

**[EDITORS NOTE: THIS JUDGMENT HAS BEEN REDACTED TO REMOVE  
PERSONAL DETAILS OF THE PERSONS INVOLVED.]**

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CO50/2016**

**[2018] SCSC 252**

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**THE REPUBLIC**

versus

**B R**

Accused

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Heard: 30 March 2017, 18 May 2017, 27 June 2017, 03 October 2017 and  
24 October 2017

Counsel: Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for the  
Republic  
Mr. Nichol Gabriel Attorney at Law for the Accused

Delivered: 14 March 2018

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**JUDGMENT**

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**Burhan J**

[1] The accused B R stands charged as follows:

**Count 1**

*Manslaughter contrary to Section 192 of the Penal Code and punishable under Section  
195 of the same Act.*

*Particulars of offence are that B R, Child minder of Anse Aux Pins, Mahe on the 19<sup>th</sup> November 2015 at Anse Aux Pins, Mahe, negligently fed a 6 months old infant namely B L of Au Cap, Mahe, who was under her care and unlawfully caused the death of the said B L on the 28<sup>th</sup> November 2015 at Victoria Hospital, Mahe.*

[2] The accused denied the charge on the 11 November 2016.

**Evidence of the Prosecution.**

[3] The opening witness for the prosecution, Dr. Rosa Maria Fonseka stated that she had done the post-mortem on the deceased B L. She stated the post-mortem revealed that the deceased was 6 months old and had passed away on the 28<sup>th</sup> of November 2015, and on considering the size and weight of the baby, he was big for his age. She stated that there was Edema in the brain which was due to a hypoxic change which occurs when a person has a problem with breathing and Oxygen does not reach the brain. While other parts were normal, the bronchial lumen showed severe congestion with inflammatory exudates inside the lumen of the Bronchi. She stated that death was due to severe brain Edema and severe bilateral bronchial pneumonia which had occurred as a result of bronchial aspiration. She further stated bronchial aspiration occurred due to fluid going into the bronchial lumen. This would occur sometimes when a person was eating or drinking. The report was produced as P1 and the photographs produced as P2. She described the photographs in detail and stated the child did not have any pre-existing illness. She further stated that the external and internal examination revealed no injuries or marks on the body and no injuries or fractures. Witness stated she had not found any food particles, only inflammation of the lung. She stated that bronchial pneumonia would take some time to develop, a few days and in this case, it led to death.

[4] Dr. Edem Hoggar stated that he was a doctor by profession and working in the Paediatric ward in Victoria Hospital. He had made a medical report in respect of the child and produced it as P3. He stated the history revealed that the child had become dyspnoeic and cyanosed after being fed with soup which meant the child was having difficulty in breathing, and as a result, was becoming bluish in colour due to lack of Oxygen. This could happen to the body within one to one and a half minutes of not having Oxygen. The fluids had been sucked out by suction and Oxygen had been pumped in by a bag. The

child had been taken immediately to the NICU (Neonatal Intensive Care Unit) and they had placed the child on Oxygen. When the child still had difficulty breathing, they had placed the child on a ventilator and the machine was breathing for the child. The doctors had told the parents that the prognosis was not good as the baby developed hypercapnia which occurred due to the Carbon Dioxide, which should be expelled, not coming out, due to the lungs not functioning properly, resulting in the increase of the Carbon Dioxide level in the blood. The patient became desaturated, meaning the partial pressure of the Oxygen went below the normal level and his heart stopped beating. They had revived him with CPR (Cardio Pulmonary Resuscitation) and he improved, but his condition again deteriorated and he eventually passed away. Further the doctor stated that at the age of 6 months, a baby would just begin to wean. He is taken off breast milk and given semi solid foods or smashed foods. He stated that if a child is crying, you never feed it as the trachea opens and the food could go in.

[5] Further, a child should be fed upright, otherwise there is a possibility of the child choking. He stated the child was obese as he was 9.3 kg at the age of 6 months. Dr. Hoggar further stated that the fluid and the debris in the lungs resulted in infection due to bacteria being present. He stated the child was in hospital for about 8 days. The weight of the baby had nothing to do with the bronchial aspiration. The next witness, Alexander Bethew, identified the photographs in P1 as that taken by him, at the post-mortem of the victim B L and described each of the photos.

