CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 11TH JULY, 2023

SUIT NO. D14/02/22

THE REPUBLIC

VRS

YAKUBU ABDULAI

JUDGMENT

On the 28th day of February, 2023, at the close of prosecution's case and in line with the requirement of ***Section 173 of the Criminal and other Offences (Procedure Act), 1960, Act 30***, I determined that prosecution had established a prima facie case against the accused person herein on the charge of failure of a driver to stop, report accident and give information contrary to ***Section 124(a) of the Road Traffic Act, 2004 (Act 683)***.

Accused person was thus called upon to open his defence. An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. See the dictum of Korsah CJ in the case of ***Commissioner of Police v. Antwi (1961) GLR 408***.

Where the accused person is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611 and Section 11(2) and (3) of NRCD 323.***

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32***

In arriving at whether an accused person has raised a reasonable doubt, the court must undertake a three step procedure. That process begins with the court believing or accepting the explanation given by the accused, secondly where the courts finds that it disbelieves the explanation, it must find out whether although it disbelieves the explanation, it is reasonably probable. In both instances, the court must acquit and discharge the accused.

Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defense's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***Brempong II vrs. The Republic [1997-98] 1 GLR 467 and Tsatsu Tsikata vrs. The Republic [2003- 2004] SCGLR 1068***

Accused person testified alone in his defence and did not rely on any documentary evidence. His evidence to the court is that on the said date, time and place whilst driving on the very road mentioned by prosecution in its particulars of offence and evidence before this court, he was on the outer lane when he saw a red sprinter bus and a motor bike behind him.

That the red sprinter hit the motorbike rider from behind and the rider fell off into the rear of his (accused person's) vehicle. That he tried swerving but his tires run over the rider.

That he was descending from a hill and so could not immediately stop due to the heavy load he was carrying. That some motor riders chased him in anger as a result of this. That knowing about the police at Kpone barrier, he run to them and presented himself. He denied that he was stopped by the sprinter bus and said his truck never stopped until when he got to the Kpone barrier.

CONSIDERATION BY COURT

The accused person does not deny the case of prosecution that after his vehicle by a road accident injured the deceased, he failed to stop. He however seeks to explain his failure to stop as being due to the fact that he was descending a hill and carrying a heavy load in his vehicle. That is the fulcrum of his evidence in chief before this court.

He had insisted on this under cross examination when he answered at page 32 of the record of proceedings;

Q: I am further putting it to you that after hitting the deceased, you could have stopped to check but you failed to do so.

A: My lord, I was descending from a hill and the load I was carrying was heavy. I could not stop at the spot there.

Q: I am further putting it to you that it is never true that you were descending a hill.

A: It is true my lord.

Q: And even if that was the case, you could have stopped after you just descended to assist the victim.

A: My lord, when I could not stop at the scene, I saw the mob chasing me through the driving mirror and I knew there was police at the barrier there so I went and parked at the barrier.

As prosecution disputes that the accused person was descending a hill and accused persons' primary defence is that his failure to stop was due to the fact that he was descending the said hill whilst carrying a heavy load, one would have expected that he provide some form of evidence of the said hill and also of the load he was carrying. This expectation is particularly so as he was driving on a public road and from all indications that public road is still in existence.

A photograph of the said road taking from the direction in which the accused person was heading at the time of the accident would have sufficed as evidence of the nature of the road. Accused person failed to do any of this and simply kept on repeating his claim that he was descending a hill.

Although evidence is weighed but not counted and one witness's evidence may be sufficient to prove an event, a mere repetition of disputed evidence, no matter the number of times of the repetition, does not constitute evidence. Particularly so, as I did not find the evidence of the accused person worthy of belief.

Under cross examination, he took his own good time in answering questions as if to prevent himself from making a mistake. His answers appeared more of afterthoughts than his natural recollection of events.

On the second ground as to whether or not I find the evidence of accused person reasonable, I find that it is not. Reasonable people act in a reasonable manner and when a person has clearly seen that his vehicle has run over another person and caused him

fatal injury, one would expect the person to signal by either his driving hazard sign or his indicators that he intends to stop or move to the side of the road in order to possibly stop.

Accused person did not do any of these. He had kept driving on even after the driver of the sprinter vehicle had stopped him. I find the explanation by the accused person as to the reason for his continued driving: i.e to escape the mob of motor riders who were chasing after him not reasonably probable.

At page 31 of the record of proceedings, accused person had answered under cross examination.

Q: You see, the mob that you saw, did they beat the sprinter bus driver who first hit the deceased?

A: My lord, the sprinter bus driver drove away when the incident happened.

Q: I am putting it to you that he never drove away. He rather stopped you and indicated to you that your vehicle had run over a person.

A: That is not true my lord.

Q: Of which you ignored and drove off until you were chased by the motor riders.

A: My lord, he never stopped me.

I do not find the claim of accused person that the sprinter driver drove away after the incident to be reasonably probable based on his evidence before this Court. This is because if as he claims it was the driver of the Sprinter vehicle who had hit the deceased first before his (accused person's) tires run over the deceased, then one would reasonably expect that some of the very same mob of motor riders whom he says were

chasing him, would also chase after the driver of the Sprinter vehicle if indeed he had run away.

After all, accused person says the motor riders were chasing after him, who was driving a rather big truck in comparison with the sprinter bus. It would not be reasonable for them to chase after only the accused person and leave the driver of the sprinter bus to run away especially in the early parts of the morning when there is traffic congestion.

