

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC  
CO45/2021

In the matter between:

**THE REPUBLIC**  
*(rep. by Langsinglu Rongmei)*

**Republic**

and

**NEIL AZEMIA**  
*(rep. by Clifford Andre)*

**Accused**

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**Neutral Citation:** *Republic v Azemia* (CO45/2021) [2022] SCSC (05 August 2022)  
**Before:** Burhan J  
**Heard:** 08.10.2021, 19.10.2021, 28.10.2021, 08.11.2021, 26.01.2022, 07.03.2022,  
08.04.2022, 22.06.2022,  
**Delivered:** 05 August 2022

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**JUDGMENT**

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**BURHAN J**

[1] The accused Neil Garry Azemia stands charged as follows:

**Count 1**

**Statement of offence**

*Manslaughter by way of unlawful omission contrary to Section 192 of the Penal Code and punishable under Section 195 of the Penal code (Cap 158).*

## **Particulars of offence**

*Neil Garry Azemia (NIN 988-0955-1-164) of Barbaron, Mahe on the 6<sup>th</sup> September 2020 at Darros Island, caused the death of another person namely late Michelle Anacoura of Les Cannelles, Mahe by unlawful omission while recklessly driving a motor vehicle namely a Pick-up Truck with no registration number which was dangerous to the public in culpable negligence to discharge a duty tending to the preservation of life or health.*

## **Summary of Evidence of the Prosecution and Defence**

- [2] Corporal Stephanie Agathine giving evidence on behalf of the prosecution stated that she had been working at the SSCRB (Scientific Support and Crime Record Bureau) for the past seven years and stated that on the 6<sup>th</sup> of September 2020, she had gone to the scene of a fatal accident at D' Arros Island accompanied by ASP Dogley and PC Rudy Pillay from the CID. She had taken photographs of the scene on the said date and thereafter at the mortuary at Victoria Hospital Mahe. She produced the photographs taken as P1 (1 to 54). She described each and every photograph. She explained that label 1 on photograph 2 indicated where the incident occurred. Label 2 on photograph 2 (behind plastic curtain) and photograph 4 indicated where the deceased body was and label 3 indicated where the flip flops worn by the deceased were after the incident. Photograph 8 indicated a skid mark. The picture of the vehicle involved in the incident was also shown in photographs 11 and 12, a Mahindra pickup colour white. She also identified photographs 15 onwards as showing the deceased and the injuries sustained by her. Under cross examination, she stated that the places photographed at the scene was shown to her by Ms Annette Hoareau.
- [3] Dr. Roger Nelson Madiedo stated he was on duty at the casualty at the Victoria Hospital on the 6<sup>th</sup> of September 2020 and had been working in the emergency unit at Victoria Hospital for the past 10 years during his thirty one years of experience as a doctor. The hospital had been alerted of the arrival of the serious patient and on arrival all the team was on alert. The patient arrived and the para medic with her had informed them the

patient had cardiac arrest 25 minutes ago. On examination there was no vital signs, dilated pupils, no breathing and no cardiac activity. He produced his medical report in respect of the deceased Michelle Anacoura as P6. Witness Dr. Madiedo further stated that CPR (Cardio Pulmonary Resuscitation), had been done by the paramedics and three shocks had been administered in the ambulance. The person was declared dead at 2.00 pm. He described the medical terminology in his report and explained where the injuries depicted on the medical report were situated on the body. He stated that the history and clinical findings indicated that all the trauma was caused in one accident. He stated that CPR was given on the centre of the chest and he had never seen marks arising on patients in relationship to CPR been given.

[4] Superintendent Justin Dogley of the CID produced document P8 which was a consent form given by the accused Neil Azemia for the taking of a sample of blood and urine from him. He stated he was subsequently informed that sample was analysed and tested positive for Marijuana.