[6] The prosecution next called Vivette Loze, who stated that in 2015, she was working as a nurse at the Anse Aux Pins Clinic. She was on duty at the time of the incident, when around 11.55 a.m. she heard a woman shouting for help as a baby was not breathing. The baby was in her hands and facing upright. The baby was in his pampers and his short and witness Loze had taken the baby from the lady's hands. She noticed that the baby had already changed colour as she tested his reflexes, there were none. She had taken him to the emergency room and Dr. Amelia had commenced CPR. The lady who brought the child, the nanny, was questioned and she had said that she had given milk and the baby had suddenly changed colour. Another doctor too came to assist and when the ambulance came, both doctors had gone in the ambulance with the child. She stated the child was in the clinic for about 20 to 25 minutes. She identified the accused as the person, the nanny

who had brought the child and had handed the baby to her that day. Under cross examination, she stated she had not noticed any marks of strangulation or any hematomas on the body of the child due to the child being beaten.

[7] A E, the mother of the victim B L, gave evidence stating she was a dentist working at Aux cap and her husband was D L. On the 19<sup>th</sup> of November 2015, she had taken her son B L, to the house of B R and left him in her care. She had received a missed call and then a message from Mrs. Arissol to contact the Anse Aux Pins Clinic urgently. She had thought it was regarding a patient of hers but when she called, she realized it was regarding her son and was shocked. She had passed the phone to her mother and she could hear B R (the accused) crying at the other end and knew something was very wrong. Her mother had spoken to Mrs. Arissol and then she had told her they have to leave immediately. On their way, they were told that the ambulance had left and they had gone directly to the clinic. She had gone straight to the casualty and seen her son gasping for breath. They had rushed the child to the Neonatal ICU. When B R had been asked by them what she had given the child, she had first said noodles soup and then denied and stated she had given blended rice and lentils. Witness stated she had never asked B R to give such food to her son. She had bought a cereal pack, maize cereal with milk and given it to B R to feed her son. Every time she asked, B R would inform her that he would not eat it but spit it out. She had expected him to do it, so she had also given a bottle of milk to be fed to her son at 12 o'clock. She would ask B R everyday whether he drank his milk and she would say yes. It was only on the day of the incident that she realised B R had been giving him food, other than what she provided.

[8] Witness further stated that she had earlier blended pumpkin and tried to feed the baby but he had spat it out so she had told B R to give him only the food she brings, which was water, juice and milk. She recognized the accused as the child minder of her child B L. She also described how she stayed in the hospital and how the doctors informed her of his deteriorating condition until eventually, he passed away. She also produced the health card to show that the victim had been given all his inoculations which were up to date. She stated she had a few issues when she brought her baby son initially to B R. B R had stated that her sister would be helping her take care of the child, but that did not materialize, and she began to take on more and more children. Witness had wanted to

change the child minder and was looking out for a replacement but could not find one. She stated that her child would sweat and he would be kept in his wet clothes by B R and not changed, despite being told that he should be changed. Witness further stated B L was mainly fed on breast milk. He had passed his test for development and his weight was not an issue. She stated that B R had come with the child to the hospital the first day but after that day had not come again.

[9] The next witness M E, the mother of A E and the grandmother of the baby B L, stated that at the time of the incident, they were living with her at Aux Cap and her daughter had been studying inside, when around 12.15 p.m. her daughter had received a call. She had spoken loudly on the phone and then given the phone to witness. Witness had been asked to come immediately to town with her daughter as B L was having respiratory problems. They had contacted the father of the child and when they went to the hospital, the father had been crying outside. They had gone in to see B L and he was crying but his voice was not normal. She had questioned B R and first B R had stated she had given B L a watery soup and then stated she had fed him a soup with potatoes, carrots and pumpkin. When witness had asked B R what exactly she had given the child, so that the doctor would know what to do with him, she had replied that she had given B L lentils with rice. The doctor had told her he had removed something like rice. B R had been crying out that they should take action against her because she had removed a dead baby from the house. She had said that twice in the presence of the witness.

