

IN THE CIRCUIT COURT, 28<sup>TH</sup> FEBRUARY ROAD HELD IN ACCRA ON 5<sup>TH</sup> DAY OF APRIL, 2024 BEFORE HER LADYSHIP JUSTICE RUBY NAA ADJELEY QUAISON (MRS), HIGH COURT SITTING AS A CIRCUIT COURT JUDGE.

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SUIT NO. D8/47/2016

THE REPUBLIC

VRS.

1. KWABENA KONADU
  2. MENSAH MADOTEY
  3. MICHAEL ADDO alias NANA YAW
  4. KWABENA NIMO
- 

1<sup>st</sup> and 3<sup>rd</sup> Accused persons absent

2<sup>nd</sup> and 4<sup>th</sup> Accused persons present

Complainant present

Chief Inspector Lawer for prosecution present.

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### JUDGMENT

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The accused persons were charged with the offences of Causing Harm under Section 69 of the Criminal and Other Offences Act 29, (1960). The accused persons pleaded not guilty to the charge for which reason the onus was on the prosecution to prove the charge against the Accused persons beyond reasonable doubt.

In the case of **ASARE VRS. THE REPUBLIC (1978) GLR 198 – 199**, the court in holding (2) held:

“(2) 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”

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused is on the prosecution; and the standard of proof required by prosecution should be proof beyond reasonable doubt as provided in sections 11(2) and 13(1) of the Evidence Act, 1975 NRCD 323. In the case of **Republic v District Magistrate Grade II Osu; Exparte Yahaya [1984-86] 2 GLR 361-365**, Brobbey J (as he then was) stated as follows: *‘One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.’*

Proof beyond reasonable doubt means *‘proof of essential ingredients of the offence charged and not mathematical proof’*. See **Frimpong @ Iboman v The Republic [2012] 1 SCGLR 297**.

The prosecution sought to discharge the burden placed upon them by calling four (4) witnesses and tendered ten (10) exhibits ‘A’, ‘B’, ‘C’, ‘D’, ‘E’, ‘F’, ‘G’, ‘H’, ‘J’, and ‘K’ in evidence. The accused on the other hand gave evidence, called no witness and tendered no exhibits in evidence.

## THE LAW

Section 69 of Act 29/60 states;

“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony”.

**Section 76 of the Act 29/60** gives the Definition of unlawful harm.

**“Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter One of this Part.”** In Chapter One of this Part,

**harm is defined as follows “harm means a bodily hurt, disease, or disorder whether permanent or temporary.”**

In order to ground a conviction, the prosecution will have to lead evidence beyond reasonable doubt that

1. The accused caused harm
2. The harm was caused to a person
3. The harm caused was intentional.
4. The harm caused is not justified by law pursuant to the provisions contained in Part two, Chapter One of the criminal and other offences Act, 1960.

*See: Contemporary Criminal Law in Ghana; written by Dennis Dominic Adjei, 2017@ page 309 177*

The brief facts of the case are that the complainant Kwaku Opoku is a Goldsmith at Kaneshie Market Complex and resides at Kasoa in the Central Region. All the four accused persons, namely; Kwabena Konadu alias KK, Mensah Madotey, Michael Addo alias Nana Yaw and Kwabena Nimo are commercial drivers at Kaneshie and reside at Kasoa, Awoshie and Kaneshie respectively. On 09-09-15 at about 8:00pm after the complainant had closed from work, he walked to the roadside at Kaneshie to board a Kasoa commercial vehicle back home, 1<sup>st</sup> and 2<sup>nd</sup> accused persons who also live at Kasoa were also by the roadside for the same purpose. When a Kasoa vehicle eventually arrived, the complainant as well as 1<sup>st</sup> and 2<sup>nd</sup> accused persons rushed to the said vehicle to get on board. Suddenly, 1<sup>st</sup> accused person held the complainant’s hand and accused him of having stolen his money from his back pocket, 3<sup>rd</sup> and 4<sup>th</sup> accused persons joined in and immediately conducted a search on the complainant but the alleged stolen money was not found on him. However, the accused persons and unidentified persons subjected the complainant to severe beatings with waist belts and sticks. They inflicted injuries on

his head, forehead, left arm, left middle finger and the right thumb. The complainant also lost one of his upper incisors during the attack. A report was made to the Kaneshie Police by the complainant who was issued with a police medical form and was treated at the Kaneshie Polyclinic. The accused persons were later arrested. The complainant also alleged that his three mobile phones, cash sum of GH¢400.00, a bag containing jewelry, revenue papers and bunch of keys got lost during the attack. After investigations, the accused persons were charged with the offence before this honorable court.

