

GHANA / JUDGMENT

Boakye Vrs Republic [2023]

GHAHC 136 (6 February 2023)

[2023] GHAHC 136

COURT

High Court

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE WINNEBA, HELD ON MONDAY THE 6TH DAY OF FEBRUARY, 2023, BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE. SUIT NO. CC15/007/2022

1. FRANK BOAKYE ... APPELLANT VS THE REPUBLIC ... RESPONDENT

JUDGMENT

The Appellant Boakye Frank was charged with the offense of Dangerous Driving contrary to Section 1(a)(i) of Act 683, 2004 as amended and by act 761, 2008 and Causing Danger to Other Road User contrary to Section 22(b) of Act 683, 2004 as amended by Section 1(b) of Act 761, 2008. On the 6th day of June 2022, the Appellant was arraigned before the District Court Awutu Bereku where he pleaded guilty on both counts and was sentenced to one month Imprisonment on court 1 and a fine of 25 penalty units on count 2 in default two (2) weeks imprisonment. Dissatisfied with the judgment of the court below, the Appellant has mounted this appeal in his quest to secure his freedom by way of acquittal and discharge of the charges against him and the punishment thereof pursuant to Section 21(1) of Act 459 as amended. THE BRIEF FACTS OF THE CASE On the 4th day of June 2022, about 9.15 am , a team from National Police Headquarters , Accra who were on special excise duty on Accra – Winneba highway arrested the accused driver Boakye Frank who was in charge of Toyota Fortuner with registration No. GT 6043 – 22, for the offenses of overtaking, dangerously in the middle of the road, facing oncoming vehicles and caused road obstructions which interfere with free movement of other vehicles. He was handed over together with the vehicle to Kasoa MTTD Commander ACP Ms Agnes Caesar. The accused again failed to produce his driver's license to assist investigations. The accused was then processed with the offense, as stated in the charge sheet and arraigned before this honourable court. THE GROUNDS OF APPEAL The sole ground of appeal was that; the sentence imposed on the Appellant is harsh and excessive. In determining the Appeal before me, I will combine grounds a, b and c together and deal with them given that they all lead to the same conclusion and consequences. It is trite that an Appeal is by way of re-hearing especially in the instant

appeal where the judgment is being challenged as not supported by the weight of the evidence. This principle was reaffirmed by the Supreme Court speaking through Appau JSC in the case of *EVELYN ASIEDU OFFEI V YAW ASAMOA ODESHE KWAKU AGYAPONG*¹ thus: "... An appeal is by way of rehearing, particularly where the appellant alleges his notice of appeal that the decision of the trial court was against the weight of evidence. In such a case, it is the duty of the appellate court to analyse the entire record of appeal, take into account the testimonies...it is immaterial whether the appeal is a second one from the Court of Appeal to the Supreme Court." See: *TUAKWA V BOSOM* (2001-2002) SCGLR 61. This position of the law that an appeal is by way of rehearing especially when the evaluation of the evidence by Court below is in doubt, was re-echoed by the Supreme Court speaking through Adinyira JSC as well as Dotse JSC in the cases *Ackah v Pergah transport & Others* [2010] SCGLR @ 728 – 739 and *Abbey & Others v Antwi* V SCGLR 17 @ 34 – 35. This no doubt allows the appellate court the opportunity to re – examine the record and arrive at its own decision one way or the other. THE BURDEN OF PROOF IN A CRIMINAL CHARGE Section 11(2) of the Evidence Act 1975 NRCD 323 states; "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 evidence a reasonable mind will find the existence of the facts beyond reasonable doubt." Section 13(1) of the Evidence Act 1975 NRCD 323 provides the extent of proof or the burden on the prosecution in a criminal action thus:

