

CASE NO CC43/09

DATE 13 MARCH 2012

THE STATE versus 1. HARDUS JOHANNES LOTTER

2. MATHEW NAIDOO

3. NICOLETTE LOTTER

JUDGMENT

13 MARCH 2012

GYANDA J The accused in this case, Hardus Johannes Lotter, accused No 1, a 20-year old South African male of 62 Thames Avenue, Westville; Mathew Naidoo, accused No 2, a 21-year old South African male of 181 Queenspark Crescent, Phoenix; and accused No 3, Nicolette Lotter, a 26-year old South African female of 62 Thames Avenue, Westville, stand indicted before us on two counts of murder read with the provisions of section 51 and Schedule 2 of Act 105 of 1997, in that on or about 19 July 2008 and at or near 62 Thames Avenue, Westville in the district of Pinetown, the accused unlawfully and intentionally killed Maria Magdalena Hendriena Lotter, an adult female, and on count 2, in that at the same time and place the accused unlawfully and intentionally killed Johannes Petrus Gerhardus Lotter, an adult male.

The accused were represented throughout this trial by counsel – accused No 1 by Advocate Mr R *Parsotham*, instructed by the Legal Aid Board; accused No 2 by Advocate Mr V *Sivakumoor* of the Justice Centre in Durban; and accused No 3 by Advocate Mr T *Botha*, also instructed by the Legal Aid Board.

They pleaded not guilty, and in terms of section 115 of the Criminal

Procedure Act accused No 1 indicated through his counsel, Mr *Parsotham*, that he lacked criminal capacity, in that he acted under duress and on instructions from accused No 2 who had placed accused No 1 under duress.

Accused No 2 also pleaded not guilty and tendered a written statement in terms of section 115 of the Criminal Procedure Act which is Exhibit A before the Court. The relevant portion of his statement indicating the basis of his defence appears in paragraph 3, where he states:

“I have been residing with the deceased persons and both my co-accused at the time of the offence. During my stay with the deceased I had observed that there was constant conflict between both the deceased and my co-accused. On the day in question I was at the Pavilion Shopping Centre. I was at the Pavilion Shopping Centre from approximately 17:30 to approximately 22:00. I was not involved in the planning or the killing of both the deceased. At the time of my arrest I did not know who had killed the deceased persons. I was forced by the police who had physically assaulted me subsequent to my arrest to confess to an offence that I had no knowledge of. I accordingly deny the charges levelled against me and put the State to the proof of each and every allegation against me.”

Accused No 3 elected through her counsel to remain silent and not indicate the basis of her defence. However, as the trial unfolded it became

apparent that the defences of both accused No 1 and accused No 3 were the same in that they contended that they had been influenced by accused No 2 who had changed their religious belief and their thinking into believing that he, accused No 2, was the son of God and that they were obliged, if they wanted salvation for their souls, to follow the will of God and kill their parents, the deceased. It would seem in the circumstances that accused No 3 had, like accused No 1, raised as a defence that they were influenced by accused No 2 to such an extent that they were not exercising their own free will in acting as they did.

Accused No 2, on the other hand, indicated that his defence was that of an alibi, that he had nothing to do with the killings and was not involved in the planning or the perpetration of the offence.

The evidence that was led before the Court consisted mainly of that of the police witnesses in relation to evidence recovered at the scene of the incident and in relation to certain letters and SMSes that had been sent by persons to the deceased during their lifetime, threatening their lives, and the evidence of the three accused.

In respect of accused No 2 a trial-within-a-trial was held to determine the admissibility of a statement he made to a captain in the Police Service [a Captain Delport] which he disputed that he had made freely and voluntarily, and contended that the contents of that statement were dictated to him by the police immediately prior to him being taken to the captain to whom he made the statement. In addition, accused No 2 disputed that he voluntarily took two policemen, namely the investigating officer, Captain Shane Naidoo, and one Captain Eva, to recover certain exhibits that had been disposed of

in dustbins in the Westville area.

After hearing evidence in the trial-within-the-trial I ruled that both the statement was admissible in evidence against accused No 2 as having been made by him freely and voluntarily without him having been unduly influenced in any way thereto and that the recovery of the exhibits was, likewise, freely and voluntarily done by the accused in his sound and sober senses without him having been unduly influenced thereto in any way. In addition, I found that the accused's contentions of him not having been properly apprised of his legal and constitutional rights had no merit whatsoever.

That evidence then constituted by Exhibit P and the pointings out as contained in the photographs and in the evidence of Captain Eva and Captain Shane Naidoo was admitted in evidence against the accused.

