CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 7TH MARCH, 2023

SUIT NO. D14/29/20

THE REPUBLIC

VRS

ROMEO KWASI FIATOR

JUDGMENT

Mr. Kwasi Fiator stands arraigned before this court on two counts; careless and inconsiderate driving contrary to ***Section 3 of the Road Traffic Offences Act, 2004 (Act 683)*** and 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 1st day of January, 2020 at about 9:00pm at Community 25, Tema near DPS International School in the Tema Municipality and within the jurisdiction of this Court, then being the driver in charge of a Toyota Camry Saloon car with registration number GT 2105-19, without due care and attention to other road users and collided with Royal Motorbike with registration number M-13-GT being driven by Mawunyo Abednego Darke aged thirty three years.

The particulars of offence for count two are that on the aforementioned date, time and place and under the same circumstances, he negligently caused harm to Mawunyo Abednego Darke when his vehicle collided with the motorbike driven by the said Mawunyo Abednego Darke thereby injuring him and leading to his death.

The accused person pleaded not guilty to all two counts. By this plea, he stood shielded by the law as per ***Article 19 (2) (c) of the 1992 Constitution***, he is presumed innocent until proven guilty. According to the case of **Davis v. U.S**. **160 U.S 469(1895)** "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story.*

The presumption of innocence guaranteed under the 1992 Constitution, is not cast in historic concrete like King Arthur's sword. That guarantee is that he is presumed innocent *until prosecution* has been able to lead evidence to establish his guilt beyond reasonable doubt.

That being so, prosecution may lead credible, relevant and material evidence in proof of the charges 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 their 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 four witnesses to testify.

THE EVIDENCE OF PW1

PW1's evidence is that he is the brother of the deceased. That he was at home in their parents' home on the 1st day of January, 2020 when two persons came to inform him that his brother had been involved in a road accident.

That upon arrival at the scene, he realized that his brother was motionless and was lying face down with his helmet covered in dust and his head next to a gutter. That because he is a medical doctor, he quickly assessed his brother and observed that there was no central or peripheral pulse and no chest movements as well. That he also had fractures of the forearms and blood oozing from his nose and right ear. That his late brother's motorbike was damaged.

That he called his brothers as well as his neighbor. That further ahead of his late brother's motorbike was a reddish Toyota Camry with registration number GT 2105-19. The driver's side of the bumper was damaged. That he was informed that the driver of the vehicle was allegedly drunk and also that there was a can of kiss alcoholic beverage alongside disposable cups in the car.

That the driver of that vehicle which is the accused person abandoned the deceased. Together with a police pick up vehicle, he, his brothers and their neighbor convened the lifeless body of his deceased brother to the Tema General hospital where he was

formally pronounced dead. The motorbike and vehicle were also towed to the Community 25, police station.

That on Friday the 3rd of January, 20220, the number plate of the red Toyota Camry vehicle was traced at DVLA and it showed accused person as the owner. That on the next day, his family and accused person's family met at the police station and accused admitted to killing the deceased.

THE EVIDENCE OF PW2

PW2's evidence in sum is that she was in her shop when she saw a red car speeding from Bediako junction towards Community 25 junction. There were two vehicles ahead of the red car and the driver suddenly begun to overtake the two cars ahead of him and eventually crashed with a motor rider who was coming from the opposite direction.

She continued that she went to the scene with two boys and upon identifying the victim as the deceased, she asked one of the boys to go and inform the family of the deceased. Before then, boys and three other boys had removed the deceased from the gutter he was lying in after the hit.

That she also moved closer to the red car and saw the driver and a lady. That the driver who is the accused person and the lady wanted to run away but she raised an alarm upon seeing a police patrol team. That the police came around and she showed them the red car and they moved to meet the accused driver.

THE EVIDENCE OF PW3

His evidence is that he went to the scene about 9:20pm and saw the body of the deceased lying by a gutter and still wearing a helmet. That he saw a Toyota Camry

which was trying to escape. Upon inspection, he saw a bottle of kiss alcoholic drink opened with disposable cups filled with drinks in the car.

That the driver absconded and left the body at the scene and it took over two hours before the body was conveyed to the Tema General hospital where the doctor confirmed that the motor rider was dead.

