

IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 24<sup>TH</sup> DAY OF  
NOVEMBER 2022 BEFORE HER HONOUR GWENDOLYN MILLICENT OWUSU  
ESQ., CIRCUIT JUDGE

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26/2020

THE REPUBLIC  
VRS  
FLORENCE OSEI

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PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI  
ACCUSED PERSON SELF REPRESENTING

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### JUDGMENT

The accused was arraigned before the court on a charge of dangerous driving contrary to section 1 (c) of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761).

The particulars of the offence as presented by the prosecution are that, at about 1330 hours on 20/01/2019, accused, then in charge of a Toyota Corolla saloon car with registration number GE 9905 – 13, did drive the said vehicle dangerously and knocked down one Vincent Helegbe, aged five (5) years at Tega in the Ashanti Circuit and within the jurisdiction of this court who died shortly on arrival at the Tega Government Hospital.

The accused pleaded not guilty to the charge.

The brief facts of prosecution's case are that, on 20<sup>th</sup> January, 2019 at about 1:30pm, accused driver Florence Osei was in charge Toyota Corolla Saloon car with registration

number GE 9905-13 with two persons on board driving from Tewa Township to Duayaw-Nkwanta of Ahafo Region of Ghana. On reaching a section of the road at Tewa Senior High School main gate, accused knocked down pedestrian; Vincent Helegbe aged 5 years who was crossing the road from the nearside to the off side of the road. He sustained serious injuries and was rushed to Tewa Government Hospital for treatment but died shortly on arrival. The body was deposited at same hospital mortuary where autopsy was conducted on the body, later. After investigations, duplicate docket was sent to Attorney General's Office Kumasi, for advice. On 12/09/2019 same was received advising that accused be charged with the offence mentioned on the charge sheet to appear before this honorable court.

Section 1 (c) of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761) states: "A person who drives a motor vehicle dangerously on a road commits an offence and is liable on summary conviction where death occurs to a person other than the driver to a term of imprisonment of not less than three (3) years and not more than seven (7) years".

Section 2 of the Act says,

"(1) For the purposes of section 1, a person drives dangerously if

(a) the way that person drives falls below what is expected of a competent and careful driver, or

(b) it is obvious to a competent and careful driver that it would be dangerous driving the vehicle

(i) in that manner, or

(ii) in its current state.

(2) In determining what is expected of, or obvious to, a competent and careful driver in any particular case, regard shall be had to

(a) the circumstances of which the accused could be expected to be aware,

(b) any circumstances shown to have been within the knowledge of the accused, and

(c) the conditions of the road at the relevant time.

(3) in determining for the purpose of subsection (1) the state of a motor vehicle, regard may be had to anything attached to or carried on or in it and the manner in which it is attached or carried.

The laws of our country, per **Article 19 (2) (c) of the 1992 Constitution** provides:

*“A person charged with a criminal offence shall be presumed to be innocent until he is proved or had pleaded guilty”.*

Thus, when a person is charged with a criminal offence, and the person does not plead guilty, the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt.

**Section 11(2) of the Evidence Act 1975, (NRCD 323)** provides that, “In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt”.

The prosecution, in order to succeed, will have to prove that

1. The way the accused drove fell below what is expected of a competent and careful driver;

2. Any competent and careful driver ought to know that it would be dangerous driving the car in that manner; and/or
3. It would be dangerous driving the car in that state.
4. The said state or manner of driving caused the death of someone other than the driver of the vehicle

## PROSECUTION'S CASE

The prosecution called only one witness, the investigator. The case of the prosecution, put succinctly is that, if the accused had observed the requisite speed limit, the accident could have been avoided. In *Gligah and Anor v. The Republic* [2010] SCGLR 870, the Supreme Court held that "in establishing the standard of proof required in a civil or criminal trial, it was not the quantity of witnesses that a party who had the burden of proof called to testify that was important, but the quality of the evidence called and whether at the end of the day, the witnesses called by the party had succeeded in proving the ingredients required in proving a particular case." At the close of prosecution's case, the court ruled that a prima facie case had been made for the accused to answer.

