

SOUTH AFRICA / JUDGMENT

S v Lotter and Others (CC43/09)

[2012] ZAKZDHC 51 (19 March 2012)

[2012] ZAKZDHC 51**COURT**

Kwazulu-Natal High Court, Durban

BEFORE

Gyanda

CASE / FILE NUMBER

CC43/09

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CC43/09-NB/CD 9 SENTENCE

SENTENCE 19 MARCH 2012

GYANDA J The most difficult function of a Court is the imposition of an appropriate sentence upon accused persons that it has convicted. Counsel has already outlined the basic principles involved in the assessment of an appropriate sentence, namely that the Court in imposing an appropriate sentence has to take into account the triad of the accused, the crime and the interests of society and, at the same time, impose a sentence that embraces in it a measure of mercy.

There has been a fair amount of evidence that has been led in mitigation of sentence and on the aspect of the availability of

education in the Correctional Services system in respect of convicted persons. I do not intend repeating the evidence of the Reverend

Mr Willem Lotter and Pastor Leon van Assenderp, nor do I intend repeating the personal particulars of the three accused, save to say that they are fairly young especially accused No 1 who turned 21 in custody. They are very young people at the beginning of their lives, if one were to regard them as young adults. But this case is such a terrible case when one considers that it has permanently removed, as properly argued by counsel for the State, two very useful members of society, two very productive members of society for no apparent reason whatsoever.

The first question that this Court has to determine is whether or not there are substantial and compelling circumstances in the case of each of the accused which would justify this Court in imposing a sentence other than the prescribed sentence of life imprisonment in respect of the two charges of murder in as much as the evidence discloses that the murders were pre planned. The Criminal Law Amendment Act prescribes the sentence of life imprisonment unless this Court were to find that there are circumstances in the case of each of the accused which amount

to substantial and compelling circumstances and justify the Court in departing from imposing the prescribed sentence.

As regards accused Nos 1 and 3, counsel for the State has properly conceded that there are such circumstances and that the evidence of them being controlled by accused No 2 and the belief that was inculcated in them by accused No 2 that their parents were evil and had to die because it was the will of God amounted in their cases to substantial and compelling circumstances which justify this Court in departing from imposing the prescribed sentence of life imprisonment in respect of accused Nos 1 and 3.

With accused No 2, I had during the evidence of Professor Schlebusch debated with him the position of accused No 2, in as much as it had been argued at some stage that but for the Nazi Germany and the populace that followed Hitler, Hitler would not have been able to maintain power and his beliefs as long as he did, that is that the control and the reciprocal belief system, the one in the other, existed for Hitler to be in control for as long as he was and for the people to believe in his power for as long as they did. It would appear on that basis that accused No 2 may very well have had the opportunity and the right to say that but for accused Nos 1 and 3 so gullibly following him, he would not have had two subjects to manipulate, and if he did not have the two subjects to manipulate he would not have got himself in trouble as he did. But for accused No 2 to have argued a basis of diminished responsibility on the basis that accused Nos 1 and 3 by allowing him to manipulate them thereby manipulated him in a sense, he would have had to have given such evidence and lay the basis for such findings but he did not.

His counsel argued that there may be substantial and compelling circumstances in respect of accused No 2 to be found in his

evidence when he was cross-examined and when he responded to a question: "I suppose it's too late now to ask for mental

observation", that that should have alerted the Court that there must be something wrong with accused No 2 and that his letters and the contents of the letters that he had written, likewise, must raise a red flag that there is something definitely

wrong mentally with accused No 2 which resulted in him behaving in the fashion that he did. But the starting point in respect of accused No 2 is accused No 2 himself. For any of this to be viewed in his favour he had to lay a basis for it. He denies that he wrote those letters, so how can anyone place any value on that on the same basis as is contended for by accused Nos 1 and 3 when accused No 2 himself says he did not write these letters? If he did not write them how can one say that what is depicted in those letters shows or reveals a demented mind or an over-religious person? None of these things can be said about accused No 2. He simply does not accept that he wrote those letters.

