

SUPREME COURT OF SEYCHELLES

Reportable
CO 66/2024

In the matter between:

THE REPUBLIC
(Represented by Ms Sophie Vel)

Prosecution

And

[REDACTED]
(Represented by Mr Basil Hoareau)

Convict

Neutral Citation: *Rep vs SH* (CO 66/2024) (16 May 2025)

Before: Adeline J

Summary: Sentencing on guilty plea. Accused convicted of causing Harm by way of unlawful omission contrary to and punishable under Section 230 of the Penal Code.

Heard: 22 April 2025

Delivered: 16th May 2025

SENTENCE

Adeline, J

[1] By way of an indictment filed in court on the 21st November 2024, the accused, [REDACTED], now a convicted, was indicted with the following offences,

Count 1

The statement of offence in the indictment reads;

“Wilfully neglecting or exposing a child in a manner likely to cause her unnecessary suffering or injury to health, by a person who has the custody of a child, contrary to Section 70 (2) (a) of the Children Act, (Cap 28) and punishable under Section 70 (6) of the Children Act”.

- [2] The particulars of the offence in the indictment reads;

“[Redacted] being a 36 year old male citizen of South Africa residing at [Redacted] Mahe, bearing NIN 009-0540-6-1-81 being the father and having charge of his 17 months old daughter namely [Redacted], on the 17th of March 2024, at his residence, [Redacted] Mahe, by his omission to supervise the said child, led to the drowning of the said child in the swimming pool, thereby wilfully neglected or exposed the said child in a manner likely to cause her unnecessary suffering or injury to health”

- [3] In the alternative, the accused/convict was indicted with the following offence, the statement of which reads;

Count 2

“Causing Harm by way of unlawful omission, contrary to and punishable under Section 230 of the Penal Code”.

- [4] The particulars of the offence in the indictment reads;

“[Redacted] being a 36 year old male citizen of South Africa residing at Baie Lazare, Mahe bearer of NIN 009-0540-6-1-81, being the father and having the charge and care of his 17 months old child namely [Redacted], on the 17th day of March 2024, at his residence at Baie Lazare, Mahe, caused harm to the said child by his unlawful omission to discharge his duty to supervise the child, exposed the said child to have access to the swimming pool causing her to drown”.

- [5] On the 18th of February 2025, the accused/convict pleaded not guilty to count 1 and guilty to the alternative count 2, and was accordingly convicted on his guilty plea to one count of causing harm by way of an unlawful omission contrary to and punishable under Section 230 of the Penal Code.

- [6] The two counts having been in the alternative, the accused/convict having pleaded not guilty to count 1 and guilty to count 2, meant, that count 1 was automatically withdrawn.
- [7] The facts pertaining to count 2 as narrated by the prosecution and admitted by the accused/convict, are that;

“The accused [Redacted] is the father of the victim, [Redacted], aged only 17 months old at the time. On the 17th of March 2024 whilst he was supervising the same victim in the TV room at their residence at [Redacted] Mahe thereby having the duty to supervise the same victim had fallen asleep on the sofa, consequently omitting to discharge his duties thereby exposing the same victim to wander about the house and have access to the swimming pool whereby she drowned. The victim was certified to be dead at the Anse Royale Hospital by a Medical Practitioner. The Accused person was arrested and cautioned and he voluntarily gave a statement”.

- [8] By motion, made viva voce, learned counsel for the accused/convict sought for an order of this court to have a Pre-Sentence Probation Report prepared, which motion was granted, and the Report dated 2nd April 2025 received.

SALIENT ASPECTS OF THE PRE-SENTENCE PROBATION REPORT

- [9] The Probation Report, reports that the accused/convict is a married South African man of two daughters including his deceased daughter. He lives with his wife and the other daughter. He came to Seychelles when he was only five years old and has since settled in Seychelles where he has his family home. Over the years, the accused/convict has worked as a navigator and skipper employed by few employers until he became self employed by setting up his own business as skipper.
- [10] The accused/convict's version of the incident as told to the Probation Officer, Adam, the author of the Probation Report, is that the incident happened on a Sunday. He had just returned home after long hours of charters and was very tired. As is traditionally the case, on Sundays he spends time with his family by having a family barbeque. On that particular fatal Sunday, his wife was away from home and he was the one entrusted with the task of

looking after his two daughters. Together they were preparing for the barbeque by the swimming pool side.