## **EVIDENCE**

Prosecution, in proof of its case, commenced its case by calling the first prosecution witness (Pw1), Kwaku Opoku the complainant in this matter resides at Kasoa and is a Goldsmith. He identified A1, A2, A3, and A4. In his evidence he stated that on the 9<sup>th</sup> September, 2015 he had worked for some people who had requested the products should be sent to them. Thus the three different gold chain set, three sets of silver chains and three wedding rings were in his bag. When Pw1 reached Kaneshie Overhead in front of the market, there was a lot of people so he began walking a bit to try and get a taxi. As he was walking a commercial Yuotong bus came to park shouting Kasoa. Pw1 stated that he was about to enter the bus however there was a fat woman so as he was waiting for her to sit before he climbs then somebody held the right part of his short, the upper part. So he hit the hand of the person. Pw1 turned and saw it was A1. A1 said somebody had picked him and went on to ask Mensah (A2), to get hold of Pw1 for him. Pw1 said he was wearing a chain, A2 held the chain and shirt at the neck and tore Pw1 chain. Pw1 told A2 he is not a thief so he should leave him alone. There A2 hit Pw1 chest and slapped his ear. At that time, people were entering the bus, a certain man told them Pw1 was not a thief. Pw1 told A2 that he has friends around that area if he doesn't mind they should go to those friends to enquire if he is a thief. Pw1 said he heard a voice behind asking him to mention the name of his friends he is referring to. Pw1 said he is called Isaac. Before he

could mention another person's name again A2 fixed a blow, punched his mouth and one of his tooth fell out. A2 pushed Pw1 towards the engine of the Yuotong bus and he started putting his hand into Pw1's pocket. When he put his hand into PW1 left pocket, pw1 had a Samsung mobile phone and GH¢200.00 in the pocket and brought out the Samsung phone and money from his pocket. There was a G3 phone also in Pw1's right pocket, he brought out that phone from his right pocket also. A2 was beating Pw1 and other people were also beating Pw1. Pw1 then heard A2 saying to A1, the money you said the man has stolen is not on the man so take his bag and search inside. A1 took the bag from Pw1 and the Yuotong driver asked that they should come out of the bus as his bus is full and he wants to drive away. A1 and A2 threw pw1 out of the bus and they started using sticks to beat him. Pw1 was trying to go to the place where his friends are. They kept beating Pw1 and when lhe fell down they brought a tyre to hang on his neck. When they put the tyre on his neck then he removed it. So they kept beating him and he fell down again. By then people had trooped to where they were beating Pw1. the friends of Pw1 also came there so Pw1 heard a voice mentioning his name Egya, what is going on. It was Isaac who was shouting his name Egya. Pw1 said he could not hear anything again, what he heard was rush him to hospital if not he would die.

PW1 said A1, A2 together with others continued beating PW1, so his friends came and asked what offence he had committed. Isaac carried Pw1 to the Kaneshie Police Station to report the matter to the police. The police told Isaac to take Pw1 to hospital immediately because he is dying. He was sent to the hospital, it was later he was given a police report to send to the hospital. The medical report as endorsed by the medical doctor is tendered and marked Exhibit A. In the cause of pw1 being beating, A2 punched Pw1 mouth and his tooth fell out. These are pictures showing Pw1 injuries tendered and marked Exhibit 'B' and 'B1'.

**Excerpts of Cross-Examination of PW1 by Counsel for A1, A2, A3:**

Q. When the A1 shouted I have been picked by you, how many people attacked you?

A. It was A2 who attacked me first and then those in the vehicle also attacked me.

Q. I am putting it to you that A2 just held your shirt whilst the others were beating you?

A. It was the A2 who was beating me.

Q. Were you searched when you were arrested?

A. A2 searched me when I was arrested.

Q. What did they find on you when you were searched?

A. The A2 took GH¢200.00 from my pocket and my phones, a Samsung S3 phones and also a G5 phone.

Q. Do you have any witnesses to these items taken from you by A2?

A. In the car I have no witnesses.

...

Q. From the car to where Accused persons allegedly put the tyre on your neck, how far is the distance?

A. It is about 15 metres.

Q. Was it in a crowded market, full of people?

A. It was a crowded place.

Q. You telling this court in a crowded market and nobody had sympathy on you when they were putting the tyre on you?

A. There were many people there, the place was crowded, there was a lady there saying this man is not a thief, he is a goldsmith. But A2 said I am not the goldsmith.

...

