

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 20<sup>TH</sup> JUNE, 2023

SUIT NO. D14/24/22

THE REPUBLIC

VRS

FRANK GADZEKPO

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JUDGMENT

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The Accused Person is before this court charged by the Republic with two counts: count one is careless and inconsiderate driving contrary to *section 3 of the Road Traffic Act, 2004 (Act 683)*. Count two is negligently causing harm contrary to *section 72 of the Criminal Offences Act, 1960 (Act 29)*.

The particulars of offence for count one are that on the 10<sup>th</sup> day of October, 2021 at the Community 12, Coca Cola depot junction, in the Tema Metropolis and within the jurisdiction of this court, then being the driver in charge of a Ford F150 pick-up vehicle with registration number GR-5973-12, drove the said vehicle without due care and attention to other road users, crashed into a motor rider by name Philip Ameku Kobla aged 32, now deceased, who was riding Suzuki GSR motor bike with registration number M-20-GT 2421 from the opposite direction, injuring him and leading to his death.

The particulars of offence for count two are that on the aforementioned date, time and place within the jurisdiction of this court, then being the driver in charge of the same vehicle and the same place, did drive the said vehicle on the road negligently and caused harm to Philip Ameku Kobla aged 32 who was riding Suzuki GSR motor bike with

registration number M-20-GT 2421 from the opposite direction of the road. The rider sustained serious injuries leading to his death.

Upon the election of Accused Person, his plea was taken in English and he pleaded not guilty to both counts. Prosecution thus bore the singular duty of leading cogent, reliable and credible evidence to establish his guilt beyond reasonable doubt. The veritable Dotse JSC in reading the decision of the Supreme Court in the case of *Amaning v. The Republic* [2020] GHASC 47, had this to say by way of a prologue

“William Blackstone, an 18<sup>th</sup> century English jurist in a statement on the hallowed principle of “Innocent until proven guilty:-rights of an accused person” upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: “better that ten guilty persons escape than that one innocent suffer”. The above constitutes the fulcrum of our criminal justice jurisprudence”.

In the case of *Domena v. Commissioner of Police* [1964] GLR 563 the Supreme Court per Ollenu JSC (as he then was) commented on the burden and standard of proof as such: “Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person, except in special cases where the statute creating the offence so provides...”

In the case of *Richard Banousin v. The Republic, Criminal Appeal NO. J3/2/2014 delivered on 18<sup>th</sup> March, 2014*, The Supreme Court per Dotse JSC noted that “the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged”.

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused person by the close of its case. It is only then that prosecution would be deemed, prima facie, to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

Prosecution in proof of its case called one witness; the investigator. His evidence is that the police were called to the scene after the accident. That the victim died at the hospital whilst receiving treatment. That on the day of the accident, measurement could not be taken but vital points were marked down for measurement to be taken later. PW3 tendered the following in evidence;

Exhibit A and A1: Investigation caution statement and charge statement of accused person.

Exhibit B: Copy of sketch of the accident scene.

Exhibit C series (C, C1 and C2): Coroner's report request form, inquest form and coroner's report.

Exhibit D and D1: DVLA report

Exhibit E and E1: Insurance certificate of Enterprise Insurance

Exhibit F and F1: Driver's license and DVLA registration particulars of accused person's vehicle.

The said measurement in EXHIBIT B was taken on the 17<sup>th</sup> of November, 2021 (more than one month after the incident).

### CONSIDERATION BY COURT

Per *section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, I am enjoined to at the close of prosecution's case, determine whether prosecution has made out a case against the accused person sufficiently to require him to make a defence. The generally accepted meaning of this section is that prosecution must at the close of their case, establish a prima facie case against the accused person. It is only then that the accused person would be called upon to open his defence.

See the dictum of Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions [1947] 1 All ER 372 at 373* where he 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 is 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*

The prosecution would be deemed to have failed to establish a prima facie case against the accused where at the close of its case it fails to prove an essential element of the offence charged, where the evidence led has been so discredited by cross-examination, where the evidence led is so manifestly unreliable such that no court of law can safely convict on it (see *Apaloo And Others v. The Republic [1975] 1 GLR 156*) and finally where the evidence adduced by the prosecution is evenly balanced and is susceptible to two likely explanations; one being consistent with the guilt of the accused whilst the other is

consistent with the innocence of the accused (see *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068).

