

IN THE CIRCUIT COURT HELD AT AGONA SWEDRU ON
THURSDAY 24TH DAY OF NOVEMBER, 2022 BEFORE HIS HON.
JONATHAN DESMOND NUNOO ESQ. CIRCUIT JUDGE.

CC46/20

THE REPUBLIC
VS.
ROBERT KOBINA FOSU

Accused present.

JUDGMENT

The charges preferred against the Accused are Dangerous Driving, Careless and inconsiderate Driving and three counts of Negligently Causing Harm contrary to section 1, 3, and section 72 of Road Traffic Act and Act 29 respectively.

The particulars of offence for count one are that for that you on the 25th day of June 2017 at about 9:40 am near E.C.G Revenue collection on the Apam-Ankamu motor road in the Central Circuit and within the jurisdiction of this court, then being in charge of Kia Truck private with registration No. GR9325- 11 did drive dangerously on the road and cause the death of Elvis Danful aged 29 and Carolyne Mara Arthur aged 38.

The particulars of offence for count two are that for that you on the 25th day of June 2017 at about 9:40 am near E.C.G Revenue collection on the Apam-

Ankamu motor road in the Central Circuit and within the jurisdiction of this court, then being in charge of Kia Truck private with registration No. GR9325- 11 did drive the said vehicle without due care and attention to other road users

The particulars of offence for count three are that for that you on the 25th day of June 2017 at about 9:40 am near E.C.G Revenue collection on the Apam-Ankamu motor road in the Central Circuit and within the jurisdiction of this court, then being in charge of Kia Truck private with registration No. GR9325- 11 did negligently cause harm to Reginald Aggrey aged 26

The particulars of offence for count four are that for that you on the 25th day of June 2017 at about 9:40 am near E.C.G Revenue collection on the Apam-Ankamu motor road in the Central Circuit and within the jurisdiction of this court, then being in charge of Kia Truck private with registration No. GR9325- 11 did negligently cause harm to Kingsley Hayford aged 33

The particulars of offence for count three are that for that you on the 25th day of June 2017 at about 9:40 am near E.C.G Revenue collection on the Apam-Ankamu motor road in the Central Circuit and within the jurisdiction of this court, then being in charge of Kia Truck private with registration No. GR9325- 11 did negligently cause harm to Ernest Kwesi Gyasi aged 32.

The Accused pleaded not guilty to all the charges preferred against him.

The brief facts are that on the 25th day of June 2017 at about (9:40) hours Accused was in charge of Kia Truck private with registration No. GR9325-11 from Apam towards Gomoa Assin. On reaching a spot at the junction of E.C.G now PDS revenue collection office near Gomoa West District Assembly, accused driver was avoiding a sharp trench which was dug across the road and covered haphazardly. He therefore left his lane to the offside which was the lane of Atos driver now deceased, in the process the deceased driver with the Hyundai Atos Prime taxi cab with registration No. GE 8864-18 with four passengers on board from Ankamu towards Apam observed the accused driver speeding and advancing decided to avoid the truck by using the offside lane. However the accused driver without due care, attention and reasonable consideration returned to his normal lane and crashed into the Taxi cab. Both drivers and occupants sustained serious injuries whereby they were all rushed to the Apam Catholic hospital for treatment. However victim Carolyne Mara Arthur aged 38 was confirmed dead at the hospital whilst victim Elvis Damful was referred to the ridge hospital at Accra and was further referred to Korle-bu Teaching hospital but died on 27/06/2017 whilst on admission. Bodies of the deceased were transferred and deposited at the Trauma and Specialist hospital Morgue, Winneba for preservation and autopsy. The vehicles were badly damaged. On the 17/07/ 2017 and 26/07/2017 Post-mortem were performed on the bodies of the deceased and the pathologist gave the cause of death as "Severe head injury, Polytrauma and Hemorrhagic shock due to Road Traffic Accident. After investigation Duplicate Docket was prepared and forwarded to Attorney General's office for study and advice. On 30/07/ 2019 AG Fiat was received that accused should be charged with the offences on the charge sheet and arraigned before this honourable court.

In our criminal justice system the principle of law is that the prosecution in proving the facts in issue against an accused person must do so beyond all reasonable doubt. Whenever any doubts exist in the mind of the court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person.

This principle was stated by Adjei J. A in the case of *The Republic v Francis Ike Uyanwune* [2013] 58 GMJ at 181 -182 as follows-:

“the trial court rightly discussed the burden of proof in criminal law in accordance with section 13(1) of the evidence Act, NRCD 323 which provides as follows “In any civil or criminal action the burden of persuasion as to the commission of a crime which is directly in issue requires proof beyond reasonable doubt”

In the case of *Ali Yusif Issah (No.1) vs. The Republic* [2003-2004] SCGLR 174, The Supreme Court said what constitutes proof beyond reasonable doubt was ably discussed by Lord denning MR in the English case of *Milner vs. Minister of Pensions* [1947] 1AER 372 at 373, He held thus;

“Proof beyond reasonable doubt does not mean proof beyond shadow of doubt. The law would fail to protect the community if it admitted fanciful doubts ... position will deflect the course of justice if the evidence is strong against a man as to leave only a remote possibility in his favour which can be dismissed with a phrase ‘it is possible but not the least probable the case is proved beyond reasonable doubt but nothing short of that will suffice’

In an attempt to establish the guilt of the Accused prosecution called three witnesses and tendered Exhibits A to F1.