Q. Prior to this incident, did you know A1, A2 and A3?

A. No.

Q. How much did you spend on your medicals?

- A. I have the receipts though I have not calculated the amount.
- Q. Did you attempt any settlement with A1, A2, A3?
- A. No.
- Q. Did you not demand GH¢2,900 at the first instance from A1, A2, A3 as medical expenses?
- A. It was the money in the bag I was holding which was GH¢11,800.00 which the police asked them to pay.
- ...
- Q. Can you tell the court the source of the GH¢11,800.00 that you alleged got missing?
- A. It was the gold, silver and the hospital bill that was calculated at the police station which totaled GH¢11,800?
- Q. But you just told this court A1 took GH¢11,800 cash from your bag, how do you reconcile this with your statement it was the total of hospital bill and gold and silver jewelry in your bag?
- A. The amount that they took from me is GH¢200.00 with my phone. The GH¢11,800 is from the gold and silver jewelry and the hospital bill put together.
- ...
- Q. You told this court again that A1, A2 put a lorry tyre on your neck and any time they did that you removed it with force?
- A. It is true. Any time they try putting the tyre on my neck, I remove it. It happened three times.
- Q. and all this time by standers are applauding you for your strength?
- A. There was nobody applauding me.
- Q. **I am putting it to you that A1, A2, A3 never assaulted you or caused harm to you but it was rather the other passengers who assaulted you when you attempted to pick the pocket of A1?**

A. It was A1, A2 who assaulted me and took me to where their friends were. For the A3, I don't know him.

....

**Excerpts of Cross-Examination of PW1 by Counsel for A4:**

Q. When then incident happen, did A4 touch you?

A. I do not know A3 and A4.

**PW2:** Emmanuel Yaw Offei Amoah lives at Odorkor. He is a phone repairer. In his evidence he identified PW1 and the accused persons. He stated that on the 9<sup>th</sup> of September, 2015 PW1 went to make a report to the police. Pw2 was at his workplace at Kaneshie and he heard his brother Isaac (Pw3) shouting. So he rushed out to Isaac and asked what the problem was. Isaac (Pw3) asked Pw2 to look down and Pw2 asked who the person is that is lying on the ground and Isaac told Pw2 it is PW1 who they call Agya. Pw2 asked Isaac (Pw3) what the problem was and Isaac told Pw2 some people brought PW1 as a thief. They had beaten him and blood was all over him so Pw2 couldn't recognize him. Pw2 went to those who brought PW1 and they were three in number. Those who brought PW1 are in the court room thus A1, A3 and A4. Pw2 went to A1 and asked him what PW1 had done as he is not a thief. A3 responded that PW1 is a thief and he picked money from his brother's pocket. A3 again told Pw2 that when they were beating PW1, he did not confess until they put a tyre on his neck to burn him before PW1 confessed that he picked the money and given it to Isaac that is the reason why they are here. A4 said they would involve those of us standing there. So I told A1, A3 and A4 that if truly PW1 is a thief they should send him to the police station. A1 claims his money was stolen. Pw2 and A1 were heading towards the police station, A3 came with a jack knife saying what are they saying. Pw2 told A3 this is not a quarrel between them so they should all go to the police station. A3 used the back of the knife to hit Pw2 fore head and he fell down. Pw2 went to Kaneshie police station to report the case. Before Pw2 got to the police station, Isaac had already brought PW1 to the police station and the police told



Pw2 that they should send PW1 to the hospital. Pw2 and Isaac(Pw3) sent PW1 to the Kaneshie Polyclinic.

**Excerpts of Cross Examination of PW2 by Counsel**

Q. So it was PW1 who told you that all the four accused persons assaulted him?

A. No, it was from A3 and A4's own mouth, they said when we were beating him.

Q. Would you be surprise that PW1 told this court that he does not know A3 and A4?

A. Yes, I would agree with PW1 because at the time that he was beaten he could not identify anybody

Q. If PW1 could not identify anybody why are these 4 accused persons in court?

A. Later that PW1 recovered a bit he was able to identify A1 and A2 because they held him in the car and said he has stolen money from them. It was A1, A3 and A4 that brought PW1 place where I work so I saw them.

Q. Did PW1 asked for settlement with A1 and A2 by way of financial demands that you are aware of?

A. Yes, I heard something about that but it was not PW1 that went to accused persons but accused persons rather went to PW1 that they want to pay the expenses he incurred at the hospital.

Q. I put it to you that PW1 was demanding in excess over GH¢15,000.00 for which you were part of the negotiations?

A. It is not true. But at the police station the accused persons said they want to know the amount that PW1 had incurred at the hospital. A4 said he is not among