[10] Thereafter, B R had stated she had to go back as she had left other children in the house. She stated she was present when A E had told the accused that B L only ate cereal. At home they would blend carrots, potatoes with pumpkin but he would eat only 2 or 3 spoons and they would have to go around the house, to feed him. At the time of the incident, B L had been attending B R's day care for a period of one and a half months. She stated that A E had left her house and gone to her own home. B R had told her she had applied CPR when she was in her house until she reached the Anse Aux Pins Clinic. She admitted that the doctor had told her that it was pneumonia that had caused the death.

[11] The father of the victim, Mr. D L, stated he was working with the NDEA at the time of the incident. He stated he had rushed to the hospital after receiving a call from his wife

that his baby was choking. When he was at the casualty, the ambulance had arrived and he had noticed his baby was bluish in colour and the paramedics were trying to assist him to breathe properly. He had asked B R what had happened and she had said that she had been feeding the baby and after the second spoon, the child began to choke. They had taken the child to ICU and he was informed that the child's condition was critical. They had remained in the hospital for days until eventually B L passed away. He stated B R had not been given any authorization to give the baby any kind of food. Under cross examination, he stated that B L was showing signs of distress when he arrived in the ambulance at the hospital. The doctors had informed his wife they had removed white particles. He stated B R was crying and looked scared.

[12] Dr. Christian Annasse produced the medical reports of Dr. Barun Saha dated 4 January 2016, 26 February 2016 and 20 June 2016. The report dated 4 January 2016 was produced as P5 which had been prepared from the information available in the casualty slip at Anse Aux Pins. It stated the child had been brought on the 19 of November 2015 at 12.06 p.m. with a history that the child was not responding after being fed. The child B L had symptoms of cyanosis and was unconscious and not responding. The pulse rate was 145 beats per minute and SPO2 was 47%. According to the report, Oxygen was given and resuscitation was done by two doctors. Intravenous fluid was administered but failed. The Seychelles emergency unit doctors were contacted and the patient was sent for further management as there was an improvement of the condition. Distal cyanosis, he stated, developed quite soon i.e. within minutes and the pulse was also quite high. The Oxygen level 47% was below normal. It was very low and possibly fatal. He produced the report of 26 February 2016 as P6 which was based on the post-natal examination on B L which was done on the 6 of June 2015 which stated no congenital defects or abnormalities were seen. The report stated the child was a normal child. P4, the health card of B L , born 2 May 2015, indicates that the baby must take all necessary vaccinations and further states, that the child should be fed with breast milk at least until he reaches 6 months of age, and should continue to feed on breast milk for at least for two years. The report also stated that the child was a normal healthy baby.

[13] The medical report dated 20 June 2016 prepared by Dr.Barun Saha, was based on the vaccination chart of B L and it referred to all the vaccinations given to the said baby. The

statement of Dr. Suarez Poul out was produced by the defence as D1, which stated that he was the first doctor to see B L and that the child was not responding initially but eventually, he started to cry. He stated the fact that the child cried indicated the child was responding, which was a good sign. He had started to cry on the way to Victoria and witness further stated the usual Oxygen level was 100% or 97 to 100 can be accepted. He stated that the weight of the child would affect the child's digestion in extreme cases but baby B L was only 9.4 kg and this was not an extreme case. He admitted the only discrepancy between Dr. Barun Saha's report and the statement of Dr. Suarez was that Dr. Suarez stated that minutes before they reached the hospital, the baby started crying. Sergeant Soultane Amice stated she was working at Anse Aux Pins police station on the 28 November 2015 and they had recorded a statement from the accused B R in regards to the death of baby B L . She produced the statement as P8. She stated she had invited the accused to give a statement, cautioned her and explained her constitutional rights. Thereafter the prosecution closed its case.

#### **Evidence of the Defence.**

[14] The accused gave evidence under oath. The accused giving evidence under oath stated she lived at Anse Aux Pins with her husband and two sons. She stated that earlier she was a customs officer and then quit and became a child minder. She stated she had now resumed employment as a customs officer. As a child minder she had 8 children in her care and she was assisted by her sister E L. She admitted that B L was one of the children she looked after. She stated that B L's mother, A E, had in October 2015, approached her and begged her to take B L and, even though she already had 8 children, she agreed as her sister was coming to assist her. She had brought him about two weeks later. When he was brought, he was not yet 6 months old. He had started to eat cereal and milk. She stated there were problems with B L in regards to eating and drinking. She stated that she had to carry him in her arms or sit him on her lap and watch TV and give him his food for him to eat. He was a child who would sleep a lot. One day, A E had brought B L, who they called Nathan, and had told her that he had had a fever the night before but it was not too serious. A E had told her she had not taken him to the doctor and the accused had thereafter taken him in and given him his cereal as usual at 10 a.m. The parents had given

their consent for her to feed the baby potatoes and pumpkin. B L had gone to sleep and she had prepared his meal.

