CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT THE CIRUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 12TH DECEMBER, 2022

SUIT NO. 24/2012

THE REPUBLIC

VRS

AMARTEY NYABU & 6 ORS.

RULING

The accused persons are before this court on two counts of causing harm. The particulars of offence are that on the 10th day of April, 2011 at Kowadenasi near Ada in the Tema Circuit and within the jurisdiction of this Court, they did intentionally and unlawfully cause harm to one Samuel Ofori Twasam and Edward Tetteh Twasam.

The accused persons pleaded not guilty to all the charges and by so doing, cast upon the prosecution the duty of leading evidence to establish their guilt. A plea of not guilty serves as both a shield and a sword. A shield for the accused persons who are presumed to be innocent until proven guilty and do not have to say anything in proof of their innocence and a sword pointed to their accusers to lead evidence to establish a prima facie case against them. It is only when prosecution has discharged their duties by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused persons; not to establish their innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused persons.

Also, by their plea of not guilty, the accused persons had invoked the protection accorded them under ***Article 19 (2) (c) of the 1992 Constitution***. Per that provision, they are presumed innocent until proven guilty. According to the case of ***Davis V. U.S. 160 U.S 469(1895)***. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called its first witness; Samuel Ofori Twasam. His evidence is that on the 10th of April, 2011 at about 6:30am, he went to the farm of his junior brother by name Gabriel Kofi Twasam to assist the latter uproot and peel cassava.

That his said brother and others were already on the farm when he got there. That whilst working with another brother by name Edward Tetteh Twasam, he saw a motorbike and a kia truck loaded with about 20 people including the accused persons drive to the farm. The men were holding cutlasses, sticks and other offensive weapons.

That they all got down and began to hit his head with the sticks. He sustained a cut on his head and blood was oozing from the said cut. That the people also attacked his brother, Edward Tetteh Twasam. He became weak and fell down. He later realized he was in a vehicle and he reported the incident to the police. He was given a police medical form to attend hospital and he did so.

He continued that he cannot pinpoint the actual person who hit his head with the stick but he could recognize one Afoehey Ofoe and Believer Kantey who were led by their brother, Frederick Narh as the persons who attacked him.

PW2 is Gabriel Kofi Twasam. His evidence in chief is that he engaged ten men, including his brothers, PW1 and Edmund Twasam to go and harvest cassava on his farm. That whilst working, he saw one C.T. Caesar and Joe Ofoe also harvesting cassava on their farm which is close to his. That the two men left around 7:00am.

That all of a sudden, he saw the said C.T. Caesar with Aterh Hopley on a motorbike with a group of men numbering about 25 following in a kia truck. That when they got to where his brothers were, he saw C.T Caesar and Aterh Hopley pointing his brothers out. That they were all holding sticks, pounced on his brothers and brutally assaulted them. That the men saw them running towards them and took to their heels.

He continued that he rushed his brothers who were then injured on their heads with blood oozing from same to the police station to make a complaint.

PW3 tendered in evidence the investigation caution and charge caution statement of the accused persons as well as the medical forms of the supposed victims. Same were

admitted into evidence as Exhibit A Series (A – A4: Investigation Caution Statement of 1st Accused to 5th Accused respectively.
Exhibits B Series (B – B4) Charge Statement of 1st Accused person to 5th Accused person respectively and Exhibit C Series (C – C2) medical report of Samuel Kofi Twasam, Edward Ofori Twasam and Evans Nyabu respectively.

According to him, he obtained a statement from the two complainants to the effect that they were attacked by a group of men from the Amartey Nyabu family at Luhuor over a piece of land which was the subject matter of a law suit. They were issued with a police medical form to attend hospital which they did.

That on the same day, Evans Nyabu, a member of the Amartey Nyabu family also reported at the charge office with bruises of blood and made a complaint that he was assaulted by complainants and their brother. That he was issued with a police medical form to attend hospital which he did. He however later went into hiding. Prosecution closed its case after this.

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case ***of Asamoah & Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that ''the

underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime
b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved*** **of**

Before proceeding to the merits of the case however, it is elementary that in all criminal charges, prosecution must first lead evidence to establish the identity of the accused person. As was held in ***Howe v The Republic [2013-2014] 2 SCGLR 1444***, in a criminal trial, the prosecution is obliged to lead evidence to identify the accused as the person who had committed the crime.