**them so he is not going to pay any amount so it was there that A1 said then the case would go to court.**

**PW3:** is Isaac Aikens. He corroborated the evidence of Pw2 and Pw1. He lives at Kaneshie and is a trader. In his evidence, Pw3 stated that on the 29<sup>th</sup> September, 2015, one Wednesday, he was selling when Accused persons brought the complainant that he has stolen from them. It was A1, A2 and A4 who brought complainant to where Pw3 was selling at Kaneshie. Complainant was severely or thoroughly beaten. When Accused persons brought complainant, he was not able to stand on his feet so he fell on the ground. Pw3 asked complainant who has done this to him and complainant replied saying it is the Accused persons who brought him that had beaten him like that. The way Pw3 saw the complainant he said he did not know what would happen next so he called his brother Emma(PW2). Emma(PW2) asked the same question Pw3 asked that who had beaten complainant. Emma (PW2) asked the three Accused (A1, A2, A4) to accompany him to the police station. The condition of complainant was so bad, so Pw3 carried complainant on his back to the police station. Upon reaching the police station, Pw3 put complainant on the front of the police station and he went inside for a police medical form to take him to hospital. The police man came out and saw the condition of complainant and said PW3 should send complainant to the hospital before he comes for the police report considering his condition. So Pw3 hired a taxi and took complainant to Kaneshie Polyclinic. From the hospital, Pw3 came to the police station for the medical report and sent it back to the hospital.

**Excerpts of Cross-Examination of PW3 by Counsel for A1, A2, A3, A4:**

**Q. Isaac, you told this court that when the Accused persons brought the complainant, he was in a bad shape, that he was beaten?**

**A. Yes.**

...

**Excerpts of Cross-Examination of PW3 by A2:**

Q. Do you know me?

A. I do not know you but I got to know you the very first day you brought the complainant saying complainant had stolen money.

Q. The place you claim we brought complainant, did you see me among the people that brought complainant?

A. Yes.

**PW4:** is No. 35388, D/Sgt. Michael Asante Yeboah, stationed at Kaneshie District CID. On the 9<sup>th</sup> September, 2015 this case was referred to him for investigation as the investigator on duty at the Kaneshie police station. On that day at about 9:00pm, complainant was brought in by others. He had sustained injuries on his head, his forehead and his both hands. He also had one of his teeth removed. The dress he was wearing was stained with blood, he reported that Accused persons beat him up for allegedly having stolen A1's money. A police medical form was issued to him to attend hospital. Afterwards a statement was taken from him. Pw4 later visited the scene of the incident at Kaneshie by the road side. H also caused the arrest of all Accused persons except A1 who was invited to the police station. Investigation caution statements were separately obtained from all Accused persons, i.e. A1 (Kwabena Konada), Michael Addo (A3), Mensah Madotey (A2) and Kwabena Nimo (A4). The Investigation caution statements separately obtained from all Accused persons are tendered and marked respectively as Exhibit C, D, and F. After, All the parties were paraded before the District Commander Station Officer and District Crime Officer. After interrogation, pw4 was instructed to charge Accused persons and arraigned them before court. The charge statement of Kwabena Konadu (A1), A2, A3 and A4 are respectively tendered and marked Exhibit G, Exhibit H, Exhibit J and Exhibit K. All the Accused persons are drivers at Kaneshie so Pw4 went to their station where

Accused persons A2, A3, A4 were pointed out by complainant and his witnesses. A1 was not present. A message was therefore left with some of the drivers for him to report to police and upon the invitation. A1 reported himself to the police.

**Excerpts of Cross-Examination of PW4 by A1:**

...

Q. The incident happened in a car and you said you went to Kaneshie roadside to conduct the investigation. The person you asked was he also in the car when the incident happened?

A. The incident happened at the roadside as I indicated. The A1 and A2 and the complainant were boarding the same vehicle to Kasoa when the incident happened in a car and the complainant was dragged out of the vehicle and he fell. There is a pavement by the roadside which is being used by traders. At the time of my visitation, the said vehicle was not there, it was actually not the same day that I visited the scene. So I interviewed people around the scene where the incident happened.

Q. I am putting it to you that you are not being truthful to the court?

A. That is not correct.

...

**Excerpts of Cross-Examination of PW4 by A2:**

...

Q. I am putting it to you that when the incident happened, I was not present. I was at Kaneshie 1<sup>st</sup> light going home?

A. A2 was present. A1 started his caution statement that when the incident happened and suspected complainant to have picked his money from A1 pocket, he made A2 to hold complainant for him.

**Excerpts of Cross-Examination of PW4 by A4:**

...

Q. When A1 pleaded with complainant I refused to plead and also to contribute towards the refund of medical bills because I am not party to the matter so the case should go to court?

A. I do not know where they had such discussion. All the Accused persons actually decided to meet the complainant for amicable settlement but that was not successful.

...

Q. I am putting it to you that I was not part of the people who went to complainant to plead because I have never offended the complainant?

A. That was the proposal but I cannot tell who and who were present at the venue for their attempt to resolve the matter.

