

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 5TH JUNE, 2023

SUIT NO. D14/04/22

THE REPUBLIC

VRS

BARIMA DEBRAH APRAKU

JUDGMENT

On the 12th day of December 2022, I determined that Prosecution had established a prima facie case against the Accused Person on counts one, two and three. Accused Person was called upon to open his defence if he so desired.

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 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

Accused Person was 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. Where he 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*.

In arriving at whether an accused has raised a reasonable doubt in the mind of the court, the court must first consider whether his explanation is acceptable, that is, whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence'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 *Bediako v. The State* [1963] 1 GLR 48.

Accused Person testified and called one witness. In his evidence-in-chief, Accused Person said on the said date, he was driving the sonata and had four passengers on board including Emmanuel Ato Amonoo and his father, and that after he over took the nissan versa, he kept driving for a distance. A Nissan pick-up which was ahead of him slowed down and he did same. Suddenly, the nissan versa vehicle which was behind him crashed into the back of his vehicle and the vehicle veered off into the shai hills.

Accused Person says that he momentarily lost control of the vehicle due to the impact of the crash. The airbag exploded into his face. When the vehicle came to a standstill, he came out and noticed the damage to the vehicle and the occupants. He also realized that some tree branches penetrated the windshield and one of them pierced Mr. Amonoo Buckman's face. He subsequently died at the hospital.

Accused person was present when the sketch of the accident scene was later taken by the C.I.D. He says that the accident would not have happened if not for the negligence of the other driver, and that the deceased driver of the other vehicle was a hired driver and not the regular driver of the vehicle. Accused Person says that Emmanuel Ato Amonoo paid GH¢7,000.00 out of GH¢8,000.00 demanded by the owner of the nissan versa.

THE EVIDENCE OF DW1

DW1's evidence is that he was on board the vehicle driven by the Accused Person on the said date with three others. The Accused Person overtook the nissan versa vehicle which was ahead of him and after travelling for some distance, suddenly he heard the nissan versa crashing into the back of their vehicle.

The remainder of his evidence as to the injuries sustained is the same as that of the Accused Person. That while the case was in court, PW2 advised him to settle the matter with the owner of the nissan versa and he did so by paying him GH¢7,000.00 out of an amount of GH¢8,000.00 that he demanded. He says that he paid by instalment and some of the money was paid through the investigator.

CONSIDERATION BY COURT

The fulcrum of Prosecution's case is that the Accused Person, after overtaking the nissan versa vehicle, had to suddenly cut in front of the said vehicle without travelling for a reasonable distance because there was an oncoming vehicle.

Accused Person and his witness both dispute this version of facts and insist that the Accused Person travelled for a reasonable distance after overtaking the nissan versa vehicle before coming into his lane and afterwards, travelled for sometime before the

accident. They claim that there was no oncoming vehicle which the Accused Person had to avoid.

Under cross-examination by prosecution, Accused Person maintained at page 41 of the record of proceedings that;

Q: *At this instance, what was the distance before you came back to your lane?*

A: *I do not remember the distance but I remember it was between 30 seconds to a minute.*

Q: *I am putting it to you that just after you overtook the car ahead of you, you realized that there was an oncoming car and so you had to quickly cut in.*

A: *That is not so my lord. There was no oncoming car.*

DWI at page 46 and 47 of the record of proceedings, answered that;

Q: *Did you see the accident yourself?*

A: *Yes my lord. On our way going, we overtook a nissan versa. After we overtook him, we travelled some distance and then I heard a crash at the back of our car. So after hitting the car, we rushed into the bush and a tree broke through the windscreen.*

Q: *You said when you overtook the car ahead of you, you went for some distance. How far is that distance?*

A: *I could tell that after overtaking the car, we kept moving for some minutes but I cannot really tell the distance but I know it was far.*

Q: *I am putting it to you that the driver that is the accused person was not careful when he was overtaking the car and just after he overtook the car, he saw that there was an oncoming car from the opposite direction.*

A: *No my lord it is not true*

I do not find the evidence of Accused Person to be believable, particularly so as both he and DW1 gave a different account as to the distance of the travel after the overtaking. Whereas Accused Person stated that it was a matter of 30 seconds to one minute, DW1 says it was for some minutes.

I however find that the evidence of Accused Person is reasonably probable. This is because DW1 was an eye witness who was in the vehicle at the time of the accident. He lost his father through that accident. He had also suffered some injuries as a result of the accident.

As an eye witness in a motor traffic offence, his evidence must be accorded the necessary weight unless same is discredited under cross-examination. This is particularly so as Prosecution itself did not call an eye witness to testify on its behalf.

Although Prosecution sought to discredit DW1's evidence under cross-examination, he remained firm. DW1 also answered questions in a straight forward manner and coupled with the answers of the Accused, created a doubt in my mind as to whether indeed Prosecution had made any efforts in contacting the occupants of Accused Person's vehicle and those in the Nissan Versa after the accident. They were eye witnesses and so their statement would have assisted Prosecution in conducting its independent investigations.

Further, DW1's evidence that the investigator contacted him while the case was in court and urged him to pay some moneys to the owner of the Nissan versa appears reasonably probable. Apart from the fact that it was corroborated by the Accused Person, DW1 testified of the amount demanded, the amount that he had paid and the mode of payment. He maintained his stance under cross-examination and I find that although I

do not believe the evidence of Accused Person, the evidence has led me into a soliloquy of “should I convict or should I not convict”?

In the case of *Akilu v. The Republic* [2017-2018] 1 SCGLR, 444, the SC speaking through *Apau JSC* held that “we want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused, are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of ‘should I convict’ or ‘should I acquit’ takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do in such a situation is to acquit, as required by law”.

I find that from the evidence of the Accused Person and his witness, it is reasonably probable that the Nissan versa crashed into Accused Person’s vehicle after he had successfully overtaken it and returned into his lane after a reasonable distance. It is also reasonably probable that the Accused Person did not travel a reasonable distance after overtaking the Nissan versa and had suddenly come back into his lane which resulted in the crash. That the impact of the crash is due to the fact that both drivers were driving at top speed is not in contention and so either of the scenarios above would have resulted in the fatalities that occurred on the said date.

On that basis, I hereby find that the Accused Person has satisfied the onus of raising a reasonable doubt in my mind. I hereby acquit and discharge him on counts one, two and three.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. J. ASAMANI FOR THE REPUBLIC

P.K. HODO FOR THE ACCUSED PERSON