

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CO33/2020

In the matter between:

THE REPUBLIC
(rep. by Joshua Revera)

Republic

and

MANUEL FREMINOT
(rep. by Anthony Juliette)

Accused

Neutral Citation: *Republic v Freminot* (CO33/2020) [2022] SCSC (18th July 2022)
Before: Burhan J
Summary: Manslaughter- Section 192 &195. Causing death Section 192(b), Unlawful act and omission must subject the other person to a risk of some form of harm resulting therefrom.
Heard: 6 &12 August 2021, 21-02-22, 16, 25 & 29 March 2022, 06 April 2022 and 05th May 2022.
Delivered: 18th July 2022

ORDER

The accused Manuel Freminot is found guilty on Count 1 and convicted of same.

JUDGMENT

BURHAN J

[1] The accused Manuel Freminot has been charged as follows:

Count 1

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

Particulars of offence are that, Manuel Antoine Freminot of Anse La Mouche, Mahe, on 23rd March 2019 at Anse La Mouche, Mahe, caused the death of a person namely Catherine Moustache of Anse La Mouche, Mahe, aged of about 51 years by an unlawful act of slapping on her face and abandoning her at the beach.

- [2] The prosecution opened its case by marking a statement of agreed facts as P1 together with the relevant exhibits P2 to P9.
- [3] Further in order to establish the charge against the accused, the prosecution also called as witness Louisianna Moustache who gave evidence that she knew the deceased Catherine Moustache for a period of three to four years and that she had last seen Catherine Moustache on the same day the incident occurred at Anchor café at Anse La Mouche. Witness had been sitting on a wall on the beach side when she saw Catherine coming and sitting on a bench and arguing with a man who had one small braid or dreadlock from his head. The man had a bag with a few empty bottles in it. The man with the braid had left and gone to the shop with his bag of empty bottles. Thereafter witness had left. Under cross examination she admitted she had gone to the police and given two statements one on the 26th of May 2020 the other on the 4th of June 2020. She further stated she saw the braid from the back view of his head and it was on his right side. She denied saying that she had seen two braids and stated that was a mistake of the person writing the statement.
- [4] Witness further admitted that she had met the sister of the deceased Marie prior to giving her statements and she had asked if witness could help her in regards to the death of her sister and what happened at Anse La Mouche. She admitted she had told her she will not be able to, as she had seen him mostly from the back but nevertheless thereafter had given a statement regarding the incident which she admitted was 14 months after the incident.

- [5] The next witness Sergeant Eulentin produced the statement of the accused as P10 (a) and (b) after a voirie dire was held and it was declared admissible on the basis it had been obtained voluntarily. The driving license of the accused obtained on the 15th June 2010 was also produced as P10 (c). She also stated that the accused had taken the police to the scene and shown how the incident had occurred and photographs were taken of places shown by the accused (P7).
- [6] Sergeant Eulentin further stated that a statement from the accused had been taken on the 21st May 2020 a period of 14 months after the incident. She stated at the time of arresting the accused they had identified him by his driving license. She stated that his picture in the driving license dated 15th June 2010 (P10c), shows the accused having one braid. She stated the braid was near his right ear and extended to the back of his head. She admitted that the photograph taken of the accused at the time of arrest shows the accused had no braids at that time.
- [7] The next witness called by the prosecution was Inspector Stella Germain the investigating Officer. She admitted that the incident of murder had occurred in 2019 during which time she had recorded several statements and then the case had gone cold. She stated further that thereafter a lady had come forward and given a statement and the investigations had continued. The statement was not taken by her. She stated she had recorded further statements from others and prepared the affidavit for the remanding of the accused. She admitted that the barber had given a statement that the accused had no braids in 2019. She further stated that after the case went cold, the matter was referred to the priority section to ASP Dogley.
- [8] Witness Jean Christopher Laporte stated that he was a barber by profession and that he knew the accused in Anse La Mouche since 8 years. He stated he used to cut his hair and from the time he knew the accused, he never had braids. He stated even after looking at the driving license P10 (c) picture which shows the accused having a braid, that he does not recall him having braids. Under cross examination, he maintained that he had started cutting hair in 2018 and at that time the accused did not have braids. He further stated that the accused was bald in the front of his head. The accused would come every time he

got his salary at least once a month to cut his hair. Witness Laporte further stated that since cutting his hair, he has never seen the accused with braids in his hair. He produced a picture of the accused P11 taken in 2018 with no braids as P11.

