



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No 46 of 2014

BETWEEN THE REPUBLIC

And SEREIMA NAMATA **DEFENDANT**

Before: Khan J
For the Prosecution Mr L Sovau
For the Accused Mr J Rabuku and Ms A Lekanaua

Date of Hearing: 4 & 5 November 2014
Date of Judgement: 6 November 2014

CATCHWORDS:

Criminal Law – Manslaughter Charge s. 303 and s. 310 of the Criminal Code – Defendant a nurse and midwife at RON hospital – after baby's birth Defendant vaccinated baby – by mistake injected insulin – baby died within 8 hours of birth – no post mortem conducted – Death certificate stated that death is a result of asphyxia and aspiration – cause of death not proved beyond all reasonable doubt – Defendant found not guilty.

JUDGEMENT

1. The Defendant is charged with 1 count of manslaughter contrary to section 303 and 310 of the Criminal Code, Cap 17. The particulars of the offence are that the Defendant on 30 August 2013 at Nauru unlawfully killed an unnamed male infant (baby) of Rosen June Menke.

2. At the material time the defendant was employed as a nurse and midwife at RON hospital (Hospital). She is from Fiji and had nursing training in Fiji and worked there for a number of years and came to Nauru in November 2011.
3. The defendant worked with nurses from Fiji. Her immediate superior was Losena Tuira (Losena) also a nurse and midwife. She was the ward manager at the maternity unit at the hospital. Amongst others her colleagues were Makalesi Senikabuta (Makalesi) and Manuqalo Tagiveitaua (Manuqalo). Both are nurses and midwives.
4. During the period 2 August 2013 to 10 September 2013, 20 babies were born in the maternity unit and the defendant delivered some babies as a midwife and she also assisted her colleagues in the delivery of other babies.
5. Upon delivery of the babies they are vaccinated with 2 vaccines and a vitamin namely:
 - I. BCG to prevent TB;
 - II. HEPVAX to prevent Hepatitis B (HBV) and
 - III. KENAKION (vitamin K to help the clotting process of the blood).
6. The defendant was entrusted the task of giving vaccines to the 0 out of the 20 babies born between the periods 2 August 2013 to 10 September 2013.
7. The baby in relation to this charge was born through normal delivery on 30 August 2013 at around 12:00 noon to Rosen June Menke (Rosen) of Denig District. The midwife was Losena and the defendant assisted in the delivery. The baby was born healthy.
8. After the delivery the baby's mother Rosen was attended to by Losena, whilst the defendant took the baby to the nursery to weigh measure and bathe him. Thereafter the defendant vaccinated the baby.
9. After immunization the baby was taken back this mother and she breast fed him. The baby stayed with her till about 1:30pm when he was taken back to the nursery when he did his initial toilet and cord was treated and he was again taken back to the mother to be breast fed.
10. At 6:50pm a relative called out to Makalesi and told her that Rosen was calling for her. She immediately attended to her and the baby. Her notes state that: "The baby was held by mum, dusky looking and gasping". She took the baby to the nursery and

sucked out the fluid (milk) from her mouth. She thereafter started to do ambubagging. Her note states that the baby's blood sugar level was low. She asked the dietician to call for Dr. Maribeth Cagiungin (Dr. Maribeth)".

11. Dr. Maribeth came over at around 7:05pm and took over the ambubagging and resuscitation of the baby. She performed auscultation by using a stethoscope to check the heartbeat of the baby and she did not hear any heart beats. She also carried out chest compression. She called for Dr. Peter Auso (Dr. Peter) the paediatrician and he arrived and attempts to revive the baby were not successful. He pronounced that the baby was dead at 7:30pm.
12. Dr. Peter's record states that the possible causes of death were:
 - I. Hypoglycaemia (BSL – Low sugar level – duration of hypoglycaemia - ??)
 - II. Possible milk aspiration causing respiratory failure.
13. No post-mortem was performed on the baby and a death certificate was issued by Dr. Peter wherein it is stated that the cause of death were:
 - I. Asphyxia (approximate interval between onset and death was 40 min)
 - II. Aspiration (milk)
 - III. Hypoglycaemia (approximate interval between onset and death was 40 min)
14. The defendant continued to work at the hospital. There was a high incidence of symptoms of hypoglycaemia in the new born babies and all the nurses were very concerned. Makalesi did an audit of the vaccines stored in the fridge and she found that insulin was there as well. On 12 September 2013 she informed Losena that there was a discrepancy in the audit. Her finding was that the 10 babies who had symptoms of Hypoglycaemia were not getting HBV.
15. As a result of Makalesi's finding Losena checked the book in which records were made of all vaccines that are administered and she also cross checked with the hospital folders. She also consulted Dr. Peter after which she approached the defendant on the afternoon of 12 September 2013 at around 4pm and asked her as to what HBV was she giving to the babies. The defendant replied she was giving multi dose HBV and she was told that HBV multi dose stopped on 2 June 2013. The defendant then told her that she must be giving the babies insulin isophane. As a result Losena informed the Director of Nursing and an investigative panel was set up on 12 September 2013 comprising of the following members:
 - I. Acting Secretary for Health – Dr. Seta Vatucaawaqa (chair)
 - II. Director Medical Services – Dr. Alaniu Tangitau