[5] The next witness Ms Annette Hoareau a house keeper attached to the D'Arros Island stated that she had first gone to D'Arros Island on the 6<sup>th</sup> of September 2020 by plane. She had reached there around 10.50 hrs. When she arrived at the airstrip Michelle who she knew earlier was waiting for her at the airstrip. Michelle had come driving a Mini Moke and a white pickup had come to carry the goods. They had left the airstrip and gone and Michelle had parked the Mini Moke near a shop and she had gone to the store which was separate from the shop. She had seen Michelle go to the store and open the door. Then she heard a "hit" and she had thought the pickup had hit the wall and on looking saw it had parked near the store. She had seen the driver disembark and say "Michelle shit". She too had gone to the store and pulled the plastic curtain and seen Michelle on the ground. The driver had told her to go call other people for help. She had gone and called others to help the driver but had not gone back to the scene. When she saw Michelle she was on the ground face down, her face was turned to a side her feet were outside the plastic curtain and her head was inside. She identified the store from the photographs shown. She identified the place where Michelle had fallen in photograph 4.

She identified the accused as the driver of the pickup. When she had seen the deceased on the floor she was not groaning or bleeding but she had noticed that she was breathing.

[6] Senior Emergency Medical Technician, EMT Paramedic Mr. Luke Jean Louis Estrale stated that he is working at the Victoria hospital. He stated that on the 6<sup>th</sup> of September 2020, he was informed by Zil Air that they had a patient coming in, so he had left to the airport and arrived there but the plane had not yet come. He was accompanied by the ambulance driver and the porter. A South African para medic was also present at the airport and when the patient came they had tried to intubate her but been unsuccessful, so they had used the Ambu bag to ventilate the patient to assist her breathing. He described how the CPR and the bag were being used to ventilate the patient. He had applied an Automated External Defibrillator AED which shocks the patient to promote heart rhythm and informed casualty of a Code 9 which means, patient very unstable and needs urgent attention. He stated the patient was unresponsive and he could not feel a pulse and he knew therefore she was in Cardiac arrest. He stated the Ambu bag could be used with the CPR.

[7] The next witness Mr. Ibrahim Salim stated he was in charge of the Bio Chemistry Unit for the Health Care Agency Ministry of health. He stated being the Head of the Department it was he who would always sign on all the reports and further stated he had eight persons working under him. The toxicology report of the accused Neil Azemia was produced through him as P13. He stated the test proved that the urine of the accused tested positive for Marijuana. THC. The sample of urine according to the report had been taken from the accused on the 6<sup>th</sup> of September 2020. He stated the Marijuana could be in the body for at least 1 to 3 days. He stated Marijuana puts you in a state of euphoria and relaxes your state of alertness. The next witness Roomy Rose stated he was on the D' Arros Island at the time and as he was trained in first aid, he had rushed to assist the victim of the accident Michelle. As she was struggling for breath he had put her in the recovery position as she was not breathing and when the oxygen came, he had given her mouth to mouth but as she had no pulse he had given her CPR. He had accompanied her in the plane and when it arrived in Mahe, he had handed her over to the ambulance and to the paramedic who had arrived to take her. He identified the photograph 4 as the place

where he had seen Michelle lying down. He stated that when he saw Michelle first she was breathing but not like a normal person breathing. He also stated he had to turn her on her back to give CPR, as first he had put her in recovery position which was sideways.