[9] Mr. Ronald Maiye a sixty four year old mechanic stated that he knew Catherine Moustache and he would usually see her on the beach at Anse La Mouche. He stated he also knew the accused and would meet him often on the same beach. He confirmed that Mr. Freminot did have a braid over his right eye. He stated on the 23rd of March 2019, he had seen Catherine on the beach. She had asked him for a cigarette and she had been sitting on a bench opposite the market at Anse La Mouche. The next day Sunday when he came to the beach with his wife the police were on the beach and informed him that Catherine was dead. Under cross examination he admitted he was friends with Catherine and used to drink with her. On that day he had a Seybrew and left to work. He had not seen the accused. He clarified under cross examination too that the accused had a braid which was on the forehead right side over his eye. He admitted that today the accused was bald.

[10] The next witness Daniel Pillay stated that he was a mechanic and that Catherine Moustache was his mother. He stated he knew the accused and when they saw each other they would wave. He admitted stating in his statement when he met the accused in 2019, he had short hair but he stated in evidence he had braid. However he had not mentioned the fact the accused had a braid in his statement.

[11] When one considers the statement of agreed facts marked P1, it is clear that the body of the deceased Catherine Moustache was found floating upside down in the sea opposite the farm training school at Anse La Mouche on the 24th of March 2019. The body had been brought to the beach and investigations had commenced. The body of the deceased had been brought to Anse Royale police station and identified by the deceased sisters Gemma Agricole and Bernadette Moustache. Thereafter the body had been taken to the mortuary. There was no tampering with the body and a police guard had been placed.

[12] Dr. Raoul Salas Forensic Pathologist had come to the beach and made his observations and thereafter a certificate of death report was prepared by Dr. Salas produced as P3 who

after the post mortem examination done by him on the deceased Catherine Moustache, had prepared the Post Mortem Examination Report ML-38-2019. These facts are admitted by both the prosecution and defence at paragraph 8 of the statement of agreed facts and the post mortem report was produced as P4. The causes of death set out in the post mortem report include inter-alia asphyxia due to drowning and multiple external and severe trauma (Cranial, Cervical. Thorasic, Abdominal and external).

[13] The statement of agreed facts further sets out that that Officer Confiance had observed on the deceased scratch marks under her right side of the neck, bruises on her right back shoulder and arm, bruises on her left side ears and a lump on her forehead. It is also accepted and agreed that the crime scene at the beach had also been photographed by officers from the SSCRB (Scientific Support and Record Bureau) PC Bethew album P 5 (photographs 1 to 63) with affidavit P5 (a) on 24th March 2019 at 08.39 hrs and Inspector Agathine album P6 (photographs 1 to 42) with affidavit P (6a) on the same day in the afternoon at 12.12 hrs. Thereafter, PC Bethew had assisted in the autopsy at the mortuary where further photographs were taken by him set out in album P5 at 12.30 hrs. From the exhibits taken into custody by the police from the beach area, the members of the family had identified clothes and slippers worn by the deceased on the 23rd of March 2019. It is further admitted by both parties that Daniel Pillay her son had been looking for her since the evening of 23rd March 2019 but had not been able to find her.

[14] The agreed facts also indicate that the accused Manuel Freminot was arrested on the 21st of May 2020 and the accused was taken to certain locations on the beach by other police officers and photographs of specific locations shown by him were photographed. The said album (photographs 1 to19) was produced as P7 with affidavit of Corporal Joachim Allisop P7 (a). It is also mentioned in the statement of admitted facts that the accused refused to participate in an identification parade even though the parade had been made ready as depicted in report and photographs, P8 and album P9 respectively.

[15] When one peruses the certificate of death P3, it is clear that the cause of death of the victim was drowning. In the post mortem report P4 other causes are listed and the wounds caused by violence are set out. Blunt trauma wound on upper lip. Lower lip and

left side of neck below the left ear. The findings of the forensic pathologist in respect of the injuries set out in forensic discussion notes in the post mortem report read as follows:

“.... the legal medical expert affirms that he (sic) died of violent causes in the following circumstances: he received several external traumatic injuries (traumatized), many of them with a massive effect (on the internal organs), among which we observed traumatic facial and cranial trauma, due to the presence of multiple wounds and contusions on the face, right ear, both breasts, multiple areas of contusion in the brain mass of both cerebral hemispheres, severe cerebral edema and cervical fracture at the level of the second neck joint (Atlanto – Axial), also had multiples areas of contusion in both lungs with areas of hemorrhage, scapular and neck fracture and multiple plaque excoriations with friction burns showing signs of cephalocaudal directional traction (from head to toe), conjunctival and petechial ciliary injection are also seen in both eyes and sand, presence of sand in the entire respiratory tract and stomach, water in the first portion of the duodenum and in the heart (clear and liquefied blood, phenomenon of hydremic), foamy fungus in both lungs and the multiple Tardieu spots that confirm the Drowning diagnosis.” This court would take into consideration the aforementioned personal findings and observations made by the pathologist in the forensic discussions set out in the autopsy report P4.

