

GHANA / JUDGMENT

QUICK CREDIT VRS FRIMPONG (B14/01/24) [2024] GHADC 210 (16 May 2024)

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IN THE DISTRICT COURT HELD AT PAKYI NO. 2 ON THURSDAY THE 16TH DAY OF MAY, 2024
BEFORE HER WORSHIP DORA NSIAH JACKSON (ESQ.) THE DISTRICT COURT MAGISTRATE
SUIT NO. B14/01/24 THE REPUBLIC V. FRIMPONG KWADWO CORAM: HER WORSHIP DORA
NSIAH JACKSON ESQ.

JUDGMENT

Introduction

The Accused Person was arraigned before this court charged with careless and inconsiderate driving contrary to Section 3 of the Road Traffic Act, 2004 (Act 683) as amended by Road Traffic (Amendment Act) (Act 761) The Accused Person pleaded guilty with explanation. The court upon listening to the explanation by the Accused Person entered a plea of not guilty for him. In the course of the trial, prosecution tendered the following documents into evidence in support of their case; Investigation caution statement exhibit 'A' Charge statement of Accused exhibit 'B' 1 Sketch map of the accident scene 'C' The Accused Person also tendered into evidence a Photograph exhibit '1' Prosecution called 2 witnesses; the Accused Person also called 1 witness. The case of prosecution The brief facts of the case given by prosecution are that: "On 27/03/2023 about 1630 hrs. Accused Frimpong Kwadwo was in charge a Toyota Hilux Pick-Up with registration No. GV 167-21 on board one person from Tech heading towards Aboabo Kese – Kwanwoma in Atwima Kwanwoma District. On reaching a section of the road at Kwadwo Junction, he allegedly and without due care and attention drove carelessly and crashed his vehicle with an oncoming M/ Benz Sprinter bus with registration No. AS 896-16. However, the impact moved the Pick Up and hit a pedestrian one Diana Asare. She sustained serious injuries and was rushed to Kumasi Hospital for treatment. Both vehicles got damaged and were impounded at Trede MTTD yard". The case of the Defence The case of the Accused Person as recounted by him is also reproduced hereinbelow: "On 27/3/2023, I had closed from work with my boss and we were returning home. When we reached Kwadwo Abura junction around 5.30pm, a Sprinter bus run into the bucket of my Toyota Pick-up. When the said Sprinter hit the bucket of my pick-up, my said pick-up then hit

a pedestrian who was then standing by the roadside. Kwadwo Abura is a busy place so every driver who gets to that junction has to be very careful. Because the sprinter driver was speeding without taking precaution, when he hit the bucket of my pick-up, it started spinning about three times and in the process hit the said pedestrian. At that point, I thought I could move my car but I noticed that the 2 tyres at the back had all burst. There was a good Samaritan who helped me carry the victim to the hospital. I decided to report the incident to the police station which was closer to the place of the accident. I informed the sprinter driver to come with me to make a case at the said station. He refused and told me that it is not his case but rather my case so I should go and report. Policemen at Abura junction gave us the contact of Trede police station and asked us to call them. Later, my boss called Trede police and they came to the scene to examine the place and took measurement and also towed my pick-up to the station. I was asked to go to Trede police station to give my statement. Ever since the incident occurred, we have searched for the sprinter driver but we have not found him. The people at the junction where the incident occurred told the policemen at the junction that the driver of the sprinter was drunk that was the reason why he cannot be found. I have a photograph on my pick-up mangled bucket and I wish to tender it into evidence". The law Applicable The Accused Person was charged under Section 3 of the Road Traffic Act, 2004 (Act 683) as amended by Road Traffic (Amendment Act) (Act 761) which provides that: "A person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road commits an offence and liable on summary conviction to a fine not exceeding 200 penalty units or a term of imprisonment not exceeding 40 months". In order to succeed in establishing the offence, prosecution is required to prove the following elements of the offence:

1. That the Accused drove carelessly without due consideration for other road users
2. That the Accused acted intentionally
3. That the Accused acted without any lawful justification
Presumption of innocence and the burden of proof
It is trite that in criminal trials, the Accused Person is presumed to be innocent until proven guilty by a court of competent jurisdiction or until the Accused Person pleads guilty. It is stated in the 1992 Constitution, article 19(2) (c) as follows: "A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty". Consequently, the evidential burden is on the prosecution to lead credible evidence to establish the guilt of the Accused when he or she pleads not guilty. It is also provided in the Evidence Act, 1975 (NRCD 323) section 15 (a) that "unless it is shifted, the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue". See also section 11(2) of the Evidence Act, 1975 (NRCD 323) which states as follows: "in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt". The law thus places a higher burden on the prosecution in a criminal matter than it does on a plaintiff in a civil suit. In the case of *Oteng v. The state* [1966] GLR 352 at 354 SC, it was held that "one significant respect in which

our criminal law differs from our civil law is that, while in civil matter a plaintiff may win on a balance of probabilities. In a criminal case the prosecution cannot obtain conviction upon mere probabilities". The onus on the defence When at the close of prosecution's case an Accused Person is called upon to open his defence, he is required to do so to avoid a ruling on that fact against him. This has been codified in section 11(3) of Evidence Act, 1975 (NRCD 323) which provides that "in a criminal action the burden of producing evidence when it is on the Accused as to any fact the converse of which is essential to guilt, requires the Accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt". It has been held in the case of Commissioner of Police v. Antwi [1961] DLSC 5356 that in defence, all that is required of an Accused Person is to raise a reasonable doubt as to his guilt. The above case law is also codified by NRDC 323 s. 13(2) which also states that "except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the Accused as to a fact the converse of which is essential to guilt requires only that the Accused raise a reasonable doubt as to guilt".

Analysis and Evaluation of evidence adduced at trial It is the duty of this court at this stage to determine whether prosecution has established all the elements of the offence. To do this, prosecution called 2 witnesses and also tendered into evidence exhibits 'A', 'B' and 'C'. PW1 testified that on 27/03/2023 at about 4.30 hours, he was driving a Mercedes Benz sprinter with registration No. AS 896-16 Kwanhoma towards Sokoban. When he reached a section of the road at Kwadwo Kwadwo Abora Junction, a Toyota Hilux Pick-up with registration No. GV167-21 suddenly crossed him at a very close distance. That he tried his best to save him but he could not due to the distance between him and the pick-up. His vehicle, as a result run into the middle portion of the pick-up driven by the Accused Person. The impact moved Accused Person's vehicle and hit a certain woman named Diana Asare who sustained serious injuries.

5 Both Accused Person and prosecution do not deny that an accident happened on the 27/10/2023. They also do not deny that one Diana Asare got injured as a result of the accident. Where they have joined issues is the person whose fault resulted in the accident. Accused Person has alleged that the accident was caused by PW1 because he was drunk at the time of the accident. Below are excerpts of the cross examination of PW1 by the Accused Person.

Q. In Paragraph 8 of your witness statement, you have stated that your vehicle run into the middle portion of my vehicle not so A. It is so Q. I put it to you that your vehicle hit the bucket of my vehicle and not the middle A. I hit the middle part not the bucket Q. I put it to you that you were drunk on the day of the incident A. It is not correct. The following also transpired during cross-examination of PW2 the investigator by the Accused Person.

Q. You said the complainant's vehicle run into the middle portion of my vehicle is that not correct. A. It is correct. Q. I put it to you that the complainant's vehicle did not crush into the middle portion of my car but rather into the bucket of my pick-up. A. It crushed into the bucket and the back seat so I can say it crushed into the middle portion. Q. Are you aware that when the incident happened the driver of the Mercedes printer was drunk? A. when I got to the scene, I did not meet the sprinter driver. Q. I told you that the driver of the Mercedes sprinter was drunk at the time of the accident when you arrived at the scene is that not correct. 6 A. it is not true. Q. I put it to you that the driver of the Mercedes sprinter run away from the scene