- III. Director Nursing – Mrs. Gano Mwareow
- IV. Assistant Director Public Health and Disease Control – Dr. Samu Korovou

Losena, Dr. Peter and the defendant were also called to the panel to provide further information.

16. At the enquiry the defendant admitted that she thought insulin vial was HBV and she again admitted that she injected the 10 babies with insulin isophane. The defendant was suspended from her duties after the investigation on 12 September 2013 and she is still on suspension.
17. The only issue for determination by me is whether the defendant's act of injecting insulin isophane caused the death of the baby. The onus is on the prosecution to prove beyond all reasonable doubt that the death was caused as a result of the baby being injected with insulin.
18. In deciding this issue I shall refer to the following:
 - I. Firstly, I refer to the statement of agreed facts in which a statement of the baby's mother Rosen is attached dated 18 July 2014. In her statement she states:

"At around 6:30pm my baby cried again but this time the tone of his voice is different from his first cry, it is a weak cry. I picked him up and tried to breast feed him and he refused and then I noticed that his eyes are rolling back and I thought he was tired and wanted to be cuddled. I sat him up and smell his face and I noticed that he looked very pale instantly. So I sat him up and blew over his face, one of the mothers in my ward told me to call the nurse as it was what happened to her baby a couple of hours ago before she got really sick and was taken into the nursery for care. My younger sister called the nurse who came and took my baby and was asking me a lot of questions whether I fed my baby or burped him properly, it sounded that they are blaming me. I looked at my baby and the lips are now blue and the nurse took my baby into the nursery and they started resuscitating him, I knew then that something is wrong with my baby and that he is going to die".
 - II. Secondly I refer to the evidence of Makalesi where she stated as follows:

"Q. August 30 2013 were you rostered on duty. Do you recall the incident that happen to the baby of Rosen June Menke?

A. Yes

Q. What happened?

A. Started work after 5:00pm. There were 2 sick babies in the nursery. I checked on them and updated notes. A relative came to tell me that a mother

wanted to see me. I attended to the mother and saw that the baby was under stress and had difficulty breathing. Took baby to nursery, and placed baby in the warmer.

Q. What is a warmer?

A. It is an equipment where we do basic examination over the baby and it keeps baby warm. I suctioned the baby because there was fluid present in the mouth... ”

III. Thirdly I refer to the hospital notes of Dr. Peter after pronouncing the baby dead where he stated:

- Hypoglycaemia (BSL – Low sugar level – duration of hypoglycaemia - ??)
- Possible milk aspiration causing respiratory failure.

IV. I refer to the evidence of Dr. Maribeth where she stated:

Q. “What was the cause of death?

A. Leading cause of death was hypoglycaemia and asphyxia which is blockage of airway. Dr. Peter, wrote that immediate cause of death was blockage to the airway and the child was drinking the fluid went through to the air way instead of going through the correct tract it went through to the airway”.

In answer to the questions by me seeking clarification she stated:

Q. “Dr. if I understand you correctly, you say that asphyxia is related to aspiration – right?

A. Yes

Q. The two are quite connected?

A. Yes

Q. And aspiration can cause asphyxia if there is blockage in the system?

A. Yes

Q. The only way to ascertain as to whether there was aspiration is to do a post-mortem?

A. Yes

Q. There is no other way of establishing this?

A. Yes”

19. In light of my discussion in paragraph 18 above I find that the prosecution has not been able to prove that the defendant's act of injecting insulin isophane was the cause of death of the baby and I therefore find the defendant not guilty of the charge of manslaughter and I acquit the defendant.

DATED this 6th day of November 2014

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Mohammed S. Khan
Judge