As I have drawn to the attention of Mr Sivakumoor during argument, accused No 2 has shown no remorse. He (Sivakumoor) has argued that accused No 2 is entitled to maintain his innocence, and so he is but he cannot then claim to be entitled to have a lighter sentence than usual imposed

upon him on the basis that he is an ideal candidate for rehabilitation, that he is a young man and can be properly rehabilitated when the essence of rehabilitation encompasses a person first of all admitting his fault, showing remorse and then starting on the road to rehabilitation. You cannot rehabilitate a person who has not offended. It just does not make sense. If you have not offended, you have not offended. Who is going to rehabilitate you, and how? It is impossible.

I have thought long and hard about the position of accused No 2, including the fact that he grew up, as he says, alone because his mother worked very long hours from the time when he was a very young person, but even this is incongruous with what appears to have been placed before the Court previously from the evidence of accused No 3, if I recall, that accused No 2 lived in the home of his extended family, and that also appears from the statement of his mother, that there were uncles, aunts and even his grandmother, so how would he have been growing up alone?

There is just nothing in the case of accused No 2 that would amount to substantial and compelling circumstances in his case. His alleged youthfulness, as argued by Mr Sivakumoor, is far from being a substantial and compelling circumstance in his case. In fact, the way in which he portrayed himself in court when he testified and his mannerism throughout this trial indicates to me that he is a person that is mature well beyond his years. He portrayed himself clearly as a person who knew it all, believed he was superior to everybody else and portrayed an arrogance second to none seen in this court. He believed that everybody else was stupid and he knew everything and hence his mocking letters to the Lotters and the mocking letters to the police after the deed had been done. The entire case in respect of accused No 2, if analysed, clearly indicates a cunning and conniving man who set in motion the wheels to do harm to this family from the inception when he made accused Nos 1 and 3 report false robberies in respect of each one of them. He had a plan for the Lotters. When he said to his mother at a very early stage, before he had even convinced accused No 3 of that fact, that accused No 3 had been molested by her father and therefore needed prayer to help her also indicates that he had a plan for the Lotters long before accused Nos 1 and 3 realised it. Then his thefts of the money using the ATM and their card and stolen PIN number and, as I say, the taunting and threatening letters and SMSes, all these were part of his plan to indicate to the police, if ever this case was investigated, that somebody was after the Lotters for some very long time if one has regard to one of the letters where

reference is made to the fact of Mr and Mrs Lotter abusing the writer for some eight years already. These were all intended to mislead and set in motion this entire plan. It was he who bought or caused to be bought the gloves that were used, the surgical gloves. It was he who bought the needles that were to inject air bubbles into their veins. It was he who bought the Taser that was supposed to shock the deceased before they were incapacitated and injected with the needles. It was he who instructed accused Nos 1 and 3 as to what the time ought to be when the attack on both the deceased started in order that his alibi of being at the movies at 8.00 pm-ish, as accused No 3 says in her statement, would keep him out of harm's way, and that is why he was so confidently arrogant in court in saying he had nothing to do with it, he was never there, he was at the movies, when the evidence discloses otherwise.

I cannot find anything in the case of accused No 2 to amount to substantial and compelling in his case, and in the circumstances the sentence that will have to be imposed upon him is the one prescribed by law.

With accused Nos 1 and 3, as I say, counsel for the State has conceded that there are substantial and compelling circumstances but has argued for a lengthy term of imprisonment for both of them, in as much as it appears that the prime reason for the involvement of at least accused No 3 was the money. But the same cannot be said of accused No 1, based on her argument. However, if regard is had to the content of her evidence and the statement made by accused No 3, it appears that the money was not the prime motivating force as far as she was concerned because she did say that she told accused No 2 he could have all of the money that was due to her.

