

GHANA / JUDGMENT

# Republic Vrs Buhari [2023]

## GHACC 417 (13 April 2023)

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IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 13TH DAY OF APRIL 2023 BEFORE HER LADYSHIP JUSTICE GWENDOLYN MILLICENT OWUSU, A JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL CIRCUIT JUDGE 6/2021 THE REPUBLIC VRS ALHASSAN BUHARI PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI ACCUSED PERSON PRESENT AND SELF REPRESENTING

### JUDGMENT

The accused person was arraigned before this court on a charge of dangerous driving contrary to section 1 (C) of the Road Traffic Act, 2004 (Act 683), as amended by the Road Traffic (Amendment) Act, 2008 (Act 761). The particulars of the offence are that, the accused, Alhassan Buhari, a driver aged 38 years on December 19, 2019, then in charge of a Daewoo Matrix taxi with registration number AW 3186-12 did drive the said vehicle dangerously and crashed with Bajaj tricycle numbered M-19-AS-1210 and killed one Abraham Gyimah, the rider. The brief facts of prosecution's case are that, on 19th December, 2019 at about 11:30 accused driver Alhassan Buhari aged 38 years was in charge of Daewoo Matrix Taxi with registration number AW 3186-12 with four persons on board driving from Mabang to Tapa whilst rider Abraham Gyimah aged 25 years was in charge of Bajaj Tricycle with registration number M-19-AS 1210 with three persons on board from Akwasiase towards Tapa. On reaching a section of the road at the outskirt of Tapa near Appiah Adjei washing bay, accused driver in an attempt to overtake the tricycle grazed the side of the tricycle and the rider lost control of the tricycle and went into a ditch on the right side edge of the road. All occupants in the tricycle including the rider sustained injuries and were rush to Tapa Government Hospital for treatment but the rider was later referred to Komfo Anokye Hospital for further treatment where he was admitted and died on 23rd December, 2019. After police investigation, duplicate docket was prepared and forwarded to Attorney General's office Kumasi for advice. The docket was returned to police with the advice that accused driver should be charge with the offence mentioned on the charge sheet and put before this honorable court. BURDEN OF PROOF The prosecution had the burden to prove that the accused person drove dangerously, and the victim died as a result of the dangerous driving of the accused person. This is so because in our criminal law jurisprudence, it is the prosecution which carries the burden of proof, the standard of which is proof beyond reasonable doubt as reflected in the

statement of Lord Sankey in *Woolmington v. DPP* [1935] UKHL 1 that “no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”. It was held in *Dexter Johnson v. the Republic* [2011] 33 GMJ 68 S.C that prosecution would have to discharge this burden by leading evidence satisfactorily to prove that the accused person committed the offence he has been charged with. Any doubt in the prosecution’s case should inure to the benefit of the accused person. Section 11(2), (3) and (4) of the Evidence Act refers to the burden on prosecution to prove the guilt of the accused person beyond reasonable doubt. Section 11(2) states that “in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to the guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt”. This is true to upholding the fundamental principle in Article (19) (2) (c) of the 1992 Constitution that everyone is innocent until proven guilty. To establish culpability, the prosecution must present enough evidence to convince the court that the accused is guilty of the offence charged. The Prosecution has the burden to provide evidence to satisfy all the elements of the offence charged. It was held in *Asare v. The Republic* (1978) GLR 193 – 199 that “as a general rule, there was no burden on the accused to establish his innocence. Rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.” Prosecution called two (2) witnesses; PW1, Akua Tigah who was a passenger on the Bajaj tricycle, and PW2, the investigator. According to the prosecution, PW1, was on board the Bajaj tricycle with one 14-year old known as Seidu, and the deceased rider Abraham Gyimah. On reaching a section of the road on the outskirts of Tepa near the gas filling station, the Daewoo Matrix taxi cab being driven by the accused was overtaking the tricycle, and there was a big truck coming from the opposite direction. To avoid a head- on collision with the said truck, the accused drove his taxi cab towards the side of their tricycle. The taxi grazed the side of the tricycle and the deceased rider lost control of the steering, veering off the road into a ditch. All three (3) passengers on board the tricycle sustained various degree of injuries and were rushed to the Tepa Government Hospital. The deceased driver was however referred to Komfo Anokye Teaching Hospital for further treatment where he died some days later while still receiving treatment. During cross-examination, accused did not challenge the evidence adduced by the prosecution. He only sought to establish that he was the one who picked the injured occupants of the tricycle to the hospital. PW1 however stated that after the accident, she was in no state to take notice of which taxi conveyed them to the hospital. At the close of prosecution’s case, this court ruled that a prima facie case has been made, and called on the accused to open his defence. DEFENCE The accused in his defence stated that it was rather the tricycle which wanted to overtake him when there was an oncoming truck. He contends that because of the oncoming truck the tricycle forcibly entered in front of him and to avoid hitting its back, he the accused turned his steer to the left side, and the tricycle rider also turned its steer to the left side and because the tricycle was overloaded, it could not get enough space and hit the front passenger side of his taxi. The tricycle veered into the bush, and he alighted the passengers on board his taxi to convey the occupants of the tricycle to the Tepa Government Hospital.