- [11] After the preparation for the barbeque was over, the accused/convict and his two daughters proceeded inside the family house in the playing room to wait for his wife to return home with her parents. After some time, the accused/convict observed, that her two daughters had fallen asleep. Minutes later, he too fell asleep.
- [12] The accused/convict told the Probation Officer that after some time, his wife who had returned home, woke him up and asked him where is their other daughter. The accused who looked panic rushed outside and saw her daughter floating in the pool. He jumped in the pool and took his daughter out. He administered cardiopulmonary resuscitation (CPR) to try to revive his daughter while awaiting for incoming help. The ambulance was called and when it arrived it took the child to hospital. Although the doctor there tried to resuscitate her, he did not succeed. It was too late.
- [13] The accused/convict expressed his pain and disbelief that his daughter has drown and is no longer with the family whilst expressing his feeling of guilt, blaming himself for not having locked the door once they were all back inside the house. He told the Probation Officer that, since the incident, there has been lots of tension between him and his wife, and that he fully understands his wife's anger and frustration towards him, given that he was the father of their daughter entrusted with the task of looking after her in her absence. The accused/convicted stated, that the loss of their daughter has had a negative impact on their lives which has changed completely, that but for the therapy and the support they received from family members and friends, they would not have been able to overcome the pain, anger and frustration that built up amongst them after the incident.
- [14] The accused/convict reckons, that he is suffering because of that incident and wonder whether he would ever recover entirely. He added, that this case against him has caused more suffering not only to him but to the entire family, more so because they are still in the grieving process.

- [15] The wife of the accused/convict too was interviewed about the incident. She described the accused as a loving, caring and kind-hearted husband who has been a good father for their children. She told the probation officer, that she has been traumatised and tormented by the fact that she has lost her daughter, and the fact that she had seen the footage of the CCTV camera of her daughter struggling helplessly in the swimming pool has been painful for her to bear, and that this incident has impacted on the relationship between her and her husband. She reckons, that they have only managed to work it out through therapy and support from close family members. She acknowledged, that the accused/convict is hurt and heartbroken because of the loss of their daughter to whom they were very close.
- [16] As regards to this court case, she told probation officer, that she became upset after her husband received the summons to come to court because they were not expecting a court case. She added, that she doesn't want to lose her husband as a consequence of that incident, and expressed concerns about a possible custodial sentence that she said will bring about more misery to the family. She called upon this court to exercise leniency and forgive her husband by not imposing a custodial sentence on him given that they are still grieving over the loss of their daughter, and are still undergoing therapy sessions to help them to cope and revert to normality.

PLEA IN MITIGATION

- [17] In plea mitigation, learned defence counsel for the accused/convict, submitted, that the accused/convict has pleaded guilty at the very early stage of the proceedings, and that by doing so, he has shown remorse and saved the court's precious time and resources by avoiding a full blown trial. Learned counsel also submitted, that the court should take into account the facts and circumstances that the incident happened on account of the accused/convict version of event in the probation report.
- [18] Learned counsel also submitted, that the court should take into account the effect that this tragedy has had on the accused personally, as well as on the entire family. Learned counsel explained, that as a father the accused/convict has gone through tremendous pain and still has a feeling of guilt, whilst blaming himself for not locking the door before he fell asleep.