Further that it took the police about 48 hours to trace the whereabouts of the accused person. That on the 4th of January, 2020, the accused person in the presence of his family and the family of the deceased admitted at the police station that he tried overtaking two vehicles in the opposite lane and all what he saw was the late Abednego Dorkeh's motorbike climb his Toyota Camry vehicle.

THE EVIDENCE OF PW4

PW4 is the investigator. His evidence is that the accident was reported on the same date and he went to the scene. He called for the vehicles involved to be removed from the scene and also for assistance to convey the body of the deceased to the mortuary.

That he went to the place of abode of the accused person but did not find him. That he found accused person at the Midland hospital on the 2nd day of January, 2020 and issued him with a police medical form.

That accused person reported himself on the 3rd of January, 2020 and complained of neck pains and so was asked to go for treatment. He returned to the police station on the 4th of January, 2020 and returned the medical form earlier issued to him. The accused person gave an investigation caution statement and a charge caution statement.

That both accident vehicles were examined by the technical engineer of DVLA and he submitted a report thereafter. That a postmortem examination carried out on the deceased gave the cause of death as severe head injury, multiple bone and soft tissue injury from road traffic accident when the victim was knocked down.

That he visited the accident scene and took a sketch in the presence of the accused person and the family of the deceased. He tendered in evidence the investigation caution and charge caution statement of the deceased as EXHIBIT A and B respectively, the sketch of the accident scene as EXHIBIT C, the medical form of the accused person as EXHIBIT D, the DVLA accident reports as EXHIBITS E and E1, EXHIBIT F as the inquest form and EXHIBIT G series as photographs of the damaged Toyota Camry vehicle, the deceased and the royal motorbike driven by the deceased.

Learned counsel for the accused person in cross examining PW2, PW3 and PW4 tendered through them EXHIBIT 1, 2 and 3. They were two photographs depicting the road and the police accident report respectively. Prosecution closed its case after this.

THE EVIDENCE OF PW5

PW5 testified as the administrator of the Medland Hospital. He could not give any relevant evidence as to EXHIBIT D.

THE EVIDENCE OF PW6

PW6 is the doctor who attended to the accused person and prepared the medical form; EXHIBIT D. His evidence is that he attended to the accused person on the 2nd day of January, 2020 in the morning and discharged him the same day.

CONSIDERATION BY COURT

The issues for the court to determine are:

1. Whether or not the accused person drove the Toyota Camry in a careless and inconsiderate manner and without due care and attention to other road users when he was reversing to reposition his truck
2. Whether or not the accused person negligently caused harm to Mawunyo Abednego Dorkeh.

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 Toyota Camry vehicle
b) He drove it without due care and attention OR
c) He drove it without reasonable consideration for other road users.

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''.

There is no issue as to the first element of the offence. The accused person does not deny that he was the one driving the said Toyota vehicle on the date and time in question and also at the place of the accident. Prosecution tendered in evidence pictures of the vehicle as EXHIBIT G.

The accused person also does not deny that whilst driving the said vehicle, he was involved in a head on collision with the deceased who was then driving the motorbike. I thus find that accused person was the driver in charge of the red Toyota Camry vehicle with registration number GT 2105-19.

On the second element, prosecution's duty is to prove that the accused drove the said 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 accused 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.

On this element, the evidence of prosecution witnesses, particularly PW1, PW2 and PW3 is that the accused person was driving at top speed on the said date. 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. In the circumstances of this case, there was an eye witness to the incident and that is PW2.

PW2's evidence is that the accused person was driving at top speed on the said date and drove past her shop almost immediately before the accident. That when accused person drove past her shop, a friend she was with remarked as to accused person's top speed and almost immediately thereafter, they heard the crash. PW2 testified based on first hand knowledge and her evidence had left the Court in no doubt that she was a credible, reliable and relevant witness.

From the evidence which accused person does not dispute, accused person was overtaking i.e driving past a or some vehicles ahead of him and had moved from his rightful lane unto oncoming traffic from the opposite direction. The deceased was driving from the opposite direction and in his rightful lane when the accident occurred.

