

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 860
CO 45/2021

In the matter between:

THE REPUBLIC

(rep. by Langsinglu Rongmei)

Republic

and

NEIL AZEMIA

(rep. by Clifford Andre)

Accused

Neutral Citation: *Republic v Azemia* (CO 45/2021) [2022] SCSC 860 (07 October 2022).

Before: Burhan J

Summary: Manslaughter

Heard: 15 September 2022

Delivered: 07 October 2022

ORDER

I proceed to sentence the accused Neil Azemia as follows:

Count 1- to a term of three years imprisonment and a fine of SCR 25, 000.00 (twenty five thousand rupees). I make order that in default of payment of fine the accused serves a term of six months imprisonment consecutive to the said term of three years imprisonment.

SENTENCE

- [6] The accused has worked as a cook throughout his career in numerous hotels in the Seychelles. It appears from the report that though his usual job was as a cook, he states he had volunteered to drive the said vehicle on the instructions of the victim in order to assist her and at her request. It is apparent he provides financial assistance to his children as per a Family Tribunal Order. It also appears from the report that the accused is a daily smoker of Cannabis.
- [7] The father of the victim informs the probation that the 10 year old child of the victim is emotionally suffering at the loss of his mother. The victim's mother too had informed the probation officer that when she heard about the incident she went into shock. She had become distressed and disturbed when she had seen the wheel marks on the back of her daughter's body. She had been unable to go to work for two weeks due to the distress caused to her at the loss of her daughter. The probation recommends a deterrent punishment and recommends at the end of the report that the minimum custodial term be given.
- [8] Learned Counsel Mr Andre stated that from the moment the vehicle of the accused had struck the victim, he had got down and expressed remorse at what he had done and began to call for help and began to assist in different ways in the taking of the victim to Victoria hospital for treatment. Mr Andre referring in detail to the subsequent conduct of the accused after the incident submitted that the accused acts, soon after the incident, clearly indicate that the accused wanted the victim to live. He moved court that the accused be given a suspended sentence and fine.
- [9] The case of *Njue v R (2016) SCCA 12, (at para 14)* set out the principles a court should consider when sentencing which include public interest; the nature of the offence and the circumstances it was committed. The Court at the same time must consider whether there is a possibility of the offender being reformed; the gravity of the offence; the prevalence of the offence; the damage caused; any mitigating factors; the age and previous records of the accused; the period spent in custody; and the accused's cooperation with law enforcement agencies. These factors can be grouped into three categories namely - looking at the crime committed, the offender and the interests of society." (Emphasis added).

BURHAN J

[1] The accused Neil Azemia was found guilty after trial of the charge of manslaughter and convicted on the 05 August 2022.

[2] The details of the charge read 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 988-0955-1-1-64) of Barbaron, Mahe on the 6th 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.

[3] Section 195 of the Penal Code states;

Any person who commits the felony of manslaughter is liable to imprisonment for life.”

[4] Thereafter at the request of learned Counsel for the accused Mr Andre a probation report was called prior to mitigation and sentence.

[5] I have considered the facts set out in the probation report. The accused is 34 years old and has three children from earlier relationships. Prior to being remanded the accused was residing with his partner at Anse Loius together with his partner’s child who is four years old. The accused has completed his secondary studies and then pursued his post –secondary education at the Seychelles Tourism Academy.

[10] In the case of *Emmanuel Saffance v R [2020] SCCA 29 (18 December 2020)* the Seychelles Court of Appeal enhanced a term of 15 years imprisonment to 20 years imprisonment on the basis of the fact that the accused had previous convictions and was a person of violent disposition and on considering the numerous injuries inflicted on the deceased by the accused. In coming to the decision to enhance the sentence Twomey JA held:

“In a hierarchy of seriousness, where the highest culpability for each of the offences of homicide are considered, the offence of murder would be at the summit, followed by voluntary manslaughter and then involuntary manslaughter committed by an unlawful act and lastly gross negligence manslaughter. These levels of culpability should, in my opinion, be reflected in the penalty imposed for the offence committed.” (emphasis added)

[11] Giving due regard to the aforementioned factors, this Court prior to deciding on the suitable sentence to be imposed in this case will first consider which class or type of manslaughter the accused was convicted.

[12] When one consider the facts off this case it is clear that this is a case of gross negligence manslaughter.

[13] Having determined the class or type of manslaughter relevant to this case, in accordance with the classification giving in respect of the hierarchy of seriousness as set out in the *Saffance* case referred to in paragraph [10] herein, the offence of murder would be at the summit, followed by voluntary manslaughter then involuntary manslaughter committed by an unlawful act and lastly gross negligence manslaughter. As held in the case of *Saffance* these levels of culpability should be reflected in the penalty imposed.

[14] Giving due cognisance to the aforementioned reasoning in the *Saffance* case, this court will proceed to consider the relevant case law in respect of sentencing in manslaughter cases. It would be also pertinent to mention that in the case of manslaughter by gross negligence, the Seychelles Court of Appeal in the case of *Barreau v R [2015] SCCA 15 (17 December 2015)* imposed a term of 4 years imprisonment.

[15] Although the accused in this case was not charged under the Road Transport Act, in my view it would be relevant to consider sentences imposed by this Court in relation to incidents resulting in the death of a person under similar circumstances to this case.

[16] In the cases of *R v Chetty [2018] SCSC 244*, *R v Oreddy [2018] SCSC 57*, *R v Lai Lai Lam [2020] SCSC 301*, *R v Gabriel [2021] SCSC 544*, the range of sentences imposed in these cases were between two years six months and three years for causing death by dangerous driving which is a lesser offence to Manslaughter.

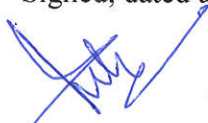
[17] Giving due consideration to the sentencing pattern of this Court, the mitigating factors urged by learned Counsel for the accused, the facts set out in the probation report and the reasoning set out herein, I proceed to sentence the accused Neil Azemia as follows:

Count 1- to a term of three years imprisonment and a fine of SCR 25, 000.00 (twenty five thousand rupees). I make order that in default of payment of fine the accused serves a term of six months imprisonment consecutive to the said term of three years imprisonment.

[18] Time spent in remand to count towards sentence.

[19] Right of appeal explained.

Signed, dated and delivered at Ile du Port on 07 October 2022



07-10-2022

Burhan J