There is nothing in the subsequent evidence that has been led before this Court that would change my view as regards the admissibility of the evidence contained in Exhibit P or the pointings out and the recovery of the exhibits that was disputed by accused No 2. In fact, the evidence subsequent to the admission of Exhibit P, in my mind, confirms and validates that Exhibit P in fact emanated from the accused and was in fact the narration of the truth of what had occurred at the time. [save in one respect, namely that accused 2 substituted himself for accused 3 as the person who stabbed Mrs Lotter]

At the conclusion of the evidence and in the light of the admissions made by the various accused and in the light of the evidence of the District Surgeon, Dr Diagasan Pillay, it is common cause that Mr and Mrs Lotter

were murdered in their home as contended for by the State in the indictment against the accused and the only issue remaining to be determined was whether or not the three accused had perpetrated the offences in question or had participated in them in any way.

In addition the issue between accused Nos 1 and 3 and the State appears to lie in whether or not their minds were affected by the influence of accused No 2 on them to such an extent that they were not exercising their own free will, and as between accused No 2 and the State the issue is whether he was in fact present at the scene of the killing or, if he was not, had he planned the perpetration of the offence or played any part in it whatsoever.

Those are the issues, in my view, that fell to be determined on the evidence that was led before us. I do not intend reiterating all of the evidence that was led, save to state that the evidence was that, in the main part, of the three accused before Court and that of Professor Schlebusch, a clinical psychologist who was retained as an expert to testify on behalf of accused Nos 1 and 3.

The first issue, in my view, that had to be determined is whether there was any merit in the contention of accused Nos 1 and 3 that they were influenced by accused No 2 to believe that he was the third son of God as they claim that he had claimed to have been. Accused No 2 vehemently denies any such allegation. He categorically states that he never once contended to anybody that he had prophetic powers or powers of recalling the past and prophesying the future or that he pretended to be the third son of God but if one has regard to the evidence of accused Nos 1 and 3 it is, in

my view, abundantly clear that there is ample corroboration between their versions to confirm that accused No 2 had in fact portrayed himself to them as the third son of God, as they claimed.

At this stage I should add that this judgment is the unanimous decision of this Court.

Validation for the claims of accused Nos 1 and 3 are to be found in Exhibit U and the allied exhibits U1, etcetera, before this Court which are allegedly letters written by accused No 2 in various documents. The first document I should refer to in this regard is Exhibit U1. Exhibit U1 is a letter dated 24 April 2007 from accused No 2, Mathew to Nicky, who it is common cause is accused No 3. Accused No 2 admits that he wrote this letter, that it is in his handwriting and that the contents emanate from him. As regards the various other exhibits or letters inscribed in the exhibit called Exhibit U which are collectively prayers and notes with various headings in a book which has a label which reads: "Mathew's prayers, 2008", the accused 2 commenced by denying that he wrote this. He admitted that the handwriting looked like his but he denied writing it. He raised various excuses as to why he was not the author of this book. The first was that this book contained demonic symbols, being the stickers of images of cartoon characters on the cover and in various portions of the written book, and he as a devout Christian was prohibited from using demonic caricatures such as this, and for this reason he said that the book in question was not his. As against his claim in this regard we have the evidence of accused No 3 who confirmed in her version when she testified that this was her book, that accused No 2 had taken possession of this book when he began living at their home and that he

thereafter wrote in this book. As regards the cartoon characters she testified that these were purchased by the accused and their on a trip to Gateway, and that the accused himself had stuck these pictures onto the book and onto the pages. In any event, a reading of accused No 2's evidence discloses that when he was cross-examined on the contents of these various documents in Exhibit U and in particular that there was a striking similarity of the writing and the spelling errors in Exhibit U when compared with Exhibit U1, the conclusion was irresistible that he was the author of all of these documents to which accused No 2 adopted the stance that the writing looked like his, that the writing was in fact his writing but he could not remember having written what is contained in these various documents.

If one has regard to the content of these various letters contained in Exhibit U, it is apparent that accused No 2 himself refers to himself as the son of God in the very first of these entries – the entry dated 12 April 2008 headed "My prayer", which reads:

"My dear Lord, help me with cash but let's do your work on earth first for that's what I really like. Always show me what I can do to help others in any way no matter how small. Also Nicky's birthday is coming up. Show what I can get her. O dear, thank you for everything. I love you always no matter what. Amen."

And in the next prayer dated 2 May 2008 he commences: "Oh my dear Father and God, I need help big time." I do not intend reading the entire contents of this letter but it is apparent from reading that letter and many of the others that follow in Exhibit U that accused No 2 addresses God

the Lord as his father and describes himself as being the son of God.

That accused No 2 in fact described himself to accused Nos 1 and 3 as the son of God with these powers to be able to predict and prophesies the future and tell them of events past which he had no direct first-hand knowledge of is in fact accepted by this Court as being the truth. This did in fact happen. Accused No 2 did in fact so portray himself to accused Nos 1 and 3.

