

**IN THE JUVENILE COURT**

THE REPUBLIC

VERSUS

DREADNA DINE     **ACCUSED**

Criminal Side No 64 of 2005

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**(BEFORE: B.RENAUD J(PRESIDING), MR. DELCY AND MRS DE COMMARMOND)**  
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Mr J. Camille for the Republic  
Mr A. Derjacques for the Accused

**JUDGMENT**

**B. Renaud**

The Accused stands charged with the offence of Murder contrary to Section 193 of the Penal Code. The particulars of offence are that the Accused a 17 year old of St. Louis, Mahe, on the 11<sup>th</sup> August, 2005, in the district of St. Louis, murdered one Richard Hoareau.

The Accused has been remanded in custody since her arrest on 11<sup>th</sup> August, 2005.

The facts as established by the evidence and accepted by this Court are that the Accused, who was 17 years old at the material time, was living together with the late Richard Hoareau (*hereinafter referred to as the "victim"*) as "*husband and wife*" at St. Louis, Mahe. They were living in the house of and together with the mother of the Accused. The mother of the Accused and her concubine, namely Michel Andre Zialor, were also living together in the same house. The Accused had 2 year old child who was also living with her and the victim. During the morning of 11<sup>th</sup> August, 2005 the Accused and the victim were at home and in the company of her mother and the latter's "*concubine*" they were sitting under a covered area outside the main house. The latter two then left the Accused and the victim and went inside the house. Later that morning one Jerry Adrienne a close friend of the victim came and joined them. The Accused was sitting on a concrete ledge about 1 metre high, the victim was sitting on the steps and Jerry Adrienne was sitting on a

chair. They were chatting and sharing jokes together. At that time the Accused had a small knife with her which she was using to clean the buckle of a belt belonging to the victim. The victim together with Jerry Adrienne was drinking alcohol and the victim was also using illegal drug during that time. About 15 minutes later Mr. Adrienne left them to go to work. The victim then stood up and went to look at the road while smoking a cigarette and the Accused was still sitting on the ledge with the knife and buckle in her hand. The victim then turned round and flicked the cigarette butt towards the Accused. The Accused was not happy with that and she said to the victim – “*are you playing fire with me?*” The victim had by then came within the arm reach of the Accused to apologise. It was at that point that the knife that was in the hand of the Accused went through the intercostals space on the right chest of the victim just above his nipples and penetrated the right lobe of the lung of the victim. The victim held the wound on his chest and said to the Accused – “*You have stabbed me!*” whereupon the Accused asked him to let her see the wound. The Accused called out that her boyfriend has been wounded and Mr. Adrienne who was still a short distance away, came back to see what has happened. The mother of the Accused responded to the call of the Accused and brought a towel to contain the bleeding. Mr. Patrick Marie came in his car and took the victim who was being supported and accompanied by the Accused, to Victoria Hospital. On the way, the victim said to the Accused – “*Dreadna, you stabbed me with the knife, rather you should have cut me instead*”. At the Casualty Department at the Victoria Hospital the victim, who was in a very critical condition, was immediately seen on arrival by a Dr. Awadalla. The Doctor carried out the necessary initial medical procedures and called the Surgeon Dr. Bondar who came within minutes and took over from Dr. Awadallah. The procedures followed by Dr. Bondar included the perforation of two holes on the right side of the victim where he inserted a tube to drain blood from the chest cavity caused by internal bleeding and another tube to remove air from the chest cavity. Intravenous treatment was also applied and the stab wound was sutured. Dr. Bondar then directed that the victim be transferred to the Intensive Care Unit at the Victoria Hospital for follow-up. The victim was showing non-response to the medical procedures. The victim’s condition deteriorated and he later died. Dr. Zhao Peng carried out a post mortem examination on the body of the victim the next day and certified that the cause of death was – “*haemorrhagic shock due to internal bleeding caused by a stab wound*”.

Section 193 of the Penal Code states that:

*“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”*

Therefore, to substantiate a charge of “murder” the Prosecution must prove beyond reasonable doubt the following elements of the offence:

- (a) *that the Accused did the act or omission that caused or led to the death of the deceased Richard Hoareau;*
- (b) *that when the Accused did the act or omission which caused or led to the death of Richard Hoareau she was acting with “malice aforethought”;*
- (c) *that the act or omission, of the Accused that caused or led to the death of Richard Hoareau, did not in law amount to a “lawful act”.*

The main Defence of the Accused was that the death of the victim was caused by an accident. It is contended by the Defence that after the victim having thrown a lighted cigarette butt towards the Accused, the lighted butt fell on the chest between the breasts of the Accused then rolled down her bra and caused her acute pain. At that moment, the victim having found that he had done a regretful act came towards the Accused to apologise and consoled her. The Accused whilst still holding the knife in her left hand pointing outwards, it wounded the victim when the latter was bending over to embrace her.

