

SUPREMECOURT OF SEYCHELLES

Reportable
[2022] SCSC 4
CR79/2021...

In the matter between:

THE REPUBLIC
(*rep. by Mrs Monthy*)

and

NATHALIE BACCO
(*rep. Ms Domingue and Mr Georges*)

Accused

Neutral Citation: *Republic v Nathalie Bacco* (CR79/2021) [2022] SCSC 4 (30th December 2021).

Before: Govinden CJ,

Summary: Manslaughter- Plea of guilty- sentence as if charged for Infanticide, given the facts of the case.

Heard: 16th December 2021-Mitigation

Delivered: 6th January 2022

ORDER

The Convict is sentenced to two years imprisonment suspended for two years in pursuant to Section 282 of the Penal Code

SENTENCE

GOVINDEN CJ

[1] The convict is a resident of Beau Bel, Mahe, who on her own guilty plea, has been convicted of a criminal offence namely:

COUNT 1
Statement of Offence

Manslaughter contrary to Section 192 of the Penal Code and punishable under Section 195 of the Penal Code.

Particulars of Offence

Nathalie Charlette Bacco of Beau Belle, Mahe, between the period of Friday 09th July to Sunday 11th July 2021, at Beau Belle, Mahe, by an unlawful act or omission caused the death of her new born baby boy she owed a duty of care and unlawfully omitted or neglected to discharge such duty tending to the preservation of life of her child.

- [2] The facts of the case, as read out by the prosecution and admitted by the convict are as follows;
- [3] On the 12th of July 2021 a phone call was received at the Beau Vallon Police Station and a person reported that he has found the body of a baby wrapped in a yellow towel in the bins opposite the “Gran Kaz” Casino and henceforth police went on the scene. The scene was attended by the station officers and CID officers as well as the Police Child Protection Team; the SSCRB and Dr Paul Ramirez from the Mortuary. Later on that same day, footage was retrieved from the “Gran Kaz” Casino and it was viewed. On the footage a white coloured van make Toyota was seen stopping at the bin opposite “Gran Kaz” earlier in the morning and through investigation conducted, the accused was on that same day at around 21.30 hrs arrested, cautioned and interviewed by the Police whereby she cooperated fully with the police and gave a confession statement. Later on that same day at around 23.35hrs, the accused was examined at the hospital. On the 14th of July a post mortem examination was performed on the body of the baby and it was noted that the wrist, right foot joint, right side clavicle were fractured. Also present was severe head trauma and signs of asphyxia. The death certificate was issued by the Pathologist and the cause of death was determined to be sub-arachnoids haemorrhage due to or as a

consequence to severe head trauma. Further to the investigation, the accused was charged on the 27th of July 2021.

[4] Before proceeding to make their plea in mitigation, the Learned counsels for the accused requested for Pre-Sentencing Reports. The Probation Services made available two Probation Officers' Reports; one dated the 13th of November 2021 and the other the 30th of November 2021. We are very grateful to the Probation Services for these Reports, as they have greatly assisted the court in coming to its determination in this case.

[5] Ms Domingue submitted mostly on what she considered to be personal mitigating circumstances in favour of the convict. In that regards the records shows as follows;

“Ms. Nathalie Bacco, the defendant in this case has been charged with the offence of manslaughter contrary to Section 192 of the Penal Code, punishable under Section 195 of the same Code. My Lord before I go to the charge proper I wish to submit to the Court on the personal circumstances of Ms. Bacco. It is of course laid down my Lord in the presentencing report, two of them, which is before the Court, Ms. Nathalie Bacco is a 27 year old lady. She is the mother of two young children, Adriana Emilien and Noah Emilien, age respectively 5 years old and 2 years old. Prior to the incident with which the defendant stands charged and has been convicted for, Ms. Bacco was working at the STC as a Cashier doing shift work. She had been there for seven years and she was a very responsible employee. From the presentencing report it emerges that Ms. Bacco is a loving mother to her two children. She is and was in a relationship with her partner, the father of her two children. She has been in a relationship with him for nine years, six years of which she was living with him, during which time she bore the two children. The persons living in the household with her were her partner, the two children themselves, her mother in law and the stepfather of her partner. All of those persons my Lord who have been interviewed describe Ms. Bacco as a caring and loving mother, a caring and loving person, a person who is calm, however reserved and a person who is responsible in terms of all that she does, be it in her duties as a mother, her duties as a partner, as well as her duties as an employee. She is the daughter of Margarete Mellie who

