

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY
THE 22ND DAY OF MARCH, 2023, BEFORE HER LADYSHIP ROSEMARY BAAH
TOSU (MRS)- HIGH COURT JUDGE SITTING AS AN ADDITIONAL CIRCUIT
COURT JUDGE**

COURT CASE NO: D18/10/2022

REPUBLIC

VS

DANIEL ACQUAH

.....
JUDGMENT
.....

Accused is charged with the following offences.

1. Careless and inconsiderate driving contrary to section 3 of the Road Traffic Act 683/ 2004 as amended by Act 761/08
2. Negligently Causing Harm contrary to section 72 of Act 29/60
3. Failing to attend to an injured person contrary to section 124(2)(A)(3) & (4) of Act 683/2004
4. Failing to report Motor Accident contrary to section 124(2)(C) & (4) of RTA 683 OF 2004 as amended by Act 761/08
5. Driving Motor Vehicle without licence contrary to section 53(1) and (2) of Act 683/04 as amended by Act 761/08
6. Driving an uninsured Motor Vehicle contrary to section 1(2) of the Motor Vehicles (Third Party Insurance) Act 42 of 1958.

FACTS

Per the Prosecution, on the 12th September, 2021, at about 10:30pm, Accused was the driver in charge of a Chevrolet Matiz car with registration number GC 1417-21 going from Danquah Circle towards Labone.

A few metres from the U turn after Danquah Circle and just in front of the Purple Pub, Accused knocked down NO. 42120 G/CPL, Robert Asare. The deceased was a

service driver at Osu Police Station and was crossing the road from the offside edge to the central reservation whilst in civilian attire.

Accused, instead of assisting deceased, sped off and later abandoned the vehicle at a different place. The victim was rushed to hospital and pronounced dead. Investigations were conducted to ascertain the owner of the vehicle. Accused was then arrested and charged with the various offences.

Accused has been called upon to open his defence after this Court ruled that the Prosecution has made out a prima facie case against him on all charges.

On the burden on the accused, the court held in **Commissioner of Police v. Antwi [1961] GLR 408**, that

“The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything. If he can merely raise a reasonable doubt as to his guilt he must be acquitted.”

Prosecution called only one witness, PW Sergeant Sarah Okyere as PW1. Her evidence is that the Cantonments MTTD on the 12th September, 2021 was notified that a male adult had been knocked down at Danquah Circle in front of Purple Pub. At the scene she found, the victim, G/Corporal Robert Asare, lying on the edge of the road with cuts all over his body. He was rushed to the hospital but pronounced dead shortly after.

According to her, Accused person refused to stop after the incident and sped off. Initially, Accused denied the offence, however, upon being arraigned at the District Court, he admitted being the one in charge of the vehicle.

PW1 tendered in the following documents in evidence

1. Exhibit A- Investigation Cautioned Statement
2. Exhibit B- Further Cautioned Statement
3. Exhibit C- Driver and Vehicle Licensing Authority Report
4. Exhibit D- Sketch of Accident scene
5. Exhibit E- Autopsy
6. Exhibit F- Charge Statement

THE DEFENCE

Accused testified in his own defence but did not call any witness in support of his case. He testified that on the day in question he drove from Labadi to Danquah Circle between 9pm to 10pm. He gave evidence that at a place called Purple Pub, he knocked down a pedestrian, however, due to fear of the reaction of passers-by, he drove about 400 meters away from the scene before he stopped.

Accused says that upon returning to the scene of the incident, he noticed that there were plenty persons gathered there. He then went back to where he parked his vehicle but the Police had towed it away.

Accused denies that he drove carelessly, he says that it was rather the victim who was drunk. Accused says that there was a gutter between the Purple Pub and a place called Africa. Accused says since he was near the gutter and victim was close by, standing, he monitored victim. Just as he was about to move, the victim suddenly crossed the road. Accused says that he tried to dodge but deceased still crossed the road and he was hit.