[8] Mr. Ditender Patel stated that he was working on D'Arros Island in charge of the shop and store on the date of the incident 6<sup>th</sup> of September 2020. He stated he would collect all goods arriving from the airport and keep it in the store. He stated the procedure when unloading the goods into the store was to open the two store doors first and then remove the plastic curtain so everything was clear and then park the vehicle near the store but before the concreted area and unload the goods. If the vehicle was reversed inside it would block and no one could go inside. The goods were unloaded from where the pickup is parked near the concrete and taken in by hand inside the store. He stated there was a concrete area near the main door of the store which was a slope towards the road. He also identified the store, concrete, the inside of store with racks from the photographs. He stated that the accused was driving the vehicle that day and he was allowed to do so. He stated Michelle was the HR Manager. He further stated under cross examination that the position marked no 1 on photograph 2 was the place the vehicle would usually stop to unload cargo. He showed the place where the vehicle is usually parked to unload goods as X on photograph 2. The next witness Mr. Saju John stated he was the electrician and also did mechanical duties at D'Arros Island. He confirmed the fact that when goods were being unloaded into the store the vehicle was stopped at the end of the slope of the concrete near the store door and goods were carried by hand inside. He too stated that the place Y marked on photograph 2 was where the vehicle should park. He stated it was the cook Neil Azemia who was driving the vehicle on that date and he was driving normally.

[9] Dr. Raul Ramirez Salas Forensic Pathologist gave evidence producing the post mortem report of the deceased identified as Michelle Anacoura as P16. He described details in his report and details of the photographs taken at the post mortem. The post mortem report refers to multiple fractures cervical and fractures of ribs. In his evidence Dr Salas also referred to rupture of liver and trauma in the thoracic abdominal and cervical area of the deceased. He stated that the severe trauma that affected the lungs, liver, diaphragm provoked bleeding inside the thoracic and abdominal cavity. He referred to a tyre mark

on the panties worn by the deceased. He stated the deceased after being hit had fallen down. The causes of death as recorded in the report are road traffic accident, where the deceased received severe thoracic and abdominal trauma with multiple fractures of cervical and ribs, and rupture of internal organs that caused traumatic shock which he described as “a lot of injuries in different organs” indicating there was multiple organ damage. Under cross examination he stated that traumatic shock cannot be caused by multiple electric shock in CPR or constant pressing of the chest for over a period of 2 hours during CPR. He also stated that traumatic shock cannot result due to constant CPR pressure being applied on the thoracic area. He further explained how the neck fracture would occur due to sudden trauma and movement of the neck. The rib fracture he stated had punctured the lungs.

[10] The prosecution next called Inspector Stella Germain attached to the Central police who stated that she was informed by Superintendent Dogley about the incident in D’Arros Island and that the casualty victim was being brought on the plane for the purposes of treatment at the Victoria Hospital. She had left to the hospital and was informed that the person brought had been certified as dead and her name was Michelle Anacoura. She had proceeded to the CID headquarters and met the accused Neil Azemia and proceeded to arrest him on the charge of Manslaughter after explaining his rights to him. He had remained silent. On the instructions of Superintendent Dogley she had taken the accused for a toxicology test. The accused was sad, crying at times but able to speak. Thereafter, after the test, he wanted to give a statement and witness had cautioned him and proceeded to record a statement from the accused which was produced as P17.

[11] In his statement, the accused Neil Azemia admits driving the pick up at the time of the incident. He admits seeing Michelle on that day getting out of her Mini Moke and going inside the store as she had to record all the cargo that was in the pickup he was going to unload. He admits he was reversing the pickup so that the rear end would reach as close as possible to the store. He further states he was reversing slowly to avoid the two trees on either side and was also checking the rear door where the truck would enter and was almost at the entrance when he heard Michelle shouting screaming ‘ayoyo’. He had immediately pressed the break and as he forgot to press the clutch, the truck shook

abruptly and came to a stop. He had got down immediately and seen Michelle on the floor her head inside and her feet was at the entrance. He describes in his statement that she was on her right side, her tongue was out and she was biting on it and her eyes were open and rolling. He had inserted his hand in her mouth sideways to prevent her from biting her tongue. He had then run for help. Roomy Rose had come and noticed there was liquid coming from her mouth and then they had turned her properly on her side. He had called an expat doctor who was not at that time on the island and he had told him to go and get the oxygen bottle from the clinic which he administered on Michelle but it did not work and she had gone into a seizure. Thereafter they had started CPR. Roomy had done the CPR while he did the artificial respiration. They had learnt that the plane was coming back and had loaded Michelle on the rear of the pickup and driven to the airport. When the plane landed they had removed two seats and placed Michelle on the plane. In the plane all four had taken turns to administer CPR until they reached Mahe and there they had handed her over to the doctor who had come in the ambulance. He states in his statement under caution that he did not know what happened to Michelle as he did not feel if he had hit her with the truck as he only heard the “Ayoyo”.