EXHIBIT C is a sketch of the accident scene. It was drawn by PW4; the investigator after the incident. In his evidence in chief, he says he went to the scene with the accused person and the family of the deceased and they made identifications to him. It is based on this that he drew EXHIBIT C. Rather curiously, EXHIBIT C is signed only by the accused person and PW4. There is no mark; be it a signature or thumbprint of any such family member of the deceased.

To further weaken the weight of EXHIBIT C, PW4, the investigator who had made it had under cross examination, answered at page 83 and 84 of the record of proceedings that;

Q: Exhibit C, you can confirm that you went to the accident scene with the relatives of the deceased and the accused person too and took the measurement and did the sketch and they all approved for same. That is correct?

A: My Lord, that is not correct. Only accused person approved.

Q: But you can confirm that the exercise was done in the presence of the relatives of the deceased. That is correct.

A: Yes, that is correct.

Q: So you would agree with me that if anybody came to this court to say that the accused person overtook more than one car, that would not be true.

A: My Lord, I do not agree with you because what accused person told me is what I drew and the witnesses are very important in all cases and so the witnesses cannot deceive the court. What they saw is what they are telling the court.

Q: It is out of your own investigations that you conducted as an investigator in this matter that is why you put down exhibit C the sketch as a true reflection of the incident.

A: My Lord, that is not true. That is the initial investigation. It would get to a point that witnesses would be coming in to assist you to get the true facts of the case. Exhibit C is from information taken from the accused person and so when the witnesses came, whatever information they give is admitted in the investigation.

PW2 who is an eye witness maintained her position that there were two vehicles ahead of the accused person which he had tried to overtake right before the accident. PW3's evidence that he was at the scene with the accused person and PW4 for the identifications necessary for the sketch was not challenged and his evidence that he had never seen the sketch until same was shown to him under cross examination was not disputed. He maintained under cross examination that accused person even admitted that there were two vehicles ahead of him.

In any case, I believe the evidence of PW2 who is an eye witness. She did not only witness the accident, but by virtue of she being seated in front of her shop which from EXHIBIT 1 is close to the road, she had witnessed the accused person driving by before the accident. It was she who had sent two boys to inform the family of the deceased about the accident and this fact is corroborated by PW1 whose evidence is that he was at home when two young men on a bicycle came to inform him of the accident. PW2 was as material as any material witness could be.

I believe the evidence of PW2 because I found her to be a witness of utmost truth. She was in court to tell the truth based on what she had witnessed and not as an interested party. Between her and PW4, I found her to be credible.

PW2 had maintained that there were two and not one vehicle ahead of the accused person. She had not only maintained that but had provided the Court with facts of the type of vehicles, (a Mercedes Benz and an Opel) their make and colours under cross examination. She had also provided the court with facts as to the number of people who were seated in each of these two cars as well as the brief conversation she had had with the driver of the Mercedes Benz. I found her evidence to be not only relevant but also credible.

I thus would attach no weight to EXHIBIT C, particularly as there is no signature of a family member of the deceased. It appears per the signatures on it and from PW4's own answers under cross examination by learned counsel for the accused person, to be a document known to only the accused person and the investigator.

Accused person had disputed the claim that he was driving at top speed. Prosecution aside from the witnesses, tendered in evidence EXHIBIT E and E1. They are the DVLA reports of the Toyota Camry vehicle and the motorbike.

For the Toyota Camry vehicle, the report indicates the destruction of the front airbags, the ramming of the roof of the vehicle, destruction of headlights, battery and front bumper as well as the condenser fan and radiator of the etc.

For the motorbike, the front forks were broken, steering bar twisted from rim, tyre and hub destroyed, headlights shattered tail light shattered etc.

EXHIBIT G series showed the damages to the car and the motor. In lay man terms, almost all of the frontage of the vehicle and part of the roof were damaged. For the motorbike, a layman would describe the damages as beyond repair with some of the parts totally removed and scattered around.

The extent of the damage shows the impact of the collision. Under cross examination, learned counsel for the accused person and PW1 had engaged in a theory of physics to determine which of the vehicles were driving at top speed. Because physics is a subject, it lends itself to verification. I find from the evidence that the greater impact for the accident came from the accused person.