Accused admits that he did not have a licence to drive because the license was still being processed. Accused also admits that his vehicle was not insured at the time of the incident

THE CHARGES AGAINST ACCUSED

Accused is firstly charged with Careless and Inconsiderate Driving under section 3 of the Road Traffic Act 2004 (Act 683) as amended by Act 761/08. It provides as follows

“ A person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road commits an offence and is liable on summary conviction to a fine not exceeding 2000 penalty units or to a term of imprisonment not exceeding five years or to both.”

In his book, Contemporary Criminal Law in Ghana, Justice Dennis Dominic Appiah states at page 576

“ A person who drives without due care and attention or without reasonable consideration for other road users commits careless and inconsiderate driving. Careless and inconsiderate driving are two offences which have been put together as one offence. Careless driving means driving without due care and attention....inconsiderate driving on the other hand means the driver drove in such a

manner that inconvenienced other road users including passengers on board the vehicle. In determining what amounts to inconsiderate driving, the Courts are to consider the driving and other conduct which may be said to be inconsiderate"

In **Owusu v. Commissioner of Police [1963] 1 GLR 113**, the Supreme Court said *"The general principle of law governing road traffic is that it is the duty of all road users at all times to keep a look-out so as to avoid collision with other road users."*

Thus, it is only when the various road users apply themselves to the accepted road traffic rules and regulations that they can perform their primary duty to one another as espoused by the Supreme Court above.

From the Highway Code, a driver or cyclist is generally required to use the road with due care and attention and with reasonable consideration for other road users. They must not drive or ride recklessly or at a speed or in a manner which is dangerous to the public. A driver must be in a position that he can exercise proper control over the vehicle and retain a full view of the road and traffic ahead. A driver must also observe speed limits. When it is dark, a driver must drive in a manner that he can stop well within the distance that he sees in his headlamp to be clear ahead.

The question is whether Accused drove with such due care and attention to other road users. In his evidence in chief, Accused denies driving carelessly and shifts the blame unto the deceased victim. Accused claimed that deceased was drunk.

The authorities are however clear on evidence led against a dead person. The position of the law is that a court must be cautious in accepting without scrutiny such evidence against the deceased who cannot respond to the allegation. In both exhibits A and B, cautioned and further cautioned statements, Accused never mentioned that the victim was drunk, and of course he could not have. Accused never interacted with the deceased. Accused evidence is obviously an afterthought which I reject.

It is also without controversy that the speed limit in areas such as Osu, where the incident occurred is 50 km per hour, if Accused as a reasonable driver complied with the speed limit, his vehicle would not have suffered such damage and the extent of injuries on deceased victim would not be fatal. Exhibit C, which is the accident report shows that Accused person's vehicle suffered the following damages, front bumper buckled and torn, nearside head lamp broken, near side front fender crumpled, near side door pillar rammed and front windscreen damage.

Exhibit E, the autopsy report also show that the deceased died of crashed chest injuries consistent with the damage caused to the said vehicle.

After considering the evidence led by both Prosecution and Defence, I find that Prosecution has proved the charge of Careless and Inconsiderate Driving beyond a reasonable doubt. Accused is hereby convicted on Count 1.

Accused is secondly charged with Negligently Causing Harm contrary to section 72 of Act 29/60 which provides

“A person who negligently and unlawfully causes harm to any other person commits a misdemeanor”.

Negligence is said to be the failure to take reasonable care to avoid causing injury or loss to another person. Negligence is also any conduct which is wanting in skill and care as reasonably necessary under the circumstances.

A breach of driving regulations may constitute prima facie evidence of careless or negligent driving. In cases of negligence, the principle of res ipsa (the thing speaks for itself) applies. This is a rule of evidence which raises a presumption of negligence. Such a presumption comes into play when the circumstances can only be explained by the Accused. The burden then falls on Accused to show that the accident was not due to his negligence.

In Accused person's evidence in chief, he states that he saw the victim about to cross the road. In exhibit D, the distance at which Accused spotted the victim about to cross the road is long enough for Accused to have exercised caution. If Accused had been driving within accepted speed he should have avoided the collision.

Again, in considering exhibit D, the point of impact and where the victim fell after being hit, shows that the Accused was speeding, had Accused not been speeding the impact would not have been so great. I find that prosecution has proved beyond reasonable doubt that Accused drove without due care and attention, was negligent and thus caused harm, this case a fatal one to the victim.