- [16] When one considers the statement under caution given by the accused Freminot P10 dated 21st May 2020, the accused admits that he and the deceased Catherine Moustache were good friends and would drink together. He admits seeing Catherine on Saturday the 23rd of March 2019. He admits going to the beach and meeting Catherine at the restaurant after working from 8.30 am to around 12.00 in the afternoon, after finishing his work he had gone to the beach near the wall of the Kapatya restaurant at Anse La Mouche and met Catherine who was in a small black dress with a small black bag. Catherine had asked him to buy her a drink and he had gone to the shop and bought one for her and himself. He admitted that he had returned to the beach near the wall and he and Catherine had drunk together and stayed on the beach till night time. They had then decided to go somewhere more private to have sex. They had arrived at a secret little

place on the beach and they had sat down and drunk more. He had asked her what they were going to do and she had told him to decide. When he had been removing her first button on her small black dress she had shouted Daniel. He had got angry on hearing the name and had got up and slapped her twice with his right hand on the left side of her face. When he slapped her the second time she had fallen on the sand on her right side or back and had said something he could not understand. He had left her on the beach and gone to his mother's place. He further admits in his statement, he was drunk but he was able to walk unlike Catherine who was drunker than him. He further states when he met her early, she had already drunk and she was not walking steadily when going to the beach.

[17] The accused in defence chose his right to remain silent. No adverse inference should be drawn from this fact. Thereafter both parties made submissions.

[18] I have considered the facts before court and the submissions of both learned Counsel. Learned Counsel for the defence in his submissions stated that the prosecution has failed to prove the charge of manslaughter against the accused. His contention is that the statement should not be taken into consideration as it was not obtained voluntarily. He further submits that the evidence of the prosecution does not in any way establish that the accused caused the death of the victim as no witness has identified or seen him assaulting the victim. He states no eye witness was called who had seen the accused beating the victim. Witness Lousianna Moustache called never identified the accused but referred to a person with braids arguing with the deceased Catherine on the afternoon of 23 March 2019 at Anchor café at Anse La Mouche. It is learned Counsel for the defence contention that it was disproved by witness Laporte the barber of the accused that the accused did have braids at the time. He stated that no court could convict on this identification of this witness. The statement of the accused was retracted and therefore needs corroboration to be accepted. He stated further that there was no corroborative evidence in respect of the statement and therefore the prosecution has failed in its endeavour to prove the case beyond reasonable doubt as there is no evidence to indicate that it was the accused who caused the injuries or that it was he who had drowned her.

[19] The accused in this case was initially charged with murder but thereafter the charge was reduced to manslaughter under section 192 of the Penal Code read with section 195. Section 192 reads as follows:

Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed "manslaughter" An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life and death, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

[20] The prosecution relies heavily on the statement of the accused given under caution dated 21st May 2020. The statement was admitted after a voire dire and therefore amounts to a retracted statement that requires corroboration if one is to accept any facts set out in it. It appears to this court on considering the evidence led by the prosecution in conjunction with the particulars of the charge that the prosecution is not only relying on the unlawful act committed by the accused in this case which is slapping the deceased but also on the omission of the part of the accused as borne out by the conduct of the accused thereafter.

[21] When one considers the facts set out in the under caution statement of the accused, it is clear that the accused admits he had met the deceased Catherine Moustache after finishing his work around 12 in the afternoon on the 23rd of March 2019, near the wall on the beach at the Kapatya restaurant at Anse La Mouche and had bought drinks from market. Witness Lousianna in her evidence also states she saw Catherine the morning of the incident at Anchor café also in close proximity to the wall near the beach. Her version is that she saw Catherine at the anchor café restaurant with a man with a braid and that the man went to shop with empty bottles. Ronald Maiye as well had met her on the beach at Anse La Mouche near the place they sell fish and given her a cigarette when she asked for one that day. It is clear from the evidence of these witnesses that the deceased Catherine was in this vicinity of the wall near the beach at Anse La Mouche on the said day and therefore the accused version in his statement that Catherine was near the wall on the beach is corroborated by the evidence of these witnesses.

[22] Thereafter in his statement the accused states that he had talked till night with Catherine on the beach near the wall and they had decided to go somewhere private to have sex. They had thereafter arrived at a secret place near the beach and they had sat down and continued to drink. He further states that as he was removing the button of her dress when she had stated the name “Daniel” and this had annoyed him and he had slapped her twice on the left side of her face. The doctor’s report confirms bruises on the left side of face which corroborates this fact in his statement and further sets out more severe injuries under the heading- signs of violence and II- Internal Examination – Head.