- [12] Thereafter the prosecution called the investigating Officer Mr. Rudy Pillay who stated he had been asked to attend the scene of the incident and commence investigations into the incident in this case. On arriving they were assisted by the Island Manager Mr. Simara and one Annette Hoareau. They had inspected the vehicle a Mahindra Bolero and observed it had no rear view mirror, no number plates or registration number, no insurance and was in a bad rusty state. The SSCRB Officer had taken photographs. The skid marks inside and outside the store were also photographed. He had made a rough sketch of the scene that day. He produced the rough sketch plan as P19 and clear sketch as P20 with attachments giving relevant measurements. He had given measurements of the pickup involved in the accident. The 2<sup>nd</sup> document he stated was a measurement of the store room which was situated at an elevation of 6 degrees from the ground. He also referred to the various measurements taken of various parts of the vehicle, the skid marks and the storeroom and the concrete measurement and its elevation just outside the storeroom door. He further stated there was a typing error in his statement and the incident occurred in 2020 and not 2021.

[13] Thereafter the prosecution closed its case. The accused exercised his right to silence. No adverse inference should be drawn from same. Thereafter both parties made submissions.

**The Law pertaining to the Charge.**

[14] The accused in this case has been charged with the offence of manslaughter. There are two types of manslaughter namely voluntary and involuntary manslaughter. Voluntary manslaughter occurs when all the elements of murder are present including an intent to kill or cause grievous bodily harm but the crime of murder is reduced to manslaughter by reason of either,

- a) provocation;
- b) diminished responsibility or death being caused in pursuance of a suicide pact.

[15] Involuntary manslaughter is unlawful killing without intent to kill or cause grievous bodily harm. There are two classes of involuntary manslaughter which could be:

- a) Manslaughter by an unlawful act also known as constructive manslaughter.
- b) Manslaughter by gross negligence or culpable negligence.

[16] Section 192 of our Penal Code refers to the above principles (a) and (b) of manslaughter and 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 or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.*



[17] It was held by the House of Lords in the case of **Regina v Adomako [1994] 3 WLR 288** following **R v Bateman [1925] 19 Cr App R 8**, in order to establish culpable, gross or criminal negligence or whatever epithet that may be used, the prosecution should establish that the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. In Seychelles, the case of **R v Marzetti [1970] SLR 20** and **Ragain v R [2013] SLR 619** similar findings were made.

[18] **Archbold Criminal Pleading, Evidence and Practice 2008 edition pg 1861**, describes manslaughter by gross negligence which the prosecution has sought to prove in this case. This form of manslaughter is satisfied on proof that the conduct of the accused which caused the death of the deceased, amounted to a breach of duty owed towards the preservation of life and was so serious as to justify the imposition of criminal liability **Barreau v R 2015 SCCA 45** at paragraph 9. On the facts before this court, manslaughter by gross negligence or culpable negligence, which is manslaughter by an unlawful omission which involves a breach of duty to preserve life, is applicable to the facts of this case. In such a case, it is the duty of the prosecution to prove the following elements of the offence; whether there was an omission by the accused, the omission should be unlawful and tantamount to culpable negligence to discharge a duty tending to the preservation of life, safety or health; and which omission or breach of duty resulted in the death of the person also discussed in **Barreau (supra)** paragraph 12.