A1: is Kwabena Konadu. He denied the charges against him. A1 the court that he lives at Kasoa Down Town and is a driver. He got to know the complainant when this incident occurred. A1 knew A2 and A3 prior to the incident as he works with them at the same Kaneshie Ford Station. He however has never set his eyes on A4 or spoken to him prior to the incident occurring. A1 narrated that he had arrived from Alubu to Accra and parked his vehicle at the back of the Kaneshie Police Station. After parking his vehicle, A1 decided to pick a car home to Kasoa. A1 met A2 at Kaneshie, they were both standing there waiting for a vehicle to Kasoa. This was proving difficult as no cars were going to Kasoa. As they were standing there a Yutong Bus finally arrived. A1 told A2 that the bus coming would go to Kasoa so they should go and board the Yutong bus. When they got to the bus, A2 was able to board the bus, when A1 was about to board the bus, there was a fat lady finding it difficult to board the bus so he held the lady by pushing her into the bus. Whilst A1 was boarding the bus, he felt somebody hand dip his hand into his back pocket so he held the hand. A1 said who that thief is, immediately he turned to see the one, it was the complainant (PW1). A1 told A2 that complainant had stolen his money

totaling GH¢740.00. Complainant denied stealing the money from A1. There was a scuffle in the bus. A1 confronted the complainant and demanded for the return of his money. Initially Complainant denied having taken the money until a point when he admitted the money was with Isaac (PW3).

A1 and A2 sent PW1 to the Ford Transport Station at Kaneshie. A3 asked of the whereabouts of PW3 and PW1 said PW3 was at the overhead. So A3 held PW1 and they took him to the Overhead and asked him to identify PW3, the said Isaac. PW1 kept mute and refused to talk. Someone standing there then enquired what the matter was and they narrated same to him. The said gentleman told them there was no Isaac there. By then other people had also come around and gathered there. A2 left and went home. The people gathered took PW1 from them and said they were sending him to the police station so they should all accompany them. Since the place was a little dark, somebody slapped A3 but we could not identify the person. A1 said he followed to the police station as he still wanted to recover his money from the said Isaac (PW3) the complainant (PW1) was referring to. That he did go to the police station but did not meet the complainant there. So he could not make any complaint. He later left for North. A1 had a call from the police saying he was needed at the police station, Kaneshie. On his return A1 went to the police station and his statement was taken.

...

**Excerpts of Cross-Examination of A1 by Prosecution:**

Q. You told this court that yourself, A2 and A3 are drivers at Kaneshie Ford station, is that correct?

A. Yes, that is correct.

Q. So you know each other very well, is that not so?

A. Yes.

Q. You also told this court that on the 9<sup>th</sup> September, 2015, you and others were struggling to board a Yutong bus to Kasoa, is that correct?

- A. Yes.
- Q. So you also told this court that when the Yutong bus arrived, A2 was able to board the bus but when you were about to board the bus a certain fat lady blocked you?
- A. Yes, that is correct.
- Q. And you tried to assist this fat lady board the bus, this is in evidence?
- A. Yes.
- Q. Whilst assisting this fat lady, you felt someone was putting her hands into your pocket, is that also correct?
- A. That is also correct.
- Q. And you shouted who is that thief putting his hands into my pocket, is that also correct?
- A. Yes, that is correct.
- Q. So you would agree with me that you could not turn to look at the alleged thief who was putting his hands in your pocket since you were busy assisting this fat lady who had blocked you at the entrance of the Yutong bus?
- A. I told this court that I held the hand of the person whilst he is dipping his hand in my pocket.
- Q. I am putting it to you that you could not turn to look at the one who had put the hand into your pocket?
- A. The one I held his hand is the complainant (PW1).
- Q. In your evidence to this court you never mentioned PW1 as the one who put his hands into your back pocket, you said someone?
- A. Then the person did not hear what I said. I said the hand I held in the back of my pocket was PW1.
- Q. You are not being truthful to this Honourable Court, I am putting that to you?
- A. I am telling the court the truth.

- Q. In your evidence, you also told this court that immediately you said who is that thief, you were pushed and you entered into the bus, is that also not correct?
- A. Yes, that is correct.
- Q. So it was not PW1 who pushed you into the bus?
- A. I do not know who pushed me into the bus but the person whose hand I held was PW1.
- Q. You agree with me that you fell flat in the Yutong bus?
- A. I did not fall flat in the bus.
- Q. So how did you fall?
- A. When I was pushed, I leaned against some passengers in the bus, I did not fall flat.
- Q. *So you want the court to believe that at all these time assisting a fat woman, pushed into the bus, you leaned on some people, you were still holding the hand of PW1 as you are alleging?*
- A. *The time I shouted thief and I held the thief's hand, the woman I was helping had already boarded the bus.*
- Q. *You told this court that when you fell in the bus, you turned and saw PW1 is that not correct?*
- A. *When I was pushed into the bus and I turned myself, it was PW1 by then I was still holding his hand.*
- Q. *I am putting it to you that it was not only PW1 who was in that vehicle, there were many people in the vehicle including PW1?*
- A. *It was PW1's hand that I held in my back pocket.*
- Q. *I am putting it to you that it was not only PW1 in the bus, there were many people in the bus including PW1?*
- A. *It was PW1 hand that I held in my back pocket.*
- Q. *Where there many people trying or struggling to board the bus at that time?*
- A. Yes.



