IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 13TH DAY OF APRIL 2023 BEFORE HER LADYSHIP JUSTICE GWENDOLYN MILLICENT OWUSU, A JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL CIRCUIT JUDGE

07/2022

THE REPUBLIC

VRS

AWUNI DANIEL

PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI

ACCUSED PERSON PRESENT AND SELF REPRESENTING

JUDGMENT

The accused was arraigned before this court on three (3) counts to wit:

1. Careless and inconsiderate driving: Section 3 of RTA 683/04 as amended by Act 761/2008.
2. Driving without road users certificate: Section 94[1] [a] of RTA 683/2004.
3. Driving without insurance: Section 125 [1] of RTA 683/2004

The accused pleaded guilty with explanation to all three (3) counts.

The brief facts of prosecution's case are that, On 24/04/2021 at about 10:20am accused driver Awuni Daniel age 21 years was driving Opel Astra Taxi cab with registration number GW1428-V with three passengers on board from Twabidi to Tepa. On reaching Dwaho, he knocked down one Derrick Kwakye aged 3 years who was crossing the road from the nearside to the offside. He sustained injuries and was rushed to Tepa

Government hospital for treatment but died shortly on arrival. The body was deposited at same hospital mortuary for preservation and autopsy. After investigations, duplicate case docket was forwarded to Attorney General's Office Kumasi for advice and same was received instructing that accused be charged with the offences mentioned on the charge sheet to appear before this court.

After the brief facts of prosecution's case was read and translated into twi, the language of choice of the accused, the court invited the accused to give his explanations to the court. The court, after the explanations given by the accused person entered a plea of "not guilty" on count one. The test is not whether the court believes the accused or not, but rather, whether the explanations of the accused discloses a possible defence which if proved at the end of trial, may exonerate the accused. The court also entered a plea of "guilty" for the accused on counts two and three respectively because nothing in the explanations given will amount to a defence to the two charges if proved at the end of trial. The court thus convicted the accused person on counts two and three but deferred sentencing due to the concurrent nature of the punishment. Prosecution is to file all the documents they intend to rely on in respect of count one to enable case Management Conference (CMC), and the accused was admitted to bail.

Section 3 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 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 two hundred penalty units or to a term of imprisonment not exceeding forty months or to both."

Section 94 (1) (a) of the **Road Traffic Act, 2004 (Act 683)** as amended by the **Road Traffic (Amendment) Act, 2008 (Act 761)** states: "1) A person shall not

(a) drive or use any motor vehicle on a road unless there is in force in respect of the motor vehicle a road use certificate provided for under this Act.

Subsection (2) says "a person who drives on a road or uses a motor vehicle in respect of which there is no valid road use certificate commits an offence and is liable on summary conviction to a fine not exceeding 25 penalty units or a term imprisonment not exceeding six weeks or to both."

Section 125 of the **Road Traffic Act, 2004 (Act 683)** as amended by the **Road Traffic (Amendment) Act, 2008 (Act 761)** states:

"(1) For the purpose of determining whether a motor vehicle was or was not being driven in contravention of this Act on any occasion when the driver was required to produce a certificate of insurance, or other evidence, the owner of the vehicle shall give such information as the owner may be required, by or on behalf of a senior police officer, to give.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty penalty units or to a term of imprisonment not exceeding eight months or to both."

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".

PROSECUTION'S CASE

The accused knocked down a three (3) year old boy who died as a result of the injuries sustained. Prosecution called only one witness, the investigator. During cross-examination, counsel sought to discredit exhibit "D", the sketch of the accident scene, without success. At the close of prosecution's case, the court ruled that a prima facie case has been made, and called on the accused to open his defence.

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 his defence. It is trite learning that the accused, under the law, is not required to prove anything in his defence. He is only required to raise a reasonable doubt.

THE DEFENCE OF THE ACCUSED

The accused in his defence concedes knocking down the three (3)-year old victim with his taxi cab which resulted in the death of the victim. He however contends that it is a twist of facts for any person to suggest that his driving which led to the incident was inconsiderate and careless. According to him and his witness, it was an accident resulting from the lack of due care, parental guidance, and better judgment on the part of the victim when he was crossing the road, because it could have been avoided had he been under the guidance and control of an adult.

ANALYSIS

The victim, a three (3) – year old is dead. He died as a result of being knocked down by a taxi cab driven by the accused. These are the facts, and they are uncontroverted. Under cross-examination when prosecution sought to point out to the accused that the incident could have been avoided, had he exercised due diligence and caution considering the circumstances prevailing at the time, accused denied same:

"**Q. You will also agree with me that the time you got to Dwaaho, there was a funeral on-going and many mourners were in town.**

A. That is correct. There was indeed a funeral but they had gone to the cemetery for the burial and were on their way back so they were not in my lane."

