IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 13TH DAY OF APRIL 2022 BEFORE HER LADYSHIP JUSTICE GWENDOLYN MILLICENT OWUSU, A JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL CIRCUIT JUDGE

28/2022

THE REPUBLIC

VRS

YUSSIF ABUBAKAR

PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI

ACCUSED PERSON SELF REPRESENTING

JUDGMENT

The accused was arraigned before the court on a charge of dangerous cycling contrary to section 30 (1) of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761).

The particulars of the offence are that, the accused Abubakar Yussif, a rider aged forty-nine (49) years, on December 4, 2020, at about 1600 hours at Tepa Beposo in the Ashanti circuit and within the jurisdiction of this court, then being a rider in charge of Peugeot bicycle did ride the said bicycle dangerously and caused the death of Elder Daniel Asante, a motor rider.

The brief facts of prosecution's case are that, on 04/12/2020 at about 4:00pm suspect rider Abubakar Yussif aged 49 years was in charge of Peugeot bicycle riding from Tepa-Beposo

along Tepa-Bechem motor road. On reaching a section of the road at Top church junction, Tepa, the accused rider collided head-on with Haojin motor bike with registration number M-16-AS 3891 then ridden by Elder Daniel Asante aged 57 years who was riding from Abesewa heading towards Tepa Township. Both riders sustained injuries and were rushed to Tepa Government Hospital for treatment. Elder Daniel Asante was later referred to Komfo Anokye Teaching Hospital Kumasi for further treatment but died on 12/12/2020 whilst receiving treatment. The body of deceased was deposited at same hospital's mortuary for preservation and autopsy. After investigation, duplicate docket was forwarded to Attorney General's office Kumasi for advice. The docket was returned to the police with the advice that, accused rider Abubakar Yussif should be charged with the offence of Dangerous cycling. Accused rider Abubakar Yussif was re-arrested and charged with the offence on the charge sheet and brought before this honourable court.

The prosecution had the burden to prove that the accused person has indeed committed the offence he has been charged with. This is so because in our criminal law jurisprudence, it is the prosecution which carries the burden of proof, the standard of which is proof beyond reasonable doubt.

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, and if this so happens, the accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) states that

"*in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to the guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt*".

The accused has been charged with dangerous cycling under **section 30 (1) of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761)** as stated above. **Section 30 (2) of the Act** says a person is to be regarded as riding dangerously if

"(a) The way the person rides falls below what would be expected of a competent and careful cyclist; and

(b) It would be obvious to a competent and careful cyclist that riding in that manner would be dangerous".

The section also provides under **subsection 3** that "*dangerous includes danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which the cyclist could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused*."

Thus, the onus is on the prosecution to prove beyond reasonable doubt that the accused rode in such a manner that it falls below what would be expected of a competent and careful cyclist. The prosecution is also duty-bound to prove beyond reasonable doubt that it would be obvious to any competent and careful cyclist that riding in that manner would be dangerous.

The prosecution called their only witness (PW1), the investigator. The testimony of PW1, put succinctly is that, on December 4, 2020, the accused bicycle rider was riding from Tepa towards the direction of Bechem, and the deceased motor rider was also riding from the direction of Bechem towards Tepa, and both of them were involved in an accident at a place known as Top Church Junction. Both riders sustained injuries from the said accident and by the time PW1 arrived at the accident scene, they had been rushed to the

Tepa Government Hospital emergency ward, and both were receiving treatment. The motor rider was later transferred to Okomfo Anokye Teaching Hospital (KATH) for further treatment, where he passed away on December 17, 2020. He was 57 years old, according to the post mortem report. The accused bicycle rider, upon being discharged from the hospital, reported himself to the police and was arrested for investigations, and was admitted to police enquiry bail, after a caution statement was obtained from him. The motor bike was sent for testing at the offices of the DVLA, Goaso, and the report indicated that the steering, brakes, and the electrical systems were all in good working order. At the close of their investigations, a duplicate docket was sent to the office of the Attorney-General for advice and they received instructions to charge the accused bicycle rider for the offence of dangerous driving. At the end of the evidence-in-chief of PW1, accused was asked to cross-examine the witness:

Q. In their particulars, they had stated that I had ridden the bicycle dangerously, I do not understand that.

A I was not there when the accident occurred but the accident occurred in the lane of the motor bike.

Accused: That will be all

Prosecution had no re-examination, and this was how prosecution closed their case. At the close of prosecution's case, the court ruled that a prima facie case had been made for the accused to answer, and called on the accused to open his defence.

The accused in his defence stated that, he did not intentionally ride on the left side of the road but it was because the right shoulder was not favourable for riding. He stated that he had once been knocked down by a vehicle from behind when he was riding on the right shoulder of the road, in the same direction of vehicular movement, and in order not to encounter a similar fate, he decided not to ride on the left shoulder of the road on

getting to that point of the road which is in a bad state; and that what happened on that fateful day was purely accidental, because he did not ride dangerously as stated on the charge sheet.

In our criminal jurisprudence, the basic principle as enshrined in **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*".

Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt 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.