The question has been asked during the trial of accused Nos 1 and 3, "How is it possible that you, people with university education, sophisticated people in a middle-class family who have all of the facilities, being a church-going family, how is it that you could allow yourself to be influenced in this fashion?", and perhaps the answer lies in the evidence of Professor Lourens Schlebusch, who testified that this sort of brainwashing, if I may refer to it as such, has been used on very large scale, even to remould and realign the religious thinking of people who were known professionals – lawyers, doctors, businessmen - and get them to do things which somebody looking from the outside, looking in, would consider stupid and conduct which would be severely criticised. He had given examples, for example the Jonestown massacre where eminent people in the community were so brainwashed by a charismatic religious leader that they committed mass suicide. So that when we, standing on the outside, look at the conduct of accused Nos 1 and 3 and then denigrate them in that there is no basis upon which sane, educated, university-educated people like accused Nos 1 and 3 could be influenced in this manner, there are examples of this happening in the past.

How was it possible for accused No 2 to influence accused No 3 in the manner that he did? Accused No 3, in our view, was fertile ground in which such thought processes could have been inculcated. She was, which is common cause and is confirmed by the evidence of Professor Schlebusch, at the time a troubled person. In her own evidence, supported by that of her brother, accused No 1, she believed at the time that their domestic maid was practising witchcraft on her. She felt that she was being spiritually violated sexually and that her hair was being ripped off her head, that there were signs around the house that the domestic maid was practising witchcraft on her, and that this was adversely affecting her. She had, it is apparent, spoken to people about this and received advice to seek prayer and assistance and guidance by certain pastors. At first she went to her own pastor to try and get some advice and guidance and assistance with her problems but, unfortunately, her parents at the time did not believe that she was being affected by black magic in any way. They felt that she was just looking for attention and they were prompted to phone the pastor and warn him that accused No 3 was coming for assistance to him with a problem but that she is merely seeking attention, with the result she was unable to see and confide in her own pastor and then was forced to seek the assistance of others. She testified that she was able to get the assistance of a pastor somewhere in Chatsworth who had prayed for her and who had asked her to bring the domestic maid to him and he had prayed for the domestic maid and apparently had removed the demons that were tormenting accused No 3, and that they had returned and things were quite normal at home but after a short while things had returned to their abnormal position. She had accused

the domestic maid of practising witchcraft based on the fact that the domestic maid's son was a "sangoma".

Whether her belief that witchcraft was being practised or not had any merit is neither here nor there. The fact is that she believed it and her version of being a troubled person at this time is confirmed by Professor Schlebusch who testified that accused No 3's mother had arranged for him to consult with accused No 3, that she did attend such consultations and that she terminated this of her own accord. Accused No 3 did not confide in Professor Schlebusch about her being tormented by demons and her belief in witchcraft. She testified that she feared that if she confided in Professor Schlebusch about this she would be classified as insane and may probably end up in a mental institution and so she was left to a large extent to try and find a solution to these problems that were vexing her life on her own.

It was in pursuit of finding some solace from these demons that were occupying her life that she went to Phoenix to have prayers done for her and that she met accused No 2. Accused No 2 from the outset must have seen that here is a person who is quite depressed, quite affected by whatever problems she has and therefore a ready victim to practise whatever he intended to. It is our belief that accused No 2 was aware of the vulnerability of accused No 3 from the outset. If one has regard to Exhibit BB, the statement of his mother to the police, it is apparent that even at this early stage he reported to his mother that accused No 3 had been abused by her father and therefore needed prayer badly. This is something that accused No 3 had denied – abuse by her father. She had no knowledge of any abuse by her father, and later on when accused No 2 had entered her life in a

bigger way he [accused 2] informed her that her father had abused her and her other sister at a time when they were very young and that God and the angels had removed this memory from their memory banks to protect them from the hurt that they would otherwise experience if they had full knowledge of what had occurred.

In our view, therefore, accused No 2 clearly saw the vulnerability of accused No 3 and an opportunity to take advantage of her, which he exercised fully.

How did accused No 2 influence accused No 1 or get accused No 1 to believe in him as a person who had these powers, so much so that he could describe himself as the third son of God? It is common cause that accused No 1 is a person who is shy, introverted, had no friends and spent the majority of his life at the computer. The reports from Dr Schlebusch indicate that he was ridiculed and mocked at school by his peers, called funny names, and so he lived very much by himself. At the outset accused No 1 was not taken in by accused No 2. In fact he did not consider accused No 2 to be good enough for his sister. Although he did not express his opinion he was wary of accused No 2 and did not like accused No 2, in much the very same way as his father was not accepting accused No 2 and did not like him. That is the reason, in our view, for accused No 2 adopting the attitude against the father, Mr Lotter, that he should be killed. This all stems, in our view, from his failure to recognise and accept accused No 2 as a proper candidate to marry or court his daughter, accused No 3.

Accused No 2, in order to win over accused No 1, thereafter practised his wiles on a person who had nobody. He had no friends and

very little or nobody to confide in. He manipulated accused No 1 into believing that he could inform accused No 1 about events that had happened in the past of which he had no way of knowing. For example, he told accused No 1 that: "You remember that when your mother and sister were quarrelling and you prayed for God to send down somebody to intercede and stop them from quarrelling" and informed accused No 1 that he was the person that God had sent in answer to his prayer. This captivated accused No 1 to some extent but what made accused No 2 be able to control accused No 1 to the extent that he did came not from accused No 2 alone but from the acceptance of accused No 2 and the powers that he had by accused No 3, the older sister of accused No 1, a person whom he looked up to and trusted.