In the case of *The Republic v. Eugene Baffoe Bonnie & 4 ORS delivered by the Court of Appeal on 25<sup>th</sup> day of March, 2020 (Crim. Appeal No 82/2/2019)*, the Court of Appeal held that “It is true that at the close of the case for the prosecution, the guilt of the accused is not supposed to have been proved beyond reasonable doubt. As the authorities however show, and having regard to the provisions of section 11 (2) of the Evidence Decree, 1975 (NRDC 323), the evidence led at this stage should however be such that it should be capable of convicting the accused if he/she offers no explanation. Not only should all the elements of the offence have been proved, but also that the evidence adduced should be reliable and should not have been so discredited, through cross-examination that no reasonable tribunal can safely convict on it. The evidence at this stage should also not be so equally balanced as to be susceptible to two likely explanations or consistent to both guilt and innocence”.

The issues for the court to determine are

1. Whether or not the accused person drove the Ford F150 pick-up vehicle in a careless and inconsiderate manner and without due care and attention to other road users while driving at the community 12, Coca Cola depot junction on the 10<sup>th</sup> day of October, 2021
2. Whether or not the accused person negligently caused harm to Philip Ameku Kobla.

On count one, the offence of careless and inconsiderate driving just like other traffic offences, is of strict liability thus the prosecution need not prove mens rea. The prosecution only need to prove that the accused person has engaged in the actus reus of the offence which is that

- a) He was in charge of driving the Ford F150 pick-up vehicle
- b) He drove it without due care and attention OR
- c) He drove it without reasonable consideration for other road users

On count two, the prosecution in order to establish their case must lead evidence to prove that

1. The accused person whilst driving the vehicle used same to negligently cause harm to the deceased
2. That the harm was unlawful.

Harm is defined by section 1 of Act 29 to mean “a bodily hurt, disease or disorder whether permanent or temporary. Again, according to **section 76 of Act 29**, harm is “unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter I of this Part”.

Per Section 12 of Act 29, a person causes an event negligently, where without intending to cause the event, that person causes it by a voluntary act, done without the skill and care that are reasonably necessary under the circumstances.

On the first element of count one, Accused Person does not dispute the fact that he was the one driving the Ford F150 pick-up on the said date when the incident occurred. PW1 testified that it was the Accused Person who was in charge of the said vehicle at the time of the incident. Thus on the first element, I find that it was the Accused Person who was

driving the Ford F150 pick-up vehicle with registration number GR 5973-12 at the time of the accident.

On the second element, Prosecution's duty is to prove that the Accused Person drove the vehicle without due care and attention as is reasonably expected of every driver or without reasonable consideration for other road users. If they are able to prove that any reasonable driver in the shoes of the Accused Person would be deemed as driving carelessly and in an inconsiderate manner in the circumstances in which the Accused drove, then they would have established the requisite elements of the offence.

Osei Hwere J (as he then was) held in the case of *Nsowah v. The Republic [1974] 1 GLR 34* that "the test for careless driving does not depend on the mere ipse dixit of.....but is an objective one. Each case must therefore, depend objectively on its own facts to determine whether there was exercised that degree of "care and attention" which a reasonable and prudent driver would exercise in the circumstances".

On this element, PW1's evidence-in-chief was silent as to how the Accused Person drove on the said date. His evidence-in-chief was simply that the Police were called to the scene after the accident had occurred and police followed the necessary protocols.

Learned counsel for the Accused Person, at page 21 of the record of proceedings put this to PW1 under cross-examination.