The Accused testified without calling any witness.

The gist of prosecution's case is that Accused was in charge of Kia Truck from Apam towards Gomoa Assin. On reaching a spot at the junction of E.C.G revenue collection office near Gomoa West District Assembly office, the accused driver was avoiding a sharp trench which was dug across the road and covered haphazardly left his lane into the lane of Taxi Atos driver (deceased) with four passengers on board , on seeing the truck in his lane with speed advancing towards him, moved into the accused lane to avoid the truck but the accused also quickly moved back into his lane and crushed into the taxi resulting in fatal injuries and death.

The case of the accused is that on the date of the accident he was in control of kia truck from Apam towards Gomoa Ankamu and the section of the road precisely the office of the Gomoa district Assembly he was descending from a steep hill and just in the midsection after he has driven passed the noted pot hole in front of the Electricity Station he spotted a taxi cab driving in his lane. He said in fact because the hill which he was descending was very steep he had to forcefully applied the break but because the distance between his vehicle and that of the taxi was very short the taxi cab Hyundai Atos crashed into his car and he got blinded by the accident and he did not see anything until he found himself at the hospital.

At the end of the trial the following issues were set down for determination are whether the Accused drove his vehicle dangerously, careless and inconsiderate and negligently caused harm to the passengers?

Dangerous driving is recorded in section 1 of Road Traffic Act 2004 as amended as follows:-

(1) A person who drives a motor vehicle dangerously on a road commits an offence and is liable on summary conviction

(a) where

(i) no bodily injury; or

(ii) a minor bodily injury

occurs to any person other than the driver, to a fine not less than 100 penalty units and not exceeding 200 penalty units or to a term of imprisonment not exceeding 9 months or to both;

(b) where bodily injury of an aggravated nature occurs to any person other than the driver, to a minimum fine of 250 penalty units and not exceeding 500 penalty units or to a term of imprisonment of not less than 12 months and not exceeding 2 years or to both; or

(c) where death occurs, to imprisonment for a term of not less than 3 years;

According to Black's Law Dictionary (8TH Edition 2004), Danger is exposure to harm and Dangerous (Of condition, situation etc.) perilous; hazardous; unsafe.

Dangerous according to Oxford ADVANCED LEARNERS DICTIONARY International Student's Edition is to do something likely to injure or harm

Section 3 of the same Act 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 is liable on summary conviction to a fine not exceeding 2000 penalty units or to a term of imprisonment not exceeding 5 years or to both.

Careless and inconsiderate driving per section 3 of Road Traffic Act is driving without care and attention or reasonable consideration for other persons.

Careless according to Black's Law Dictionary (8TH Edition 2004) is not exercising reasonable care or an action or behavior engaged in without reasonable care

Section 72 of Act 29 provides as follows;

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

Section 12 of the same Act also provides; a person causes an event negligently if, without intending to cause the event, he causes it by voluntary act, done without such skill and care as are reasonably necessary under the circumstances.

Black's Law Dictionary (8th ed.2004) defines negligence as the failure to exercise the standard of care that a reasonable person would have exercised

in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentional, wantonly, or wilful disregard of others' rights. The term denotes culpable carelessness.

In *Okutu v. The Republic* [1975]1GLR246, the appellant left his vehicle which had no warning lights in the middle of the road. A car ran into it and the occupants were injured it was held that he was guilty of causing harm by negligently leaving his vehicle in a dangerous position.

The evidence in chief of Pw1 is that he knew the accused after the accident and that on the day of the accident Caroline Mara Arthur and Elvis Danful and himself were on board Hyundai Atos Taxi cab with registration No. GE8894-16 driven by the deceased Elvis Danful, from Ankamu towards Apam. As he seated at the rear side directly behind the taxi driver on reaching a section of the road at the junction of ECG now PDS Revenue collection point office near the Gomoa West District Assembly he saw a Kia truck on top speed from the opposite direction on their lane. The taxi driver on seeing the truck on top speed on his lane swerved to the offside lane. He then saw the Kia truck suddenly returned back into his lane as a result crashed into the taxi cab and after the impact he did not see anything again until he recovered and was admission at the Catholic hospital receiving medical care and that he sustained bruises on his legs, cut on the upper limb and severe pain

Under Cross examination by Counsel for Accused this was the evidence adduced Pw1.

Q: The Revenue office of ECG and the Assembly are not located on the same premises. I suggest that to you.

A: The landmark is the District Assembly when you are going to Apam. The District Assembly is located on the left hand side of the Apam road and there is ECG transformer on the left side of the road and that is where the accident occurred and that place is not a revenue collection point. Office of the ECG and the District Assembly are not in the same premises where the accident occurred is where the ECG Transformer is and that place is not a revenue collecting point.

Q: I hope you are very conversant of the location of the ECG revenue office and the District Assembly office that you have mentioned.

A: Yes.

Q: You claimed you were seated at the back of the driver on the vehicle that you were on board.

A: Correct.

Q: In the position that you found yourself in the vehicle that you were seated, you could not tell the speed which the driver is driving at.

A: That is correct, but if you are on a vehicle, you can tell when a car is over speeding as a reasonable person and if the driver of the vehicle is also not over speeding you can tell that is why I can tell when a vehicle is over speeding.

Q: As a reasonable person, you cannot tell the speed limit at which your driver was driving.

A: That is why I agreed with you in your question and explained my position.

