

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 9TH MAY, 2023

SUIT NO. D14/27/20

THE REPUBLIC

VRS

KWESI BADU

JUDGMENT

The Accused Person stands arraigned before this court on two counts; *Careless and Inconsiderate Driving contrary to section 3 of the Road Traffic Offences Act, 2004 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 18th day of April, 2019 at about 18:45 hours, along the Community two motor road near EOCO office building in the Tema Metropolis and within the jurisdiction of this court, the Accused Person being the driver in charge of Toyota Hiace mini bus with registration number ER 1937-14, drove the said vehicle on the road without due care and attention to other road users when he was driving from Community One towards Ashaiman.

For count two, the Particulars of Offence are that on the same day, time and place and while driving the same vehicle, he drove the said vehicle on the road without due care and attention and negligently caused harm to Joyce Sarpong, aged 55, a female adult pedestrian, when he knocked her down, causing injury and resulting in her death.

The Accused Person pleaded not guilty to the charges and by so doing, cast upon his accusers the burden of leading cogent, credible and relevant evidence to prove his guilt beyond reasonable doubt.

Further by his plea of not guilty to both counts, Accused Person invoked the Constitutional guarantee in Article 19 of the 1992 Constitution. He stood shielded by the law as per *Article 19 (2) (c) of the 1992 Constitution*; he was 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".

The Supreme Court in the case of *Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879* sums this up eruditely as *"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.*

Prosecution in proof of its case called two witnesses. PW1 as an eye witness and PW2 as the investigator.

According to PW1, he was at his mechanic shop which is close to the EOCO building when he saw a woman with her daughter who was about twelve years old crossing the road from unit spot area heading towards his shop. They had almost finished crossing the road when suddenly, a Toyota hiace mini bus driven by the Accused Person with passengers on board knocked down the woman. The daughter of the woman jumped to the right side edge of the road and escaped unhurt.

PW1 says that he rushed to the scene and together with his colleagues, took the woman to the hospital in Accused Person's car. The nurses informed him that the woman died upon arrival.

PW2's evidence is that upon receiving the report of the accident, he proceeded to the scene and later to the Tema Polyclinic where the victim had been rushed. He was informed by the medical officer on duty that the victim was brought in dead.

He tendered in evidence the Investigation Caution Statement and Charge Statement of the Accused Person as EXHIBIT A and B respectively. EXHIBIT C series are a coroner's form, direction to make post mortem and a burial permit. EXHIBIT D is a sketch of the accident scene, whilst EXHIBIT E is a DVLA report on Accused Person's vehicle and EXHIBIT F as a police accident report. Prosecution closed its case thereafter.

CONSIDERATION BY COURT

The issues for the court to determine are;

1. Whether or not the Accused Person drove the Toyota Hiace Mini bus in a careless and inconsiderate manner and without due care and attention to other road users.
2. Whether or not the Accused Person negligently caused harm to Joyce Sarpong

On issue 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 Hiace mini bus
- b) He drove it without due care and attention OR
- c) He drove it without reasonable consideration for other road users

On the first element of count one, Accused Person does not dispute the fact that he was the one driving the Toyota Hiace mini bus on the 18th day of April, 2019 at about 18:45 hours, along the Community two motor road near EOCO office building when the incident occurred. All Prosecution witnesses testified that it was the Accused Person who was in charge of the vehicle which was also a commercial vehicle carrying passengers at the time of the incident. Thus on the first element, I find that it was the Accused Person who was driving the Toyota Hiace mini bus with registration number ER 1937-14 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 Person 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”.

The evidence of Prosecution witnesses, which the Accused Person does not challenge, is that the Accused Person was driving in town and the speed limit for such driving is 30km/ph.

The evidence of PW1 is that the deceased and her daughter were crossing the road and had almost completed the said road crossing, when the Accused Person who was driving at top speed at the time of the accident, knocked down the deceased.

PW1 who is the eyewitness maintained that all the vehicles that were travelling on the road at the time were driving at top speed. At page 27 of the record of proceedings, while being cross-examined by learned counsel for the Accused Person, he had this to say;

Q: So what was the traffic situation on that road that day?

A: All the vehicles were driving at speed and the traffic situation was not heavy. The deceased had almost finished crossing the road and her daughter was ahead of her when the incident occurred.