We have given very careful consideration to this contention which we find to be neither probable nor possible in the circumstances. Had the victim bent over the Accused and the latter was holding the knife in the position she claimed she did, the point of the knife would have wound the victim going in an upward direction. Secondly, the force that was used to enable the blade of the knife to penetrate the chest of the victim was considerable and could not have been caused by a simple pressing of an embrace. The wound that caused the knife to penetrate downwards to the right lobe of the lungs through the penetration of the intercostals muscle was caused by a greater force. We find that the Accused executed a violent stabbing blow with the knife by raising her left hand that was holding the knife and plunging it into the chest of the victim when the latter apologetically came to embrace her. The knife penetrated deep into the chest towards the right lobe of the lung of the victim which later caused his death. We therefore reject the defence of accident advanced by the Accused.

By the tenure of the cross-examination of the witnesses of the Prosecution and indeed by the address to the Court by the Learned Counsel for the Accused, it is not in dispute that the Accused connected a small sharp knife 7-8 cms long on the right upper chest of the victim which penetrated the latter's right lung. As the matter stands at this juncture, this Court is satisfied that the Prosecution has proved beyond reasonable doubt the first element of the offence, namely, that the Accused did the act or omission that caused or led to the death of the deceased Richard Hoareau.

Malice aforethought is the guilty mind which the Accused needs to have at the time of committing the act which led to the death of the victim. According to Section 196 of the Penal Code (Cap.158), this can be:

1. *an intention to cause death or to do grievous harm to another person, whether the person is killed or not, or:*
2. *knowledge that the act or omission causing the death will probably cause the death of or grievous harm to some person, whether such person is the person killed or not.*

On a careful consideration of the evidence as to circumstances prior to or leading to the unlawful act of the Accused, this Court entertains reasonable doubt as to whether there was indeed malice aforethought. There is no evidence to show to the contrary other than the Accused and the victim were living together as husband and wife and had a child. That morning they were happily chatting together as two lovers, in the presence of the Accused's parents and also in the presence of a friend of the victim. There was no animosity on the part of the Accused towards the victim until the victim threw a cigarette butt towards the Accused. The Accused reacted on the spur of the moment. The knife that she had with her was being used that morning to clean the buckle of a belt belonging to the victim. That was the reason the Accused had the knife in her hand at the fateful moment. It neither appealed to us that the Accused calculated the exact vital location to land the blow when she hit the Accused with the knife. For these reasons, we entertained reasonable doubt as to whether there was indeed malice aforethought on the part of the Accused at the material time. We therefore allow the Accused the benefit of the doubt and found that there was no malice aforethought, hence the second element of the offence of Murder is not proved beyond reasonable doubt.

During the trial, it was insinuated by the Defence that there were three wounds on the victim – one caused by the Accused and two others caused by the Surgeon Dr. Bondar during medical procedures, and that any of these wounds could have caused injury to the internal organs of the victims leading to internal bleeding then death of the victim.

We have meticulously and carefully considered the evidence of Dr. Bondar as well as those of the Pathologist Dr. Zhao Peng, including the photographs exhibited. It is clear to us that the only wound to the internal organ of the victim was to be found on the right lobe of the lungs. No other internal organs of the victim were damaged. The two holes perforated by the Surgeon were located on the right side of the victim at a point below his right arm pit. We accept the evidence of Dr. Bondar that he used a scalpel to open up the skin tissue and a forcep, he then inserted his finger in the muscle tissue to insert the tube into the right chest cavity. He did not use any sharp instrument that could have reached the right lobe of the lungs which is located in a position away from where he fixed the drain-tubes. In our conclusion we found that the only wound that damaged the internal organ of the victim, namely the lobe of his right lung, was that one caused by the penetration of the knife from the upper right chest of the victim which went downwards towards the right side of the victim and pierced his lungs. We therefore reject any insinuation of the Defence that the victim could have died due to internal bleeding caused by the incision and installation of the drain tubes performed by the Surgeon. The Accused had no right or authority to execute the act she did on the victim. In our view, the Prosecution has proved beyond reasonable doubt that it was the unlawful act of the Accused that caused or led to the death of Richard Hoareau.

Section 192 of the Penal Code Cap 158, states that:

*“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.”*

In the circumstances of this case we find that although there is no malice aforethought the Prosecution has indeed proved beyond reasonable doubt that there has been an unlawful act on the part of the Accused

that caused the death of Robin Hoareau. That unlawful act of the Accused which caused the death of Robin Hoareau amounted to a culpable negligence on her part to discharge the duty to preserve life or health whether or not such unlawful act is not accompanied by an intention to cause death.

Accordingly, we find that the Accused not guilty of the offence of Murder under Section 193 of the Penal Code, but guilty of the offence of Manslaughter contrary to Section 192 of the Penal Code and we convict the Accused of the offence of Manslaughter.

Right of Appeal explained

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**B.RENAUD  
JUDGE**

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**MR DELCY**

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**MRS DE COMMARMOND**

Dated this 16<sup>th</sup> day of January 2006