Q: I suggest to you that your driver was rather driving at a top speed limit at that place in relation with the speed limit at that place.

A: That is not correct.

Q: Which side of the road was your driver driving.

A: We were on the way from Ankamu to Apam and our driver was on his lane on the right side of the road.

Q: So the accused person was also driving from Apam township to Ankamu, correct?

A: Correct.

Q: I suggest to you that from where your driver was coming from, that is the left side of the road so your driver was rather on the left side of that road.

A: Not true.

Q: And the accused driver was on the right side of the road and that is where he was and that is where he should be as a driver.

A: That is not where he should pass.

Q: In your paragraph 7 of your witness statement “that the taxi driver on seeing the Kia Truck on top speed on his lane swerved to the offside lane” what do you mean by offside lane.

A: I was on board the taxi we were on our lane and when the driver of the taxi cab swerved to the left side of the road saw the Kia Truck driving at a top speed, the driver of the taxi swerved to the left side of the road, the driver of the taxi was giving way to the Kia Truck to pass, the left lane that the driver of the taxi swerved to then, I referred to as the off lane in my evidence in paragraph 7.

Q: I suggest to you that if the driver of the taxi cab has swerved into the offside lane and the accused driver was in the other lane, there could not have been a collision.

A: That is correct, but when our driver swerved to the left side of the road giving way to the truck driver to pass, the kia truck driver turned to his normal lane again and that is where they collided.

Q: You are telling the Court that at the time that you saw the accident the accused driver was back to his proper lane.

A: He did but he could not properly or entirely get to his lane and the accident occurred.

Q: Tell the Court the time it took you to read the intention of your driver and the accused.

A: I cannot tell; I did not look at my watch.

Q: In your reasonable man’s time looking at your watch.

A: I cannot tell it is an accident and it occurred within a twinkle of an eye.

Q: In that twinkle of an eye you could not have read the intention of the accused when the accused was in his car.

A: I cannot tell his intention what I saw was that he has left his lane and approaching our vehicle.

Q: You were in this vehicle seated at the rear with one Regina Affrey, correct?

A; Correct.

Q: I suggest to you that what you have told the Court is an afterthought and not what took place.

A: That is not true, what I observed is what I have told the Court.

Q: And what you have told the Court is believed by your imagination in a twinkle of an eye.

A: That is not correct, I am saying the truth.

Q: I am suggesting to you that the police report shows that the point of impact was in the lane of the accused.

A: That is not true because when the taxi driver saw the kia truck on his lane and he tried to give way to the truck driver and the truck driver having realised that he was in the lane of the taxi he did turned to his lane and so the accident occurred in the middle of the road, and not exactly in the lane of the kia truck driver (accused).

Q: Listen to your paragraph 8, you have said that, "that I also saw the kia truck suddenly returned back into his lane and as a result crushed into the taxi cab". By that assertion I suggest to you that the accident occurred on the lane of the accused contrary to what you are explaining now.

A: That is not true, the accident did not occur in the accused lane.

Q: So in effect you are denying your own assertion in paragraph 8 in your witness statement.

A: I have not said that assertion made by me is not true what I am saying is that the accident did not occur on the lane of the accused.

Q: By your statement in paragraph 8 shows your inconsistency in your evidence in the box.

A: That is not correct, what I have said is the truth, there is no other truth.

The evidence in chief of Pw2 is that she knew the deceased, Caroline Mara Arthur and Elvis Danful and that on 25th June 2017 she was in a taxi cab driven by the deceased driver from Gomoa Ankamu towards Apam with three other persons who were members of members of Methodist church Kasoa branch and that she was seated in the rear in the middle of two men she was travelling with that on reaching a section of the road at the junction of ECG now PDS revenue collection office near the Gomoa West District Assembly she saw a Kia truck on top speed from the opposite direction of their lane. The taxi driver (deceased) decided to leave his lane for the Kia

truck hence he moved to the offside lane and I also saw the Kia truck suddenly moved back into his lane and as a result crashed into the taxi cab and the three on board the taxi cab sustained serious injuries and they were trapped in the mangled taxi cab and with the assistance of by standers they were removed from the mangled taxi cab and taken to the hospital for treatment and that she had a deep cut on the right leg, a cut on her upper limb bruises all over her body and severe bodily pains

Below is further evidence adduced by Pw2 under cross examination by counsel for Accused.

Q: Can you tell the Court the distance you first saw the kia truck approaching the taxi cab on which you were in on your view what was the distance.

A: We were climbing a hill and the kia truck was descending.

Q: Where you saw the kia coming toward your taxi how many meters, twenty (20) metres, thirty (30) metres in your view.

A: It may be about twenty (20) meters looking at it.

Q: In your paragraph 7, you have said "that the taxi driver (deceased) decided to leave his lane for the kia truck hence he moved to the offside lane, do you still stand by that statement.

A: Yes.

Q: So the accident occurred in the lane of the truck driver, correct?

A: That is not true, the accident occurred in our lane.

Q: And in your paragraph "8" you said that, you also saw the kia truck suddenly moved into his lane and as a result crushed into the taxi cab.

A: What took place was that, when our driver saw the kia truck with top speed coming towards us in our lane, our driver decided to move to the lane of the kia truck for him to pass but the kia driver also turned into his lane and the crushed.

Q: I suggest to you that the accused in charge of the kia truck has always been in his lane and it rather, the taxi cab who cross into accused person's lane per your assertion in paragraph 8 of your witness statement.