In the case of ***Dogbe vrs. The Republic, Atta Bedu J***, stated thus 'in criminal trials, the identity of the accused person as the person who committed the crime might be proved either by direct testimony or circumstantial evidence of other relevant facts from which it might be

inferred by the Court''. See also the case of ***Ibrahim Razak v.The Republic [2012] 50 GMJ 139 SC @ 154-155.***

According to prosecution, the accused persons were among a group of twenty to twenty-five men who attacked PW1 and the deceased Edward Twasam on the day of the incident. There is no dispute about the presence of PW1 and PW2 on the farm on the said day. With regards to PW1, his evidence is that he cannot pinpoint the exact person who had harmed him. However, he could identify A2 and two others as the persons who had attacked him.

Under cross examination by learned counsel for the accused persons at page 15 of the record of proceedings, PW1 had answered;

Q: *At paragraph 6 of your evidence in chief, you have stated that on 10th April, 2011, you saw a number of people coming to the farm. Can you name them?*

A: That was my first time of seeing them and so I cannot name them.

Then at page 20 of the record of proceedings, still under cross examination, he had answered;

Q: You see, it was on the 12th April, 2011, that when you were giving your statement to the police, you falsely told the police that it was one Afoehey Ofoe and Believer Kantey who allegedly hit you.

A: I gave the statement on the 11th and Afoehey Ofoe he has been coming to our house every day and so I know him very well.

Q: I am putting it to you that because you cannot identify the people who allegedly hit you, you mentioned the two names on the 12th April, 2011 as an afterthought.

A: My Lord, that is not true.

That PW1 restricted himself to naming the people whom he knew is manifest that he very much knew the identity of A2. It also shows that he was not out to speak falsehood to the court. He restricted himself to what he knew.

PW2 particularly was emphatic that he knew the accused persons. He and PW2 testified that they had directly seen the accused persons on the farm on the said date and they were the ones who inflicted the said harm. PW2 under cross examination by learned counsel for the accused person had at page 28 of the record of proceedings said:

Q: I am putting it to you that there is no record to show that on 10th April, 2011, when you reported this particular incident at the Kasseh police station, you mentioned the accused person's names as those people who caused harm to your brother(s).

A: I mentioned their names because I know them very well.

Further at pages 31 and 32 of the record of proceedings, still under cross examination by learned counsel for the accused persons, PW2 had answered;

Q: *Were you at the place where the alleged assault took place?*

A: Yes, my Lord. It is a farm but only that there was a distance between the two farms – those who were uprooting the cassava and those who were harvesting it from the tree.

Q: So can you tell the court the distance between you and your two brothers.

A: Yes. It is about 100 yards.

Q: So it means that you were 100 yards according to your statement from where the alleged incident took place.

A: Yes, my Lord but it was a plain land. After uprooting the cassava, the land becomes bare.

Q: You see, you agree with me that at the time the alleged incident took place, you were still harvesting the cassava.

A: No my Lord. We were not harvesting cassava but then because they came in a Kia truck and when the truck stopped on the road, we all stopped what we were doing and drew our attention to the Kia truck as to what was happening and they started alighting.

Q: Can you tell the court or can you describe to the court how the people in the alleged truck came to the farm?

A: When the Kia truck stopped, they all jumped down with batons, sticks in their hands. They rushed unto the land but second accused who was their leader, led them to the farm and he rushed first on my brother.

Also at pages 34 and 35 of the record of proceedings, PW2 had answered:

Q: Were you at the spot where the alleged truck full of the people you refer to stopped?

A: Yes, my Lord. I was just about hundred yards away.

Q: Can you describe hundred yards to the court?

A: My Lord, hundred yards would be from the witness box where I am to the neem tree near the public toilet in the court premises. I was a hundred yards runner during my school days and so I know the distance.

Q: How did you get to know that there were 25 people in the truck that came to the farm because you were not at the spot where the truck stopped?

A: I know that they were 25 people because I know them by names. My mother came from their area and so I know them from infancy and we got the names. (Emphasis mine)

Q: I put it to you that from the hundred yards from where the alleged Kia truck stopped, you can never know the number of people in the truck.

A: My Lord, it was a plain ground even people on motorbikes and bicycles, from where I was, I could identify them.

PW2's testimony as to the identity of the accused persons remained strong under cross examination. He did not fumble and neither did he contradict his evidence as to how he

had seen the accused persons and the others come unto the farm or the distance between where he was and where the incident had happened. He also testified that he knew the accused persons even before the incident as persons who come from his mother's side. I found his direct evidence as to the identity of the accused persons to be credible.