The plan to kill both of the deceased and inherit the money obviously came from accused No 2, and accused No 1, in his

words, “would be taken care of by accused Nos 2 and 3”, so that fits in entirely with their version – that is the version of accused Nos 1 and 3 – that it was not for the money but for the fact that accused No 2 portrayed their parents as being evil people who needed to be removed so that they no longer stood in his way in doing the work of God. That that fact influenced accused No 1 cannot be gainsaid, and that is to be found in Exhibit S in which he discloses a tortured mind of a person who was being torn between his parents on the one hand and his new-found brother, as accused No 2 had portrayed himself to accused No 1. We must remember accused No 1 had no friends. He lived the life of a loner. All he really lived for was his computer, and his uncle confirmed that. He lived for watching his TV programmes, had no friends, did not go out and so when accused No 2 took interest in him it made him feel important, and as counsel for the State conceded accused No 1 wanted to belong, and that is why they were able to influence him. What is more, with the case of accused No 1, he had his sister, his older sister, whom he looked up to and respected, who was validating the claims of accused No 2 when he was putting on these performances and portraying himself as angels or gods or demons, and one will recall the evidence that accused No 1 tried to resist going through the plan at Botanical Gardens, and when he did resist going through with the plans accused Nos 2 and 3 shunned him and accused No 2 had to convince him to go through with it. Once again, when he was at home accused No 3 had to pray with him to try and convince him, and when the plan was being put into effect he again found it difficult to go through with it and accused No 3 had to take the Taser from him and use it herself, and that is how the plan backfired and instead of air bubbles being injected into their mother’s arm or using the syringes she had to be stabbed, again on the instructions of accused No 2.

With accused No 3, the additional aspect was the fact referred to in the evidence of Professor Laubscher that she was an abused woman. She suffered from what he referred to loosely as “the abused woman syndrome”. Accused No 2 assaulted both accused Nos 1 and 3 and his assaults on accused No 3 also took on a sexual character and the evidence discloses, which was never disputed, that part of his abuse of accused No 3 was forcing her to drink his urine, and if she could stoop to such low levels to obey him it follows that she would do exactly as he had wanted,

just to please him.

In my view, therefore, both accused Nos 1 and 3, for these reasons which I have just outlined, have acted with diminished responsibility. I cannot envisage how otherwise two normal people from a middle-class home would go about executing their parents in the fashion that they did, but for the influence, proof of which is readily available in the exhibits before us.

That accused Nos 1 and 3 must be punished follows. The fact is although the likelihood of them ever repeating such violent crimes is almost nil, society would be aghast if they were to get away with what would be slaps on the wrist such as correctional supervision and suspended sentences, more especially in the light of the enormous loss to the family and the community of two hard-working, intelligent and productive people in the community.

Like-minded people must also be deterred from committing such acts in the future, lest it be believed that these defences of belief in witchcraft and belief in the occult would allow people to escape from liability. There has to be, as in this case there was, evidence other than evidence from the accused themselves which substantiates their version that they were in fact influenced as they claimed they were. As I say, in this case there is sufficient evidence on record to confirm that accused Nos 1 and 3 were in fact influenced to the extent that they say they were.

The sentence that I propose to impose on the three accused, taking all that I have said into account, is the following:

In respect of accused No 1, he is sentenced on each of the two counts to TEN (10) YEARS' IMPRISONMENT. Both of them are to run concurrently, and the NON-PAROLE PERIOD in respect of his sentence is calculated to be SIX (6) YEARS in terms of the provisions of section 276B of the Criminal Procedure Act.

In respect of accused No 3, she is sentenced to serve a term of imprisonment of TWELVE (12) YEARS each on each of the two counts. Both are ordered to run concurrently in terms of the provisions of Section 280 of the Criminal Procedure Act, and the NON-PAROLE PERIOD in respect of her sentence is fixed to be EIGHT (8) YEARS in terms of the provisions of section 276B(2) of the Criminal Procedure Act.

I have taken into account the fact that accused Nos 1 and 3 have spent approximately four years in custody and I have also taken into account the fact that accused Nos 1 and 3 will have to live the life sentences indicated by counsel for accused No 1 with the thought of their deed for the rest of their lives.

For accused No 2, as I have said, there are no substantial and compelling circumstances in your case and I am obliged to impose upon you the sentence prescribed by law. You are sentenced on each of the two counts to LIFE IMPRISONMENT. Both are to run concurrently.

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