As PW1 rightly explained at page 14 of the record of proceedings;

Q: I am suggesting to you that there is no report or evidence anywhere which shows that the accused person was speeding.

A: I believe with simple understanding of physics, you would appreciate that the damages incurred by the vehicles and the victim are not possible with low speeds and being hit in his lane, the accused person was obviously overtaking which is usually done at increased speeds.

Q: Did you get to know that the motorbike skidded on top of accused person's vehicle and fell behind the car?

A: That is wrong. The mechanism of injury suggests that it was the victim who was rolled over from impact and fell on the roof of the car while the motor bike was lurched forward from the force of the car.

Q: You see from what you have just told the court, it is clear that the motorbike was also on top speed that is why the victim moved on top of the car to the back.

A: If you understand maths by velocity from momentum, you would know that he did not have to be moving at top speed but that the motion of moving forward was enough to launch over the car from the car that hit him.

Also at page 22 of the record of proceedings, PW1 had answered;

Q: I am further suggesting to you that the bigger and heavier the vehicle, the greater the energy and momentum.

A: That is very true. This force is transferred unto the other colliding vehicle and this goes on support the multiple fractures sustained by my brother.

Q: You see, again, the smaller and lighter the vehicle may have greater deceleration and may even be pushed in the reverse direction of travel. You agree to this.

A: That is true as seen in this incident but if you are familiar with Newton's laws of motion, you would understand why my brother was thrown from the bike in to the roof of accused person's car whilst the bike was thrown forward. This explains the distance between my brother's body and the bike.

The damage to the motorbike was far more extensive than the damage to the vehicle. As earlier indicated, a lay man would say the motorbike was completely damaged whilst the vehicle was well damaged. That would mean in simple language, that the force that impacted the motorbike was far heavier than the motorbike. The greater the speed at which a vehicle is driving, the greater the force of impact upon collision.

This basic theory is supported by the eye witnesses evidence. It is the accused person who was overtaking two vehicles and in order to do so, he needed to drive at a higher speed than the vehicles ahead of him. Accused person also had to move into the

opposite lane of oncoming traffic in order to be able to go past the two vehicles ahead of him. In so doing, he had moved into the oncoming lane in which he accused person was driving and that led to the accident.

Driving with due care and attention requires that a driver drives with reasonable consideration for other road users. That consideration includes all road users. Accused person was thus under a duty to ensure that it was safe and there was no oncoming vehicle which he could not avoid before moving into the opposite lane to overtake the vehicles.

The fact that the deceased was in his rightful lane and was driving straight on the road is no in dispute. As he did not suddenly join or lurch into the road, it stands to say that had the accused person observed the road ahead of him before deciding to overtake, he would have seen the deceased driving close to him and he would as a reasonably careful and considerate driver, not have moved into the lane of the deceased.

I find that prosecution has at the close of their case has established a prima facie case against the accused person on count one. He is thus called upon to open his defence.

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

1. The accused person whilst driving the Toyota camry vehicle, used same to negligently cause harm to another person
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.

EXHIBIT F series is the inquest form, direction to make post mortem and coroner's report of the deceased. The cause of death according to the post mortem is severe head injury, multiple bone and soft tissue injury and road traffic accident (motor rider knocked down).

The post mortem clearly places the cause of death to be as a result of the accident. PW1 is a medical doctor, from his evidence, it appeared the deceased died on the spot and same was known to all persons at the scene. As PW2 rightly indicated, she had even insulted the accused person for killing someone's child. That goes to show the impact of the vehicle on the deceased and ultimately confirms that the accused person was driving at top speed on a road that is abutted by residences and different communities on the said date.

Having found in count one that accused person drove without due care and attention and without reasonable consideration to other road users thereby causing the accident, I hereby find that although he did not intend to cause the death of the deceased, he did cause it by driving without the necessary skill and care that is reasonably necessary in

the circumstances. He thus acted negligently. That his negligent act has caused harm to the the deceased had led to his death is without justification is not in issue.

Accordingly, at the close of prosecution's case, I find that they have established a prima facie case against the accused person on count two as well. He was thus called upon to open his defence to both counts.