A: I said that because the truck driver was descending from a hill with a top speed and was zigzagging so that cause apprehension in our driver so he decided to make way for kia truck and the accident occurred.

Q: Your assertion that the accused driver was zigzagging on the road is not true, it is your own imagination.

A: That is true, I was seated at the rear of the car and I was in the middle so I saw all that went on.

The relevant portions of the evidence in chief of Pw3 is as follows: On the 25th June 2017 about 1000 hours Apam district Police received a distress call to the effect that two vehicles which is Kia truck and Hyundai Atos Prime are involved in an accident at ECG now PDS revenue collection office near

the Gomoa West District Assembly on Apam- Ankamu motor road and he proceeded to the scene of the accident for enquiries that he saw the Kia truck and Hyundai taxi all badly damaged in the bush and also saw six passengers trapped in the mangled vehicles and that with the help of the fire service personnel the injured passengers were removed and taken to the Catholic hospital for treatment and a female adult Caroline Mara Arthur was confirmed dead. That on 6th of July he visited the scene of the accident with the accused and independent witness Kwame Damful and Alfred Sam Coffie and he took a measurement of the scene of accident and drew a sketch which was endorsed by the accused and the witnesses and he took caution and charged statements from the accused

Pw3 also gave this additional evidence when he was cross examined.

Q: Your exhibit A and A1 were taken when the two vehicles were parked away from the scene of the accident.

A: Correct.

Q: So your exhibit A and A1 do not show the two vehicles in the collided position as happened on the accident scene correct.

A: True.

Q: You were only exhibiting these pictures exhibit A and A1 to show how badly the two vehicles were damaged.

A: That is so.

Q: I am very sure that the vehicle was towed off this scene to make way for traffic to flow so that it will not cause further accident.

A: Correct.

Q: It was done just as the victims of the two vehicles were taken to the various hospitals.

A: Correct.

The cross examination continued.

Q: You have filed a supplementary witness statement in this case correct?

A: Correct.

Q: And this supplementary witness statement explains the sketch In the case (Exhibit F).

A: That is so.

Q: Your measurement of the whole width of the road is about of 7.4 meters.

A. Correct.

Q: I presume that is a single lane were two cars drove on from each direction.

A: That is so.

Q: Will I be right to say that each of these cars on plying the road finished be in the lane of 3.1 meters.

A: Correct.

Q: And so for a driver who is driving to the estimate of reasonable person must be within the area of 3.7 meters.

A: Correct.

Q: So as a police officer on a road inspection a driver who drives outside his allotted area of 3.7 meters into an opposing lane, what would be your reaction if you should arrest that driver.

A: We will get such driver arrested and charge him with the necessary offence.

Q: And that offence shall include negligent and careless driving, correct.

A: The offence will include careless and inconsiderate driving and where there is a person injured we add careless and dangerous driving.

Q: Look at Exhibit E, you have identified the pot hole presumably the one in front of the ECG office, is that the pot hole you are talking about.

A: Yes.

Q: Between the pot hole and point of impact of the two vehicle is about 30.80 meters apart, correct.

A: No, the 30.80 meters is the point where the accused alleged he saw the other vehicle in the accused lane.

Q: You did not bother to measure the distance between that pot hole and the point of impact.

A: Yes, I did not.

Q: Do I take it if I estimate, the point where the pot hole and the point of impact the distance between these two points will be about 80 to 100 meters.

A: Once I did not measure the point at which the pot hole was and the point of impact, I cannot accept any figure.

Q: I suggest to you that if you had done a diligent work distance between the pot hole and point of impact would be 100 meters apart.

A: I did a diligent work.

Q: I suggest to you that your statement in paragraph 3 of your supplementary witness statement which seems to situate the point of impact at the pot hole or trench is not the situation on the ground.

A: I have stated that when the accused reached where the trench was, he decided to move to the offside lane which was filled properly as a result the other late driver saw the accused vehicle on the deceased driver's lane, so he also moved to the offside which was free and the accused also moved back to that side of the road and they crushed.

Q: I am telling you that the impression that you have created by your drawing that the accident occurred around the trench is not the caused based on the drawing you have produced, I am not

asking you to rephrase what you have stated in paragraph 3 of the supplementary witness statement.

A: I have not said that the accident occurred around where the trench is, but rather I have said that the accused was avoiding the trench so he moved to the offside lane so when the deceased driver saw the accused vehicle in his lane he moved to his offside lane to leave that lane where the accused has come on the accused but the accused then moved into his lane and crashed with the deceased vehicle that is how the accident occurred.

Q: I suggest to you that what you have just told the Court was never told you by the deceased driver to know the intentions of the deceased driver.

A: The surviving witnesses who were with the deceased vehicle saw the accused driving on the deceased lane.

Q: The surviving persons never knew the intentions of the deceased driver which you are attributing to the deceased driver.

A: In the course of my investigations it was disclosed that the accused was driving on the deceased lane.

Q: Look at Exhibit E again, look at the position where the pot hole is, that is where the accused was driving from towards Ankamu, correct per Exhibit E.

A: That is the direction of the accused but at the time of the accident, the accused was not driving on his lane so at the scene there were

tyre marks of the vehicle of the accused which were on the offside lane towards the point of impact.

Q: Were you able to ascertain whether the deceased driver was a license driver.

A: He was.