The well settled law is that, at the end of the case for the prosecution, only a prima facie case can be made against the accused. This principle was well articulated in the case of *The State v Sowah and Essel* [1961] GLR 743 where it was held at page 745 that: "It is wrong therefore to presume the guilt of an accused merely from the facts proved by the prosecution. The case for the prosecution provides prima facie evidence from which the guilt of the accused may be presumed, and which therefore calls for an explanation by the accused". The accused was thus called upon to open her defence. It is trite learning that the accused, under the law, is not required to prove anything in her defence. She is only required to raise a reasonable doubt.

## THE DEFENCE OF THE ACCUSED

The accused in her testimony states that her car was in perfectly good condition, she was driving with full concentration, and was neither speeding nor driving recklessly. She also says she was driving within a speed limit of 30KM/H. Per her testimony, she did not see the victim by the road, or getting ready to cross the road but the victim, unaccompanied, and appearing from nowhere suddenly crossed the road and got hit by her car. According to her, it was so sudden that it was not possible for her to apply the brakes or bring the car to an abrupt halt. The victim was rushed to the Tepa Government Hospital, and she proceeded to the Police station to report the accident. The witness she called simply corroborated her story without more.

## ANALYSIS OF THE EVIDENCE ON RECORD

Exhibit 'F2' states the cause of death of the victim to be head injury from the road traffic accident. The victim was a five (5) year old boy who was crossing the road at a section of the road just around the entrance of the Tepa Senior High School. That is a section of the road that is usually very busy. The victim, who should not be crossing any road, be it busy or otherwise unattended, was crossing at about 1330 hours, not supervised or attended by any adult. It is worthy of note that the advice from the office of the Attorney-General directed that the mother of the victim be charged with exposing the child to danger contrary to section 6 of the Children's Act, 1998, (Act 560) but prosecution could not locate any of the victim's parents because his investigations revealed that they had relocated to somewhere in the Volta Region. It would appear from the facts and the circumstances on record that the parents of the victim left the jurisdiction to escape being punished by the law for their role of neglecting their duty of care towards their five-year

old son. From the testimony of the investigator, the mother of the victim was warned and admitted to Police enquiry bail but when she was to be charged and processed for court, her husband who stood as surety was contacted and he failed to produce her. According to the investigator, he did his investigations to ascertain their whereabouts, and it was revealed that they have moved from here to the Volta Region. However, prosecution's position is that, had the accused been mindful of the speed limit in such a built-up area, the accident could have been avoided. Accused contends that she was driving within the required speed limit:

Q. You agree with me that when the alleged incident happened, you were not there at the spot

A Yes

Q. In fact, your witness statement shows that you went to the hospital and interacted with the doctor?

A Yes

Q. Subsequently, did you visit the scene of the alleged incident?

A Yes

Q. You have tendered in evidence a sketch of the alleged incident, Exhibit 'H'. How did you come about Exhibit 'H'?

A I took the accused to the scene and the sketch was drawn

Q. From the time the incident was reported to you up to the time you allegedly went to the scene, in your estimation, how much time did it take?

A It was 3 days. The accident happened on 20<sup>th</sup> and we did the sketch on 23<sup>rd</sup>

Q. And your sketch mainly had to do with positions of victim, vehicle, and the like

A Yes

Q. By the time you got to the scene in 3 days, significant changes would have taken place.  
I am putting it to you

A No. The accused could not even tell me the position of the victim. It was one of the witnesses who pointed the position of the child before the sketch was made

Q. So all the information you used in sketching Exhibit 'H' is based on what you were told by others

A Yes. Accused was present at the time of drawing the sketch. Because she did not tell the actual position of the victim, I had to depend on witnesses who were present

Q. From your own charge sheets, the facts as well as the witness statement, the age of the victim is five (5) years. Is that correct?