## ANALYSIS

The evidence led by the prosecution clearly shows that at all material times, the victim's tricycle was ahead of the taxi cab of the accused. This was uncontroverted throughout prosecution's case. In fact, exhibit "E" which is a sketch of the accident scene also confirms same. Exhibit "E" was made with the assistance of the accused person in the presence of an independent witness. In this exhibit, the accused person has indicated the point where he reached and saw the tricycle rider, which measured 28.40 metres ahead of the accused in his taxi. He has also indicated the point he reached and was overtaking the tricycle to the point of impact which measured 31.0 metres ahead of the accused in his taxi. Clearly, the tricycle was ahead of the taxi that the accused was driving. The accused, according to the said exhibit says, he saw the tricycle when he was 28.40 metres away, but then again, he says he started overtaking the tricycle when he was 31.0 metres away; and then when he mounted the witness box to give evidence under oath, he says it was the tricycle rider who tried to overtake him, when there was an oncoming vehicle. It is settled in law as per the dictum in *Fori v Ayirebi* [1966] GLR 627, SC, that when a party has made an allegation, and it is not denied by the other party who has every opportunity to react, there is no need for further evidence to be led on same. PW1 when she mounted the witness box told the court that the accused was trying to overtake their tricycle when there was an oncoming big truck, and to avoid a head-on collision with the said truck, the accused taxi driver drove his taxi towards their side, grazing the side of the tricycle, and the deceased rider lost control of the steering, veering off the road into a ditch. The accused cross-examined PW1 but asked no question about this account of the incident. He only asked questions about how many people were on board the tricycle, and which taxi conveyed them to the hospital; and even then he asked: "Is it the same taxi that grazed the pragia that took you to the hospital?", which question in itself admits that it was the taxi that grazed the tricycle. In *Fori v Ayirebi supra*, it was held that if the party fails to cross-examine his opponent or the witness while the opponent or the witness is in the box and he has the opportunity to react to his opponent's case, the court should not attach much weight to the evidence that the party later gives on that particular issue after the opponent or his witness has left the witness-box. Similarly, in *Quagraine v Adams*, [1981] GLR 599, CA, it was held that where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine. In the case of *Lutterodt v. Commissioner Of Police* [1963] 2 GLR 429, the court held that "Where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court shall proceed to examine the case for the defence in three stages: Firstly, it should consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant; If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, if it should find it to be, the court should acquit the defendant; and finally quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is, together with the whole case, i.e., prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it

should acquit.” I shall therefore proceed to consider the defence of accused person. From the analysis above, the accused during cross-examination only sought to establish that he was the one who picked the victims to the hospital, and nothing more. He never challenged the fact that there was an overtaking at a time when it was dangerous so to do because there was an oncoming big truck. Rather, when he mounted the witness box at the close of prosecution’s case, he said it was the tricycle which was trying to overtake the taxi he was driving. In *Gyabaah v The Republic* (1984-86) 2 GLR 461 CA, the Court of Appeal held that “the law was that a witness whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence could not be regarded as being of any importance in the light of his previous contradictory statement unless he was able to give a reasonable explanation for the contradiction”. In *Munkaila v The Republic* (1995-96) 1 GLR SC Edward Wiredu JSC stated that “When an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up”. From the evidence before the court, I am unable to accept the explanations given by the accused, neither do I find his explanations reasonably probable. The conduct of the accused resulting in the accident exhibits a wanton disregard for human life. However, when he realised that his own life was in danger, he saw the need to stay alive and in so doing, sacrificed the life of another to save his own when he was the one who had created that dangerous situation. Considering the evidence in its entirety, I am of the view that the accused person failed to lead credible evidence to raise a reasonable doubt in the case of the prosecution against him as to his guilt as required under sections 11(3) and 13(2) of the Evidence Act, 1975, (NRCD 323). I find from the evidence before the court that prosecution has been able to prove the charge against the accused person beyond reasonable doubt and I find him guilty, and convict him accordingly. SENTENCE In deciding the sentence of the accused person, I have taken into consideration all the aggravating and mitigating factors in line with the Ghana Sentencing guidelines, and I hereby sentence the convict to a term of five (5) years in prison in hard labour. The accused has a right of appeal which right must be exercised within three (3) months from date. SGD H/L JUSTICE GWENDOLYN MILLICENT (JUSTICE OF THE HIGH OWUSU COURT)

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