[15] When he got up she had placed him on a chair as he had just woken up and then taken him in her arms to the kitchen, put him on a high chair and started to give him his meal. He was not eating well, so she had emptied the contents of the food into his feeding bottle. She had taken him to the living room where the other children were watching television and had put him on her lap and begun to feed him via the feeding bottle. Suddenly she noticed his lips had turned blue. She had rushed to the bathroom and given him CPR. She described the CPR given and B L had vomited and his right hand started to move. She lifted him, rushed outside, stopped a car and got in, and they had taken him to the clinic. In the car, the lady, who was with the man driving, had told her to continue with the CPR which she had done. The nurses took over at the clinic. She had tried to call the mother, A E, but there was no answer. A nurse had got through to her and told her that her baby was at the Anse Aux Pins Clinic.

[16] At the clinic, they had tried to put the drip on the baby but that was not effective. They had given him Oxygen until the ambulance arrived. Two doctors, including herself, had gone in the ambulance and before reaching the hospital B L had cried out; he had screamed. The paramedics had said that this was a good sign and that he would be okay. At the hospital she had not left until B L's father arrived. She was crying. He had asked her what had happened and she had been unable to explain what happened. The doctors tried to make B L vomit eventually he vomited and he cried. They then took him to the emergency upstairs at the ICU. Thereafter B L's mother arrived following which she had gone home. B L's parents had subsequently called her to ask what had happened and she had told them but they did not believe her. She had kept calling and asking about B L's condition, she had spoken to B L's father and the brother of A E, and to B L's grandmother M E. The grandmother had come and collected everything that belonged to B L including his clothes, food and bathing tub. The grandmother had asked for the food but the accused had said no and the grandmother had left. She got to know B L had died in the afternoon when Child Protection had come to take her statement. She was very emotional. She denied she had killed B L. She stated she had undergone training with the IECD in regards to what a child should be fed. It was the organization that gave child

minders their licence and stated further that she was feeding two other children including B L. She described the food in open Court as potatoes, pumpkin, carrots, lentils and rice blended in liquid form. She had put this in the bottle and fed B L which was taken by the Child Protection Officers. She had put the contents of what was in the bottle in a cup and given it to the officers. The bottle, she corrected herself, was given to the grandmother. She stated she had taken good care of the baby.

[17] Under cross examination, she admitted in October 2015, she had been running the day care for 9 months and charged SR 1000 per month. She provided breakfast, lunch and their snack at 3.00 p.m. She would keep the children from 6.30 a.m. until 5.30 p.m. on weekdays only. She stated she did not have a license to run a day care. She stated she received consent from the parents to feed B L other food other than that brought by them which was cereal, milk and breast milk. She denied she was lying on this issue and then stated “there were no documents, no papers or anything that had been signed in regards to this, everything was said via mouth.” However, she admits under cross examination that in her statement under caution, she had not mentioned that B L’s mother A E, had given her permission to feed him rice, lentils, potatoes and pumpkin. She also stated in her evidence in chief that the child had vomited after she gave CPR, that B L had cried on the way to the hospital and the paramedic had said this was a good sign, that B L had vomited at the hospital and the doctor had said this was a good sign and that he was improving. In cross examination it was revealed that several of these facts were not mentioned in her statement under caution.P8. She admitted she had not mentioned that B L was fussy about eating and drinking in her statement and she had to carry and feed him. She admitted under cross examination that the rice, lentils, pumpkin and potatoes were her food and not what the mother gave. She admitted she was looking after 5 other children and she was making their food as the parents only gave her money. The ages were 7 months, 8 months, 1 year and 2 years. She denied the suggestion that she had fed lentils and rice, potatoes and pumpkin without the permission of the mother. It was also pointed out to her that she had told the mother, she had fed him noodle soup, then changed her version to potatoes and pumpkin soup and then again changed her version to potatoes, pumpkin, lentils and rice soup. She stated her statement was written down but not read out to her but admits that she had signed it. The accused further stated B L was

sitting in a chair at the time she was feeding him and then changed it to state that she was in the chair and B L was on her lap. Thereafter the defence closed its case and both parties made written submissions.