Q: From your own sketch Exhibit E between the edge of the accused lane the point of impact is 2.30 meters, correct.

A: That is correct.

Q: And between the edge of the deceased lane and the point of impact is 5.10 meters, correct?

A: Correct.

Q: And you have agreed with me that each of the driver must be in the area of 3.7 meters correct?

A: I did.

Q: And you also agreed with me that the point of impact was always on the lane of accused which does not measure to 3.7 meters.

A: The point of impact was in the lane of accused driver but the accused was not driving in his lane at the time of the accident and the tyre marks of accused vehicle was on the lane of the deceased lane and the surviving witness saw the accused driving in the lane of the deceased so although the point of impact was on the lane of the

accused it does not mean it was not the accused who caused the accident.

Q: would I be right to say that the point of impact is precisely where the accident occurred.

A: Yes.

Q: Did you measure the distance between where you claim the tyre marks of the accused was and the edge of the lane of the accused.

A: I did not measure but at the scene the accused denied those tyre marks to be from his vehicle.

Q: Could it be the case that an opposing driver who may be driving under the influence of alcohol, fatigue and other such circumstances to veer from his lane to that of the opposing lane.

A: It is possible.

Q: In your investigation did you do a test on the deceased body to ascertain the alcohol content?

A: I did not because at the hospital there was no sign of any alcohol intake.

Q: I suggest to you that your paragraph 5 of the supplementary witness statement in which you have attributed the occurrence of the accident to the indecision of the accused, is not borne out from your exhibit E but a hearsay from the occupants and survivors on board of accused vehicle.

A: It was as a result of the indecision of the accused that resulted in the accident.

Q: And because the deceased driver was rather recklessly driving on the lane of accused, the impact on his vehicle the taxi was the severer as exhibited in exhibit A and A1.

A: It was the accused rather who was speeding that resulted in the severity of the damage of the deceased vehicle.

Q: I suggest to you that the charges you have preferred against the accused was primarily based on exhibit E and for that all those charges were only framed up.

A: The accused was charged with the offences based on the outcome of my investigations.

The evidence in chief of Accused person is as follows:-

“My name is Robert Kobena Fosu. I live at Gomoa Assin and I am a driver.

On the day of the accident, he was in control of the Kia Truck private with registration number GR 9325-11 driving from Apam township towards Gomoa Ankamu.

At the section of the road precisely the office of the Gomoa District Assembly. I was descending the hill where you’ve climbed and needed to descend a steep hill.

Just in the mid-section after I had driven passed the pot hole in front of Electricity station, I spotted a taxi can driving in my lane.

In fact because of the hill for which I am descending was very steep, I had to forcefully apply the break.

The distance between my vehicle and the taxi cab was very short, the taxi cab Hyundai Atos crashed into my car.

I was blinded by the accident so he did not see anything until i found myself at the hospital.

I repeat that the accident happened in my lane. I never drove dangerously carelessly and inconsiderate or negligently as the police want the court to believe

That I at all material times drove as every reasonable driver will do but for the carelessness of the victim driver.

I say that I have driven past the said pothole on the section of the road and so not true that the said pothole made me to move the nearside which was properly filled as the police alleges.

It is never true that I was driving in the victim drivers lane as alleged by the police.'

Under cross examination this was the evidence the Accused gave:

Q: How long have you been driving?

A: About 6 years now, I believe it will even be more than six years.

Q: Can you tell this Court when you acquired your license?

A: Unless I refer to the license.

Q: So you cannot tell the Court on top of your head when you obtained your license unless you refer?

A: Yes.

Q: You said you have been driving for years, correct?

A: Correct.

Q: Which means you are experienced driver, correct.

A: Yes.

Q: In your paragraph 4 of your witness statement, you have stated that you were just in the middle section after I have driven past the pot hole in front of Electricity station, I spotted a taxi Cab driving on my lane, I suggest to you that statement is not true.

A: I have not said anything like that.

Q: I am suggesting to you that what you have stated in your paragraph 4 that I read to you.

A: I was from Apam to Apam junction, when I was ascending the hill from the assembly, I saw the taxi who has entered into my lane, as soon as I saw the taxi, I applied my brakes and we collided.

Q: I am suggesting to you that you rather swerved the pot hole and went into the lane of the deceased driver.

A: That is not true.

Q: I again suggest to you that paragraph 5 of your witness statement which reads "in fact because the hill for which I was descending was very steep, I had to forcefully apply the brake". It was because you

were over speeding that was why you have to apply your brakes forcefully.

A: That is not correct.

Q: On the day of the accident, you were from Apam township to Gomoa Ankamu, correct?

A: Correct.

Q: You would agree with me that the accident occurred at the E.C.G. Revenue office near the Assembly, correct?

A: Correct.

Q: And that area is where people are living.

A: No.

Q: I am suggesting to you that, where the accident occurred is within town and people live there.

A: That is not correct, it is not a town where people are living.

Q: Where the accident occurred is the area where the bungalow of the Assembly workers lives.

A: I had by then by passed that area, I was descending the hill near where the gas filling station is.

Q: As a driver, tell the court the speed at which a driver is supposed to drive in town.

A: 30 to 40kph.

Q: You agree with me that the area where the accident occurred, there are human activity going on there the gas station and E.C.G. persons are there.

A: I know there is such workers there.

Q: Looking at the impact of the accident, you were driving more than 50kph, I suggest that to you.