Accused No 1 came to believe in accused No 2 so implicitly that, from being a person whom he could barely tolerate, accused No 2 became the brother that accused No 1 did not have, and this is apparent in Exhibit S wherein he refers to accused No 2 as his brother. Exhibit S, in our view, clearly indicates the reason why accused No 2 was hostile towards the deceased Mr Lotter. In the words of accused No 1 when he wrote this Exhibit S, the letter dated 16 January 2008, he refers as I said to accused No 2 as his brother and then carries on:

"My parents are two pathetic jokes of people. I have lost all respect for them. They hurt (or hunt) my brother. They belittle the authority of God. The bastards will pay."

I do not intend reading the entire contents but it is clear in Exhibit S that the

change in attitude towards his parents with whom he had a normal relationship began to change to one where he considered them pathetic jokes is as a direct result of his parents, especially his father, not accepting accused No 2 and hurting accused No 2 by such non-acceptance.

In addition, accused No 2 preyed on accused No 1's emotions by claiming how he had been victimised by white people during the apartheid era and, furthermore, that his family members had treated him so badly that they gave him bad food to eat. All of this made accused No 1 susceptible to accused No 2. It made accused No 1 pity him. It made accused No 1 like accused No 2. Here was a brother he did not have. Here was a person who was communicating with him on a level that had never been done before as a peer and, in the version of accused No 2, here was a person that was taking him around. It is not surprising therefore that he was able to convince accused No 1 of who he was or claimed to be.

In spite of this accused No 1 was sceptical of accused No 2 when he began experiencing the spirits that entered his body and when he spoke in the changed and altered voices of these spirits, and had to look at his sister who then affirmed that what accused No 2 was doing was in fact genuine, that he was not putting on a show, that this was in fact genuine. He spoke with the voice of God. He spoke with the voice of the angel Matthias and whatever other angels emanated from him, and that this was genuine.

In these circumstances, as I say, with the fertile ground in which to plant his ideas accused No 2 set about restructuring the way accused Nos 1 and 3 were believing and depending upon their parents, to such an extent that by the time the murders were committed he had actually made them

believe that the death of their parents would be a good thing, in that their parents stood in the way of the work of God and were evil, and that evil had to be destroyed and the evil that had to be destroyed was their parents and their parents had to be killed.

This idea of killing the parents did not start on 18 July, as testified to by accused No 3, although on that night a meeting was held at which the plan was discussed as to how the deceased were to be killed. In Exhibit U is a letter dated 16 July 2008 addressed to "God who am I". It's called "Prayer", and it reads:

"Dear, I feel like shit right now. JL as to be dead soon."

"As"instead of "has".

"God help. I so lost on what to do."

It appears.

"I feel low and a joke. Please let everything work out
as planned. Please. Amen."

It is apparent at that this stage when accused No 2 wrote this prayer, he had already planned the demise of at least Mr Johannes Lotter, and he said so explicitly in this letter.

The fact that Mr Lotter had to die is also revealed in the evidence of accused Nos 1 and 3 about the attempts to kill him by putting a poisonous sap into his whisky, which he threw away because he realised that the whisky was discoloured, and by putting in 90% proof alcohol into his whisky in the hope that he would die of alcohol poisoning, but all it had the effect of doing was making Mr Lotter drunker than usual.

When these two plans to kill Mr Lotter did not work, accused No 2

announced that the deceased Mr Lotter is being protected by Satan, strengthening the belief of accused Nos 1 and 3 in what he was saying. When Mr and Mrs Lotter were to have gone on a trip to their holiday flat and Mr Lotter would have gone fishing on his boat, the trip was cancelled and there had been a tremendous storm and accused No 2 had informed accused Nos 1 and 3 that their father was to have been killed in that storm but that Satan had warned him to have prevented that. All of this made accused Nos 1 and 3 believe that he had these powers of prophesy. So it is not surprising when, especially with accused No 3, her position was subjectively much worse than that of accused No 1, here she felt that the maid was perpetrating acts of witchcraft on her, that her hair was being pulled off her head, that she was being raped by some spirit and she had had lots of people pray for her without success until she met accused No 2 and when they had sexual relations she felt that this spirit had left her and accused No 2 had assured her that he was going to be staying there in her house to ensure that she would not be affected by these evil spirits again, and so she felt reassured by accused No 2's presence and the fact that he had these powers, being the son of God and having the voice of the angel Matthias, that he would be able to protect her from the evil spirits.

I do not intend rehashing all of the evidence that was led in this case. It is on record.