separated from her father when she was at an early age and since then she was living with her mother prior to moving with her partner in Beau Belle. My Lord all of this is basically stated in the report.

Early this year Ms. Bacco and her partner were experiencing trouble in their relationship. Mr. Mario Emilien was having an affair with somebody else and he related this to Ms. Bacco and since then the relationship started to – they started to drift apart and the relationship started becoming one whereby each partner was doing their own thing. Ms. Bacco being a reserved person did not communicate her feelings to anyone, she did not seek help to try and deal with the situation in which she found herself in.

My Lord, earlier in June this year Ms. Bacco felt some pain in her stomach and as a result she suspected that she was pregnant, but given that she was in a very depressed state with the situation with her partner she did not go to the Doctors or even seek to confirm or discuss this matter with anyone. She basically put it at the back of her mind. My Lord from the instructions that I have received from Ms. Bacco, in July this year, on the 11th of July she came home, she went to bed and early morning around 4 a.m. in the morning she started experiencing a pain in her abdomen, at which point she was asleep in her room with her partner in the same bed and she woke up and went to the bathroom. When she came back her partner asked her what was wrong and she informed her partner that she was having pain in the abdomen. The later asked her whether she wanted to go to the hospital, and also asked her whether she needed any help. She said she will try to go back to sleep, which she did go back to bed but she kept on experiencing a lot of pain in her abdomen. My Lord however she fell asleep and early morning the partner normally on Sundays goes to play football at Beau Belle on the football pitch. Whilst he had gone the defendant felt sharp pain in her abdomen. She rushed to the bathroom at which point she felt a very sharp pain and she pushed on the abdomen with her hand and she felt something coming out of her vagina. My Lord it is at this point that it is revealed in the statements given by Ms. Bacco to the Police and also through her instructions to me, that Ms. Bacco gave birth to a baby boy who fell on the bathroom floor on the tiles.

My Lord will note that the cause of death in this case as per Doctor Salas, it is – I believe your Lordship have the file in this matter, it is B4. The cause of death is said to be subarachnoid haemorrhage and severe head trauma. I cannot say with certainty because our client did not instruct me as to how the baby fell. But normally would presume that a baby would come out head first, so should that have been the case that could have been impacted and caused the haemorrhage and the severe head trauma in this matter. I say this my Lord of course based on how words are normally given.

My Lord Ms. Bacco was in a state of shock. She was blank, as she has described to the Psychologist which I will come to eventually. And seeing this she wrapped the baby up in a towel and put the baby in a bag. My Lord, this was on a Sunday morning. The following day early morning at 5 in the morning Ms. Bacco was picked up for her to go to attend her duties at the STC Duty Free at the Airport and still in a blank state of mind Ms. Bacco left with the bag which was disposed of in the bins near Gran Kaz. The defendant attended to her duties that day, informed her colleagues that she was not feeling well and that she was having very heavy bleeding and in fact even requested her Supervisor for her to be given four days PH (Public Holiday) which was due to her. From there my Lord, she proceeded home in the afternoon, still in a blank state and she went to rest. After a few hours in the evening, around 6 her partner came home and a few hours later her started receiving on his WhatsApp photos of the defendant, photos of the trashcans at the Gran Kaz. Mr. Mario Emilien was shocked as he stated to the Police and when he asked the defendant, he showed the defendant the photos and asked her about them, she was still in a very blank state.