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. If 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, the court must first consider whether his explanation is acceptable i.e 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***.

In his evidence in chief, accused person said on the said date, a vehicle ahead of him had slowed down probably to make a turn as indicated by the said vehicle's indicator. That he then decided to get past the said vehicle.

When he got into the opposite lane, he saw the deceased motor rider approaching him at top speed. That he could not steer his vehicle away due to the proximity and the very top speed at which the deceased was riding. That the next thing he knew was that the deceased's motorbike had climbed his vehicle. His airbags came out and he hit his head against the steering wheel. He became dizzy and also sustained cuts on his head.

That within five minutes, a police patrol team arrived at the scene, took his car keys and advised him to seek medical treatment for his injuries. He went to the Medland Hospital where he was admitted for three days.

That he later reported to the police. A search conducted at DVLA revealed that the motorbike of the deceased was unregistered and he had used the registration number of a different motorbike.

That this goes to show that the credibility of the deceased is questionable as he did not have the right to be on the road whereas he the accused person is a licensed driver with all necessary documentation on his car including a comprehensive insurance which has enabled the family of the deceased to claim the substantial amount of forty five thousand Ghana cedis (Ghs 45,000) as compensation.

He tendered in evidence EXHIBIT 4 series as evidence of his being a student EXHIBIT 5 as the wrong DVLA registration number attached to the deceased's motorbike and EXHIBIT 6 as the insurance claimed paid out to the family of the deceased.

In accused person's investigation caution statement, he said he was driving from home with DW1 towards community 25. That a car driving ahead of him was driving slowly and he decided to overtake it.

Further that a motor rider appeared from the opposite direction and collided with his car. That the rider died and he was hurt. A police patrol team arrived at the scene and he handed over his ignition keys to them. That he was rushed to the Medland Hospital and DW1 accompanied him. That he was on admission for three (3) days and he reported to the police afterwards.

I found accused person not to be truthful. Although his evidence is that it is PW1 who accompanied him to the hospital from the scene of the accident, PW1 testified and said accused was rushed to the hospital whereas he proceeded to the police station from the scene upon the advice of the patrol team.

Again, in accused person's statement to the police, he had indicated that there was a vehicle ahead of him 'going slowly and I decided to overtake''. His statement was given three days after the incident. Then in this court, on the 22nd day of June, 2022, more than eighteen months after the incident, he filed his witness statement and testified that the vehicle ahead of him had turned on its indicator and slowed down probably to take a turn.

A car driving slowly and a decision made to overtake it is not and cannot be equated to the same situation as a vehicle indicating by its lights that it intends to make a turn and then slowing down. In driving, the two are separate and distinct. Whereas the first one shows the accused as an impatient driver who wanted to drive at top speed without the

necessary care and consideration for other road users, the other shows him as a regular driver who had tried to continue with his driving moving from one lane to the other. I find that accused person's claim as to the second one is a mere afterthought.
Furthermore, the fact that PW3, PW2 and PW1 live close to the accident scene is also not in doubt. They were all emphatic under cross examination, that there was no way the vehicle ahead of accused person could have been turning into the right lane because that road is blocked due to the school. PW2 had given further evidence of how long that road was blocked and the circumstances under which it can be assessed. I believe her.

The accused person had oscillated between the car ahead of him driving slowly, to the car ahead of him indicating that it would turn to the right. Indeed, in taking his plea before this Court, he had pleaded guilty with explanation and explained that the car ahead of him had shown its hazard lights. I would not waste time on this as it is not evidence to be considered by the court.

As I have earlier indicated, the oscillation of accused person's story is an indication that he is not being truthful to the court. Particularly so as the evidence on record is that the driver ahead of accused could not possibly have been making a turn into that lane on the right and also that the accident had occurred quite a distance before that turn, it stands to say that accused person was being quite economical with the truth to this court.

I would briefly deal with the issue of accused person's absence from the scene of the accident. According to the accused person, he was advised by the police patrol team to seek medical help as he was hurt. His witness says he was dizzy. In cross examining PW1, learned counsel for the accused person put forth the fact that the Medland

Hospital which the accused person visited for medical attention is the official hospital for BOST, the company that accused works in.