Q. *I am putting it to you that when you fell into the bus and you got up, you were confused and wrongly accused PW1 as the one who has put his hand in your back pocket?*

A. *It is not true.*

...

Q. *I am putting it to you that you were not holding PW1 hands when you fell in the bus?*

A. *That is not correct. I was holding his hand.*

Q. *So you held PW1's hand with the alleged money in your pocket whilst on the floor in the bus, is that not the case?*

A. *it is not true that I held PW1's hand with the money.*

Q. *But you told this court that PW1 put his hands in your pocket to remove your money. That is what you told this court?*

A. *Yes.*

Q. *And you immediately held PW1 hand in your back pocket including the money that was in your pocket?*

A. *I held PW1 hand on the wrist. I did not hold his hand together with my pocket. He snatched his hand when I fell down in the bus.*

Q. *Did you see some of your money around where you fell?*

A. *I did not see any money on the floor but rather when I asked PW1, he said he gave the money to Isaac?*

Q. *You were holding PW1 hands until all of you fell in the bus and you were still holding the hand, is that correct?*

A. *When I held the hand of PW1 and was pushed and fell in the bus, PW1 was still standing.*

Q. *So at what point did PW1 give the money out to Isaac?*

A. *I cannot tell.*

...

A2: is Mensah Madotey. He lives at Kasoa and is a driver. He knows all the Accused persons as drivers. He got to know complainant at the police station. On the date of the incident, A1 met A2 at Kaneshie by roadside where they board vehicles. They were many people standing there waiting for vehicle. A Yutong bus came to stand at where A1 and A2 were waiting to board transport. Everyone started struggling to board the Yutong bus. Knowing the situation at the place they were waiting for the bus to board A2 said he placed his money under his armpit. A2 boarded the Yutong bus and sat at the back. As the passengers were all still struggling to board the bus, he heard A1 calling him and saying somebody has stolen his money and he had caught him. He got up, and realized complainant hand had been caught. So as the passengers continued to struggle, A1 and complainant were pushed off the bus so A2 also alighted. A2 said he held complainant on the pavement and asked him where the money was. Complainant then said he had given the money to Isaac. Some of the passengers also asked complainant where the money was and complainant said he gave the money to Isaac and Isaac was under the overhead. As they were about to go to the overhead, he remembered a similar case which took place under the overhead and the boy was also carrying money on him and he was killed. So A2 returned and picked a vehicle and went home. On his way home, A2 had gotten to 1<sup>st</sup> light when one of the drivers called Culture called him and told A2 that A3 had been stabbed by knife under the overhead. A2 asked Culture whether A3 is dead, Culture was not able to answer so A2 went home. The following day A2 asked A1 whether they were able to report the incident at the police station. A1 replied that they did not go to the police station. A2 also asked A3 and A3 replied that reporting to the police would not be fruitful so he did not go to the police. About 3:00pm that day, A2 was arrested by the police. When he got to the police cells, he saw A4 was also in custody. A2 asked A4 why he was in custody and he explained and narrated the story to him. A2 also told his story to A4.

A3: is Michael Addo, a driver who resides at Alajo. A3 got to know complainant during this case though he knew Accused persons (A1, A2, A4), we are all drivers prior to this incident. A3 narrated that when he got to Kaneshie station after work, he saw that some boys were beating the complainant. He heard the complainant mentioning the name Isaac and saying he gave the money to Isaac. He rescued the complainant and told the boys, complainant is mentioning the name Isaac so they should take complainant to the said Isaac. When they got to Isaac under the overhead, complainant showed A3 the said Isaac and Isaac complainant showed me was with some guys under the overhead. So Isaac accused me of beating complainant so I told Isaac and the guys that I rather rescued complainant. Complainant was then having a cut on his forehead. There and then Isaac and his guys started beating A3 up. A3 explained to them that he rather rescued the complainant. A3 got a cut on his head from the beating by Isaac and his guys. A3 told the court that Complainant can bear witness that A3 was not part of those who beat him up, A3 rather came to rescue him. After the beating of A3 by Isaac and his guys, blood started oozing from the cut he had. A3 left Isaac, complainant and the guys there and went to a pharmacy where he was treated and he went home.

