

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 8TH
DECEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO.: CC222/2021

THE REPUBLIC

VRS

FRANCIS DUGBAZA

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JACOB AWIAGAH FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGEMENT

The Accused person herein stands charged with the following offences:

- a. Careless and Inconsiderate Driving contrary to section 3 of the Road Traffic Act, 2008 (Act 761);
- b. Negligently Causing Harm contrary to section 72 of the Criminal Offences Act, 1960 (Act 29); and

THE FACTS OF THE CASE

On the 15th July, 2021 at about 4:30pm, the Accused person was in charge of a Honda Shuttle with Registration Number GM 7278-12 suspected to be uncustomed from Aflao towards Accra direction. On reaching Dabala and Sogakope CEPS check points, the driver was signaled to stop but he ignored the signals respectively and sped off. He was pursued by the CEPS officers with

Toyota Hilus with Registration Number GV 1102-20 driven by CEPS officer Raphael Nutsukpui. On reaching a spot at Tefle Township, the accused person knocked down victim rider Diame Gershon and sped off. The Accused person made a U-turn and was driving towards the main Sogakope-Accra road. In the process, the Accused person's vehicle crashed with the CEPS vehicle causing damage to both.

In stating its case, the prosecution filed Witness Statements for four (4) persons but however called two (2) of them to testify in support of its case.

PW1 (Inspector Monica Dumbu) stationed at Divisional MTTD, Sogakope investigated the case. PW1 relied on her Witness Statement together with the exhibits attached.

PW2 (Gershon Diame) testified as the one whose motorbike the Honda Shuttle run into.

After the close of the case of the prosecution, the court ruled that a prima facie case had been made out against the Accused person, and so he was accordingly ordered to enter into his defence.

THE CASE OF THE DEFENCE

The Accused person in opening his defence testified himself and called no witness. The Accused person told the court that on that fateful day, he was not the driver in charge of the vehicle that was involved in the accident and that he was only a passenger. According to the Accused person on that day, his vehicle he was driving developed a fault in Accra and so he came to Aflao and joined the

driver of the vehicle that was involved in the accident to Accra. That when they got to Sogakope, the driver was signaled to stop but he refused. The CEPS officers moved their vehicle and started chasing their vehicle but his driver refused to stop. Suddenly, their car crushed the CEPS vehicle. After the accident, the driver came out of the vehicle and fled. The CEPS officers chased the driver but to no avail. The Accused person told the court that he could not move out of the vehicle because he was injured.

The legal issues that emerged for determination after the end of the trial are as follows:

- i. Whether or not the Accused person carelessly and inconsiderately drive the Honda Shuttle.
- ii. Whether or not the Accused person negligently and unlawfully caused harm to PW2 (Gershon Diame).

The general principle of law in every criminal case as stated in the case of Asare vrs The Republic [1978] GLR 193-199, per Anin J.A. reading the Court of Appeal decision is that:

"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."

Section 3 of the Road Traffic Act, 2004 (Act 683) as amended by section 3 of Road Traffic Act, 2008 (761) provides:

“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 is liable on summary conviction to a fine not exceeding 25 penalty units or to a term of imprisonment not forty months or to both.”

Section 72 of Act 2 reads:

“Whoever negligently and unlawfully causes harm to any person shall be guilty of a misdemeanour.”

The elements for this offence are that a person has caused harm to another person; the harm was unlawfully and negligently caused by that person. It means that a person who should have exercised due care and attention to another person failed and unlawfully and negligently caused harm to the other person. It is not one of the intentional offences but rather negligence. See Okutu vrs The Republic [1975] 1 GLR 264.

From the evidence adduced at the trial, it is obvious that PW1 and PW2 did not see the driver of the Honda Shuttle. In the case of Ameshinu vrs The Republic [2010] 34 MLRG 207 @ 215, the Court of Appeal per Apaloo J.A. held that:

“Where the identity is in issue, there can be no better proof of the identity than the evidence of a witness who swears to have seen the accused person committing the offence charged.” See also Regina v. Christie (1914) AC 545 per Viscount Haldane, L.C., Yamoah & Razak v The Republic [2012] 2 SCGLR 750, Howe v. The Republic [2010] 33 MLRG 90 C.A., Dogbe v. The Republic [1975] 1 GLR 118.

The two (2) CEPS officers who alleged that the Accused person was the driver of the Honda Shuttle were not called upon by the prosecution to give evidence. In Regina v. Ansere 3 WALR 388, the court held that:

“The principle of law is that if there is one witness whose evidence would settle the case one way or another and the prosecution fails to call that witness, their case must fail since in that event they have not proved their case beyond all reasonable doubt”. See also Gligah & Anor v. The Republic [2010] SCGLR 870, at holding 5.

Throughout the trial, the Accused person denied all the charges against him. In his Cautioned and Charge Statements given to the police on the 15th July, 2021 and 21st July, 2021 respectively, the Accused person flatly denied all the charges against him. Under cross examination by the prosecution, the Accused person again denied all the charges against him.

Having so failed to call the two (2) officers who alleged to have seen the Accused person drive the Honda Shuttle, I hold that the prosecution has failed to prove its case beyond reasonable doubt against the Accused person. In the circumstances, the Accused person herein is hereby acquitted and discharged.

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ISAAC ADDO
CIRCUIT JUDGE
8TH DECEMBER, 2022