The said hospital is located at Community two, Tema. The accident happened around Community 25. I take judicial notice that there is quite a distance between the accident scene and the said hospital. More importantly, there are a number of hospitals and clinics lined up from Community all the way to Community two; the most prominent of which is the Tema General Hospital. The fact that the accused person had to go all the way to Community two to seek medical attention can only mean one thing; he was not as injured and in need of emergency medical attention as he wants this court to believe.

If he could travel the full distance between the accident scene to the Medland hospital, then he could equally have waited and attended to the deceased within that time. I believe the evidence of PW2 that the accused person attempted to abscond from the scene and upon her shouts to a police patrol team nearby, he was arrested.

Again, PW6 testified as the medical doctor who attended to the accused person.

His evidence is that he observed and attended to the accused person on the morning of the 2nd day of January, 2020. That his shift commences at 8:am and ends at 10:am and so he attended to the accused person medically at that time.

Although he answered under cross examination that the accused person was in the ward when he attended to him and he cannot tell how long accused person had been there, the question any reasonable man would ask is, why would accused person go to hospital the same day with injuries and dizziness and not be attended to until after 8:am the next day?

A visit to the hospital with injuries from an accident scene means the victim would be attended to as a matter of emergency. As a hospital is not a hotel, staying in there overnight without any medical attention is not reasonable.

I find that the actions of accused person rather correlate with someone who had visited the hospital on the same 2nd of January that he was attended to rather than the 1st of January as he wants this court to believe. His own actions coupled with the observations in the medical report; EXHIBIT D and the evidence of PW6 makes it clear that he suffered no physical injury from the accident.

It appears from accused person's evidence that he is laying the blame for the accident on the deceased. His evidence is that the deceased should not have been on the road and the fact that the deceased was using number plate of his very own other motorbike on this particular motorbike means his credibility is questionable.

Unfortunately, I fail to see the relevance of the credibility of the deceased in determining how the accused person was driving. Accused person had also sought to put forth the case that the deceased was not a responsible driver and he was under the influence of alcohol on the said date. That he had gone to a drinking spot close by. Also that the deceased worked with TMA task force and was known as "Bigi" because he was well built and one who was known for his actions.

When accused person opened his defence, he did not lead any evidence of how the deceased was drunk, how he behaved or misbehaved in the community and how he come by this information and neither did he call any witness to testify about same. His claim that the headlights of the deceased's motorbike were not in order is not supported

by the DVLA report or any other piece of evidence. It appeared that the accused person was doing his best to discredit the deceased without a shred of evidence.

Rather, prosecution through PW1 and particularly PW2 had led credible evidence that the deceased was a responsible and careful driver who even wore his helmet whilst driving a bicycle. PW1 maintained that the deceased was referred to as "Bigi" because he was obese and was even actively trying to lose weight. As he was the brother of the deceased, I had to carefully analyse his evidence.

PW2 was not a relative of either the deceased or the accused person. In one of her answers under cross examination, she had answered that the deceased is referred to as "obolo''. That is a general term for chubby people. It goes to corroborate the claim of PW1 that the deceased was obese. Accused person tried too hard without any basis to disparage the deceased. The evidence did not support his case.

The accused person from the evidence was driving in his lane opposite the accused person. As a careful driver, before making the decision to overtake, one is expected to check the oncoming traffic from the opposite lane in order to ensure if it was safe to overtake a vehicle ahead of him.

Accused person says that when he went into the lane of the deceased in his attempt to overtake, he realized from his lights that the deceased was driving closely towards him and at top speed. That the proximity was such that he could not steer his car away and the deceased person crashed into him. That the headlights of the motorbike were not working and so he saw the deceased quite late.

To begin with, the fact that the deceased was driving in his rightful lane and it is the accused person who had driven into the lane of the deceased lane means that it is the accused who was driving towards the deceased and not the other way round. If the accused person whilst driving between 8:30- 9:00pm when it is generally dark, had stayed in his own lane, he would not have had a head on collision with the deceased.