Excerpts of Cross-Examination of A3 by A1:

**Q. At the time of the incident, I was not present?**

**A. At the time I came and met the people beating complainant, A1 was not present.**

Excerpts of Cross-Examination of A3 by A2:

Q. At the time PW1 was sent under the overhead, was I present?

A. No, I did not A2 there.

Excerpts of Cross-Examination of A3 by Prosecution:

Q. You agree with me that yourself, A1, A2 and A4 are all drivers in Kaneshie station?

A. Yes.

...

Q. You told this court in your evidence in chief that on the day of the incident ie 9<sup>th</sup> September, 2015 you went to the scene to rescue PW1 (complainant), is that right?

A. That is so.

Q. Who invited you to the scene?

A. No one invited me to the scene.

Q. I am putting it to you that you went to the scene because A1 invited you to assist him to conduct a search on the complainant?

A. A1 did not invite me to the scene.

Q. Can you tell the court how you went to the scene?

A. When I returned from work that evening, I saw complainant being beaten by some boys. I heard complainant mentioning Isaac and saying the money is with Isaac so I approached the guys and told them the money is with Isaac, why cant they go to Isaac for the money so I rescued complainant and I took him to the Isaac under the overhead bridge.

Q. Before your alleged intervention of rescuing PW1, you saw A1, A2 and A4 at the scene?

A. I did not see A1, A2, A4 at the scene.

Q. Before you took PW1 to the alleged Isaac you claim he mentioned to you, did you ask PW1 what happened?

A. I did not ask PW1 but rather I heard PW1 say the money is with Isaac so they should take him to Isaac for the money to be retrieved.

Q. Did you also ask who that money belongs to before you took PW1 to Isaac?

A. No, I did not.

Q. You are not being truthful to this Honourable Court?

A. I am speaking the truth.

Q. On that fateful day, A1 alleged that PW1 has picked his money from his pocket?

- A. After I rescued PW1 and sent him to the alleged Isaac under the overhead bridge that is where I saw A1. A1 told me PW1 had picked his money.
- Q. I am putting it to you that when yourself, A2 and A4 were informed by A1 that PW1 had picked his money from your pocket, you instantly yourself, A1, A2 and A4 instantly conducted search on PW1 and when you did not find the money you subjected PW1 to severe beatings?
- A. It is not true.
- Q. You continued beating PW1 until he sustained severe injuries on his head, forehead, left arm, middle finger and the right thumb?
- A. I rather rescued PW1. I did not beat him. But when I sent PW1 to Isaac under the bridge when Isaac saw me, Isaac and his boys thought I beat up PW1 so they also beat me and I had injury on my hand.
- Q. In the cause of the beating, PW1 told you, A1, A2 and A4 that he is not a thief but a goldsmith?
- A. I did not beat PW1. I was there where the incident happened from the onset. I came and rescued PW1 and sent him to Isaac, so what prosecution is telling you is not true.
- Q. In the course of the beating, PW1 told you that take him to Isaac to find out the kind of person PW1 is. And as a result, yourself, A1, A2 and A4 took PW1 to Isaac to ascertain this fact?
- A. When PW1 was mentioning Isaac name. I rescued PW1 and sent him to Isaac, by then A1, A2 and A4 were not around.
- Q. So you took PW1 to Isaac on whose interest?
- A. The reason why I rescued PW1 and sent him to Isaac was the way the guys were beating PW1 and PW1 mentioning Isaac name that is why I sent PW1 to the said Isaac?
- Q. So did you see the guys who were beating PW1?

- A. When I went to rescue PW1, the boys beating PW1 was the porters.
- Q. When police arrested you, did you assist police to arrest these guys you are alleging?
- A. The police did not send me to where the incident took place.
- Q. It was as a result of the condition of PW1 at the time you sent PW1 to Isaac that is why the other workers around where Isaac works proved to you that PW1 is not a thief but a goldsmith?
- A. How PW1 was mentioning Isaac name so I asked the boys why cant they send PW1 to Isaac and find out so I carried PW1 on my shoulder to Isaac and upon reaching there when Isaac and his guys saw me, they thought I beat PW1 up so they also beat me.
- Q. So when you took PW1 to Isaac, what did Isaac tell you?
- A. Isaac told me PW1 is a goldsmith and asked me why did we beat PW1 up and I told him I rescued PW1.

A4: is Kwabena Nimo, a Porter/Book man at the Lorry Station. A4 do not know A1, A2, and A4. A4 got to know them through this case. A4 did not know prosecution witnesses. A4 do not know the complainant (PW1). PW1 has not stolen from him. A4 said he was there one day when police men came to him saying that A1 said PW1 has stolen money from his pocket. The investigator invited A4 back to the police station. It was that day A4 met A1, A2, A3. The investigator asked A1 if he knows me and he said he does not know me. So the investigator led us all into a room for amicable settlement. And I told the investigator I have never beaten PW1 so I cannot sit for settlement. If indeed PW1 claims I beat him then the case should go to court for me to come and answer there.