A Yes

Q. In your work as an MTTD officer, you know there are rules and regulations for pedestrians with regards to the proper way of crossing road

A Yes

Q. You agree with me that a child of 5 years does not know or appreciate the said rules

A Yes

Q. Per the said rules, a child of 5 years crossing the road should be accompanied, you will agree with me?

A Yes

Q. I put it to you that the victim in this case, who was crossing the road, was unaccompanied

A Yes

Q. He was therefore loitering about in the road

A Yes

Q. Finally, I put it to you that the accused person was not careless, and was not negligent

A I will say yes, with some explanation. As he is saying I was not there, he was also not there. In town, we have a speed limit. If the driver were to be driving at the prescribed speed limit, I do not think the accident would have occurred.

Q. I put it to you that you do not know the speed at which the driver was driving

A Yes. I cannot actually tell the speed she was driving but if in town, as a driver, we have 30km per hour and if accused were to be driving at that speed, I do not think the accident will occur.

The star/only witness of prosecution 'thinks' that if the accused were to be driving within the prescribed speed limit, the accident would not have occurred, but where the freedom and liberty of an accused person is at stake, there should be no room for speculation. Exhibit 'H' is a sketch of the accident scene. Per the said exhibit, point A to B represents the width of the road, and measures 7.20 metres. The point of impact (POI) to point E, the near side of the school junction measured 1.70 metres. The POI to point C, the resultant position of the victim was measured to be 24.0 metres; and the POI to point D representing where the accused finally stopped the car was measured to be 40.85 metres. Can the court rely on the information contained in exhibit 'H'? In other words, what probative value can the court attach to the said exhibit? According to the investigator, the case was referred to him the same day the incident occurred. The accused after reporting the incident to the police was kept in custody until the following day when she was admitted to police enquiry bail. However, she was not taken to the scene to assist in



marking the various positions to enable exhibit 'H' to be prepared. The accident occurred on 20/01/19 but she was taken to the scene on 23/01/19 to identify the various positions and when she could not, the investigator took solace in relying on positions pointed out by a supposed witness who never appeared as a witness on record, to prepare the said exhibit 'H'. What weight can the court put on such evidence? How vivid or accurate is the recollection of the said witness' account of the incident? During the cross-examination of the accused and her witness by the prosecution, prosecution contended that the accused was not observing the speed limit, and accused was engrossed in a conversation with co-occupants of the vehicle and consequently was not paying heed to the road. The court is of the view that these are purely speculative suppositions which cannot be supported by the evidence on record. (A five-year old boy crossing the road at a built-up area can go unnoticed due to the hustle and bustle in the vicinity). Per the testimony of the investigator, the vehicle of the accused was taken for testing at the DVLA offices at Goaso, and the report confirmed that the brakes, steering, and electrical systems were in good working order before the accident.

Our law is that, it shall be the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt; meaning the prosecution has the burden to lead sufficient and admissible evidence such that on an assessment of the totality of the evidence adduced in Court, including that led by the accused person, the Court will believe beyond reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, it is trite learning that throughout a criminal trial the burden of proving the guilt of the accused person remain with the prosecution. Consequently, any doubt in the case of the prosecution should inure to the benefit of the accused.

CONCLUSION

From the facts, the evidence on record, the relevant law, and taking into consideration the circumstances of which the accused could be expected to be aware, as well as any circumstances shown to have been within the knowledge of the accused, this court holds that the prosecution has failed to prove beyond reasonable doubt, that the way the accused person drove fell below what is expected of a competent and careful driver; or that she drove in a manner or state that would be obvious to a competent and careful driver that it would be dangerous driving the vehicle in the said manner or state. In the case of *The Republic v Adamu* [1961] GLR 91, the Court of Appeal stated at page 95 that “where the evidence of the prosecution is so inconsistent as to ‘contain seeds of their own destruction,’ the accused cannot be convicted.” This court therefore holds that the accused is not guilty, and is hereby acquitted.

**SGD**

**H/H GWENDOLYN MILLICENT**

**(CIRCUIT**

**OWUSU  
JUDGE)**