because he was drunk that was why you did not meet him at the accident scene. A. My investigations revealed that the said driver had gone to seek medical care Q. Is there any report from the sprinter driver that he indeed went to the hospital as claimed? A. Yes, there is a medical form endorsed by a medical doctor. Q. Which hospital did the sprinter driver attend for medical care as claimed? A. Kwanwoma hospital. Q. What is the name of the medical doctor who endorsed the Medical Form? A. I do not know his name. Q. Is the said Kwanwoma hospital government hospital or private. A. It is a government hospital. Notwithstanding the fact that the Accused Person need not prove anything, during criminal trials, when the burden of proof shifts unto him, he is required to provide evidence to enable a ruling on a particular fact to be made in his favour. He alleged that DW1 was drunk at the time of the accident and the onus was on him to prove that fact by leading credible evidence but he led no evidence at all. His allegation is based on what people at the accident scene were saying. He also tendered into evidence exhibit '1', a photograph of only a mangled bucket of a pick-up. Exhibit does not show a full photograph of the said pick-up. It does not also show the registered number of the pick-up making it difficult to ascertain whether it is the same pick-up which is in reference in this case. This court is unable to place any weight on it. In proof of their case, prosecution tendered into evidence exhibit "C" being measurement of the accident scene. Below is an extensive cross-examination on the said exhibit of Accused Person by prosecution. 7 Q. Were you present when the measurement of the accident scene was taken? A. I was present Q. and you accepted the measurement which was taken. A. Yes, I accepted. Q. And you accepted where the accident happened which was the lane of the sprinter bus with registration No. AS 896-16. A I accepted. Q. Then I put it to you that you did not observe the speed limit at which the sprinter driver was coming. A. It is not true. Q. I put it to you that you certainly crossed into the sprinter driver's lane. A It is not true. Q. Can you locate where your car was coming from? A. I cannot, based on the sketch. Q. You were coming from Ampayo towards Trede. A. Yes, that was my time of driving towards the road. Q. And the sprinter was also coming from Trede towards Ampayo according to the sketch. A. It is true. Q. In the sketch you could see a pick-up drawn using red pen. Is that the direction you were coming from. A. Yes. Q. I put it to you that the incident happened in the lane of the sprinter bus. A. It is not true. 8 Q. I further put it to you that where the incident happened, you could have avoided it by observing the incoming vehicle. A. It is not correct. Q. I finally put it to you that on that fateful day, you drove carelessly into the lane of the printer vehicle which caused injury to Diana Asare and Kofi Boakye. A. It is not true. DW1 corroborated prosecution evidence during cross-examination that the accident happened in the lane of the sprinter bus. The following were his answers to questions posed to him by prosecution during cross-examination: Q. So you were in the car when the accident happened. A. Yes, I was in the vehicle. Q. When the police went to mark the point of impact and the resultant position of the vehicle were you there. A. No. Q. Exhibit 'C' shown to witness. Can you locate where the pick-up is in exhibit "C". A. Yes, I can locate i.t Q. And where the pick-up position was at the time was in the lane of the sprinter bus. A. Yes. Q. From your own observation from the sketch, which lane did the accident happen. A. From the sketch, the accident happened in

the lane of the sprinter bus. Q. Then I put it to you that the Accused Person did not observe the incoming vehicle that is the sprinter bus before the accident happened. A. I cannot speak for the driver. 9 In *Asante v. Bogyabi* [1966] GLR 232, the court held that “where the evidence of one party on an issue in a suit was corroborated by witness of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court found the corroborated version incredible or impossible” I have examined exhibit ‘C’ and I have no doubt that the accident did occur in the lane of the sprinter bus. The measurement of the accident scene also shows that the pick-up vehicle crossed unto the lane of the sprinter bus at a very close range. Also, DW1 has corroborated prosecution’s evidence that the accident happened in the lane of the sprinter bus. From the analysis above, this court makes the following findings of fact

- a. The accident happened in the lane of the printer bus
- b. Accused crossed into the lane of the sprinter bus at a close range
- c. That the Accused drove carelessly without due consideration for other road users This court is therefore satisfied that prosecution has successfully proven the elements of the offence. It has been stated in the case of *Lutherodt v. Commissioner of Police* [1963] 2 GLR 429- 440 “if quite apart from the defendant’s explanation the court is satisfied on a consideration of the whole evidence that the Accused is guilty, it must convict” This court hereby finds the Accused Person guilty of the offence of careless and inconsiderate driving and convicts him accordingly. In passing sentence, this court has considered the fact that the accused;
 1. Is a family man with responsibilities for his family 10
 2. Is a first-time offender
 3. His plea of mitigation. Sentence Accused is hereby sentenced to pay a fine of 120 penalty units and in default serve a term of 3 months in prison. Accused Person is also to repair the Mercedes Benz Sprinter bus to the state in which it was before the accident. (SGD.) DORA

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