My Lord that very same evening around 8.30 to 9, the Police came to Beau Belle where Ms. Bacco and her partner and children were living and Ms. Bacco was arrested. I wish to state that Ms. Bacco did not resist any arrest. She was very cooperative with the Police. On that very same evening, she gave a confession to the Police. In her confession she has stated to the Police that she did not – Firstly my Lord she states to the Police throughout that year prior to giving birth she was menstruating, she did not know that

she was pregnant and in fact it was only in late June that she started suspected after she felt pain in her abdomen. My Lord she told the Police that at the time that the incident happened and I quote from her statement, she said; “I would like to state that I did not use anything to abort the child or use any tools to cut the umbilical cord. I regret what I have done, as I was depressed upon learning that my boyfriend was in a relationship with another girl.” My Lord, Mr. Mario Emilien in his statement to the Police also confirms that the defendant had detached herself from him and that she was very distant. He as per partner who was sharing a room with her and living with her did not know that she was pregnant. Her colleagues did not know that she was pregnant. The persons she was living with did not know that she was pregnant.

Mr. Emilien in his statement also states that – I am sorry. If your Lordship may please just bear with me. Mr. Emilien in his statement also states that at the time when he told the defendant of his relationship that he was having with another person and that that person was about to have his baby, he said that from then that day Nathalie started to cry and from there even though they shared the same room they did have a close relationship. In fact Mr. Emilien states that he never knew that Nathalie was pregnant though he shared as I say, a room with her.

My Lord may note also that in all the statements that have been given by the person who were interviewed by the Police, Ms. Nathalie Bacco when she was pregnant with the her first two children, she showed signs of her pregnancy, it was very visible, but this third pregnancy which she had was not visible to anyone. My Lord, in fact, the report of the Psychologist in this case who examined Ms. Bacco four days after the incident, my Lord should have a copy in your file. It is the report dated the 16th of July 2021. On the very first page in the last paragraph, the Psychologist states that Ms. Bacco reported that her mind was in a blank at the time of the incident, that she was feeling sad, guilty and humiliated about this incident. The Psychologist also states that she did not seek any medical help, nor help from any members of the family. My Lord may also note from that very same report that the Psychologist upon assessing Ms. Bacco and writing down the results of her clinical assessment comes to the following conclusion; “The psychological

assessment depicted the absence of any form of psychopathology. The results obtained from the PHQ9 showed a score of 20, which indicate a level of severe depression. The GAD7 resulted in a score of 10 showing level of anxiety.” And the recommendations for her treatment was for psychological intervention to assist her in dealing with her grief and to assist her with coping and interpersonal functioning.

My Lord that said, from the pre-sentencing report and from my instructions from my client, as I have stated and as I stress, Ms. Bacco has displayed and this is confirmed by everyone who knows her, lived with her, worked with her, spends time with her, she has displayed her love and care for her two children. She has displayed the fact that she is a responsible person. She is a loving daughter to her own mother, whom she helps constantly and whom she is close to. Despite her partner informing her of his affair with somebody else in early 2021, she remained in the relationship with her partner were she was living with her two children and her partner. Though her mother in her statement reveals that Ms. Bacco during mid of this year had a few times indicated to her that she wanted to move back to her mother’s home, she had not done so and as per my instructions the reason for that was because of her children, their stability, their routine and their family unit with a father present in their lives.

My Lord the fact that this defendant already has two children who everybody will testify to that she loves very much begs to the question as to why when she was going to have a third child why would she cold-bloodedly and voluntarily want to put an end to an innocent baby’s life? My Lord, since Ms. Bacco was arrested, as I have stated she has been undergoing counselling and it is clear from the report of the Psychologist that she was very depressed at the time, she was in a blank state and it appears like she did not know what was going on around her and she was not even able to be responsible for what she was doing.

Court: Are you saying that she was insane?

Ms. Domingue: She was disturbed my Lord.

Court: Did that amount to insanity so that she didn't know what she was doing or what she was doing was wrong? You are not saying that?