A: I was not speeding.

Q: I am suggesting to you that where there is human activities in an area, a driver is not supposed to drive at 30kph.

A: There is no such sign on that road.

Q: Paragraph 5 of your witness statement you have stated that "in fact because the hill for which I am descending was very steep, I had to forcefully apply the break", that is your own statement.

A: When I was descending the hill, I saw the taxi driver on my lane so I have to apply my breaks.

Q: It is per your paragraph 5 of your averment that you were driving above 50 kph, that is why you have to forcefully apply your breaks; I suggest that to you.

A: That is not true.

Q: You have also said in your paragraph 6 that the distance between your vehicle and the taxi cab was very short. The taxi cab Hyundai Atos crashed into your car, this averment is not true.

A: It is very true, it was the taxi who left his lane and came into my lane.

Q: Look at Exhibit E, on the Exhibit E the distance between your vehicle where you saw the victim's car is 30:80 meters and that cannot be described as a short distance, I suggest that to you.

A: When I descended from the hill, the other driver suddenly entered my lane and we crashed head on.

Q: When the accident occurred, you gave statement to the police, correct?

A: Correct.

Q: Look at your caution statement exhibit F, look at the back of it and read paragraph 9.

A: I cannot read.

Q: You said I saw an oncoming vehicle Hyundai Atos prime, entered into my lane, there due to the short distance between the two vehicles I crushed into the Hyundai Atos". You said you crushed into the vehicle.

A: When I descended the hill the other driver suddenly came into my lane and we crushed.

Q: So in your paragraph 6 where you have stated that the Hyundai Atos crushed into your car that statement is false.

A: That is not false we crushed.

Q: You paragraph 6 of the witness statement and your statement to the police is inconsistent.

A: What I told the police is what I am saying in Court.

Due to the nature of the case I have captured copiously the evidence of prosecution and that of Accused in this judgment to give a clear picture of the entire case.

It is stated in the case of *Owusu V. Commissioner of Police* [1963] 1GLR that the general principal governing road traffic is that it is the duty of all road users to at all times to keep a look out so as to avoid collision with other road users. Where a vehicle is overtaking another vehicle the duty of avoidance of collision lies wholly on the overtaking vehicle

In *Chaplin V. Hawes & Ors* (1828) 172 ER 543 it was held that in cases where parties meet on the sudden and injury results, the party on the wrong side should be held responsible, unless it appears clearly that the party on the right side had ample means and opportunity to prevent it.

The case therefore falls in the ambit of the *Chaplin* case supra.

The prosecution witnesses 1 and 2 who witnessed the accident said their vehicle was ascending a hill and they saw the Accused vehicle descending the hill at a great speed towards their vehicle in their lane so their diver

swerved to the Accused lane to avoid colliding with the Accused vehicle but the Accused also moved into his lane suddenly and crashed into their vehicle.

The accused said he rather suddenly saw the other vehicle in his lane when he descended a steep hill and the distance between his vehicle when he saw the taxi cab was short and the taxi cab crashed into his vehicle.

If the case of the accused is believed then, it will be the fault of the deceased driver who was in charge of the taxi cab, on the other hand if the story of the prosecution witnesses are believed, then the accused is to be held culpable for the accident

I have carefully analyzed the story of the prosecution witnesses who saw the accident and the accused version. The accused said he became unconscious after the accident just as Pw1 but Pw2 was conscious and saw those who assisted the injured.

The prosecution witness spoke with one voice that it was the accused who was driving at great towards their in their lane and their driver swerve into the accused lane to avoid a collision but suddenly accused moved into his lane and crashed into their vehicle.

The accused said he was not driving at a great speed but admitted that there were human activities going on where the accident occurred but claimed there was no road sign at the place that indicates the speed limit on that road but he also said he is an illiterate.

So can it be that there is a road sign on that stretch of the road but he failed to appreciate?

Prosecution did not say that there is a road sign which indicate the speed limit on that road but suggested that since there was a human activities at the area where the accident occurred the accused ought not to have driven beyond the speed limit required in the area.

Be that as it may both prosecution and accused agrees that there were human activity in that area and a driver should drive beyond 30 and 40 KPH and the accused said he was not speeding meaning he was driving within allowable limit. So how can this court ascertain which of the rival claims or version to be correct?

That is whether it was the Accused who was driving at a great speed in the lane of the taxi cab speeding or not.

One can look at the impact of the vehicle involved in the accident, the two vehicles were badly damaged and the injury sustained by the occupants of the vehicles fatal leading to the loss of lives.

The condition of the vehicle and the fatal nature of the injuries and death tells the court that either both vehicle were over speeding or one of them was over speeding, if one of the drivers involved in the accident was over speeding, which of them?

All the prosecution witness who were on board the taxi cab said the Accused driver was over speeding but he said he was not over speeding but he did not say the taxi driver was driving at a great speed in his lane.

The Accused in his evidence in chief said he was descending a steep hill because of that he has to “forcefully” apply the break and the distance between his vehicle and the taxi cab was very short and the taxi cab crashed into his car.

In his caution statement, Exhibit F, he said he saw an oncoming vehicle Hyundai Atos Prime entered his lane, there due to the short distance between the two vehicles he crashed into the Hyundai Atos.

This was what the accused said under cross examination.

Q: You said, I saw an oncoming vehicle Hyundai Atos prime, entered into my lane, there due to the short distance between the two vehicles I crashed into the Hyundai Atos”. You said you crashed into the vehicle.