As the road lies within my jurisdiction, I take judicial notice that it experiences heavy vehicle traffic in the rush hours of the morning and evening. 8:20 am is certainly in the thick of rush hour where vehicles are unable to drive at top speed. Thus the motor riders could have chased the said driver of the sprinter vehicle if he had also run away as the accused person wants this court to believe.

The evidence on record does not raise any defence in favour of the accused person which he himself has not averted his mind to.

I find that I believe the case of prosecution that the said driver of the sprinter vehicle had stopped the accused to inform him of the accident even though the accused person from his own evidence had already seen same and kept driving and the accused person had ignored the driver of the sprinter vehicle to continue on his journey hence the chase by the motorbike riders.

As indicated in my ruling that prosecution had established a prima facie case against the accused person, the offence accused person has been charged with does not require him to only stop and report an accident to the police. Indeed, prior to reporting the accident to the police, he is required by law that because a personal injury had occurred

to the late Jacob Eshun and it was an injury which accused person himself has admitted he saw happen, he had a duty under subsection 2 (b) of section 124 of Act 683 to stop and in the circumstances of this case where his tires had run over the said Jacob Eshun and caused him an injury which appeared to be a danger to his life, accused person was to attend to him and to procure medical assistance for him or remove him to a hospital.

From accused person's own explanation, he failed to do so. The mob from his own evidence followed him when he failed to stop and attend to the deceased and that was when he ran to the police. His subsequent running into the arms of the police does not negate the fact that when he caused an accident which led to injury to the late Jacob Eshun, he failed to stop and to remove the now deceased Jacob Eshun to the hospital to receive medical care and attention.

Section 124 **reads—Duty of a driver to stop, report accident and give information or documents**

(1) This section applies in a case where, owing to the presence of a motor vehicle on a road, an accident occurs by which

> (a) Personal injury is caused to a person other than the driver of that motor vehicle
>
> (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

(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.

The accused person was first mandated to stop and attend to the deceased before reporting to the police. Section 124 (2) uses the word shall which is interpreted in the ***section 42 of the Interpretation Act 2009 Act 792*** to mean ''in an enactment…and the expression "**shall**" as imperative and mandatory''. Thus accused person was under a mandatory duty to stop and attend to the deceased whom he had injured on the road through a motor traffic accident.

Accused person failed to comply with his first duty and had run to the police to comply with the second duty only because he was being chased by the crowd. I find from accused person's explanation that he has failed to raise a reasonable doubt in my mind. I do not accept his evidence, I do not find it reasonably probable and it does not raise any defence in his favour.

At the close of the trial and after a consideration of the entirety of the evidence on record, I find that prosecution has proven the guilt of the accused person beyond reasonable doubt on the charge. He is accordingly convicted.

PRE SENTENCING

According to prosecution, the convict is not known.

By court: Prosecution, has there been any attempt at making restitution to the family of the deceased?

Prose: My Lord, as far as I know, no.

By court: Do we have any family member of the deceased in court?

Prosecution: No My lord, it escaped me. I did not inform them.

Counsel for convict: My Lord, respectfully the convict is a young enterprising man who would need every opportunity to amend his wrongs and offer his contribution to the society. As confirmed by prosecution, this is his first brush with the law.

It's also my understanding that at the very early stages of the matter, there was some support to the family in terms of the funeral. I would not be surprised if prosecution is not abreast with this fact as it happened at the early stages and the matter took sometime before coming to court.

The accused person has learnt some lessons having gone through this trial and he would take a cue from it to ensure that he becomes a better person behind the steering wheel.

It is our humble prayer this morning that since this offence has an option of a fine, your lordship exercises that discretion in favour of a fine and a reasonable one at that to enable the accused person to fulfill same and regain his freedom. We humbly pray.

SENTENCING

Subsection 4 of section 124 of the Road Traffic Offences Act, 2004 (Act 683) provides the punishment upon conviction for an offence under subsection 2 to be a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding twelve months or both the fine and term of imprisonment.

Convict is a first time offender and being in his 20's, is also considered a young person. It is in the best interest of the reformative element of the criminal justice system that young men who have had their initial brush with the law, be given an opportunity at reformation by the Courts. The Courts do this by imposing non custodial sentences save in circumstances where the custodial sentence is mandatory or the aggravating circumstances of the offence far outweigh the mitigating factors.

The aggravating circumstances are that the convict's failure to stop and attend to the deceased and procure medical attention for him immediately after the accident led to the deceased lying on the road in his own blood for sometime before PW1 came to his aid.

Human life can be saved in seconds or minutes if prompt medical attention is sought. Had the convict performed his duty and removed the then injured man to the hospital for medical attention, the deceased's life may have been saved by doctors at the hospital. The consequences of many an action can be reversed or repaired, death is not one of these.

Consequently, I find that per the circumstances of this case, it is imperative that I impose both a custodial sentence and a fine, although the custodial sentence should lean more towards reformation than deterrence.

Convict is hereby sentenced to a one month term of imprisonment. He is also to pay a fine of 250 penalty units by the 14th day of July, 2023. In default, he would serve a further three month term of imprisonment.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

A.S.P STELLA ODAME FOR THE REPUBLIC PRESENT

ABDUL FATTAU ALHASSAN FOR THE CONVICT PRESENT.