Ms. Domingue: No, I cannot say that my Lord, for the very simple reason that I do not have medical evidence to that effect. My Lord, as your Lordship knows, from the outset when I started representing Ms. Bacco I have insisted that Ms. Bacco goes for her counseling sessions with the Psychologist, that she is reviewed and that she is counseled, not only for herself personally, for her sake, mental and physical, but also with a view to understanding what could have prompted her to act in that way. My Lord on the last occasion I had also requested an adjournment for me to be able to get another report and my friend will address the Court on these matters. My Lord in this matter from the outset I was a little bit puzzled when the Attorney General charged the defendant with the offence of manslaughter rather than infanticide. Though I tried my utmost best to get the Attorney General to lower the charge, to change the charge rather, that was not forthcoming

[6] The other co-counsel of the Defendant, Mr Georges, made the following legal submissions;

“Your Lordship raises a very pertinent question, with respect, and I think this is the key to this matter. In my learned friend’s mitigation she has alluded to essentially two things which are not disputed. One is that the defendant was suffering from severe depression at the time that she gave birth, and the other is that she had not shown any signs of pregnancy either internally to herself or externally to third parties and in fact all the papers on file show that her workmates, her parent, her companion or partner, nobody could visibly say that she was pregnant unlike the first two previous pregnancies where that had been very obvious. So there is here a twist which I think probably explains her reaction and her behavior and her actions at giving birth. In any event we invite your Lordship to consider that there must have been something different this time as opposed to the two previous times.

The prosecution I think quite correctly and very professionally has not suggested that the fact of the problems between the two parties led to the depression and consequently led to the action. Because I don't think we can join those dots, so we are left with a person who through depression does something which is so out of the ordinary compared to her two previous times, that there must be another explanation for it, and my learned friend and I have tried to look for this legal rationale for what the defendant did. And we will invite the Court to make not a comparison but to make an equation between acts which lead to a death unwanted and what happened here. In fact there are three possible avenues opened to a prosecution in this case, one is manslaughter and this is what was chosen, another one could have been non insane automatism or the defence could have been non insane automatism, where the action of the person is unwilling and counterintuitively it is actually the actus reus which is missing rather the mens rea. One would have thought if somebody does something without thinking or knowing it should be the mens rea which is missing but in actual fact it is the actus reus because the person does the act without knowing that the person is doing the act, which could explain the actions of this person. And then of course there is infanticide which I think by the very nature of what has happened and I understand my learned friend, I was not involved with her, a prosecution authority would almost automatically go to infanticide in a case like this but we are not here to question the decision of the prosecuting authority, we must deal with the matter as we have it. But for the purposes of sentencing and for the purposes of sentencing alone my Lord, it is our plea this afternoon and we submit to your Lordship that there can be an equation made between what would be an appropriate sentence for infanticide with what has happened in this case. And of course we will invite your Lordship to consider that all the facts are so aligned between a classic case of infanticide and this case irrespective of the charge, that for the purposes of sentencing your Lordship can be guided by the practice of sentencing in infanticide cases. This is the narrow ambit of our plea this afternoon.

My learned friend has sought to equate the definition of manslaughter and the definition of infanticide in our Penal Code and your Lordship has very rightly said that infanticide is a much narrower concept than manslaughter. In answer to this, what we would like to

suggest my Lord, is that actually in the historical development of these two offences in the UK and we draw almost word for word from English Law on manslaughter by reason of diminished responsibility and infanticide. Almost word for word, if not in fact word for word, that in the historical development it so happened that we ended up with two offences whereas in fact in actual fact the development of the law should have ended up with only one.