[19] It would be pertinent at this stage to refer to section 206 which is applicable to this case and which reads as follows:

Section 206 reads as follows:

*It is the duty of every person. who has in his charge or under his control anything, whether living or inanimate and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life , safety , or health of any person may be endangered, to use reasonable care and take reasonable precautions*

*to avoid such danger; and it is held to have caused any consequences which result in the life or death of any person by reason of any omission to perform that duty.*

### **Analysis of the Evidence**

- [20] This Court will next proceed to consider whether the facts of his case establish beyond reasonable doubt the charge as set out in section 192 and in doing so, would determine first, whether there was omission i. e an omission which was unlawful and tantamount to culpable negligence to discharge a duty tending to the preservation of life, safety or health; and whether such omission to discharge such duty resulted in death of a person.
- [21] On consideration of the evidence before court, it is clear that the accused Neil Azemia does not deny the fact that the incident occurred while he was reversing the pickup a Mahindra Bolero as shown in photographs 11 and 12 on the said day, i.e. the 6<sup>th</sup> of September 2020 on D'Arros Island. He admits he reversed the pickup so that the rear end would reach as close as possible to the store. He states he was reversing slowly to avoid the trees on either side and he was almost at the entrance to the store when he heard Michelle shouting screaming 'ayoyo'. He had immediately pressed the brake and as he forgot to press the clutch the truck shook abruptly and came to a stop. He had got down immediately and seen Michelle on the floor her head inside and her feet was at the entrance. He describes in his statement that she was on her right side, her tongue was out and she was biting on it and her eyes were open and rolling. Witness Annette Hoareau states she had seen Michelle go to the store and open the door. Then she heard a "hit" and she had thought the pickup had hit the wall and on looking saw it had parked near the store. She had seen the driver disembark and say "Michelle shit". Witness had also gone to the store and pulled the plastic curtain (shown in photograph 2) and seen Michelle on the ground her body partially inside the curtain at the entrance to the store door. When one considers the evidence of Dr. Salas read together with the post-mortem report in respect of the injuries and cause of death, it is clear that the deceased Michelle Anacoura cause of death was due to traumatic shock as a result of cervical fracture, fractures of ribs and rupture of internal organs, severe thoracic and abdominal trauma due to a road traffic

accident; an incomplete run over. His evidence was that traumatic shock was due to “a lot of injuries in different organs” and there was multiple damage.

[22] When one considers the evidence as a whole and the nature of the injuries, it is clear that the injuries to the deceased were caused as a result of the impact caused by the pick up when hitting the victim whilst being reversed by the accused and further by the pickup partially running over her, as borne out by the fact that there were tyre marks on the lower right and abdominal area, causing severe abdominal trauma and rupture of internal organs as described in the report and depicted in the photographs taken at the mortuary.

[23] Further, it is apparent on perusal of the photographs numbers 2 and 4 that the victim was hit at the place labelled 1 as her flip flops label 3, were found in close proximity to label 1 which is outside the store and she had after being hit fallen where label 2 was, the place where her body was found by Annette Hoareau who arrived on the scene immediately. The distance from label 1 point of impact to label 2 where her body was fallen, could be considered to be approximately just about or just over 1.15 meters as the length of the concrete as measured in P20 page 5 is 1.15 metres. Further, the pickup driven by the accused had thereafter continued and partially gone over her lower abdominal area. Therefore considering the aforementioned facts and the nature of the extensive injuries sustained by the victim, the contention of the accused that he reversed slowly and was looking attentively at the rear is not acceptable. Further, he states he reversed slowly because there were trees on either side but photograph 1 shows that the trees are quite a distance apart.

[24] From the above, it is clear that the accused while being in charge and control of the pickup and whilst reversing the pickup failed or omitted to perform his duty to exercise reasonable care or reasonable precaution to avoid endangering the life of the victim, thereby causing risk of harm and causing serious injuries resulting in the death of the victim Michelle Anacoura. It is clear from the evidence when taken in its entirety that the reckless manner in which the accused reversed the vehicle indicates disregard to the life and safety of Michelle Anacoura who was behind the vehicle thereby establishing culpable, gross negligence on his part that resulted in her death.

