

IN THE SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC 750
CO22/2020

In the matter between:

THE REPUBLIC
(*rep. by Mr. Georges Thatchet*)

PROSECUTION

and

MARTIN MARIO GABATO
(*rep. by Mr. Olivier Chang-Leng*)

ACCUSED

Neutral Citation: *Rep v Gabato (CR22/20) [2020] SCSC 750*

Before: Vidot J

Summary:

Heard: 12 October 2020

Delivered: 12 October 2020

SENTENCE

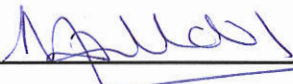
VIDOT J

- [1] The Accused was convicted on his own guilty plea on a charge of manslaughter contrary to Section 192 and punishable under Section 195 of the Penal Code.
- [2] The particulars of the case are that the accused who is 43 years old and a seafarer of Filipino nationality, on the 21st of January 202, on board a Seychelles flagged vessel F/V Chun 1 No.326, on the high seas, unlawfully stabbed a 32 year old male Filipino national seafarer, namely, Joemar Largo Canoy with a knife, thereby causing the death of the said Joemar Largo.

- [3] Counsel for Mr. Gabato requested that before sentence is passed, is that a Probation Report be sought. That report was received and is receiving due consideration before meting out sentence. The report refers to the accused restless and aggressive behaviour when he was being interviewed and the fact that he was on medication, mainly diazepam that would allow him to be more relaxed. He had been to the psychiatric unit, but the psychiatrist considered him not to be suffering from any psychiatric ailments.
- [4] Mr. Chang-Leng Counsel for the Accused pleaded for leniency from the Court.
- [5] The accused is a 43 year old and he has no children nor spouse and his only family members are his father, who is paralyzed, a sister and 2 brothers. His mother has passed away. He is the bread winner of the family. He is from a poor background and of poor education.
- [6] The accused has been a fisherman all his life. Counsel also addressed the events that led to the incident. The accused is very reserved .The victim had accused him of being a thief and there were threats of violence between them. Due to constant provocation by the victim, the accused had asked that he be granted permission to leave the boat just to avoid escalation of problems with the victim. However, they were on a fishing vessel in the middle of the ocean, so there was no escaping. The provocation continued and the accused snapped and inflicted injuries on the victim with a knife and he died as a result of these injuries. Therefore counsel argues that the crime was not pre-meditated.
- [7] Counsel relied on an Article by Felicity Stewart and Anie Freiberg entitled “**Provocation in Sentencing: Culpability Based framework**”, which indeed provided a great insight into sentencing pattern when there is an issue of provocation that arises.
- [8] Manslaughter carries a maximum penalty of life imprisonment, Counsel also drew Court’s attention to several cases in regards to sentence imposed in cases of manslaughter. These include **Republic v Caroline Nicette Barreau [2020], SCSC79 CO07/2019** (delivered on 6th February 2020), **R v Azemia CO78/2014 [2016] SCSC63 (5th February 2010)** and **Republic v Jerris Moustache CR15 of 2006** (delivered on 13th April 2007). I shall give due consideration to these cases when passing sentence.

- [9] I take note that the Accused pleaded guilty and hereby saving's Court's precious time. It shows that the accused has remorse for the offence committed. Blackstone's Criminal Practice (2012) paragraph E12 P2148 states that "a guilty plea would be in effect earn the accused a reduction in sentence as it saves the time of the Court and reduces considerable costs and in the case of an early plea, also saves inconveniences of victims and witnesses to give evidence before Court, and furthermore that a "reduction should be proportioned to the total sentence imposed calculated by reference to the circumstances in which the guilty plea was indicated, and in particular at what stage of the proceeding.
- [10] Having taken all the mitigating factors into consideration, I proceed to convict the accused to 4 years and six months imprisonment.
- [11] Time spent on remand should be discounted against the sentence.
- [12] If unsatisfied with that sentence, the accused may appeal against the same within 30 working days from today.

Signed, dated and delivered at Ile du Port / Victoria on 12 October 2020.



AG. CHIEF JUSTICE - M VIDOT J