- [19] It is submitted by learned counsel, that this incident has caused lots of tension between husband and wife, and that it is only because of the therapy and support from family members and friends, that they have managed to save their marriage relationship and gradually revert to normality, although, the accused/convict acknowledges, that this incident will forever have an impact on his life like a life sentence, and on his wife who has been expressing her frustration against him following the incident.
- [20] As to the fact that the accused/convict pleaded guilty to the charge, it was submitted by learned counsel, that the accused/convict told the probation officer, that he pleaded guilty because he is the one to be blamed for the incident which has caused the loss of the daughter he loves. Learned counsel also submitted, that the court ought to take into account the moral and mental anguish which the accused/convict has had to endure since the incident, which the convict/accused has described as a life sentence in itself, and the fact that this will haunt him for the rest of his life.
- [21] It was the submission of learned counsel, that the accused/convict's wife too has been affected by this tragic incident, and that their marriage relationship had for a while gone through turmoil because of that incident. Learned counsel explained, that the couple has been able to save their marriage because of the therapy they have received and the support from close family members. Learned counsel submitted that a prison sentence will not help to alleviate the suffering and the overall impact which the incident has had on the entire family because they have another daughter and the family is entirely dependent on the accused/convict.
- [22] On the law, learned counsel submitted, that the offence of which the accused/convict has been convicted is a misdemeanour that carries a maximum prison sentence of six months, and that the offence is not an excepted offence in terms of Schedule 1 of the Criminal Procedure Code. This means, that any prison sentence not more than six months to be imposed should the court decide that a prison sentence is the right and appropriate sentence, can by law be suspended. Learned counsel moved the court to exercise leniency and to impose a non-custody sentence, but if the court is minded to impose a custodial sentence, to have the sentence so imposed suspended.

- [23] Learned defence counsel cited two case law authorities in its quest to persuade this court that a non custodial sentence will do justice in this case, and that if the court does decide to impose a custodial sentence, to have the sentence suspended. The first case was *The Republic v [Redacted person] CR 12/2022*. Learned defence counsel submitted, that the accused in that case was charge with the offence of wilfully neglecting, abandoning or exposing a child in a manner likely to cause the child unnecessary suffering, moral danger or injury contrary to Section 70 (1) (b) read with Section 70 (4) (a) and punishable under Section 70 (6) of the Children Act.
- [24] It was the submission of learned counsel, that in this particular case, the accused, after she delivered the baby, she wrapped the baby in a white towel and put it in a black hand bag and later put it in a bin. Learned counsel submitted, that although the accused was convicted for a more serious offence carrying a maximum prison sentence of 5 years, she was sentence to 2 years imprisonment suspended for 2 years.
- [25] Learned counsel also cited the case of *Dmitri Sandul v The Republic SCA CR 04/2023 (appeal from CO 06/2023)* in which case the accused was charged with the same offence as in the case cited above. On appeal, the Court of Appeal substituted the 2 ½ term of imprisonment which had been imposed on the convict by the Supreme Court by a term of imprisonment of six months.
- [26] It was submitted by learned defence counsel, that in those two cases, the accused was convicted of a more serious offence, in that, the offence is a felony carrying a greater penalty, and that the facts of the two cases show that in both cases, the accused demonstrated their intent in doing what they did. Learned defence counsel submitted, that in the instant case, it was rather an unfortunate circumstance, given that the accused/convict fell asleep. Learned counsel also added, that a prison sentence would not only be too harsh, but will also have an adverse effect on the family now that they are trying to recuperate in this difficult moment. learned counsel urged this court to impose a non-custodial sentence on the convict.
- [27] Section 230 of the Penal Code reads;

“Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in Section 229, by which act or omission harm is caused to any person is guilty of a misdemeanour, and is liable to imprisonment for six months”.

- [28] In meting out the right and appropriate sentence that will do justice to this case, I have carefully considered the facts and circumstances that led to the accused/convict being charged and prosecuted for the offence of which he has now been convicted. I have also taken into account the content of the Presentence Probation Report, and the matters raised by learned defence counsel in plea in mitigation praying for the court to exercise leniency.
- [29] I find the two case law authorities cited by learned defence counsel to be quite helpful in determining whether or not, the accused/convict deserves a lesser sentence than the convict in those two cases. Clearly, in the two cases cited, the convict in each of the two cases were charged with a felony which was a more serious offence, than in the instant case, an offence carrying a maximum custodial sentence of 5 years imprisonment. The offence of which the convict has been convicted in this case is a misdemeanor carrying a maximum prison sentence of six months.
- [30] Moreover, in the two cases cited, the convicts' criminal intent was clear, whereas, in the instant case, the accused committed the offence simply because he fell asleep. Based on the Presentence Probation Report, he appears to be a victim of his own crime.
- [31] For the aforesaid reason, therefore, the accused/convict is sentenced to serve a terms of imprisonment of 3 months suspended for 1 year under Section 282 (1) of the Criminal Procedure Code.
- [32] The convict has 30 days as of today to appeal against this sentence.

Signed, dated and delivered at Ile du Port 16th May 2025.