## ANALYSIS OF EVIDENCE

The issue is whether or not the accused persons caused harm to Pw1. From the evidence of Prosecution witnesses especially Pw1, A2 was the first to hit Pw1 after which when the bus driver directed that they alight both A1 and A2 threw Pw1 out of the bus and they started to beat him. Pw1 further admitted under cross-examination that it was A1, A2 who assaulted him and took Pw1 to where his friends were. Pw2 identified A1, A3 and A4 as those who brought Pw1 to Isaac and that Pw1 is a thief as he had picked money from A1's pocket. Pw2 further testified that A3 stated that when they were beating Pw1, he did not confess until they put a tyre on his neck to burn him before Pw1 confessed that he picked the money and given it to Isaac that is the reason why they had brought Pw1 to Isaac. A1 in Exh C his statement to the police largely corroborated the above save that he denied joining in the assault of Pw1. A1 who claimed his money had been picked said he was the one who gave A3 Ghc30.00 to go to hospital for some injuries. Pw4 identified Exh B series and Exh C as the injuries caused Pw1. From the foregoing, I find as a fact that A1 and A2 were part of the persons that assaulted and injured Pw1 (complainant).

Having so held, the next issue to determine is whether or not the Accused persons intentionally caused harm to Pw1. The learned author **P.K. Twumasi in his book Criminal Law in Ghana P77 in laying the down the basic principle in ascertaining the concept of intention in criminal law stated thus:**

**"The general principle of our law is that intention, like many other states of mind, is incapable of direct proof, it is always inferred from proven facts. This is a principle of English common law which has been accepted as an important principle of our criminal law."**

Intention is inferred as a matter of fact, rather than law.

In the instant case, the accused persons believed Pw1 had stolen A1 money whilst they were all bustling to join a yutong bus as transportation to their various homes after work. A1 took the bag from Pw1 to search it but the alleged stolen money was not in. When the Yuotong driver asked that they should alight of the bus as his bus is full and he wants to drive away. A1 and A2 threw Pw1 out of the bus and they assaulted him together with other unidentified persons. PW1 could not tell whether definitely A3 was part of those who hit him but identified A1 and A2. Indeed whilst Pw1 was trying to get to the place where his friends were they kept beating Pw1 and when he fell they together with others assaulting Pw1 attempted to place a car tyre on neck apparently to set him on fire.

From the proven facts, I find as a fact that the 1<sup>st</sup> and 2<sup>nd</sup> accused intentionally went for the complainant PW1 and intentionally caused harm to PW1

**Pursuant to Section 76 of Act 29, 1960**, it is not enough to intentionally cause harm to any person but the harm caused must be unlawful and for the harm to be unlawful it must be devoid of the relevant justification for the use of force. Harm is therefore unlawful when it is intentionally or negligently caused by the accused to another person and not justified under Part Two, Chapter One of Act 29

In this case the relevant provision under Part One of Act 29, 1960 for the justification for the use of force is section 31(f) of Act, 1960. The question that then arises is whether or not the justification for the use of force under section 31(1) of Act 29/60 can avail the accused persons?

**Section 31(d)(e)(f) of Act 29/60 has one of the grounds for the justification for the use of force as;**

*“(d) of an authority to arrest and detain for felony; or*

*(e) of an authority to arrest, detain, or search a person otherwise than for felony; or*



*(f) of a necessity for the prevention of or defence against a criminal offence;"*

A1 sought the court to believe Pw1 stole his money compelling them to act the way they did. This surely cannot be a justification as what they should have done to hand him over to the police and not taken the law into their own hands and assaulted him to the point of searching him and mishandling him.

I therefore hold that the harm caused to pw1 by A1 was unlawful and further hold that the justification for the use of force cannot avail the accused.

#### CONCLUSION

I have considered the evidence adduced by both prosecution and defence and the applicable law and the court is satisfied that the prosecution per the evidence led proved beyond reasonable doubt the offense of intentionally and unlawfully causing harm against the complainant by the first and second accused persons.

I therefore find the A1, A2 guilty of the offence of causing harm and convict them.

A3 and A4 are discharged as prosecution per the evidence led failed to prove beyond reasonable doubt the offense of intentionally and unlawfully causing harm against the third and fourth accused persons.

In sentencing the court took into consideration the plea for mitigation of A2 and the fact that he is very remorseful, being first offender.

A1 and A2 are each sentenced to pay a fine of four hundred (400) penalty units in default twelve (12) months imprisonment IHL. A1 and A2 to also refund the outstanding medical bills covered by receipts to complainant.

**H/L RUBY NAA ADJELEY QUAISON [MRS.]  
JUSTICE OF THE HIGH COURT**