[23] It is clear from the album P7 (a) and admissions at paragraph 17 of P1 that after giving the statement to the police, the police had accompanied the accused to the scene of incident and taken photographs of specific locations shown by the accused and referred to in his statement. It is clear from the photograph album P7 (a) that the photographs corroborate the fact that the scene of incident was near the beach in a private place as mentioned by the accused as it is surrounded by the bushes in the beach as shown in the photograph with the sea in close proximity. Having taken due consideration of the aforementioned facts, I am satisfied beyond reasonable doubt that the retracted statement under caution given by the accused has been sufficiently corroborated by eye witnesses, medical evidence and photographs and therefore the facts contained therein can be considered as evidence acceptable to court and I proceed to accept it. This court proceeds to accept the statement under caution of the accused as it stands corroborated by independent evidence.

[24] In regard to the evidence of the accused having braids, the evidence of the barber Laporte who admits he is a friend of the accused since a young age is that he never had braids. He states he could never recall the accused having a braid when cutting his hair. When shown the driving license picture in which a braid is seen, he continued to deny the accused ever had a braid. I am inclined to believe that this witness, being admittedly a friend of the accused from young days, was attempting to give evidence in favour of the accused, by having convenient lapses of memory. He even produced a photograph which he states he put on Facebook in 2018 which shows the haircut he had given the accused and does not show any braid. However, it is clear this photograph on his own admission

was taken as far back as August 2018, well before this incident that occurred in March 2019. The evidence of Ronald Maiye is that he knew the accused and he had seen him with a braid and describes the position of the braid over his right ear which is similar to the description given by witness Louisiana Moustache and the picture in the driving licence.

[25] **Causing death**

Section 199 of the Penal Code provides that:-

*“A person is deemed to have caused the death of another person although his **act is not the immediate** or **not the sole cause** of the death in any of the following cases.*

- a) If he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case, it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill.....*
- b) If he inflicts a bodily injury on another which would not have caused death if the injured person has submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living.*
- c)*
- d)*
- e)*

[26] On consideration of the evidence before court especially the statement under caution, it is admitted by the accused that he did slap the victim Catherine Moustache. He admits after slapping her twice she had fallen down due to this unlawful act done by him. Further according to his statement he admits both had been drinking and she was drunk and even unsteady on her feet when walking to the beach. It is also clear from his statement that

although he had been drinking he was well aware of what he was doing as he states, after he had slapped her, she had fallen and she had said something which he could not understand and he had left her alone on the beach where she had fallen and walked away.

[27] It appears the facts are further aggravated as the accused was aware that he had left a lady who was drunk, assaulted by him fallen alone on the beach in very close proximity to the sea. The evidence as per the agreed facts and the photographs shown in Album P5, indicate that the deceased's body was floating in the sea at the time it was found and most of her possessions were recovered from the seabed in the afternoon of the 24 of March 2019 when the sea had receded as seen in Album P6. Further drowning has been indicated as one of the many causes of death.

[28] Therefore taking the aforementioned facts into consideration in terms of section 199 (b) of the Penal Code set out above, it could be safely concluded that the accused is deemed to have caused the death, even though his act of slapping her is not immediate or not the sole cause of the death as in this instant case the accused has inflicted bodily injury on another which would not have caused death if the injured person has submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living as set out in section 199 (b). Learned Counsel for the prosecution has referred to the case of **Republic v Rumcy Mothe SC (Criminal Side) 7 of 1999** which was helpful in coming to the conclusion referred to herein.

[29] It is also clear from his own statement that after slapping the victim Catherine and watching her falling down and saying something incoherent, he had not stayed to see whether any serious injury had been caused to her as a result of his unlawful act that required urgent medical attention as any reasonable person of his standing would do. Instead he had walked away thereby depriving her of proper surgical and medical care and treatment thereby subjecting her to the risk of some harm resulting from his unlawful act especially considering the fact he knew she was in a drunken state and had fallen on the ground near the beach area and was incoherent. The medical report confirms the injuries on the left side of the face, in addition to more serious injuries in her cranial cavity. It is clear to this court that the accused had abandoned her and had failed

to seek medical attention for the victim after inflicting injuries brought about by himself on the victim by an unlawful act thereby placing the victim Catherine at risk of harm resulting therefrom. In **R v Church 49 Cr. App. R 206** it was held in manslaughter “... *the unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of harm resulting therefrom, albeit not serious harm.*”

[30] For all the aforementioned reasons, I will proceed to accept the evidence of the prosecution and reject the defence. This court is satisfied beyond reasonable doubt that taking the evidence in its entirety that all the elements of the charge of manslaughter against the accused have been proved beyond reasonable including the fact that unlawful acts and omissions done by the accused Manuel Freminot did cause the death of Catherine Moustache on the 23rd of March 2019.

[31] I proceed to find the accused Manuel Freminot guilty on Count 1 and proceed to convict him of same.

Signed, dated and delivered at Ile du Port on 18th July 2022.

M Burhan J