- (1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt. Therefore, the failure on the part of the prosecution to discharge the burden according to the legal standard which standard is beyond reasonable doubt, will lead to the acquittal and discharge of the accused or convict as the case may be.. See *Donkor v The State* {1964} GLR 598, SC *Yeboah v The Re (Consolidated)* {1972} 2 GLR 281 *Republic v Adams* {1960} GLR 91 at 95 CA *Mali v The State* {1965} GLR 710 SC The criminal in Ghana is settled that one cannot ground a conviction if the prosecution if it bases is findings on mere probabilities if not beyond reasonable doubt which clearly draws a distinction between our civil law and the criminal law. See *Oteng v The State* {1966} GLR352 – 354, SC. The criminal law in Ghana is settled that one cannot ground a conviction if the prosecution bases its findings on mere probabilities if not beyond reasonable doubt which clearly draws a distinction between our civil law. See *Oteng v The State* {1966} GLR352 – 354, SC. It is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt in all criminal cases. What "beyond a reasonable doubt" means is that, the prosecution must overcome all reasonable inferences favouring innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence, in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused. The rule beyond a reasonable doubt, can thus be formulated thus:- "An accused person in a criminal trial or action, is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt, he is entitled to a verdict of not guilty." See article 19 (2) (c) of the Constitution, 1992

and Dotse JSC in the case of Richard Banousin v the Republic , Appeal # J3/2/2014, 18/03/2014
See also:

1. Frimpong @ Iboman v Republic [2012] 1 SCGLR 297 In the instant appeal the issue for consideration is not the conviction but the harshness and excessiveness of the sentence imposed. In arguing against the sentence as being excessive on behalf of the Appellant, Counsel referred to the case of Apaloo v The Republic [1975] 1GLR 156 – 192 where the held in holding 11 that “ The court would interfere only when it was of the that the sentence was manifestly excessive having to the circumstances of the , or that the sentence was wrong in principle” It was further argued on behalf of the Appellant that the circumstances of the case were not taken into consideration when he was sentenced to one month imprisonment. It was also argued that the Appellant was a first offender and pleaded guilty simpliciter without wasting the court’s time. It was also argued on behalf of the Republic that the trial judge was well within the ambit of the law when he sentenced the Appellant to one month imprisonment. The Road Traffic Act enjoins the trial court to impose a fine or a custodial sentence or both. The trial judge having considered the circumstances of the case and in the exercise of her discretion imposed the custodial sentence. It was strongly urged on the appellate court not to interfere with the sentence imposed on the Appellant and a plethora of cases were quoted to support the view expressed on behalf of the Republic. The State Attorney quoted the case of Kwashie v The Republic [1971] 1GLR 488 where the Supreme speaking through Azu Crabbe JSC stated; “in determining the length of sentence, the factors which are trial is entitled to consider are :
 - i. The intrinsic seriousness of the offense ii. The degree of revulsion felt by law abiding citizens of the society for the particular crime. iii. The premeditation with which the criminal plan was executed iv. The prevalence of the crime within the particular locality where the offense took place, or in the country generally.
 - v. The sudden increase in the incidents of the particular crime and vi. Mitigating or aggravating circumstances such as extreme youth, good character, and the violent manner in which the offense was committed” See also:
 1. Komegbe v The Republic [1975] 2 GLR 170
 2. KAMIL v The Republic [2011]1 SCGLR 300
 3. Joel Moises @ Joel Melia v The Republic [2017 – 2018] SCGLR 333. I have critically considered the evidence before the court below, the notice of appeal and the relief being sought by the Appellant as well as the legal arguments for and on behalf of the Appellant and the Respondent (Republic). I also considered the legal position of the law governing the Road Traffic both Act 683 and Act 761 that amended Act 683 and find that the legislature was as much as possible preferred a reduction of the penalty or sentence unless the facts warrant otherwise. It is therefore the view of this court that, though the one month custodial sentence was thin the law and was so rightly applied. However, the circumstance of this case and for a first offender was not mitigated enough. See ODONKOR V THE REPUBLIC 690 and

Section 30 (a) (ii) of the Court Act 459 . The difficulty we have as a court is how to ascertain re-current offenders especially when the data is not readily available and that has the tendencies to unduly punished first offenders in the name of deterrent. This is because everybody suffers for the sake of deterrents when if considered by case by case the time reactivated will be fizzled out and punished wrongly. In the instant appeal and per the evidence records the appeal succeeds and the finding of the court below is maintained but the nature of the sentenced is altered from custodial to a fine pursuant to Section 30(a) (i)(ii) (iii) of act 459 Accordingly the fine on count one is affirmed but the one month imprisonment sentence on count two is substituted to the maximum penalty units of twenty(20) and he is so fined. JUSTICE ABOAGYE TANDOH HIGH COURT JUDGE (SGD) COUNSEL JUSTIN AMENUVOR ESQ, FOR THE APPELLANT. COUNSEL FOR THE RESPONDENT (ABSENT) 8

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