Dealing with accused Nos 1 and 3 and their contention that they did not have the intent to kill their parents *per se*, that they were acting under the coercive influence of accused No 2 and, as counsel had argued in respect of accused Nos 1 and 3, that they had raised, in a manner of speaking, the

defence of non-pathological mental deficiency or incapacity which is often referred to as sane automatism to distinguish it from pathological incapacity which is usually regarded as insanity in some form. This defence has been dealt with by our Courts on numerous occasions, and one such case is the case of *S v Di Blasi* 1996 (1) SACR 1 (A) which was referred to in his argument by Mr *Parsotham* for accused No 1. Of importance in this case is the reference by the Court of Appeal to the factual foundation that has to be laid before a Court can accept that such a defence in fact exists in the matter under consideration. In the judgment of VIVIERS JA at page 7 the relevant portion of the judgment reads:

“It is for an accused person to lay a factual foundation for his defence that non-pathological causes resulted in diminished criminal responsibility and the issue is one for the court to decide. In coming to a decision the court must have regard not only to the expert evidence but to all the facts in the case, including the nature of the accused person’s actions during the relevant period.”

In *S v Harris* 1965 (2) SA 340 (A), OGILVIE-THOMPSON JA said in this regard at page 365B to C:

“In the ultimate analysis the crucial issue of the appellant’s criminal responsibility for his actions at the relevant time is a matter to be determined not by the psychiatrists but by the court itself. In determining that issue initially the trial court and, on appeal, this court

must of necessity have regard not only to the expert medical evidence but also to all the other facts of the case including the reliability of the appellant as a witness and the nature of his proved actions throughout the relevant period.”

These sentiments were re-stated in many decisions subsequent thereto in our courts.

The starting point in regards to the defence raised by accused Nos 1 and 3 is obviously the reports of the clinical psychologist, Professor Schlebusch, who was retained to represent them after having consulted with them and prepared reports in respect of each of them to assist and guide this Court in coming to a proper decision as to the mental capacity of accused Nos 1 and 3 at the time of the commission of the offence.

With regard to accused No 1, in Exhibit Z Professor Schlebusch under the heading “Criminal responsibility” had the following to say at page 19 of Exhibit Z:

“This refers to the defendant’s mental state at the time of the alleged offence. The clinician has to determine, as I did, whether the accused at the time of the alleged offence was unable to appreciate the nature and quality of his actions or did not know that the actions were wrong, by reason of mental illness or otherwise. Given this, and despite the fact that the patient is currently fully mentally competent as described in this report, aspects of his behaviour during the alleged

offence do not fall within the realms of his usual conduct and can therefore not be considered to be free of transient dysfunctional behaviour. This could be aetiologically, that is causally, associated with several variables, including the inordinate stress he was exposed to and his dysfunctional religious beliefs as noted earlier and as further discussed in the report.”

Professor Schlebusch, when he testified, indicated that in the light of the regrooming of accused No 1’s thought processes by accused No 2 it would have been difficult for him to act in any other manner but in a manner that followed the instructions of accused No 2, but he indicated that although such action on the part of accused No 1 would be difficult it would not have been impossible.

Similar comments are made by Professor Laubscher in relation to accused No 3 in his report on her as contained in Exhibit AA. Under the heading of “Criminal responsibility” at page 18 he states:

“This refers to the defendant’s mental state at the time of the alleged offence. The clinician has to determine, as I did, whether the accused at the time of the alleged offence was unable to appreciate the nature and quality of her actions or did not know that the actions were wrong by reason of mental illness or otherwise. Given this and despite the fact that the patient is currently fully mentally competent as described in this report, aspects of her behaviour during the alleged

offence do not fall within the realms of her usual conduct and can therefore not be considered to be free of transient dysfunctional behaviour. This could be aetiologically, that is causally, associated with several variables, including her inordinately stressful relationship with her boyfriend, Mr Mathew Naidoo, at the time of her dysfunctional religious beliefs as noted earlier and as further discussed in this report.”

With accused No 3 as well Professor Schlebusch was of the view that she was able to distinguish between right and wrong and conduct her actions in accordance with such appreciation at the time of the commission of the offence.

In fact both accused Nos 1 and 3 in their evidence stated quite categorically that they knew that it was wrong to kill and that the killing of their parents was a crime and they fully appreciated that, but that they persisted in their conduct in killing their parents because accused No 2 had inculcated in them the belief that their parents were evil and had to be destroyed in the interests of the work of God and that they, their parents, the two deceased in this case, were standing in the way of God’s work.

There are aspects in the evidence in relation to accused No 1 which, in our view, indicate that he was not so controlled and possessed by the instructions of accused No 1 so as not to act in accordance with an appreciation of the wrongfulness of his conduct, and these are that he verbalised at the Botanical Gardens his reluctance to participate in the killing of his parents, and when he had shown his reluctance to accused Nos 2 and

3 they had shunned him until he felt that he was obliged to co-operate with them in the plan to kill the deceased.