My Lord we will be producing some excerpts from Black Stones and relying heavily on the case of Dolores Low Hong, which is the only infanticide case to have come before this Court and one which I had the honour of defending many decades ago. And of course the case of Sainsbury which is the locus classicus in infanticide cases even today in the United Kingdom. My Lord we will be producing in the note that my learned friend will be preparing for the Court after today, an excerpt from Hemmings on sentencing, on infanticide not on manslaughter by reason of diminished responsibility, where the case of Sainsbury is considered the great length, 1989 case where the accused, the convict gave birth, wrapped the baby in a blanket and then drowned the baby in a river. And here is what the sentence accepted, and these are the key words in my humble submission, that the balance of the offender's mind was disturbed by the effect of giving birth. Which of course is one of the two conditions in infanticide, either by the effects of giving birth or by the effects of lactation, which upsets the metabolism of women. A sentence of twelve months detention was reduced to a non-custodial sentence and the benchmark for such cases has been since then that a non-custodial sentence is the appropriate punishment to be visited upon a person who kills a person's baby by reason of a disturbance of the person's mind immediately following birth. And in 59 cases Hemmings will say reviewed, there had been no custodial sentences. All offenders were dealt with by way of probation supervision or hospital orders.

The excerpt that we will be relying upon from Blackstone will show that the definition of infanticide preceded, so the narrow definition of infanticide preceded the wider definition of manslaughter by reason of diminished responsibility. And the learned authors state, and my learned friend will reveal this in the note that she will produce to the Court, state

that if that hadn't occurred it is very likely that the two offences would be equated into one offence. But the interesting thing for the purposes of sentencing is this; that manslaughter by reason of diminished responsibility has a maximum sentence of life imprisonment and infanticide equally has maximum sentence of life imprisonment. The two of them are absolutely identical in terms of the punishment that can be visited upon a person convicted of either of these two offences, but in cases of infanticide, namely, where the balance of the mother's mind was disturbed by the action of giving birth, forget lactation, by the action of giving birth, a non-custodial sentence will be the only appropriate sentence to be passed.

Court: *But that is based on the Common Law in England.*

Mr. Georges: *That is based on the Common Law in England and the only case in Seychelles which is Low Hong, and of course since we are in England on which Low Hong is brought. So therefore what we must do on behalf of this defendant here is to show to your Lordship to a sufficient degree of certainty that your Lordship will accept that the balance of her mind was disturbed by the effect of giving birth. Now unfortunately despite my learned friend's attempts of obtaining a Psychiatric report, we have not been able to obtain one because there is no Psychiatrist able to do it. So we had to rely on reports of Psychologist, and these are unanimous in stating that this person, of course she was seen after the event and we must acknowledge that, but we suspect that every defendant will only be assessed after the event and not before, was suffering from acute and severe depression with a score of 20 indicative of severe depression. We haven't been able which is one of the reasons why my learned friend sought so many adjournments before mitigating, was to try and get a Psychiatrist to say or one way or the other so that we could assist the Court that the balance of this person's mind was disturbed. Unfortunately, we haven't been able to obtain that and we cannot put that back before the Court, so we must ask your Lordship to infer it from those elements that we have. And those elements that we have in my humble submission are these; that she wasn't aware of her pregnancy; that she did not show signs of pregnancy, not to herself and not to others; that she was severely depressed and we know the reasons for that; that*

she has a fantastic life with her two former children and there is no reason why she should treat this child any differently; and that she gave birth at home in the early hours of the morning, alone in a bathroom with no medical supervision. In my humble submission my Lord, and I can put it no higher, this is indicative of a person the balance of whose mind is disturbed by reason of giving birth, not having fully recovered from the effect of giving birth.

Court: So are you saying Mr. Georges that- because infanticide is the balance of the mind being affect post giving birth, right?

Mr. Georges: Yes.

Court: Postnatal.

Mr. Georges: Yes.

Court: The imbalance is triggered as a result of the giving of the birth.

Mr. Georges: Correct my Lord.

Court: So in your submission I should look at the fact and see that she was depressed prenatal not postnatal.

Mr. Georges: Yes.

Court: The depression and anxiety was not triggered by the birth but that there was some pre-existing medical condition which lingered or was accentuated as a result of that birth.