A: When I descended the hill the other driver suddenly came into my lane and we crashed.

Q: So in your paragraph 6 where you have stated that the Hyundai Atos crashed into your car that statement is false.

A: That is not false we crashed.

Prosecution attributed the “forceful” application of the brakes as asserted by the Accused to be as a result of the excessive speeding which I share that view, why do I share that view?

This is the reason The Kia truck driven by the Accused was empty and has climbed a hill and was descending and was said to be in a wrong lane and had to hurriedly move back into his lane, if he was not over speeding when descending the hill, when he suddenly saw a vehicle in his lane he could have avoid head on collision because the taxi cab ascending a hill with passengers on board cannot be said to be driving at great speed considering the description given by the Accused of the nature of the hill they were both traversing

Again the distance at which the Accused said he saw taxi cab was 30.80 meters which cannot be said to be short distance (as the accused asserted) and could have avoided the taxi cab or the taxi could have avoided his truck if he was not driving at an excessive speed and having seen the oncoming taxi at that distance he needed to apply his breaks so hard so as to bring his truck to a halt to avoided the crash.

I believe the story as told by the prosecution witnesses that they saw the Accused driver in their lane with great speed towards their vehicle and their driver in charge of the taxi cab quickly swerved to Accused driver's lane to pave way for him but Accused driver sensing danger suddenly moved into his lane and crashed into the taxi cab.

The Accused driver may not have anticipated that the taxi driver will swerve suddenly into his lane, (neither could the taxi driver) so upon seeing the taxi cab he also swerved back into his lane which resulted in the collision.

The Accused said he has driven passed the pot hole in front of Electricity station, and he spotted a taxi cab driving in his lane. But he did not tell the distance between where he go to and he saw the taxi and the pot hole.

Counsel suggested that if Pw3 had done a good work he would realized that the distance of the impact between the pot hole or trench and the point of impact was about 100 meters but Pw3 said he did not measure the distance this was the transpired when Pw3 was cross examined

Q...

A...

Q: I suggest to you that if you had done a diligent work distance between the pot hole and point of impact would be 100 meters apart.

A: I did a diligent work.

Q: I suggest to you that your statement in paragraph 3 of your supplementary witness statement which seems to situate the point of impact at the pot hole or trench is not the situation on the ground.

A: I have stated that when the accused reached where the trench was, he decided to move to the offside lane which was filled properly as a result the other late driver saw the accused vehicle on the deceased driver's lane, so he also moved to the offside which was free and the accused also moved back to that side of the road and they crashed.

Q: I am telling you that the impression that you have created by your drawing that the accident occurred around the trench is not the caused based on the drawing you have produced, I am not asking you to rephrase what you have stated in paragraph 3 of the supplementary witness statement.

A: I have not said that the accident occurred around where the trench is, but rather I have said that the accused was avoiding the trench so he moved to the offside lane so when the deceased driver saw the accused vehicle in his lane he moved to his offside lane to leave that lane where the accused has come on but the accused then moved into his lane and crashed with the deceased vehicle that is how the accident occurred.

Q: I suggest to you that what you have just told the Court was never told you by the deceased driver to know the intentions of the deceased driver.

A: The surviving witnesses who were with the deceased vehicle saw the accused driving on the deceased lane.

Q: The surviving persons never knew the intentions of the deceased driver which you are attributing to the deceased driver.

A: In the course of my investigations it was disclosed that the accused was driving on the deceased lane.

Q: Look at Exhibit E again, look at the position where the pot hole is, that is where the accused was driving from towards Ankamu, correct per Exhibit E.

A: That is the direction of the accused but at the time of the accident, the accused was not driving on his lane so at the scene there were tyre marks of the vehicle of the accused which were on the offside lane towards the point of impact.

Pw3 was the investigator and he went to the scene with the Accused and the sketch was drawn and he did not say anything about the sketch in his evidence in chief. Pw3 was the investigator and he investigated the crime and he heard from the surviving witnesses who said as they did in court that the Accused the Accused drove at great speed in their lane and their driver moved into the lane of the Accused to avoid the crash but the Accused also moved back into his lane and crashed into their taxi cab.

I do not see what Pw1 and 2 will gain if they lied against the Accused after all they have survived the accident and if the fault was from their driver there will be nothing to hide because the driver is no more.

Pw1 and 2 appears to me to credible witnesses and they were resolute in their stand that it was the Accused driver that caused the accident.

If the accused has not moved into the lane with speed into the lane of the taxi in the first place, there would not have been the need for the taxi driver to also move to Accused lane in order to avoid the Accused only for the Accused to revert to his lane for him to crash into the taxi cab.

The Accused as I said gave three versions as to which of the vehicles crashed into the other

First, in his caution statement he said his vehicle crashed into the taxi cab, secondly in his evidence in chief, he said the taxi cab crashed into his vehicle and under cross examination he said they both collided.

Counsel for accused also tried to point out some inconsistencies in the case of the prosecution particularly where the impact occurred because it appears the accounts given by Pw1 and 2 under cross examination was not succinct but I saw the inconsistency as a mere confusion in their mind as a result of the cross examination so that inconsistency in my view did not do hurt the prosecution's case in anyway because the story is that the point of impact was in the lane of the accused as the accused himself admitted.