I found PW1 to be a credible witness. His mechanic shop was so closely situated by the road where the incident occurred and that afforded him the opportunity to not only witness the accident but events before the accident; the deceased crossing of the road with her daughter.

Prosecution tendered in evidence EXHIBIT D as a sketch of the accident scene. It shows the distance of the road which the deceased and her daughter were crossing to be 13

metres. The deceased had crossed all but 0.5m of that distance when the accident occurred. It also shows that the distance between the point of impact and the resultant position of the deceased is 17 metres. It further shows the final position of the vehicle after the accident.

The Accused Person as well as PW1 signed EXHIBIT D. The point of impact and the resultant position of the deceased as well as the distance the Accused Person travelled before bringing his vehicle to a stop is a good indication of the speed at which Accused Person's vehicle was travelling. The accident report from DVLA which details the damages to the vehicle is also a good indication of the force of impact.

EXHIBIT E is the DVLA report on Accused Person's vehicle. The braking, electrical and steering gear systems were found to be in good condition. That finding eliminates any possible blame on the state or condition of the vehicle. The damages to the vehicle were a wreck to the nearside front fender of the bonnet lid, smashing of the wind shield, nearside headlamp and direction indicator and a dismantling of the radiator and grill.

EXHIBIT E is evidence of extensive damages to the vehicle due to its impact with the deceased.

PW2 under cross-examination by learned counsel for the Accused Person at page 39 of the record of proceedings, answered;

Q: Did you calculate the speed of the Accused Person's vehicle at the accident scene?

A: My lord, no. Looking at the distance that he finally stopped from the point of impact, it would suggest to you that the vehicle was running over 30mph which is the designated

speed for township driving. and moreover the damage on the vehicle would also tell you that he is on top speed but for the actual speed, it cannot be determined if you are not using the speed gun to count. But the damage and the final position would at least give you the clue that the vehicle is on top speed.

From both the oral and documentary evidence on record, I can safely infer that the Accused Person was not driving at the requisite 30km/ph as required of an ordinarily careful driver who is driving through a town road which has homes, schools and businesses close to the road.

The Accused Person was driving at such top speed that even after his vehicle had impacted the deceased and was extensively damaged, the vehicle continued on for more than twice the distance between the point of impact and the resultant position of the deceased before it came to a stop. The distance of travel of the vehicle from the point of impact to the point C where the vehicle came to a resting point is over 37 metres.

The damages to the vehicle particularly the wind shield and bonnet were so extensive that the Accused Person cannot claim he did not feel the impact of the accident. The only inference that can be made is that due to the high speed at which he was driving and the fact that the speed had to be lowered gradually rather than abruptly, his vehicle continued travelling for that long distance before coming to stop.

Accused Person as a commercial driver had a duty of care towards all road users and was expected to exercise reasonable consideration for other road users including the deceased. That duty required him to travel at a maximum of 30km/ph on that particular road and also keep an eye on the road. He clearly failed to do this. The deceased had

almost crossed the road and was only 0.5 metres from the edge of the road at the time of the accident.

From the sketch, it is a straight road and so the Accused Person was reasonably expected to notice the deceased crossing and exercise reasonable consideration by slowing down his speed. The time of the day when the accident occurred according to prosecution witnesses was such that there was natural visibility. One would also reasonably expect that the Accused Person does not drive too close to the edge of the road where the accident occurred. He failed to do these. I find that Prosecution has established a prima facie case on the second element of count one.

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

1. The Accused Person while driving the mini bus, used same to negligently cause harm to Joyce Sarpong
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 C series includes the coroner's report and post mortem. The post mortem indicates the cause of death of the deceased to be cerebral contusion, multiple frontal scalp contusions, traumatic head injury, road traffic accident of pedestrian knocked down by vehicle.

The report is manifestly evident that but for the Accused Person knocking down the deceased and the resultant injuries, she would not have died on the said date at the said time and place. The Accused Person by knocking her down caused her bodily hurt and disorder which led to the contusions and injuries which caused her death.

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 reasonable consideration for other road users. He thus acted negligently. That his negligent act which caused harm to the deceased has led to her death is without justification is not in issue.

Consequently, at the close of prosecution's case, I found that they had established a prima facie case against the Accused Person on count one and two. He was thus called upon to open his defence to both counts.