Q: *I suggest to you that your evidence-in-chief contains no evidence of the nature of the alleged careless driving the Accused Person was supposed to have driven.*

A: *No my lord.*

Q: *Again, I suggest to you that you have neither witnesses nor any form of corroborative evidence (supporting) of the nature of careless driving allegedly driven by the accused person.*

A: *No my lord. I have evidence to it. On exhibit B, I have investigations witnesses, the family of the deceased and the Accused Person.*

Q: *As a police officer, where is the statement of the said investigation witnesses?*

A: *My lord, at the time the accident occurred, on reaching there, those that accompanied the deceased to the hospital because the place was a drinking spot, nobody was there to help police with a witness statement but according to how we went to the scene and the sketch was being drawn, the Accused Person was the one who showed police where after the accident, his car was and the motorbike and the deceased fell.*

For the purpose of emphasis, I would reproduce pages 25-30 of the record of proceedings;

Q: *I am suggesting to you that the Accused is not guilty of any of the offences that you have mentioned, nor was he found to have been culpable by your investigations for those offences.*

A: *The Accused Person is guilty of those offences he has been charged with.*

Q: *Now L/Cpl Ansah, I am suggesting to you that he could not have been culpable with those offences because you yourself never found him guilty to have committed those offences.*

A: *My Lord, looking at the way the accident occurred, where it occurred, a sketch was being drawn to that and through that and my investigations revealed that the Accused Person did not drive well. That is why he has been charged with those offences.*

Q: *I suggest to you that that is false.*

A: *It is never true my lord.*



Q: *You signed the witness statement that has been attached to the document(s) that were discovered by the prosecution. Is that correct?*

A: *Yes my Lord.*

Q: *I am suggesting to you that nowhere in your own witness statement - paragraph 1 to 19 have you stated therein that there was any finding that the Accused had either driven inconsiderably or caused harm negligently.*

A: *My lord, I have stated in my witness statement.*

Q: *I would request you to look at your evidence-in-chief and show this court where you have stated from paragraph 1 -19 that the Accused Person carelessly & negligently caused harm.*

BY COURT: *Evidence-in-chief of PW1 handed to him.*

A: *Paragraph 16, 17 shows clearly that a duplicate docket was sent to the Attorney General's department for an advice and upon that, the Accused Person was being charged with those offences*

Q: *Please read out paragraph 16 again.*

BY COURT: *PW1 reads out loud paragraph 16 and 17 of his evidence-in-chief.*

Q: *You fairly understand the English language, do you not?*

A: *My Lord, I do understand English language very well.*

Q: *Now paragraphs 16 and 17 that you just read, which part of it contains your own finding that the Accused Person is culpable of the offence?*

A: *My Lord, in my witness statement, I have stated in it.*

Q: *I would ask you again, where in paragraphs 16 and 17 is there a statement from your own self that the Accused Person is culpable of the offences you have charged him with. Show us.*

A: *My Lord, after the investigations, I sent a duplicate docket so it is in my investigation's statement.*

Q: *And that investigation statement is not before this court. Is it?*

A: *My Lord, it is before this court*

Q: *Can you show us where or which document it is in before this court?*

A: *My Lord, it is all included in my case docket that I filed before this court.*

BY COURT: *Disclosures handed over to PW1 to enable him indicate to the court where his investigations statement can be found.*

A: *My Lord, it is in paragraph 1 of my evidence-in-chief.*

Q: *Please read paragraph 1 of the evidence-in-chief to the court and tell us if it is in there.*

BY COURT: *Witness reads out Paragraph 1 and 2 of his evidence-in-chief out loud in court.*

Q: *Now L/Cpl Ansah, what you just read, the description of your name and where you are stationed is certainly not to be described by the far stretch of anybody's imagination as the investigation's report. Am I correct?*

A: *It is never true*

Q: *Finally, I suggest to you that you never made any findings regarding the Accused Person's commission of the alleged offences as per your own evidence-in-chief.*

A: *My lord, my findings are true, that is why Accused has been charged with those offences and I still go by the sketch that I have tendered in this honorable court*

His evidence-in-chief is silent as to whether Police gathered any evidence from bystanders as to the manner in which the Accused Person was driving immediately prior to the accident and whether his actions were such that he exhibited a lack of due care and attention as is reasonably expected of every driver.