**The Law pertaining to the Charge.**

[18] The accused in this case has been charged with the offence of manslaughter. There are two types of manslaughter namely voluntary and involuntary manslaughter. Voluntary manslaughter occurs when all the elements of murder are present including an intent to kill or cause grievous bodily harm but the crime of murder is reduced to manslaughter by reason of either,

- a) provocation;
- b) diminished responsibility or death being caused in pursuance of a suicide pact.

[19] Involuntary manslaughter is unlawful killing without intent to kill or cause grievous bodily harm. There are two classes of involuntary manslaughter which could be:

- a) Manslaughter by an unlawful act also known as constructive manslaughter.
- b) Manslaughter by gross negligence or culpable negligence.

[20] Section 192 of our Penal Code refers to the above principles (a) and (b) of manslaughter and reads as follows;

*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.*

[21] In manslaughter, by an unlawful act, constructive manslaughter, the accused commits an unlawful act which results in death but has no intention or knowledge in other words no malice aforethought of causing death.

[22] **Archbold Criminal Pleading, Evidence and Practice 2008 edition pg 1861**, describes manslaughter by gross negligence which the prosecution has sought to prove in this case. This form of manslaughter is satisfied on proof that the conduct of the accused which caused the death of the deceased, amounted to a breach of duty owed towards the deceased and was so serious as to justify the imposition of criminal liability **Barreau v R 2015 SCCA 45** at paragraph 9. On the facts before this court, manslaughter by gross negligence or culpable negligence, which is manslaughter by an unlawful omission which involves a breach of duty to preserve life, is applicable to the facts of this case. In such a case, it is the duty of the prosecution to prove the following elements of the offence; whether there was an omission by the accused, the omission should be unlawful and tantamount to culpable negligence to discharge a duty tending to the preservation of life, safety or health; and which omission or breach of duty resulted in the death of the person also discussed in **Barreau (supra)** paragraph 12.

[23] It would also be pertinent at this stage to refer to section 202 of the Penal Code which relates to the duty of a person having charge of another.

[24] Section 202 reads as follows:

*It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.*

#### **Analysis of the Evidence and Findings.**

[25] When one considers the evidence and facts of this case, it is clear from the evidence of witnesses A E, the mother of the deceased B L , and M E, the maternal grandmother, that the accused B R , was the child minder of the victim B L , who was 6 months old at the time he was placed in her care. This fact is admitted by the accused herself and she states

in her evidence under oath that the 6 month old B L was placed in her care and she had several other children of similar ages placed in her care at the time of the incident. Therefore, it is the view of this Court that it is proved beyond reasonable doubt and admitted by the accused B R that she was the in charge of B L at the time the incident occurred and therefore she owed him a duty of care, to provide for the necessities of life. Therefore in terms of section 202 of the Penal Code, she would be liable for any consequences which result to the life and health of B L arising as an omission to perform her duty or a breach of her duty.

[26] Further, it is the contention of the prosecution according to the particulars of the offence that the child minder had negligently fed the child that day resulting in the child choking and, as a result of the choking, passing away. It is also in evidence that the mother and grandmother had specifically given instructions to the accused that the child should only be fed maize cereal, milk, water and juice, all of which were provided by the mother A E and not anything else. Although the accused denies these instructions were given to her, she admits that A E had left with her, the cereal, a bottle of milk, water and juice. She also admits that no other parents left any food and she would provide the food for the babies who were of a similar age for the payment she received. A E stated that the milk was an extra, in the event of him not eating the cereal, as it was difficult to feed him the cereal. On this issue, I am inclined to believe the mother of the child that she had told the accused not to feed anything else to the child as unlike other parents who had children of a similar age in the said day care, A E had specifically provided the food which she wanted fed to her child, which is admitted by the accused. I am therefore satisfied that the fact that specific foods were provided by the mother, indicate that the accused was given instructions not to feed the child anything else other than what was provided.