Again, although I would not analyze the investigation caution statement of the accused persons at this stage, learned counsel for the accused persons had in cross examining PW3, the investigator, made him to read out the said investigation caution statement of all five accused persons. In same, each of the accused persons had placed themselves at the scene of the alleged incident on the said date and time. On the issue of the identity of the accused persons, I am satisfied that prosecution has discharged its burden. I would now proceed to the merits of the evidence in relation to the charge.

On a charge of causing harm, prosecution must establish all the relevant elements of the offence. Section 69 of Act 29 provides that:

''*a person who intentionally and unlawfully causes harm to any other person commits a second degree felony*''.

Thus the requisite elements for the prosecution to establish in order to sustain the charge are that;

1. Accused caused harm to PW1 and the deceased
2. The harm was intentional and
3. The harm was unlawful.

Section 1 of the Criminal Offences Act, 1960 (Act 29) defines harm to mean any bodily hurt, disease, or disorder, whether permanent or temporary. Thus prosecution must prove that the accused person by his actions or omissions caused a bodily hurt, disease or disorder to the complainant. In the case of harm by a bodily hurt, the prosecution must prove that there was a break in the skin of the complainant.

As was said by **Osei Hwere J.** (as he then was) in the case of ***Comfort and Anor v. The Republic [1974] 2 GLR 1*** bodily harm," of course, includes, any hurt or injury calculated to interfere with the health or comfort of the victim and, although it need not be permanent, it must be more than merely transient and trifling'.

The evidence of prosecution witnesses on this ingredient is that the accused persons attacked PW1 and the deceased with sticks and in the process caused injury to their head. That blood was oozing from the said wound. PW1 and PW2, under vigorous cross examination by learned counsel for the accused persons, remained unwavering in their evidence that it was the accused persons who had attacked them though according to PW1, he cannot mention the exact person who hit him.

The law is settled that '' where two or more persons embarked upon a joint criminal exercise, each of the participants would be answerable for the acts done in pursuance of the joint enterprise including such acts as were incidental to and necessary for the achievement of the joint enterprise and were in the contemplation or ought to be in the contemplation of the participants at the time when the exercise was embarked upon''. See the case of ***Teye alias Bardjo & Others v. The Republic [1974] 2 GLR 438.***

Prosecution tendered in evidence the medical report of PW1 and the deceased as EXHIBIT C and C1. The endorsed medical report indicates that on the 10th of April,

2011, PW1 had reported to the hospital with a deep cut on the head and a cut on his right leg. For the deceased, he had a cut on the head and on his hands.

Suturing was done on the cuts and they were both treated and discharged that day. The fact that their wounds were sutured is an indication that they received deep cuts which led to a break in their skin for which reason there was a need to stitch or suture the wounds. That would meet the test of a bodily hurt as provided in section 1 of Act 29.

Learned counsel for the accused persons had under cross examination challenged the medical report of PW1 on the basis that his surname which he spelt as "Twasam'' was spelt as "Tswasam'' on the medical report. According to counsel, this shows that the medical report is not for PW1. PW1 disagreed with same and insisted that he was indeed the one. I find that this attempt to dispute the medical report did not yield the desired results.

PW1's evidence is that after he was served, he collapsed and only came to himself at the police station. The medical form was not filled by PW1, it was handed to him by the police to attend hospital. A reasonable man would expect that with PW1 being injured, the last thing on his mind would be the right spelling of his name. Thus a mistake in his name by the insertion of one word "s'' by someone else other than PW1 in the state that PW1 was in at the time is not sufficient to discount the said medical report as not being for PW1.

Mere harm alone is however not enough and the prosecution must go on to prove that the harm was caused intentionally by the accused persons. Provisions relating to intention are provided for under ***section 11 of Act 29***. A person is presumed to intend the natural and probable consequences of his actions. Thus if the ultimate occurrence is the natural or probable consequences of the conduct engaged in, it does not lie in the

mouth of the accused to assert that he did not intend the achieved result. This test was applied in the case of ***Serechi & Another v. The State [1963] 2 GLR 531.***

As a man intends the natural and probable consequences of his actions, his intentions can be deduced by looking at the circumstances of the particular case and looking at what any reasonable man would intend by engaging in those acts in those circumstances.

The evidence of prosecution witnesses is that about twenty to twenty-five men had driven to their farm on the said date wielding sticks and used same to harm PW1 and the deceased. That the said men run away when PW2 and the other men on the farm began to run towards them.