Mr. Georges: Indeed so my Lord. I mean we cannot hide the fact that she was depressed before, that is in the file, but it doesn't follow that because she was depressed before that

she could not have been equally depressed after, immediately after. Because although the Act speaks of not having fully recovered from the effect of giving birth, it clearly all the cases of infanticide show a killing immediately at giving birth or very very shortly after. Although the law speaks of a child under the age of 12 months, generally speaking, so infanticide could actually allow a person to be charge if the person kills 11 months after birth, in all the cases reviewed the act is immediately consequent upon the birth. That is when the postnatal depression as it is called in some of the cases kicks in. And in this case of course the fact that all the Psychologists independently come to the conclusion that her mind was blank, she can't remember a thing immediately afterwards would indicate that there was a post birth trauma which caused her to act so completely outside of the norm. And my learned friend has just also indicated to me that there is another element and that is that the labour was long and laborious, and of course lonely and without medical intervention.

So we will invite your Lordship to consider that this was not in effect a manslaughter case where the balance of a person's mind was disturbed through mental illness or through an inherent cause or induced by disease, none of which has been indicated, and because this person has not been charged with murder we must accept that there was no malice aforethought here either. Prosecution is not alleging that there was. So what is there left? The only thing I can point to is that there was by reason of all these factors that I have enumerated or listed, there was an imbalance in the defendant's mind consequent upon giving birth which caused her to act so irrationally at that point. Some of the cases on infanticide reveal that the person is shocked by giving birth because the person did not know that the person was pregnant, that they acted in the manner in which they had. We cannot presume that this is what happened here but all we can do is to draw from the facts that are available to us and I think at the very lowest my Lord, there must be a recognition that all these factors must show if this was not premeditated and if this did not arise out of a diminished responsibility through a disease of the mind, inherent or otherwise, it must have come from the act of giving birth, postnatal depression immediately consequent upon giving birth which upset the balance of her mind such that

she did what she did, which will allow your Lordship then to consider that although she has pleaded guilty to manslaughter, in effect her guilt is no more than infanticide.

For the purposes of sentencing only and we cannot pitch it any higher, that your Lordship should be guided by the English Common Law Sentencing Rules on infanticide and by the only case in our jurisdiction, the case of Low Hong, which we will make available to your Lordship.

These submissions in mitigation were also made available in writing by both counsels.

[7] Having carefully listened to the submissions in mitigation, I find that it is substantially as follows; that the convict, who was otherwise a law-abiding citizen, had given birth to two healthy children before the incident without any complications. However, due to relationship issues that she was having with her boyfriend, which included the fact that the latter had impregnated another woman, she had fallen into a depressive state that had deprived her of certain sense of self-control. In such a state, she fell pregnant and she did not go for pre-natal consultation or discuss her case to anyone. It is submitted that she was in such a mental state that at the time that she delivered the child alone at her home and later disposed of the body. According to her counsel's submission her mind was blank at that time. Counsel submitted that this however stopped short of a state of insanity. Moreover, the severe head trauma seen on the baby, it is submitted, occurred as a result of the baby falling on a hard surface during birth that happened whilst the accused was standing up.

[8] Regarding the law the submission in mitigation is that the facts of the case shows that the accused was suffering from severe depression at the time she gave birth and that she had shown no visible signs of pregnancy either internally or externally to third parties. Based on this fact the Defence accordingly, for the purpose of sentencing, invites the court to consider the sentencing pattern for the offence of Infanticide rather than for the offence of Manslaughter in this case. For it is their submissions that the charge that should have been preferred by the Prosecution as Infanticide, given the facts of this case. It is further submitted that if the court was to agree that the offence of Infanticide should have been the most appropriate offence, the likely sentence should be a non-custodial one. Given

the fact that though Infanticide is tantamount to Manslaughter, courts has imposed noncustodial sentences for conviction for the former offence.

[9] I have thoroughly considered the submissions of both counsels for the Convict. I have given careful consideration to the content of both Probation Reports and their respective recommendations. Special attention has also been given to the legal submissions made in light of the facts and circumstances of the case.

