

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC  
CO 61/2020

In the matter between:

**THE REPUBLIC**  
*(rep. by Ananth Subramanian)*

**Republic**

and

**MARK GABRIEL**  
*(rep. by Alexia Amesbury)*

**Accused**

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**Neutral Citation:** *R v Gabriel* (CO 61/2020) [2021] SCSC 544 (20 August 2021).  
**Before:** Burhan J  
**Summary:** Causing death by dangerous driving contrary to Section 25 of Road Transport Act  
**Heard:** 27<sup>th</sup> July 2021  
**Delivered:** 20 August 2021

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**ORDER**

I proceed to sentence the accused to a term of two years six months imprisonment and a fine of SCR 25,000/-. In default of payment of fine a term of six months imprisonment to be imposed to run consecutively.

I make further order that his driving licence be suspended for a period of five years from the date hereof (20<sup>th</sup> August 2021). Copy of sentence to be served on the Licensing Authority Seychelles.

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**SENTENCE**

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## **BURHAN J**

[1] The accused Mark Gabriel was charged with the following offence:

### **Count 1**

*Causing death by dangerous driving contrary to Section 25 of the Road Transport Act (CAP 206) and punishable under the same*

*Mark Gabriel of Mont Buxton, Mahe on the 2<sup>nd</sup> May 2019 at Bel More, Mahe caused the death of another person namely Romian Moses by driving a motor vehicle having registration number S 23601 on the public road recklessly or at a speed in a manner dangerous to the public having regards to all the circumstances of the case.*

[2] The accused pleaded guilty to the said charge and was convicted on his own plea of guilt on the 12<sup>th</sup> of April 2021.

[3] At the request of his learned Counsel Mrs. Amesbury a probation report was called. The report states that the accused is 24 years of age and presently single. The accused had attended Primary and Secondary school. He also studied electrical installation at the Seychelles Institute of Technology (SIT).

[4] After the incident that happened on the 2<sup>nd</sup> of May 2019, the accused had not worked for some time but presently is working at a restaurant as a delivery man and a general helper. It is clear from the report that the accused has pleaded guilty as he feels deep remorse and regret at the incident. It appear the victim was his own cousin, the son of his mother's sister. In his explanation to the Probation Officer, he admits he was the driver of the vehicle in which he and the victim were travelling. He states that he cannot recall the speed but admits he had lost control of his vehicle which resulted in the accident and subsequent death of his cousin who was the other passenger in the vehicle. It is to be noted as borne out by the facts narrated by the prosecution that the accused lost control of the car and the car had turned on its side onto the grass verge after hitting a retaining wall. Considering the fact the victim had been thrown from the car into the sea water bordering the coast area due to the impact and the extensive damage to the car as borne

out by the photographs, it is clear the vehicle had been driven at a high speed which was the reason he had lost control of the vehicle.

- [5] It appears the accused deeply regrets this incident and states he would have not been able to cope mentally had it not been for his mother and sisters. He has expressed he would like to ask for forgiveness from the parents of the victim.
- [6] It is clear from the probation report that the victim was the only child and his parents are in deep grief at the loss of their only child and son who was 19 years at the time he passed away. It is apparent his father had plans for the victim in opening up a business with him as the victim was a talented artist and barber and both parents now feel the loss of their son greatly.
- [7] Learned Counsel for the accused Mrs. Amesbury in her plea in mitigation stated the accused has pleaded guilty at the very first opportunity provided to him as he had not wanted the witnesses especially the family of the victim, to relive the experience they had gone through. Learned Counsel for the accused further stated that the accused himself has been mentally affected by the incident and not wasted the time of Court but pleaded guilty without proceeding to trial. Learned Counsel further submits the accused would “have to continue to pay the price for the offence.”
- [8] I have considered the background facts of the case. The accused in this case has been charged with “Causing death by dangerous driving” He has pleaded guilty to the said charge which is a lesser charge than Manslaughter. The Seychelles Court of Appeal in the case of **Barreau v Republic [2015] SCCA 45** sentenced the convict to a term of four years imprisonment for the charge of Manslaughter. The range of sentences imposed for this offence by Courts, which is a lesser offence to Manslaughter varies from suspended terms of imprisonment to sentences of up to three years imprisonment, depending on the circumstances of each case. I refer to the following cases in support of same. **R v Chetty [2018] SCSC 244, R v Oreddy [2018] SCSC 57, R v Lai Lai Lam [2020] SCSC 301.**
- [9] Having considered the facts in this case. the young age of the victim, the facts of the accident as described by the prosecution in paragraph 4 herein, I am of the view that an

immediate custodial term of imprisonment should be given. It is to be noted that in the aforementioned cases, the sentences were imposed after the accused were convicted after a trial by Court. In this instant case the accused has pleaded guilty at the first opportunity provided to him thereby expressing remorse and regret at the incident. Having considered the aforementioned facts and the facts in mitigation, I proceed to sentence the accused to a term of two years six months imprisonment and a fine of SCR 25,000/-. In default of payment of fine a term of six months imprisonment to be imposed to run consecutively totalling three years. Time spent in remand to count towards sentence.

[10] I make further order that his driving licence be suspended for a period of five years from the date hereof (20<sup>th</sup> August 2021). Copy of sentence to be served on the Licensing Authority Seychelles.

[11] Right of Appeal explained.

Signed, dated and delivered at Ile du Port on 20<sup>th</sup> August 2021

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Burhan J