Although learned counsel for the Accused Person had under cross examination established inconsistencies in the time of the incident, I find that these inconsistencies do not hold much water as there are inconsistencies in the time provided by both the Accused Person and defence. For instance, in his investigation caution statement given to the police, Accused Person said the incident happened around 6:15pm. In his Evidence-in-Chief, he indicated in paragraph two that it was around 5:15pm. I would

thus not hold the differing times against either side. It appears that the incident occurred between the hours of 5-6pm on the said date and place.

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, 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.

In his Evidence-in-Chief, Accused Person said the deceased had finished crossing the road he was driving on when she momentarily came back onto the road and the vehicle he was in charge of knocked her down.

In his Investigation Caution Statement, Accused Person said his vehicle had knocked down the deceased who was crossing the road from the nearside to the offside.

Accused Person had given his statement to the police on the 19th day of April, 2019; a day after the incident. He had not mentioned how the accident occurred or the role that the deceased played in causing same. Then, on the 21st of November, 2022, more than three years after the accident, when he filed his witness statement which was adopted as his Evidence-in-Chief, he suddenly remembers that the accident occurred because the deceased finished crossing the road and momentarily dashed back into the road.

Under cross-examination, he himself admitted that his Evidence-in-Chief was a mere afterthought. At page 63 of the record of proceedings, he answered;

Q: In your evidence in chief paragraph 4, you stated that everything happened within a few seconds and you did not anticipate that she would come back after crossing the road.

A: Yes.

Q: I put it to you that paragraph 4 of your evidence in chief is an afterthought.

A: Yes my lord. It is an afterthought.

Further, although the Accused Person was present when the sketch report was drawn and he signed it, he denied its contents under cross-examination. This is despite the fact that his learned counsel had not challenged PW2 when he answered under cross-examination that the Accused Person was the one who indicated to him all the points of impact and resultant positions which informed the sketch.

Accused Person had also not challenged his signature on the report or his presence at the scene during the sketching. Yet, under cross-examination, he had completely denied being present when the sketch was drawn or signing the said sketch. When prosecution showed him the sketch with his signature, he remained silent.

Accused Person's blatant lies to the court under cross-examination as well as his admission that his Evidence-in Chief is an afterthought means that I do not believe his evidence. I also do not find it reasonably probable. I have combed the evidence and it does not raise any defence in favour of the Accused Person.

In his cross examination of PW2, learned counsel put forth the case that the deceased was partly culpable in her own death as she did not cross the road at a zebra crossing. PW2 agreed and pegged the degree of contributory negligence at 5% on the part of the deceased. PW2 did not indicate if there was such a zebra crossing present on any part of the said road and the Accused Person did not in his defence provide any such evidence. On that basis, I cannot arrive at a conclusion that the deceased contributed to her death in anyway.

At the close of the defence's explanation, I find that the Accused Person has failed to raise any reasonable doubt in the mind of the court.

I find at the close of trial and after a careful evaluation of the evidence that the actions of Accused Person on the 18th day of April, 2019 between 5-6pm while he was the driver in charge of the Toyota Hiace mini bus vehicle with registration number ER 1937-14 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 negligently caused the death of madam Joyce Sarpong.

At the close of the trial, 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

According to the prosecution, the convict is not known.

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 has taken prosecution through a full trial in order to establish his guilt. His careless and inconsiderate driving has led to the death of a woman in her mid fifties who was crossing the road with her daughter of about twelve years. Aside the loss of her mother, the surviving child would have to live with the trauma of witnessing her mother’s sudden death in such a tragic and gruesome manner. As Prosecution witnesses indicated, she was in shock immediately after the accident.

Convict has also not shown any remorse for his actions in this court throughout the trial and neither has he shown any empathy towards the family of the deceased for having caused them to lose a loved one.

In mitigation, convict is a first time offender.

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 month term of imprisonment. He is also to serve a three-month term of imprisonment on count two and pay a fine of 200 penalty units by the 16th of May, 2023. In default, he would serve a five-month term of imprisonment. The terms are to run concurrently.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

INSPECTOR JACOB KUUBAL FOR THE REPUBLIC

PRINCE KWAKU HODO FOR THE CONVICT