

SUPREME COURT OF SEYCHELLES

Reportable after redaction

[2020] SCSC 969

CO 37/2020

In the matter between:

THE REPUBLIC

(rep. by Ananth Subramanian)

Republic

and

MGM

(rep. by Lucy Pool)

Accused

Neutral Citation: *R v MGM* (CO 37/2020) [2020] SCSC 969 (21st December 2020).

Before: Burhan J

Heard: 07th December 2020

Delivered: 21st December 2020

ORDER

The convict is sentenced to a term of one year imprisonment which I suspend for a period of two years. I also impose a fine of SCR 2500/= (two thousand five hundred). In default of payment of fine three months imprisonment.

SENTENCE

BURHAN J

[1] The convict pleaded guilty to the following charge:

Count 1

Unlawful act of administrating noxious thing to herself with intent to procure miscarriage of her own contrary to Section 148 of the Penal Code and punishable under the same.

[2] At the request of learned Counsel for the convict Ms Lucy Pool a probation report was called for and thereafter learned Counsel made submissions in mitigation based on the said report.

[3] I have considered the facts set out in the probation report. The convict is 22 years of age at present and at the time the offence was committed would have been 18 years of age. The convict has stated to the probation officers concerned that she committed the act set out in the offence out of fear as she had become pregnant at a young age and did not want to upset her mother who she had a strong bond with. It appears from the report that her father had left the family when she was only 10 years old. It appears that since then a close bond had developed between the convict and her mother.

[4] The convict has completed her secondary education and furthered her studies by completing a two year course at [____]. She has been employed as a [____] at the [____]. She had thereafter worked at [____] and at the end of March 2018, joined [____] as a [____]. It is apparent that the mother of the convict too speaks to the close bond between the convict and her when interviewed by the probation office. Although her mother had been angry when she heard of the incident, she had thereafter started communicating with her and now both are together again.

[5] I have considered the facts in mitigation. The convict is a first offender and has pleaded guilty without wasting the time of Court. She has also expressed remorse and regret in doing so. The seriousness of the offence has been explained to the convict by the probation and it is clear from the report that she has expressed regret and remorse at what she did and vowed not to repeat such an offence in the future.

- [6] It also appears from the probation report that the convict had been traumatized after the incident and the convict had isolated herself for a considerable period of time as a form of self-punishment and had herself been mentally affected by it.
- [7] I am aware of the seriousness of the offence committed by the convict, as on conviction a convict is liable to a maximum term of seven years imprisonment. I am therefore not going to give a community based sentence as recommended by the probation as I feel suitable deterrent punishment must be given in order to ensure the convict does not commit this type of offence again. At the same time however, this court must consider the tender age of the convict at the time she became pregnant and at the time she committed the offence and the fact that she has genuinely expressed remorse and regret at what she has done as borne out by the facts contained in the probation report and the fact she pleaded guilty to the offence at the very outset of the case.
- [8] In my view there should be an appropriate balance between the demands of society that criminal behaviour should be condemned and the desire of society to give an offender an opportunity for rehabilitation. The offence committed by the convict should not be trivialized but at the same time this court is of the view, that considering all the circumstances peculiar to this case that imposing an immediate custodial sentence on the convict would have lasting and devastating effect on her as she is now trying her best to get her life together by being gainfully employed and making use of her academic qualifications and training. I therefore proceed to sentence her to a suspended term of imprisonment which in my view would suffice to meet the ends of justice, refer sentence of **Dolores Low-Hong v Republic SCA Criminal Appeal No 7 of 1993**.
- [9] The convict is sentenced to a term of one year imprisonment which I suspend for a period of two years. I also impose a fine of SCR 2500/= (two thousand five hundred). In default of payment of fine three months imprisonment.
- [10] Nature of suspended sentence is explained to the convict in open court.

Signed, dated and delivered at Ile du Port on 21st December 2020.

M Burhan J