The prosecution witnesses who were on board were eye witnesses to what transpired and the issue has to do with which of the drivers was in the others lane and which of them was driving at a great speed and the evidence adduced shows clearly that the impact occurred in the lane of the Accused so there was no doubt as to where the impact occurred which counsel for accused wanted to make capital out of.

I hold the view that the accused moved into the lane of the victim driver first, and the victim driver, in order to avoid the crash swerved into the accused lane and the accused suddenly moved back his lane and crashed into the taxi.

This picture painted occurred in a jiffy.

The defense of the accused, I find an attempt by counsel for accused suggesting that the deceased driver was rather culpable as the accident occurred in the lane of the accused but the accident as I have said occurred in the lane of the accused because the evidence adduced by all prosecution witnesses which I have no doubt in my mind, to be speaking the truth narrated how the incident occurred and I believe them.

I find the prosecution witnesses to be credible, if their driver was the one who put their life in danger, they could have said that because their driver unfortunately lost his life due to the accident.

I have said that the mangled vehicle indicate that the impact was great and was so because one of the vehicle, if not all the two vehicle may be driving at a top speed and I have no doubt it was the accused driver who was driving above the speed limit on that stretch of the road not only because the prosecution witness said so but also from the evidence it was the accused who was descending a hill according to him and the taxi was ascending the hill so if the accused driver had to apply his breaks "forcefully" having no cargo in the bucket of the truck, then it was he who could be said to be driving above the speed limit on the road.

The accused said he applied his breaks forcefully, he is the only one who understands what he meant by that, failing to explain what he meant by applying his breaks forcefully, the only meaning to be placed on what the accused meant by applying his breaks forcefully is to press on the breaks paddles at once and with force to enable the vehicle to be put to a stop instantly and it is only when a car is moving at an excessive speed and in

order to prevent the vehicle from getting involved in some kind of collision upon coming upon sudden danger is when the driver of the said vehicle would have to apply his breaks instantly and with force in order to bring the vehicle to an immediate halt and if the vehicle is moving within speed limit and having no break faulty break which will make the break fail the vehicle will indeed stop.

It is only when the breaks of the vehicle are faulty or the vehicle is moving beyond the speed limit on a particular road that the vehicle will not stop instantly when the driver applies the breaks "forcefully".

In this case the accused in his caution statement when the incident was fresh in his mind said he crashed into the taxi. Then in court as I have stated earlier said the taxi crashed into his vehicle and then under cross examination he said they crashed.

The Accused was descending a hill and was in excessive speed which ought not to have been the case. The Accused should have taken note of the hill he was climbing so as to be circumspect when ascending but he descended the hill in a manner that made him enter the lane of the deceased driver and he tried to avoid an head long collision by veering into the Accused lane and Accused also return to his lane and he crashed into the deceased vehicle.

In the instant case the deceased driver was confronted with the choice of either by driving head-long and crashing into the accused truck or by

swerving to avoid a collision. The deceased driver decided to swerve and he cannot be faulted of having driven negligently. The question is whether he was placed in such a situation as to render what he did a prudent precaution for the purpose of self-preservation.

I am satisfied that the deceased driver was not hasty in his judgment and he acted reasonably in the circumstances and he could not be expected to be epitome of circumspection. I therefore conclude that that the deceased driver in the agony of the moment acted reasonably and swerved to the lane of Accused in order to avoid the accident but without success.

In *Aruba & Anor. v Aboagye* [1966] GLR 36 the court stated ...“I am satisfied that the second appellant was negligent in starting and moving his vehicle when in fact the respondent had already warned him by the long blast of his horn that he was approaching. The second appellant should have taken extra precaution before moving because he was parked on a lay-by off his lane and by moving into the middle of the road clearly obstructed the respondent in his rightful lane. In effect, the second appellant by his negligence created an emergency or a situation of unusual difficulty so as to cast on the respondent the burden of using more than ordinary care to avert the accident and the fact that the respondent did not take such extraordinary care and so avoid the mishap does not by itself excuse the second appellant: ...

It is also settled law that where the defendant's act places the plaintiff in such a situation as to involve the choice of two evils, the fact that he chooses that which turns out to be the one which injured him does not of itself

prevent his recovering against the defendant... "If I place a man in such a situation that he must adopt a perilous alternative, I am responsible for the consequences."

It was the Accused driver who placed the deceased driver and those on board in this dangerous situation and the untoward occurred and he must be the one to be blamed.

However unfortunate, the incident seems to be, the blame is to be put at the door steps of the accused, first, he was speeding whilst descending the hill and he went into the wrong lane and he reverted to his lane and crashed into the taxi.

The law is that beyond reasonable doubt does not mean beyond a shadow of doubt, it is my view that prosecution has established their case against the accused beyond reasonable doubt.

In applying the law to the evidence as I have put out the above analysis shows prosecution has establish the guilt of the Accused in accordance with the law and I hold that the accused drove dangerously, was careless and inconsiderate and he negligently caused the harm to the occupants of the Hyundai Atos Taxi Car and he is pronounced guilty and convicted on all the charges accordingly.

In sentencing the accused, I have considered the fatal nature of the accident and how he has wasted the time of the court and that of prosecution and I have taken judicial notice of how drivers generally drive without due care and glaring disregard to human life and property in this country.

Accused is sentenced to serve 36 months imprisonment in hard labour on all the charges.

(SGD)

H/H JONATHAN DESMOND NUNOO ESQ.

CIRCUIT JUDGE