[10] I note that the offence of Infanticide which is penalised under Section 214 of the Penal Code reads as follows:

214. Where a woman by any willful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

[11] In addition, the court note that in both Pre-Sentencing Reports the Probation Officer confirms the personal and relational circumstances of the convict prior to the commission of the offence as submitted about by her counsels. The first Report recommended that she be inflicted with a lesser term of imprisonment other than life imprisonment and the second Report recommended that the court takes note of the circumstances of the case and interviews from different individuals who were involved in the accused's life before disposing of the case.

[12] The court also bears in mind the contents of two Psychological Reports, which concluded that according to psychological assessment she was suffering from a level of severe depression and a moderate level of anxiety when she was assessed shortly after she was arrested.

- [13] Having noted all these I find that ‘gender-specific’ crime of infanticide is targeted solely at women who have given birth within the previous 12 months. Infanticide may be charged as an offence where the *mens rea* for murder is present and a woman kills her child under the age of one year. The specific offence of Infanticide was introduced as a result of general opinion being against treating infants killed by their mothers as victims of an ‘ordinary’ murder. *D Ormerod & K Laird, Smith & Hogan’s Criminal law* (14th ed., OUP: Oxford, 2015) 679.
- [14] Reasons as to why the killing of an infant under 12 months has been regarded as less reprehensible are: that an infant cannot suffer the same as an adult victim; the loss to its family is less; the sense of insecurity caused to society is lower; and the responsibility of the mother is reduced due to the disturbance of her mind.
- [15] Furthermore, I am aware that there is a need in law to establish a causal link between the mother suffering from the after effects of childbirth or lactation and the actual killing in order to ensure that women escape the full force of a murder or voluntary manslaughter conviction. If the disturbance of the mind cause the killing, then a reduction in culpability is appropriate. Most cases result from a guilty plea to the offence, and are accepted as such where there is evidence of emotional disturbance at the time of the offence., vide *R D Mackay, ‘The Consequences of Killing Very Young Children’ [1993] Crim LR 21*. Where a woman is found guilty of infanticide, the tendency has been to deal with her leniently. The Law Commission in England in its Report, *Murder, Manslaughter and Infanticide (2006) No 304 at paras. D.6-D20: 49* relating to cases during the period 1990-2003 found that of a sample of 49 defendants convicted of infanticide, only three defendants were given custodial sentences. The assumption being that she must not have been in her right mind at the time of the killing. The tendency in Seychelles has been the same, in the case of *Dolores Low Hong vs Republic*, SCA No.7 of 93, the Seychelles Court of Appeal reduced a sentence of one year imprisonment passed on the Appellant to a sentence of one year imprisonment suspended pursuant to Section 275 for a period of two years.

- [16] Having scrutinised the facts of this case, I am satisfied that the convict wilfully caused the death of her child, being a child under the age of twelve months. However, at the time of the act the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child. In this case, the Hon Attorney General has used his constitutional discretion to prosecute the convict for the offence of Manslaughter. However, after reviewing the facts and circumstances of the case, I am satisfied that the convict could also have been appropriately prosecuted for the offence of Infanticide.
- [17] Accordingly, in determining the proper sentence, out of fairness, I will consider the case as if the convict was convicted for the latter offence of rather than the former. I note that even if the convict was charged with Murder, it could in law been reduced to Manslaughter, if these same mitigating acts had been proven in a trial
- [18] Having made these determination and come to these findings and after looking at the totality of the facts and circumstances of the case in light of the sentencing pattern both in Seychelles and the United Kingdom, this court feels that the most appropriate sentence should be a non-custodial one. Accordingly, I sentence the convict to two years imprisonment suspended for two years in pursuant to Section 282 of the Penal Code,
- [19] Time spent on remand is to be taken into consideration if the suspended sentence is to be activated.
- [20] The convict has a right of appeal against both the conviction and sentence in this case.
- [21] All bail conditions imposed on the convict shall accordingly lapse.

Signed, dated and delivered at Ile du Port on the of January 2022

Govinden CJ