

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 838

CO 33/2020

In the matter between:

THE REPUBLIC

(rep. by Joshua Revera)

Republic

and

MANUEL FREMINOT

(rep. by Anthony Juliette)

Accused

Neutral Citation: *R v Freminot* (CO 33/2020) [2022] SCSC 838 (29 September 2022)

Before: Burhan J

Heard: 05 September 2022

Delivered: 29 September 2022

ORDER

Count 1- to a term of eight years imprisonment and a fine of SCR 125, 000.00 (one hundred and twenty five thousand rupees). From the said sum, a sum of SCR 50,000.00 (fifty thousand) to be paid to each of the two children named in the probation report as compensation under section 151(1) (b) of the Criminal Procedure Code.

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 8 years imprisonment.

Time spent in remand to count towards sentence.

Copy of this sentence order to be served on the Superintendent of Prisons.

SENTENCE

BURHAN J

[1] The accused Manuel Freminot was found guilty of the said charge of manslaughter after trial and convicted on the 18th July 2022.

[2] The details of the charge set out as Count 1 reads as follows:

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.

[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 Juliette 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 32 years old and has a 9 year old daughter from an earlier relationship. Prior to being remanded he had been living with his concubine and her family. The accused has completed his secondary studies and then graduated with a certificate in carpentry and joinery from the Seychelles Institute of Technology. In employment he has worked on a casual basis as a carpenter and then worked at Four Seasons Resort and Spa as a maintenance officer. He had thereafter worked as a cook in a “Take Away” business for a few years and later at the

Seychelles Institute of Agriculture and Horticulture as a field attendant prior to being arrested. He admits he consumes alcohol excessively and in his early twenties occasionally smoked Cannabis.

[6] The accused according to the report admits slapping the victim and that he and the victim had been drinking on the beach and both were under the influence of liquor and were on the verge of having sexual intercourse when an argument ensued and he had slapped her and left her on the beach. He denies he killed her and states when he left her on the beach she was alive. He states his daughter is currently in the care of the mother and he would like to discharge his parental duties by being with her and helping out in his daughter's expenses. He moved that court take this into consideration when sentencing him. The mother of the accused states he is a good and helpful person and moves that court exercise leniency in sentencing the accused.

[7] The probation report further sets out the impact the death of the victim has had on her children. The sudden death had affected their routines and they had to make several adjustments in their lives. The children have informed the probation that the victim their mother was the head of the household as their father and she were separated and he too had passed away in 2017. The report states the children still find it difficult to cope with the absence of the victim and they feel that a part of the family has died with the victim their mother. The daughter of the victim states that after the death of her mother (in March 2019) she had been distracted from her studies and was deeply hurt due to the absence of the victim her mother at her graduation ceremony. She further states she had been unable to have the personal discussions a mother and daughter would normally have due to her mother's death. She hopes that the accused would pay for the crime he has committed. She had stated that she and her brother give each other the emotional support and comfort they need.

[8] The son of the victim her brother stated that after the death of his mother, he had to take over the payment of the housing loan as his sister was still schooling. He had been unable to pay the electricity bills as they had to choose between electricity and food. He had to take leave from his workplace for one month to recover, as he had lost interest and could

not concentrate on his work due to his mother's death and had to take psychological treatment and attend counselling sessions. Because of his depressive state his girlfriend had left him as she could not cope with his isolated behaviour and he had also lost his stable job and would work for the sake of paying the household bills. The son of the victim states that he felt anger towards the accused but now he feels pity for him. The probation officer reports that the impact of the victim's death has been profound and extensive on the children. It has affected several aspects of their life emotionally and even their proper functioning as individuals. It further reports "*The impact of losing a loved one is greater when it relates to a traumatic crime event.*"

- [9] The probation report recommends a custodial term of imprisonment and that court take into consideration the social circumstances of the accused.
- [10] 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 to be 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).
- [11] 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)

- [12] 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 of.
- [13] ***Archbold Criminal Pleading and Practice 2008 edition 19-97*** states voluntary manslaughter occurs when all the elements of murder are present including an intent to kill or cause grievous bodily harm but the crime is reduced to manslaughter by reason of a) provocation b) diminished responsibility or c) death being caused in pursuance of a suicide pact. Involuntary manslaughter is unlawful killing without intent to kill or cause grievous bodily harm and are divided into two classes namely unlawful act manslaughter and manslaughter by gross negligence involving breach of duty at 19-98.
- [14] The law in regard to involuntary manslaughter was clarified by the House of Lords in ***R v Adomoko [1995] 1 AC 171*** in which Lord Atkin distinguished the two types of manslaughter comprised in the offence, namely “unlawful” act manslaughter and manslaughter by gross negligence involving a breach of duty.
- [15] Msoffe JA in ***R v Sirame (SCA 06/2012) [2014] SCCA 6 (11 April 2014)***, explained the distinction between the type of manslaughter referred to above voluntary manslaughter and involuntary manslaughter:

“15. The offence of manslaughter is usually divided into two generic types – voluntary and involuntary. Voluntary manslaughter is committed where the accused has killed with malice aforethought, and could be convicted of murder, but there are mitigating circumstances present reducing his culpability. In other words, voluntary manslaughter consists of those killings which would be murder because the accused has the relevant mens rea but which are reduced to

manslaughter because one of the defences, like diminished responsibility, provocation, etc., exists in the case.