Furthermore, in the evidence of accused No 3, it is apparent that accused No 1 was reluctant and unable to use the stun gun to stun his mother to the extent that she would become unconscious for her to be bound and gagged, and that is how the entire plan to kill the deceased went haywire due to the reluctance of accused No 1 to proceed with the plan as agreed.

These facts, in our view, indicate that he still had the ability to differentiate between right and wrong and act in accordance with such an appreciation, but that he failed to do so at the crucial time. He was able to take instructions from accused No 2 as to how to kill his father, by getting hold of a cord, by breaking two sticks to tie to either end of the cord and by tightening the noose around his father's neck until he was dead. Accused No 1 was also able, in our view, to appreciate the threat from accused No 3 that if he did not hold his mother down he would go to gaol.

These instances in the evidence of accused No 1 support the version by Professor Schlebusch that accused No 1 had criminal responsibility at the time of the commission of the offence, and this applies to accused No 3 as well. The facts which in her case underline and confirm Professor Schlebusch's opinion is that she was able to think for herself when the plan started going wrong, to take the Taser and try and assist accused No 1 in stunning her mother, to take the needle which accused No 2 was supposed to use to inject the air bubble into her mother's vein and to try and do it herself. She was making calls to accused No 2 in desperation, seeking

guidance and she was able to verbalise a threat to accused No 1 that if he did not hold down his mother he would go to gaol. She was able to recollect accused No 2 pushing accused No 1 up against the wall and threatening him to strangle his father or else he would go to gaol and she was able, although throughout her testimony she indicated that she could not tell accused No 2 anything or challenge any of his instructions because it was the will of God and to do so would result in her being assaulted and abused by accused No 2, she did intercede on behalf of accused No 1 to ask accused No 2 if he could not speak to God to arrange a lesser punishment for accused No 1 when accused No 2 suggested that accused No 1 must now plead guilty and plead insanity. These are aspects in her evidence which, as I say, underscore the fact that she was still able to act in accordance with her appreciation between right and wrong.

Their belief in the powers of accused No 2, at best for accused Nos 1 and 3, are mitigating circumstances that may or may not have resulted in a diminished criminal capacity in respect of both accused Nos 1 and 3 but they certainly do not excuse accused Nos 1 and 3 from liability on the basis that they lacked the necessary criminal responsibility. The evidence in this regard is quite overwhelming.

Dealing with accused No 2's alibi, accused No 2 indicated that he had the tickets of the movie house to confirm that he and accused No 3 were going to the movies, and accused No 3 had called him from the home of the Lotters to tell him that there was a family meeting and that she was unable to meet him, that he tried to get a refund of the ticket that he had bought for her and he explained the various instances of correspondence between him and

accused No 3 by SMS on the basis that they were communicating as to whether she was coming, what time she was coming, where he was seated, etcetera, and that is why there was this communication.

Accused No 3, on the other hand, stated quite clearly and categorically that she had been communicating with accused No 2 to get directions as to what to do in certain instances when the plan was not working and she is supported in this by accused 1.

That the deceased were to be killed had been planned is the evidence of accused Nos 1 and 3. They support each other perfectly in this regard. Their statements were written shortly after their arrest and without them having had the opportunity of putting their minds together to come up with this common version if they were to be challenged on that aspect. They did not have the opportunity.

Accused No 3's statement is voluminous. It is in her own handwriting and it covers a great deal of detail. Accused No 1's statement is, likewise, quite voluminous and covers a great amount of detail. It would be surprising in the extreme that these two people could come up with a common version containing so much of detail and fabricate this version just to implicate accused No 2. But if they were implicating accused No 2, it was clearly not, as accused No 2 contends it was, to exonerate themselves and to implicate accused No 2. They were implicating themselves. They were confessing to the killing of the deceased. They confessed fully to the parts they played in the killing of the deceased. They were not fabricating a version to extricate themselves and implicate accused No 2, and that is another reason for accepting the reliability of their versions.

Accused No 2 was a glib character. He always fancied himself with his ego as being cleverer than everybody else, including the police. He was arrogant and boastful. A perfect example is Exhibit I, a letter that was written and left for the police to find at the Lotters' residence, which reads:

"To whom it may concern. I have done what I said I was going to do. To any investigators that are investigating this, you have three suspects to choose from in my opinion – Nicky, Nicolette, or whatever it is, Hardus Johannes and of course the boyfriend, Mathew, Matthias. So who is it? If you find out tell me. Job 3 verse 16 to 19."

A reading of the evidence of accused No 2 under cross-examination confirms that he had this great opinion of himself and that he thought everybody else was quite stupid. He was arrogant to counsel for accused No 1 when cross-examined. For example, on one occasion counsel indicated to him that he was going to question him on a certain aspect, and he retorts to counsel: "Go for it". Another retort indicating his arrogance and his belief in his superiority over others is, for example, his exclamation when confronted with a problem in cross-examination, the words: "Oh, come on". Examples like this are to be found in an examination of his evidence during cross-examination.