[27] However, the accused in complete disregard to these instructions, chose to make her own blend of lentil and rice and chose to feed the baby which resulted, in baby B L choking and subsequently dying from the complications arising from this. It is clear from the evidence of all the doctors and nurses called by the prosecution that at the time the child had been brought in to the clinic and then the hospital, B L was unable to breathe properly, was bluish in colour, cyanosed, due to his inability to breathe as food particles had gone down his trachea. Attempts were made to remove the food particles, antibiotics

and CPR given during the course of his treatment in the Neonatal Intensive Care Unit but Baby B L had eventually passed away, due to complications of pneumonia, arising from the bacterial infection, brought about as a result of food particles going into the lungs. There is no doubt in my mind, on considering the medical evidence of Dr Rosa Marie and Dr. Hoggar that the death of baby B L was a result Bronchial or Broncho Aspiration resulting in choking and eventually resulted in bronchial or Bronchopneumonia and Brain Edema which (Broncho Aspiration) occurred as a result of the accused failing to take due care and diligence when feeding the child with a mixture of lentils and rice which was also was prohibited to be fed to the child by the parents, thereby clearly indicating a breach of the duty of care she owed the child.

[28] It was held by the House of Lords in the case of ***Regina v Adomako [1994] 3 WLR 288*** following ***R v Bateman [1925] 19 Cr App R 8***, in order to establish culpable, gross or criminal negligence or whatever epithet that may be used, the prosecution should establish that the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. In Seychelles, the case of ***R v Marzetti [1970] SLR 20*** and ***Ragain v R [2013] SLR 619*** similar findings were made.

[29] In this instant case the accused, omitted to take due care and precaution in the feeding of the child, which is further aggravated by the fact that she had been specifically instructed, not to feed the child any other food but that provided. However, the accused chose to deliberately ignore the specific instructions given, which indicates, considering the age of the child who was only 6 months old and had not yet been placed on such diet, a complete disregard to life and safety of the child and a total disregard to the foreseeable consequences of the act or omission as to amount to gross negligence or culpable negligence which is more than ordinary negligence.

[30] It is also borne out by the evidence of the prosecution that at the time the child was fighting a battle of life and death, the accused had not been forthright with what she had fed the child. She had first said that she had fed him milk and he choked. She had then stated soup and noodles, then mentioned potatoes carrots and pumpkin blended and

finally stated potatoes, pumpkin, lentils and rice. No doubt her failure to tell the truth instantly to the doctors, who were fighting to save the life of the 6 month old baby is in the view of this Court a further aggravating factor in her failing her duty of care she owed to the child. It is also admitted by the accused that despite admitting she had five to eight children under her care she had no licence to run a day care centre.

[31] Having considered the evidence of the prosecution witnesses in this case, I observe that the evidence led by the prosecution in their attempt to prove the elements of the offence as set out in detail above, is corroborative in nature and no major or material contradictions exist. I therefore will proceed to accept the evidence of the prosecution as it stands corroborated by independent medical evidence.

[32] However, when one considers the evidence of the accused in defence, Learned Counsel for the prosecution in cross examination has pointed out several omissions in her evidence as against her statement under caution. It is apparent from these many omissions that the accused in her evidence under oath in Court, is attempting to play down her gross negligence by stating that the baby was crying and therefore recovering when he was taken to the hospital and that it was only thereafter, he became worse in an attempt to palm the blame on others and dilute her liability. Learned Counsel on her behalf elicited from witnesses that there were no external injuries on child this was irrelevant as at no stage was the prosecution attempting to prove that death was as a result of the child being physically abused or by an unlawful act. No doubt the child was big for his age as borne out by the evidence of the doctors but this was not a contributory factor to his death that day. For the said reasons I reject the defence.

[33] For all the aforementioned reasons, I am satisfied that the prosecution has proved beyond reasonable doubt all the elements of the offence of manslaughter as set out in the charge in Count 1. I proceed to find the accused B R guilty as charged and convict her of same.

Signed, dated and delivered at Ile du Port on 14 March 2018

M Burhan

## **Judge of the Supreme Court**