Thus, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him/her, he is generally not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the Court as to the commission of the offence and his/her complicity in it except where he/she relies on statutory or special defence.

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".

Section 15(1) of the Evidence Act, 1975 (NRCD 323) also provides that "*Unless and until it is shifted, the party claiming that a person is guilty of crime or wrongdoing has the burden of persuasion on that issue".*

In the case of **COP v Antwi [1961] GLR 408** the Court held that "the fundamental principles underlying the rule of law are that the burden 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"

It is with these principles in mind that this Court will consider the present case before it and examine the evidence to determine whether the charge against the accused is supported.

Under the **Evidence Act 1975 (NRCD 323)**, what is called the burden of proof has two elements, namely; the burden of persuasion and the burden of producing evidence. The two are not the same. The burden of persuasion as provided in section 10 of the Act involves the establishment of a requisite degree of belief concerning a fact in the mind of the Court or a party raises a reasonable doubt concerning the existence or non-existence of a fact or that the party establishes the existence, or non-existence of a fact.

However the burden of producing evidence as defined in section 11 of the Act obligates a party to introduce sufficient evidence, to avoid a ruling against him on the issue. And in criminal cases, a party that bears the burden is the prosecution, so the prosecution must produce sufficient evidence so that, on all the evidence, a reasonable mind, which is the Court, will find the existence of the fact beyond a reasonable doubt.

As regards the accused, all that is required of him\her is to produce sufficient evidence so that the court will have a reasonable doubt as to his or her guilt. The sufficiency of the evidence is attained by taking all the evidence on record into consideration.

During cross-examination of PW1 by the accused, the accused had asked how he is deemed to have ridden dangerously, and the response from the only witness of the prosecution was that, "I was not there when the accident occurred but the accident occurred in the lane of the motor bike". The question then is, how did prosecution come to the conclusion that the accident occurred in the lane of the motor-bike when their only witness has categorically stated that he was not there when the accident occurred? The only evidence placed on record by the prosecution in respect of this that we can fall on, is exhibit 'D', a sketch showing the scene of the accident. It is not dated, so it is not known when the said sketch was made, considering that the accused rider himself was in hospital receiving treatment until December 14, 2020, when he reported to the police, and the deceased motor rider never left hospital and passed away. It however has a thumb print ascribed to 'suspect rider', and the signature of the investigator, PW1.

According to exhibit 'D', the head-on collision of both bicycle and motor bike actually occurred on the nearside of the road of vehicular direction of Bechem-towards-Tepa. The point of impact to the edge where the road actually begins is measured to be 1.60 metres, which means that the accident took place 1.60 metres off the road. It would appear from the evidence on record that the reason the prosecution has charged accused for dangerous driving is because according to them the accident happened in the lane of the motor rider. However, per exhibit 'D', the accident did not take place in the lane of the motor rider. In fact, both riders were not in their respective lanes, as they were both riding on the 'shoulders' of the road when they collided into each other.

For the offence of dangerous cycling, section 30 of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761) states:

(1) A person who rides a cycle dangerously on a road commits an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or to a term of imprisonment not exceeding 8 months or to both.

(2) For the purposes of subsection (1), a person is to be regarded as riding dangerously if

(a) the way the person rides falls below what would be expected of a competent and careful cyclist; and

(b) it would be obvious to a competent and careful cyclist that riding in that manner would be dangerous.

(3) In subsection (2) "dangerous" includes danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which the cyclist could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) Where a cycle track is provided alongside a road, a person riding a bicycle who fails to use the cycle track commits an offence and is liable on summary conviction to a fine of 25 penalty units or to imprisonment not exceeding one day.

The accused person in his defence said that he had once been knocked down by a vehicle from behind when he was riding on the right shoulder of the road, in the same direction of vehicular movement, and in order not to encounter a similar fate, he decided not to ride on the left shoulder of the road on getting to that point of the road which is in a bad state. This, the court finds unacceptable, because it is untenable under the law. A person cannot say that he opted to act contrary to the laid down laws and regulations simply because he had once encountered an accident while acting in accordance with the law. I am unable to accept the explanations given by the accused, neither do I find his explanations reasonably probable. Considering the evidence in its entirety, I am of the

view that the accused person failed to lead credible evidence to raise a reasonable doubt in the case of the prosecution against him as to his guilt as required under sections 11(3) and 13(2) of the Evidence Act, 1975, (NRCD 323).

CONCLUSION

At the end of the trial, this court is of the view that, it ought to have been obvious to the accused that riding in that manner, which in this case is a place such as he is not expected to ride would be dangerous. I reject the explanation offered by the accused person as being unacceptable and find him guilty as charged, and convict him accordingly.

SENTENCE

In deciding the sentence of the accused person, I have taken into consideration all the aggravating and mitigating factors in line with the Ghana Sentencing guidelines, and sentence the accused to a fine of eight (8) penalty units, in default of which the accused will serve one month in jail. The accused has a right of appeal, which right must be exercised three (3) months from date.

SGD

H/H GWENDOLYN MILLICENT OWUSU (CIRCUIT JUDGE)