Accused is next charged with the offence of Failing to attend to an injured person contrary to section 124(2)(A)(3) & (4) of Act 683/2004

Section 124(2)(a) (3&4) of Act 684 provides

(2) Where an accident occurs as under subsection (1) the driver of the motor vehicle shall

(b). where a person to whom injury has been caused so requests, or if the person is unconscious or if the injury caused to that person appears to endanger life,

attend to the injured person, to procure for the person's medical attention and to procure, where necessary, the person's removal to a hospital.

Accused is also charged with Failing to report Motor Accident contrary to section 124(2)(C) & (4) of RTA 683 of 2004 as amended by Act 761/08

Section 124(2) C of the RTA 683 of provides

(c). In every case report the accident to a police station as soon as reasonably practicable, and in any case where the accident occurred in a municipal area so report within twenty-four hours of the occurrence of the accident, or in any other case so report within twenty-four to forty eight hours of the accident.

Accused is also charged with Driving Motor Vehicle without licence contrary to section 53(1) and (2) of Act 683/04 as amended by Act 761/08

Section 53(1) of Act 683/04 as amended provides

(1) Except as otherwise provided in this Act, a person shall not drive a motor vehicle of any description or class on a road unless that person is a holder of a driving licence authorizing the person to drive a motor vehicle of that description or class.

Finally Accused is charged with Driving an uninsured Motor Vehicle contrary to section 1(2) of the Motor Vehicles (Third Party Insurance) Act 42 of 1958.

Section 1(2) of the Motor Vehicles (Third Party Insurance) Act 42 of 1958 provides

(1). Subject to this Act, a person shall not use or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of that motor vehicle by that person or the other person, a policy of insurance or security in respect of third party risks which complies with this Act.

The sections which I have just read above, are preferable to the charges brought against Accused in this matter, thus counts 3, 4, 5 and 6. Accused has both in his further cautioned statement exhibit B and his evidence on oath before this Court not denied these particular charges.

The further cautioned statement, exhibit B, at least in respect of the above mentioned charges is a confession statement.

A confession is defined as a statement by a suspect which when taken together with other facts and circumstances constitutes an admission of the commission or

participation in the commission of an offence. Such a statement, though hearsay is admissible if it is found to be voluntary and the requirements of an independent witness are complied with.

Section 120(1) of NRCD 323 provides

'in a criminal action, evidence of a hearsay statement made by an accused admitting matter which

- a. Constitutes; or*
- b. Forms an essential part of; or*
- c. Taken together with other information already disclosed by him is a basis for an inference of,*

the commission of a crime for which he is being tried in the action is not admissible against him unless the statement was made voluntarily.'

Exhibit B was admitted into evidence without objection from Accused and even under cross-examination Accused went ahead to confirm same. I therefore find that exhibit B which is Accused person's further cautioned statement to the Police is a confession statement and it was voluntarily given.

I therefore conclude that prosecution has proved Counts 3, 4, 5 and 6 against Accused person beyond reasonable doubt. Accused is hereby convicted on counts 3,4,5 and 6.

I find that prosecution has proved the guilt of Accused person beyond reasonable doubt on all six charges against him and Accused is accordingly convicted.

Upon consideration of Accused person's plea in mitigation I sentence him as follows

1. On count one, I sentence Accused to pay a fine of 250 penalty units, in default 12 months in prison custody in hard labour.
2. On Count two, I sentence Accused to pay a fine of 250 penalty units in default 12 months in prison custody IHL
3. On count 3, I sentence Accused to a fine of 100 penalty units in default Accused will serve 6 months in prison custody
4. On Count 4, I sentence Accused to pay a fine of 100 penalty units in default Accused will serve 6 months in prison custody.

5. On count 5, I sentence Accused to pay a fine 100 penalty units in default will serve 6 months in prison custody.
6. On count 6, I sentence Accused to a fine of 100 penalty units in default 6 months in prison custody.

Sentences are to run consecutively,

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**

REPRESENTATION

Accused present

DSP Kesse for Republic present