However, when the wheels started coming off for accused No 2 he realised that the game was up, that nobody is being taken in by his lies, and he made an about-turn and indicated that he wanted to plead guilty. As he was under cross-examination at the time he could not speak to his counsel

without the presence of the other counsel and counsel for the State, so although he had asked to consult with his counsel he could not do so because the other counsel would be present. He then requested permission to speak to an independent counsel, and the Court arranged for the Bar Council to send an independent counsel to advise accused No 2, and a counsel who is quite senior amongst the advocates in Durban, Advocate Wolmarans, was sent to consult and counsel accused No 2 in his predicament. Mr Wolmarans is a person who had been a Magistrate for many years before he joined the Bar and has immense experience as a criminal lawyer. Having consulted with Advocate Wolmarans, accused No 2 returned to court and advised the Court that he had now decided that he was pleading guilty. He was given an opportunity for the matter to stand down so that his counsel, Mr *Sivakumoor*, could compile a statement or a list of admissions in terms of section 220 to encompass his plea of guilty. Mr *Sivakumoor* returned to the Court and in chambers and advised that he could not get instructions from accused No 2. When accused No 2 was called back into the witness box and continued his testimony he indicated that he did not plan or participate in the commission of the murders of the two deceased but that he wanted to plead guilty because he helped cover it up. Accordingly no plea of guilty could be entered.

This, in my view, was another indication of the behaviour on the part of accused No 2 who felt that he was a person of so much intelligence and ability that he could lead and mislead counsel for the defence, counsel for the State and even an independent counsel. He was merely trying his very best to get out of a tight spot, and the tight spot was that it became apparent

under cross-examination that he had no answer for the contents of Exhibit U which was written by him, and he could not explain.

The detailed plan to kill the two deceased was hatched on the night of 18 July 2008. According to the evidence of accused Nos 1 and 3 which we accept as being the truth, they were in the room of accused No 3. Accused No 2 was seated on the bed and they, the disciples, had to be seated on the floor. Accused No 2 took umbrage to the fact that they were not kneeling and slapped both of them and ordered them to kneel and then demanded from them to come up with a plan for the killing of the deceased, and when they were unable to come up with any plan he outlined the plan to kill them. He outlined the need to buy the syringes with which to inject air bubbles into their veins to cause them to die of what would appear to be a heart attack and that cable ties were to be obtained to tie them up. He bought an electric Taser which would be used to knock out the two deceased and bind them to allow him to come and administer the fatal injections that would kill them and rubber gloves or surgical gloves be purchased so that no fingerprints would be left. It is our belief that all along accused No 2 was fully aware that if two people died of a heart attack it would call for investigations and post-mortem examinations. Although it was not unheard of that two people will die of a heart attack at the same time it would be something that would require investigation. Accused No 2 said so in his evidence – he would not be that stupid to come up with a plan like this which would clearly call for post-mortem examinations to be performed. He knew about this. He appreciated it but he had his reasons for carrying on with it nonetheless. He had in accused No 1 a “fall guy”, a person who would take the rap, and that

is why when this plan went haywire and it could not be put into operation, the Taser was unable to knock out Mrs Lotter that the other plans had been put into place.

The fact that accused No 2 is aware of the killings and the number of times that the deceased Mrs Lotter was stabbed confirms that he was present at the killing. Accused No 3, when she testified, denied and disputed the version contained in the statement, Exhibit BB, from accused No 2's mother, that she informed accused No 2's mother of the number of times that the deceased was stabbed. She denied having any such discussion with her. If that was the case then one wonders where accused No 2's mother got this information that the deceased was stabbed five times because accused No 2 when he testified said he could not stand looking at the deceased. In fact when he covered their bodies he held the sheet up to cover his eyes so he did not need to look at them and, from a distance, threw the sheets over their bodies because he was overwhelmed with grief at having seen a woman he called mother and a person whom he called his buddy lying dead on the floor as he found them. So he couldn't have seen how many times Mrs Lotter was stabbed, and yet in his statement, Exhibit P, he told the captain taking down his statement, Captain Delport, that the deceased was stabbed about four times. How would he know about this? He did not see the bodies. He did not say he was told she was stabbed four times. But there is an explanation in the evidence of accused No 3, that when the deceased was not killed by the injecting of the air bubble by accused No 3, accused No 2 was seated in her room and he told her that she must now take a knife and stab the deceased and indicated to her which

knife she must use and told her that she must stab the deceased once on the one side of the neck, then on the other side of the neck, then in the middle of the neck and then in the chest – a minimum of four stab wounds, which he would have known because he ordered her to stab the deceased in that fashion. What is more, in Exhibit P which he subsequently tried to dispute, he informed the captain who took down his statement that he was present when the offence was committed.

