, procured accused no.3 to do the foul deed. The argument is that the appellant is by nature a good person.

[8] The court *a quo* gave due consideration to all the factors raised on behalf of the appellant. What also weighed heavily with the court *a quo* were that there was a long term family conspiracy to kill the deceased and that there was clearly a commercial motive for the killing. In this regard the evidence indicated at least four different plots to get rid of the deceased. The appellant could not have been unaware of all of them. Moreover the appellant was actively involved in the commercial aspect of the case in that he assisted his mother to get the insurance money of more than R500 000 that was paid out after the death of the deceased. (The insurance policy had lapsed and was reinstated by accused no.1 before the murder.) Mr *de Bruin* accentuated the fact that there was no specific agreement that the appellant would receive a specified amount because he in fact only borrowed R10 000 from his mother to trade his old car in on a newer one. The argument loses sight of the fact that it was the appellant who offered accused no.3 first the R40 000 and thereafter the R60 000. Those monies

were destined to come out of the proceeds of the insurance policy. Added thereto was the factor that the appellant in fact played an active role in the killing of the deceased in that he was involved in the whole plot of making the deceased drunk so that he would be an easy target for accused no.3 to kill. The evidence also indicates that accused no.3 reported to him that he had completed his mission. The fact that he accepted some of the benefits of the insurance money but failed to honour his bargain with accused no.3, does not redound to his benefit.

[9] The appellant did not give evidence in mitigation except that he testified on one aspect only namely to deny the evidence of Mrs. Van Vuuren to the effect that he accompanied his mother to the Insurance Company. He did not give evidence as to how exactly he was influenced by his mother. Nor did he give evidence as to how he experienced the deceased. The impression that he made on the court *a quo*, when he did give evidence, was that he is an intelligent young man. There was not really substantial material before

the court about the appellant's thought processes at the crucial time. In the matter of *Ferreira and Others v The State*, (245/03) (SCA)) the court indicated how detestable society regards the actions of the hired assassin. On the other hand people with a low income are usually lured into those actions by the hope of receiving, in their eyes, enormous amounts of money. The actions of the instigators are equally abhorrent, especially where the assassin is persuaded to do the deed to find finally that the promise of wealth was an empty one.

[10] This court has limited powers on appeal. In my view the court *a quo* did not misdirect itself or overlook any relevant consideration. As a matter of fact the court *a quo* considered every relevant aspect. There is just no basis upon which this court can interfere with the sentence imposed by it.

The appeal is dismissed.

W J HARTZENBERG
JUDGE OF THE HIGH COURT

I agree .

G WEBSTER

JUDGE OF THE HIGH COURT

I agree.

J C W VAN ROOYEN
ACTING JUDGE OF THE HIGH COURT