Accused probably forgot that before this very same court, on August 24, 2021 when he was giving his explanations after his plea, he himself had told this court the following account:

"Coming from Twabidi, on reaching Dwaaho, there was a burial and the mourners were returning from the cemetery. On the right side of the road, there were a lot of people, and on the left side cars had parked along the road. At that material moment, the child suddenly rushed from where the cars were parked onto the road so I swerved to the right but because there were a lot of people on the right side, I could not go further and the boy hit the right side of the car, the back of his head hitting the tarred road as he fell. I carried him to Manfo Hospital, and was referred to Tepa. He was dead when we arrived at Tepa. I was accompanied by the child's mother and uncle to Manfo Hospital but only the uncle

came with us to Tepa Hospital. Afterwards, we met with the family, and all costs levied by the family was paid by us."

This court will also not over-look the fact that the victim, a boy of three (3) years was attempting to cross the road without the assistance of an adult. This is contributory negligence on the part of whichever parent or guardian had charge of the boy at the time, but this does not absolve the accused of his responsibilities as a driver. Even when cattle are crossing, you need to halt your vehicle to wait for them to file past. If you consider yourself so skillful that you can manoeuver your way around, it is a risk you assume, and the consequences thereof.

Prosecution also tried to point out to the accused that he did not even become aware when he knocked down the victim but again, the accused denied:

"Q. I am putting it to you that at the time you knocked down the victim, you were not even aware that you had knocked down someone

A. That is not so.

Q. How did it come to your attention that you had knocked down a pedestrian?

A. When I was coming from Twabidi, victim emerged from a parked vehicle running to cross the road

Q. It was by-standers who shouted that you had knocked down a pedestrian so stop. I am putting it to you

A. That is not true"

However, this is the account of his own witness who was on board the vehicle at the time of the incident under cross-examination:

"Q. How did it come to the notice of the accused that he had knocked down a child?

A. When we got to the place, there was a car parked by the side of the road and the accused was driving past it. Shortly after, we saw the victim emerge from that parked vehicle unto the road and we heard shouts behind us saying "he has killed someone, he has killed someone" so we stopped. I got down to run because I have never beheld any such happening but was advised to sit in the car. It was the uncle of the victim who went to pick him up and joined us in the vehicle to bring him to the hospital."

Clearly, the accused came to court to mount his defence not minded to tell the court the truth. It is unfortunate that a child's life has been lost in the process, and the accused, only minded to save his own skin, has come to this court to mount a defence on deception. Exhibit "D" that counsel for the accused sought to discredit had been prepared using inputs from the accused himself. Per the said exhibit, accused had indicated where he got to and sighted the deceased victim. This very same exhibit also clearly shows that the accused person was not in his lane when he knocked down the victim, he was in the lane meant for vehicles coming from the opposite direction, and the explanation he had given to the court on August 24, 2021, quoted supra attests to these facts.

In Gyabaah v The Republic (1984-86) 2 GLR 461 CA, the Court of Appeal held that "the law was that a witness whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence could not be regarded as being of any importance in the light of his previous contradictory statement unless he was able to give a reasonable explanation for the contradiction". In **Munkaila v The Republic (1995-96) 1 GLR SC** Edward Wiredu JSC stated that "When an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up".

In **Regina v. Ojojo [1959] GLR 207**, the Court of Appeal stated at page 213:

"It is well settled law that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise a reasonable doubt in the minds of the jury. If the accused can raise only such a reasonable doubt he must be acquitted".

Considering the evidence before the court in its entirety, I find that the accused has not been able to raise a reasonable doubt as required by law. I therefore find the accused guilty as charged on count one, and convict him accordingly.

SENTENCE

The accused was at the prime age of twenty-one (21) years when the incident occurred. In **Haruna Vs. The Republic (1980) GLR 189-192** Taylor J (as he then was) stated at page 191 that "When young men have had their first brush with the law, it was essential in the interest of the reformative element in criminal justice that they be not sent to prison unless prison sentence was mandatory requirement." Similarly, in **Frimpong @ Iboman Vs. The Republic (2012) SCGLR 297**, the Apex Court observed that; "It is generally accepted that a first or young offender must normally be given a second opportunity to reform and play his/her role in the society as a useful and law abiding citizen. That is why it is desirable for a first or young offender to be treated differently when a court considers the sentence to be imposed on a first or young offender vis-à-vis a second or habitual offender."

Going by the Ghana Sentencing Guidelines, and considering all aggravating and mitigating factors, I hereby sentence the convict to a fine of two hundred (200) penalty units on count one, in default of which the convict will spend six (6) months in prison; a fine of twenty penalty units on count two, in default of which convict will spend one month in prison; and a fine of thirty (30) penalty units on count three, in default of which convict will serve six (6) weeks in prison. All three sentences run concurrently.

SGD

H/L JUSTICE GWENDOLYN MILLICENT OWUSU (JUSTICE OF THE HIGH COURT)