What I found striking about his evidence is the fact that although the accident occurred on the 10<sup>th</sup> of October, 2021, per paragraph 14 of his evidence-in-chief, a sketch of the accident scene; EXHIBIT B was taken on the 17<sup>th</sup> of November, 2021. That is a time difference of more than five weeks. Neither the witness PW1 spoke of nor the family member of the deceased who was present at the scene of the measurement appeared in this court to testify.

Indeed, I noted in the record of proceedings that the witness was being evasive and vituperative under cross-examination by learned counsel for the Accused Person. He appeared to be approbating and reprobating. On one hand, there was no witness even on the day of the accident and on another hand, there were some witnesses nearby who focused on the deceased. Although he insisted that his investigations had revealed the culpability of the Accused Person, those investigations were never put before this court.

Even when he was handed his own evidence-in-chief to point the court to where the evidence of his investigations could be found, he could not do so and sought to rather read from paragraphs which did not support his claim and then insist that those paragraphs indeed supported his claim.

In PW1's over zealous attempt to command into existence what did not exist in his evidence, he insisted that paragraphs 1 and 2 of his evidence-in-chief, which read "*I am no. 52360 G/L/Cpl Hayford Addo Ansah; stationed at Community 11 District Accident Squad. On the 10/10/2021 at about 6:30pm, information received from Police Information room, Tema indicating there had been an accident at Tema Community 12, Coca Cola Depot junction which needs police assistance*" were evidence of Accused Person's careless and inconsiderate driving as well as his negligently causing harm to the deceased.

Driving is a skill which is carried out in public after one has acquired the necessary driving skills. Because driving is a skill, when there is an accident, experts are expected to be able to use the available circumstantial evidence to arrive at a conclusion as to what led to the accident. That process must however be proven by evidence.

The fact that an accident has occurred does not necessarily mean that the surviving driver is the one who caused the said accident. PW1's evidence in chief did not indicate how the accident occurred and most importantly the manner in which Accused was driving.

Under cross-examination, his answers made it evidently clear that he was only surmising as to what occurred rather than providing concrete evidence to the court from any investigation he had carried out. Simply because the learned officers of the Attorney General's department advise that a person be charged with an offence does not mean ipso facto that the person is guilty.

The onus still lies on Prosecution to lead cogent, relevant and credible evidence to establish a causal connection between the actions of the Accused Person per his mode of driving and the occurrence of the accident. Prosecution failed to establish the manner in which the Accused Person was driving and how that constitutes inconsiderate driving.

Negligence which is the basis of count 2 connotes that the Accused Person should have or was expected ordinarily to drive with a certain level of care and expertise on the road as he has a duty of care to other road users and he failed to do so. Prosecution must thus establish how the Accused Person drove for any reasonable man to arrive at a conclusion that that driving was negligent.

Indeed, for both counts one and two, Prosecution's case appears to be this; since the Accused Person was the one driving the vehicle and the said vehicle knocked down the deceased causing him injuries that later led to his death, then afortiori, the Accused Person was guilty.

This is a philosophical approach to evidence rather than the legal approach. The legal approach of evidence requires Prosecution to testify as to what, where, when, why and how the accident happened. Where there is no direct evidence, circumstantial evidence is admissible but same must lead to a sole inference that indeed, the Accused Person has prima facie committed what he is accused of.

At this stage, Prosecution's duty is to establish a prima facie case and not prove their case beyond reasonable doubt. Prima facie case means on the face of the evidence, the court can arrive at a conclusion that the accused has committed the offence. In order to arrive at such a conclusion, prosecution must amongst others, establish all the relevant elements of the offence and the evidence must be such that the court can safely convict on same.

At the close of prosecution's case, I find that they have failed to establish all the relevant elements of count one and two and the evidence is such that I cannot safely convict upon same. Accordingly, the Accused Person is hereby acquitted and discharged.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

***A.S.P JACOB ASAMANI FOR THE REPUBLIC***

***PATRICK SORGBORDZOR FOR THE ACCUSED PERSON***