On a question, No 23, to the accused by Captain Delport who took down the statement: “Is the statement that you wish to make about the facts which you yourself have experienced or is it about facts which the police or anyone else has dictated to you to come and tell me?” “Answer: I was there, I saw it”. And as we have found this statement was in fact made by the accused freely and voluntarily, without him having been unduly influenced thereto and we rejected as false his contention that the contents thereof came from the police. It raises the question – why would accused No 2, who did not stab the deceased himself, claim that he stabbed the deceased? The answer is simple. It is keeping in line with what accused No 3 testified about, that accused No 2 told her that he would protect her. He will take responsibility for the stabbing because she cannot go to gaol, and she was arguing with him: “But you cannot go to gaol because you are the son of God, you have got to do the work of God”. It is for this reason that he claimed to have stabbed the deceased. Maybe in his arrogance he believed that he would get away even with this admission on his part, as he tried to do by claiming that this statement emanated from the police, it was dictated to him and that he was drilled as to what to say, and that what he

said did not come from him and that he had been assaulted to say what he did - all of which, as I have said, we found to be false.

Unless accused No 3 gets carried away with the fact that accused No 2 was willing to take this blame for her on her behalf because he loved her in our view he had to protect accused No 3. If accused No 1 was the "fall guy" he would be eliminated. Without accused No 3 accused No 2's plans were worthless because his hope of inheriting from the deceased estate could only come to him via accused No 3, and with accused No 1 out of the way he had to ensure the safety of accused No 3. There is no evidence before us that he had any relationship with the other daughter of the deceased so, in our view, he had to ensure that no harm befell accused No 3, to protect his expectations of her inheriting from the deceased estate and for him to be able to control her finances.

We accept the evidence of accused No 3 that accused No 2 controlled the finances. He contributed nothing to this venture. He became a co-owner of Entertainment Rebirth. As the person in charge of the finances he had her bank card, he had her wallet. When she objected to there being a single wallet and suggested that they have two wallets he became angry and abusive towards her, with the result that she let him have his way. He expected that his plan would go through, that even the so-called stupid plan as he called it of killing the deceased with an air bubble had a ready-made fall guy, accused No 1 who was either going to plead insanity or going to kill himself, one way or the other, so he would be out of the way. So accused No 2 had to protect accused No 3 in order that he be able to inherit.

It is our view that this entire killing of the deceased may originally

have started from the fact that accused No 2 did not like the manner in which the deceased Mr Lotter refused to accept him as a companion or consort or fiancé of accused No 3 but that with time it outgrew this. The other turning point in their relationship came on 13 June when, after monies had been stolen from the accounts of the Lotters and Mrs Lotter's handbag, the police were called in and accused No 2 gave to accused No 3 an ultimatum whether she was going to go with him or stay there, and they left, and Exhibit U covers this particular aspect about the quarrel with Mrs Lotter. Accused No 2's version that he was living in the house with the full knowledge of Mr and Mrs Lotter and that he was in fact paying rent to Mr Lotter is a blatant lie. Accused No 2 is what can only be termed a pathological liar, so much so that when he was confronted by accused No 3 at the Cato Manor Police Station about the lies that he made her believe he in fact said to her: "I am a blatant liar".

His entire evidence in this case and the manner in which he went about trying to fleece the Lotters is the conduct of a con artist, a person who obtains information from people at a moment of weakness, uses it later on in circumstances and at a time when they have forgotten that they themselves had been the source of this information and gets them to believe that he is such a great spirit that he could recall incidents when he was not there, that he can forecast the future and that he has these powers from God.

Although the ordinary man in the street may find that this belief by accused Nos 1 and 3 is laughable and ridiculous, as I have said earlier on we have the expert testimony that thousands of people have been conned by charismatic leaders into believing that they had these supernatural powers

from God that could change the world, change their lives and change everything around them. In the end that they were all sold something that was useless and many of them lost their lives for their stupidity and their beliefs.

We are satisfied therefore that all three accused are guilty of murder as charged on counts 1 and 2. Accused Nos 1, 2 and 3 are found GUILTY on both counts, 1 and 2, of murder as charged.

**IN THE HIGH COURT OF SOUTH AFRICA
DURBAN AND COAST LOCAL DIVISION**

HELD AT DURBAN

CASE NO: **CC43/09**

DATE: 2012/03/13

THE STATE versus

- 1. HARDUS JOHANNES LOTTER**
- 2. MATHEW NAIDOO**
- 3. NICOLETTE LOTTER**

BEFORE THE HONOURABLE MR JUSTICE GYANDA

ASSESSORS: MR M SEWPAL
MS N JASAT

ON BEHALF OF THE STATE: MS R MINA WITH
MS S RAMOUTHAR

ON BEHALF OF THE DEFENCE: MR R PARSOTHAM
(On behalf of accused 1)

MR V SIVAKUMMOOR
(On behalf of accused 2,
instructed by the Legal Aid Board)

MR T BOTHA
(On behalf of accused 3)

INTERPRETER: MR A V NOBEKA/MR MTSHIZANA

DRAFT JUDGMENT
on 13 March 2012