16. *Involuntary manslaughter is an unlawful killing committed by an accused who did not have malice aforethought but who, nevertheless, had a state of mind, which the law treats as culpable. BLACK'S LAW DICTIONARY [Ninth Edition, by Bryan A. Garner] defines it as a "Homicide in which there is no intention to kill or do grievous bodily harm, but that is committed with criminal negligence or during the commission of a crime not included within the felony – murder rule... Involuntary manslaughter is a "catch-all" concept. It includes all manslaughter not characterized as voluntary..."*

- [16] The particulars of offence in this instant case assists us in coming to a finding that the class or type of manslaughter applicable to the facts of this case is involuntary manslaughter as the particular of offence state that "... *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.* Therefore this case is clearly a case of involuntary manslaughter. (emphasis mine)
- [17] 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 [11] 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. It is apparent that involuntary manslaughter relevant to this case occupies the third position in respect of seriousness and as held in the case of *Saffance* these levels of culpability should be reflected in the penalty imposed.
- [18] Giving due cognisance to the aforementioned reasoning in the *Emmanuel Saffance* case this court will proceed to consider the relevant case law in respect of sentencing in manslaughter cases. In the case of ***Francis Bakas v R [2021] SCCA 07*** a case where the jury verdict of conviction for murder was quashed and the accused was found guilty of

voluntary manslaughter, the Seychelles Court of Appeal sentenced the accused to a term of 10 years imprisonment. Therefore it is the view of this Court that the sentencing range based on these recent cases for voluntary manslaughter ranges from 10 years (*Bakas*) to 20 years (*Saffance*) depending on the aggravating circumstances of each case. It would be also pertinent to mention that in the case of manslaughter for 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. As per paragraph [11] guidelines stated herein as involuntary manslaughter culpability is greater than manslaughter by gross negligence, this court is of the view based on the sentences referred to above that a sentence range of above 4 years and less than 10 years should be considered in cases of involuntary manslaughter depending on the mitigating and aggravating circumstances of each case. Case law indicates that sentencing cannot be based on mathematical deductions but the aforementioned reasoning is based on the guidelines on the culpability of different classes or types of manslaughter referred to in the *Saffance* case.

- [19] In this instant case the accused is a first offender. Learned Counsel for the accused has not offered much in respect of mitigation other than to state he relies on the probation report. The accused knew the victim and states in his statement they were good friends who used to drink together. The victim was 51 years of age and to her that day, death would have never been in her mind when she went to a quiet place on the beach with a person she knew well, to spend some private time and have a drink. The accused act has left two children destitute as their father too had passed away in 2017, this is borne out in the probation report which states the impact of the victim's death has been profound and extensive on the children. It has affected several aspects of their life emotionally and even their proper functioning as individuals. It further reports "*The impact of losing a loved one is greater when it relates to a traumatic crime event.*" The son who went into depression lost his job and wife due the effects of depression. The daughter while dearly missing her mother was able to graduate on her own brave efforts as pointed out in the report. The medical report also refers to injuries such as multiple external and severe trauma (cranial, cervical, thoracic, Abdominal and external). The court cannot ignore such facts. The accused has not expressed any remorse at his actions. I also note that in most cases where lesser sentences were given the accused had some mental or

psychological issues in (*Sirame*) a psychological profile of personality disorder and emotional instability and impulsive conduct aggravated by substance abuse similarly in ***Labrosse v R (SCA 27/2013) [2016] SCCA 35 (09 December 2016)***. In this instant case the accused has no such personality disorder and no mental impairment exists. The accused has completed his secondary studies and graduated with a certificate in carpentry and joinery from the Seychelles Institute of Technology. In employment he has worked on a casual basis as a carpenter and then worked at Four Seasons Resort and Spa as a maintenance officer. He does not plead addiction to controlled drugs. He is a person who is well aware of the seriousness of what he has done to a person he knew well and placed her trust in him.

[20] Giving due consideration to all the aforementioned factors, I proceed to sentence the accused Manuel Freminot as follows:

Count 1- to a term of eight years imprisonment and a fine of SCR 125, 000.00 (one hundred and twenty five thousand rupees). From the said sum, a sum of SCR 50,000.00 (fifty thousand) to be paid to each of the two children named in the probation report as compensation under section 151(1) (b) of the Criminal Procedure Code.

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 8 years imprisonment.

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

[22] Copy of this sentence order to be served on the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 29 September 2022.

M Burhan J