From their evidence which I found to be credible, the men had driven up to their farms and without any confrontation, proceeded to attack PW1 and the deceased who were at the frontage of the farm. The only inference from such an action is that the said men had come to the farm with an intention to cause harm to the persons on the farm. PW1 and the deceased were the one harmed because they had been the first to be seen on the farm on the said date.

Here, learned counsel for the accused persons in his written address had submitted that the inconsistency in the number of attackers was material. That is the fact that PW1 mentioned twenty whilst Pw2 mentioned 25 but was only able to mention twenty names to the police should go against their credibility.

I am unable to agree with learned counsel on this. Per prosecution's evidence in this case, it would rather have been more surprising if prosecution witnesses had mentioned the same number of persons.

According to prosecution witnesses, a number of men came down from a Kia truck and began to attack PW1 and the deceased after their leader had pointed them out. PW1 received the brunt of the attack and says he collapsed afterwards. PW2 says he was also on the farm but was a 100 yards away from the place of attack.

He saw the men attack PW1 and the deceased and he saw the men flee. Thus for both PW1 and PW2, as they did not count the men, one would expect that they have an estimate of the number of men that they saw. When that estimate is within a reasonable range, I have no reason to doubt their evidence. 20-25 is an acceptable range unlike a situation where one says 20 and the other says 40 or 50.

On the second element of the offence, I find that prosecution has established that the accused persons intentionally caused harm to PW1 and the deceased on the said date, place and time.

Prosecution must finally establish that the harm that was caused was unlawful. Harm according to **section 76 of Act 29 is** "*unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part''.*

The evidence of prosecution is that the accused persons came down from the vehicle and without any provocation, began to attack PW1 and the deceased. Prosecution in its brief facts indicated that there is a protracted land dispute between the family of PW1 and PW2 and the family of the accused persons. Cross examination has one of its aims being to put across the case of an accused person.

Learned counsel for the accused persons had sought to put across a case that it is because of this land dispute that PW1 and PW2 have made this false claim against the accused persons. Prosecution witnesses did not dispute the fact of the land litigation although they disputed that they had trumped up these charges.

Section 30 and 31 of Act 29 provides the various means by which force including harm may be lawful. The existence of a land dispute is not part of the legal justifications for causing harm. I thus find that prosecution has established the last element/ ingredient of the offence.

Although the 2nd victim died in 2019 and thus could not testify in this case, I find that prosecution has been able to lead sufficient evidence in proof of the charge of causing unlawful harm caused to PW1 and the deceased.

It is material to state that this incident supposedly occurred in 2011 and the evidence of prosecutions witnesses was taken between 2021 and 2022; ten and eleven years after the incidence. Due to the long lapse of time, it is expected that the memories of witnesses would not be as sharp as one would expect if the evidence was given some weeks or months after the incident.

Counsel for the accused persons had in cross examining PW1 and PW2 relied heavily on their statements as given to the police after the supposed incidents as evidence that they were not credible witnesses. Learned counsel had however not tendered these statements in evidence through the witnesses to enable the court to consider it as part of the evidence.

At the close of prosecution's case, I find that they have established a prima facie case against the accused persons. Prosecution has established all the relevant elements of the offence of causing harm against the accused persons, the evidence has not been so discredited under cross examination, the evidence is manifestly reliable and it lends itself to only one susceptibility; that of the prima facie guilt of the accused persons. Accordingly, they are hereby called upon to open their defence on the two counts of causing harm.

Learned counsel for the accused persons in his well researched address had put forth the case that prosecution should have charged the accused persons with the offence of causing harm by the use of an offensive weapon under ***section 70 of Act 29***. That is a first degree felony whereas the offence of causing harm simpliciter is a second degree felony. Counsel however, appears to have countered his own argument by referring the court to the case of ***The Republic v. Darko [1971] 2 GLR 227.***

The said case in line with ***Section 9 of Act 29*** gives prosecution a right to decide what to charge an accused person with where an act constitutes a criminal offence under two separate enactments. Although both section 69 and 70 are contained in the same enactment, one has a lesser punishment than the other. The elements of one are the same as the other save that for the other, prosecution would have to prove that the weapons used were offensive.

That the prosecution elected to charge the accused persons under causing harm simpliciter rather than causing harm by the use of an offensive weapon does not in any case occasion a miscarriage of justice or prejudice the case of the accused persons if at all. The lesser charge rather enures to the benefit of the accused persons.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. J. ASAMANI FOR THE REPUBLIC PRESENT

HUMPHREY MODZAKA FOR THE ACCUSED PERSONS