- [25] Further, Mr. Ditender Patel in his evidence clearly sets out the procedure in unloading goods from the store. He stated the procedure when unloading the goods into the store was to open the store the two store doors, move the plastic curtain so everything was clear and park the vehicle near the store but before the concreted area and unload the goods. If the vehicle was reversed inside it would block and no one could go inside. The goods were unloaded from where the pickup is parked near the concrete and taken in by hand inside the store. This evidence is supported by the evidence of Saju John who states that when goods are unloaded at the store the vehicle is stopped at the end of the slope of the concrete near the store door and goods were carried in. The points marked X and Y where the vehicle should stop and unload the goods as marked in photograph 2 are both at the outside edge of the concrete sloping upwards towards the store and away from the door of the store. It is clear the accused had disregarded all the usual procedure and decided to reverse right up the sloping concrete to the door of the store, without exercising reasonable care and precaution.
- [26] Further, the evidence of Investigating Officer Rudy Pillay was that the store was at a higher elevation of 6 degrees to the ground which means the accused would have been reversing up a slight incline to bring the pickup close to the door. His evidence and the photographs produced indicate that there were skid marks inside and outside the store. This could be he stated due to a wheel spin following sudden acceleration. Skid marks could also occur from sudden braking. Be that as it may, it must be kept in mind that the vehicle had been moved from the scene to take the victim to the airport prior to the police arriving at the scene and commencing their investigations.
- [27] It is also borne out in the evidence that when the Investigating Officer Rudy Pillay had inspected the vehicle a Mahindra Bolero pick up, he observed that the vehicle had no rear view mirror, no number plates or registration number, no insurance and in bad state rusty. SSCRB Officer Agathine had taken photographs which clarify her findings and observations. Officer Rudy Pillay had also taken measurements of the pickup involved in the accident. The accused should have been aware of the condition of the pickup but chose to ignore the dangers of driving such vehicle and with no rear view mirror, this court is of the view his awareness at the time of reversing would have been greatly

affected. Therefore he failed to see the risk of harm that could result from his use of such a vehicle thereby failing to take care and precautions in the preservation of the life of the victim.

[28] In addition to all the aforementioned facts, the evidence of other witnesses namely Mr. Ibrahim Salim indicate that on the date of the incident, the urine of the accused tested positive for Marijuana. He further states that Marijuana puts a person in a state of Euphoria and relaxes his alertness indicating the callous nature of his state of mind of the accused at the time of driving. All these facts clearly indicate the state of mind of the accused in that he had failed to foresee the risk of harm or serious injury or death to person that could result as a consequence of the above factors, thereby failing to take care and precautions in the preservation of the life of the victim.

[29] When one considers the defence of the accused as borne out by the cross examination, the defence that the traumatic shock, marks and injuries caused to the victim resulted due to the CPR administered on her has been clearly rejected by both Dr Roger Madiendo and the Forensic Pathologist Dr Raul Salas. The defence as borne out by the entire submissions of the defence is based on unlawful act manslaughter which is not applicable to this case. I also observe that although the witness were cross examined at great length by learned Counsel for the defence no material contradictions were forthcoming. The evidence of the prosecution stands corroborated. I will therefore proceed to accept the evidence of the prosecution and reject the defence.

[30] From the above, it could be safely concluded when one considers the evidence in its entirety that the prosecution has proved beyond reasonable doubt that the accused by unlawful omission set out above and amounting to culpable negligence, failed whilst reversing the pickup to take reasonable care and reasonable precautions to prevent danger to the life of the victim, thereby failing to discharge his duty tending to the preservation of life, safety and health, resulting in the death of the victim Michelle Anacoura. Therefore this court is satisfied that the prosecution has proved beyond reasonable doubt all the essential elements of the charge of manslaughter against the accused.

[31] I therefore proceed to find the accused Neil Azemia guilty as charged and proceed to convict him of same.

Signed, dated and delivered at Ile Du Port on 05 August 2022.

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M Burhan J