

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 795
CR 44/2021

In the matter between

THE REPUBLIC
(rep. by Rose)

Prosecution

and

IRENIE CLARISSE
(rep. by Karen Domingue)

Accused

Neutral Citation	<i>R v Clarisse</i> (CR 44/2021) [2022] SCSC 795 (16 September 2022)
Before:	Vidot J
Summary	Attempted murder contrary section 207(b) and punishable under section 207 of the Penal Code and Cruelty to Children contrary to section 70(1)(b) read with section 70(4)(a) and punishable under section 70(6) of the Children Act.
Heard:	08 September 2022
Delivered:	16 September 2022

SENTENCE

VIDOT J

[1] The Accused, Ms. Clarisse was charged with the following offences;

Count 1

Statement of Offence

Attempted murder contrary to section 207(b) and punishable under section 207 of the Penal Code

Particulars of Offence

Irenie Clarisse of Perseverance, Mahe, on the 10th November 2019, at her residence at Perseverance, Mahe, with intent unlawfully to cause the death of her new-born baby boy, placed the infant in a shopping bag and put it in a bucket and covered with a sofa cover in a storeroom, an act being of such a nature as to likely endanger the life of the said new-born baby.

In the Alternative to Count 1

Count 2

Statement of Offence

Cruelty to children contrary to section 70(1)(b), read together with section 70(4)(a) and punishable under section 70(6) under the Children's Act.

Particulars of Offence

Irenie Clarisse of Perseverance, Mahe, on the 10th November 2019, at her residence at Perseverance, Mahe, after giving birth to a baby boy at her residence, neglected, abandoned or exposed the said infant in a manner likely to cause him injury to health by placing him in a shopping bag in a bucket which was covered with a sofa cover in the storeroom of her residence at Perseverance, Mahe.

[2] The Accused pleaded to the second count which was in alternative to Count 1. Therefore in terms with section 65(a), Counsel for the Republic moved the Court to withdraw the first count. The request was acceded to.

[3] The Prosecution relayed the facts to Court. Basically, on 11th November 2019, a neighbour, Mr. Lenny Nicette, made complaints to the Police that Ms. Clarisse had given birth in her house and he requested assistance. When the Police went to Ms. Clarisse's home, they met with her and her partner Mr. Eric Mills. She was questioned regarding delivery of the baby and confirmed that she was pregnant and that throughout her 9 months pregnancy had not attended the pre-natal clinic. Police Officers queried where the

baby was and she showed them a store room and asked Mr. Mills to open the door. They found the new-born in the state as described in the charge sheet. The placenta was still attached to the new-born. The baby was still alive and both child and mother were taken to casualty at the hospital. She accepted the facts and was accordingly convicted of the second Count.

[4] Counsel for Ms. Clarisse requested for a probation (pre-sentence) report. The same was received and a copy served on Ms. Dominique.

[5] In mitigation, Counsel for the Accused, endorsed the probation report and highlighted aspects of the report she considered very pertinent. I shall give due attention to the report. Counsel pleaded to Court to show leniency to her client who is a first time offender and had pleaded guilty to the charge, thereby showing remorse and accepting responsibility for the crime committed. By pleading guilty she has saved time and resources of the Court.

[6] The Accused is 36 years old and mother to six children father by Mr. Mills who are all minors, save for the first son, Shawn of 22 years. Mr. Mills is not the father of the latter either. All the children are still living at home save for the child who is the subject of this case who has been adopted. Shawn is the only one working and helping to maintain the family. Mr. Mills is not helping out at all. He is a heroin addict. It is her father who assist with a financial support of SR4,500/- monthly. She has asked her partner to move out but he remains in the family.

[7] At the time of the incident she was facing serious financial hardship, a situation which persists today. She is finding it hard to maintain her family.

[8] Counsel submitted that as is reflected in the report, the sudden death of the Accused mother seriously affected her particularly since she was close to her mother and that impacted on her own family. The Accused father even alleges that as a result of her mother's death the Accused was affected mentally.

[9] Counsel submitted that the Accused found it difficult to deal with the pregnancy in view of her financial hardship and her personal and home situation. She was at that time

dealing with depression. She gave birth at home and when this was happening Mr. Mills was in another room with the other children. After giving birth, the cry of the baby disturbed her, so she wrapped up the baby and put him in a bucket. She could not bear the cry of another baby. The Accused Counsel added, that she did not mean to harm nor intentionally harmed the baby. She just wanted him away. She is happy that her son is still living and has been adopted. At the time that the child was born the Accused's family was in so much financial difficulties that all utilities had been disconnected from the house.

[10] I have had the benefit of reading the probation report and I have observed the Accused in Court. Unfortunately, there are many other Irenie Clarisses in our society who are in desperate situations and get little or no assistance. I am not here talking of financial assistance only, but of counselling and mental health support. We live in a very sick society. Mental health is a pressing problem. I am absolutely sure that the Accused suffers from mental health issues compounded by financial difficulties. She should not have been allowed to have so many children. She may love her children but she cannot cope. Her father and the state have to jump in and assist with maintenance of the children. This is unfair to taxpayers. Maybe, if there was proper attention, counselling and monitoring given, she would not be in the state she is in. Her partner is an addict and a burden to society. That affects her and in the end affects all of us as he fathers children he does not maintain and others have to.

[11] The Accused is mentally disturbed and should get assistance. I do comprehend that in her situation she would have been disturbed by the cry of a child who would have been a burden to her. I do not profess to understand and fully appreciate the birth giving process but I do believe that the process can trigger many emotions in a woman, some pleasant and some not so pleasant. I even believe that at that point in time she wanted to rid herself of the child, thus the reason she covered the bucket and why she opted to give birth at home. She did not want to have this child. At that point in time, she could not care less what happened to the child. I believe that a part of her did not want that child to survive. The child was still attached to the placenta and she had made no effort to clean

the baby. I believe that if the Police had not intervened in time, the child would not have survived.

[12] A guilty will in effect earns the Accused credit as far as sentence is concerned and in particular since the guilty plea was obtained before the trial.

[13] Ms. Domigue referred to the case of **Republic v Nathalie Bacco [2022] SCSC 4, CR69/2021** a case of manslaughter for causing the death of a new-born infant and **Dolores Low-Hong v R**, a case of infanticide. In both cases, court imposed suspended sentence on the accused.

[14] Having listened carefully to submission of mitigation and considered the probation report, I convict the accused to a term of 2 years imprisonment suspended for 2 years.

[15] The Probation Services have recommended that the Accused sees a psychologist and follow psychological treatment. I believe that in this case, she absolutely needs such treatment. Therefore, I recommend that Social Services assist Ms. Clarisse in getting the proper treatment needed. A copy of this sentence must be served on the Director of Social Services. Ms. Clarisse should also start thinking of getting back into employment to be able to financially maintain her family.

[16] If unsatisfied, the Accused may appeal against sentence within 30 working days from today.

Signed, dated and delivered at Ile du Port on 16 September 2022

M Vidot J