Secondly, if the accused person had as required of an ordinarily careful and considerate driver, looked out into the oncoming traffic to check if it was safe i.e whether there was an oncoming vehicle close by, before moving into the opposite lane to attempt to overtake the vehicle ahead of him, he would have realized that the deceased was so close that it was not prudent to overtake.

I do not believe his evidence that the headlights of the deceased person's motorbike were not working. He did not state it in his statement to the police and it appears more of an afterthought. However, even if it is so, accused person's own headlights were working and so was in a capacity to see the oncoming motorbike if he was driving with care and consideration.

The witness for the accused person testified that accused person visited him at home on the said date and they decided to go and get some food. On their way, a motorbike crashed into accused person's car. That he cannot tell what happened as he was inspecting a building plan at the time of the accident.

That both the motorbike and accused person's vehicle were destroyed beyond mechanical repairs and whereas the accused sustained injuries, the deceased laid motionless on the ground. That the accused went to check on the deceased and was

then rushed to the hospital for treatment as he appeared dizzy. That he then proceeded to the Community 25 police station.

DW1's statement was tendered through him as EXHIBIT H. He gave the statement on the 4th of January, 2020. In same, he indicated that although he was driving with the accused, he cannot tell the cause of the accident and all he knows is that the car crashed with the motor rider. That the motor rider died instantly and accused person was hurt. That he was not affected.

I found him to be a witness of little truth. Although he testified that the accused person went over to where the victim was laying, accused himself does not say so. He also says accused was rushed to the hospital whilst he went to the Community 25 police station.

In a twist of events, accused person himself says he was advised by the police patrol team who took his car keys to go to the hospital and he was accompanied by him; DW1.

Again, if DW1 indeed reported to the police at Community 25 after accused had left for the hospital, then he would have been expected to make the whereabouts of accused person known to the police. Yet PW4 says he tried unsuccessfully to find the accused and it was not until two colleagues of the accused came to the police station to retrieve fuel coupons from accused person's vehicle that he forced them to show him the whereabouts of the accused. I attach very little weight if at all to his evidence before this court.

Also, in his statement to the police which was given on the 4th of January, 2020, he had never mentioned a patrol team, the dizziness of accused or he being rushed to the hospital nor the fact that accused had gone over to see the victim. Although he says in

his evidence in chief that he proceeded to the police station on the date of the accident which was 1st January, he offers no explanation as to why his statement was taken on the 4th of January, 2020.

Indeed, by means of putting his case forth under cross examination, the accused person's case is that it was after he had made his statement to the police on the 4th of January that he mentioned the name of DW1 and DW1 was then invited to the police station to give his statement. Yet, DW1 wants this court to believe that he had proceeded to the very same police station on the date of the accident. I find his claim to be fantastical.

Even though he says accused person came to him in his house and they then decided to go and find food, accused person in his investigation caution statement says he was driving from home - without indicating whether it was his home or DW1's, the only reasonable inference is that the accused person was referring to his own home rather than that of PW1 as one is likely not to refer to the house of another as home.

At the close of accused person's defence, I find that I neither believe his evidence or find it reasonably probable. The evidence on record also does not lend itself to any defence in favour of the accused. See the case of ***Regina v. Grunshie [1955] 1 W.A.L.R. 36***.

I find at the close of trial and after a careful evaluation of the evidence that the actions of accused person on the 1st of January, 2020 at about 9:00pm whilst he was the driver in charge of the Toyota Camry vehicle with registration number GT 2105-19 were short of the standards required of a careful and considerate driver. He drove in a careless and inconsiderate manner without due regard to other road users. His careless and

inconsiderate driving had negligently caused the death of Mr. Abednego Dorkeh and by so doing, caused a loss to his family and the entire country.

At the close of prosecution's case, I find that they have established the guilt of the accused person beyond reasonable doubt on both count one and count two. He is convicted accordingly.

PRE SENTENCING HEARING

BY COURT: Prosecution, is the convict known?
Prosecution: No my lord.
BY COURT: Is there a family member of the deceased here?
Ex WO1 Daniel Coffie Dorkeh: I am the biological father of the deceased.
BY COURT: How has this affected the family if at all?

Father of deceased: It affected the family deeply. Even as at now, I pick up my phone to call him because I cannot believe that he is gone. He was not married but he was taking care of two of his nieces. If the convict had chosen to tell the truth, we would not be where we all are today. I believe in Jesus Christ the son of the man and he says we should be truthful. I also believe in Buddha and he also says the truth would set one free. The convict knows what I am talking about.

BY COURT: Counsel, any grounds of mitigation?
Counsel for convict: My lord, this is an unfortunate incident and when a family looses a dear one, it is not easy. We share in the grief of the family and would have wished that it never happened but it has happened already. We reached out to the family on several occasions in an attempt to see how best we could support in whatever way possible.

Convict is a responsible person who works with BOST, a very reputable institution, indeed he is a Safety Officer. He is a married man with kids and he has children, four children and the youngest one is seven years old. They are all in school and he is the one who is responsible for their education. He is in school doing further studies at Maritime University. I plead with the court to be lenient with him in the circumstances and pray that my lord, if my lord can avoid a custodial sentence, we would appreciate that or worst case scenario, a 12 hour or 5 hour custodial sentence would send the right signal. This is our humble prayer and a custodial sentence would have very dire implications on the convict as well as his family.

SENTENCING.

The punishment upon conviction on count one is a fine of not more than two hundred and fifty penalty units or a term of imprisonment not exceeding 40 months or both. Count two is a misdemeanor and the punishment upon conviction per ***Section 296*** of the Criminal and other ***Offences Procedure Act, 1960 (Act 30)*** is a term of imprisonment not exceeding three years.

Kpegah J. (as he then was) in the case of ***Impraim v. The Republic [1991] 2 GLR 39-47*** stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration 'the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.'

Convict had taken prosecution through a full trial in order to establish his guilt. The family of the deceased had to testify and go through long, vigorous and unpleasant

cross examination in order to establish the guilt of the accused person. His careless and inconsiderate driving and his rather negligent act of ignoring basic road protocols with regard to overtaking had led to the death of a thirty three (33) year old man. That death is irreversible. The deceased was a public servant and so his death is a loss to both his immediate family, friends and the public at large.

Convict had also not shown any remorse for his actions in this court. The line of cross examination adopted had rather sought to exacerbate the pain of the family of the deceased. Convict had tried unsuccessfully to sully the image of the deceased who appears to have been well known and cherished by his community.

An accused person has every right and indeed must be accorded every facility necessary to enable him to mount a spirited defence. However, when an accused person has through his careless and inconsiderate driving caused the death of someone, one would expect that he restrains himself from dragging the reputation of the deceased in the mud particularly so when he has no evidence.

Convict had also showed no empathy as he tried to paint a picture that the receipt of the "substantial" insurance of forty five thousand Ghana cedis (Ghs 45,000) by the deceased's family was sufficient to assuage their loss. Forty five thousand Ghana cedis (Ghs 45,000) cannot be described as substantial for which the loss of life of a thirty three (33) year old employed in the public service should be sufficient.

In mitigation, convict is a first time offender and is ably employed. Although he tendered in documents showing he was a student, the said documents rather go to show that he is not. For EXHIBIT 4, he was admitted to the Ghana Institute of Management and Public Affairs for a two month course which he should have

completed in June, 2021 and for EXHIBIT 4a, he was pursuing a 4 year undergraduate degree programme at Maritime University which commenced in January, 2019. All things being equal, he should have completed that as well.

However, the fact that he has completed the courses should not go against him. If at all, it shows that he has attained the requisite skills necessary for him to do his part in developing the country. His negligent act of causing the death of a public servant has already deprived the state of one person, a harsh punishment handed to the convict would lead to the state losing the services of two persons.

In the circumstances, I find that a custodial sentence although appropriate, should not be too harsh. On count one, convict is sentenced to a three (3) month term of imprisonment. He is also to pay a fine of two hundred (200) penalty units failure of which he would serve a further four (4) months in custody. He is also to serve a three (3) month term of imprisonment on count two and pay a fine of six hundred (600) penalty units. In default, he would serve a further six (6) month term of imprisonment. The terms are to run concurrently.

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

A.S.P STELLA ODAME FOR THE REPUBLIC

JAMES ENU FOR THE CONVICT