

**Public Prosecutor**

AND

**Mohd Firdaus Bin Morni [D1]  
Abdul Malik Bin Judin [D2]  
Yasir Bin Yahya [D3]**

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**(Intermediate Court of Brunei Darussalam)  
(Criminal Trial No. 8 of 2025)**

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Pg Masni Pg Hj Bahar, Judge

**Date of Sentence: 13 February 2025**

*Headnote: Sentencing: Joint charges - S 451 PC read with section 34 of the same - House trespass in order to commit theft - Common intention - Pleaded guilty- repeated offender - Public Interest -Deterrence sentence - Appropriate Sentence.*

DPP Pg Hjh Nor'Azmeena Pg Hj Mohiddin and PO Mohammad Syafi'e Habibuallah Edi Mirhan for Public Prosecutor.

Defendants In Person and Unrepresented.

**Cases cited:**

*Daud Bin Hj Zainal vs Public Prosecutor* (Court of Appeal) (Criminal Appeal No: 11 of 2004),

*Rosazli bin Hj Metassan v PP* (Criminal Motion 6 of 2018),

*Ahmadi bin Hj Nawawi v PP* (Criminal Motion 1 of 2015),

*Abdul Wakil bin Samsun Yusra v PP* (Criminal Motion 35 of 2014)

*Mohd Zahiruddin bin Hj Junaidi v PP* (Criminal Motion 38 of 2013)

*Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin* [2003] BLR 138

**SENTENCE**

**Pg Masni, Judge:**

**Introduction:**

1. The Defendants, Mohd Firdaus bin Murni (D1), Abdul Malik bin Judin (D2) and Yasir bin Yahya (D3) are jointly charged for house trespass with the intention to commit theft, an offence punishable with imprisonment contrary to section 451 Penal Code read with section 34 of the same.

## Charges:

2. The charges provide that:

### 1<sup>st</sup> Charge [against D2 and D3 only]:

*That both of you, sometime between 2<sup>nd</sup> October 2024 and 9<sup>th</sup> October 2024, at a house addressed No 125, Kampung Seri Tanjong Belayang, Temburong, in Brunei Darussalam, a building used as a human dwelling, in furtherance of your common intention, did commit house-trespass by entering into the said house, in the possession of one Siti Norazura binti Saidin, in order to the committing of an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22, read with section 34 of the same.*

### 2<sup>nd</sup> Charge [against D2 and D3 only]:

*That both of you, sometime between 1<sup>st</sup> October 2024 and 5<sup>th</sup> November 2024, at a house addressed No 8, Simpang 269, Kampung Simbatang, Jalan Temada, Temburong, in Brunei Darussalam, a building used as a human dwelling, in furtherance of your common intention, did commit house-trespass by entering into the said house, in the possession of one Tony Anak Sedau in order to the committing of an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22, read with section 34 of the same.*

### 3<sup>rd</sup> Charge [against all Defendants]:

*That all of you, sometime between 26<sup>th</sup> day of October 2024 to 17<sup>th</sup> day of November 2024, at a residential house locate at No.139, Kg Bekarut, Jln Pendaruan Temada, Temburong PE1951, in Brunei Darussalam, a building used for human dwelling, in furtherance of your common intention, did commit house-trespass by entering into the said house, in the possession of one Hajah Rapiah binti Haji Tamin, in order to the committing of an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22, read with section 34 of the same.*

### 4<sup>th</sup> Charge [against D1 and D2 only]:

*That both of you, on 28<sup>th</sup> day of October 2024, sometime between 1130hrs and 1300hrs, at a wooden hut located at Simpang 808, Kampung Sibulu, Temburong, Brunei Darussalam, a building used for the custody of property, in furtherance of your common intention, did commit house-trespass by entering into the said wooden hut, in the possession of the Temburong District Land Office of the Government of Brunei Darussalam, in order to the committing of an offence punishable with imprisonment,*

*to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22, read with section 34 of the same.*

**Penalty:**

3. Section 451 of the Penal Code carries an imprisonment sentence of 5 years and shall also be liable to a fine. And if the offence intended to commit theft, the sentence may be extended to 10 years' imprisonment.
4. These charges and its penalty were read and explained to the Defendants in Malay language. The Defendants informed the court that they understood the charges and its penalty read preferred against them. All the Defendants entered a guilty plea to all the said charges.
5. By their undertaking that they understood the charges and penalty read and explained to them, I am satisfied that all the Defendants understood the nature and the consequences of the plea, I accept their guilty plea, therefore, complying with s 175 of the CPC.

**Statement of Facts:**

6. The Statement of Facts were read and explained to all the Defendants. Defendants admitted to the following facts.
7. D1 admitted that at the material time, he was employed as a mechanic at the workshop at Kg Bokok, Temburong. D2 admitted that he was employed as a Bus Driver for NEHA Transportation Services where his task was to transport students from the Bangar Camp to different schools using a bus bearing registration number KK8936 ("the school bus"). D3 admits that he does not have an occupation.

In relation to the 1<sup>st</sup> Charge [against D2 and D3 only]:

8. D2 admitted that sometime in the morning of October 2024, after dropping the students, he went to meet up with D3 at Kg Sungai Tanit, Kampung Menengah with the intention to hangout. They then agreed to go out to find food using the school bus. While driving, they saw the house light at addressed No 125, Kampung Seri Tanjong Belayang, Temburong (said house) was still on. Suspecting that the house is vacant, they then form a common intention to commit theft from the said house. D2 parked the bus in the compound of the said house. They admitted walling to the back of the door. D3 admitted acting as a look out while D2 kicked the back door open. When D2 managed to kick open the door, D2 and DS3 admitted entering the said house and stole the following items:
  - a. 1 "SHARP" 32" white TV
  - b. coffee maker machine

- c. "SHIMANO EX2500" fishing rods
  - d. 1 20L red cool box; and
  - e. 1 "UONIBABY" Tricycle (used for children).
9. D2 and D3 admitted that they carried the said stolen items into the bus and left the house with the said stolen items with the intention to sell it. D3 admitted that he threw some of the stolen items that were damaged.
10. The break-in was discovered by one Siti Norazura binti Saidin when she visited the said house on the 9<sup>th</sup> October 2024 at around 1245hrs. The said house belonged to her late grandmother. She lodged a police report. Siti Norazura informed the police that her sister visited the said house on the 2<sup>nd</sup> October 2024 and the said house was still in its original state.
11. Police investigations led to the arrest of D2 and D3 who confessed to the said crime. Only the red cooler box was recovered.

In relation to the 2<sup>nd</sup> Charge [against D2 and D3 only]

12. D2 and D3 admitted committing house trespass with the intention to commit theft at No. 8, Simpang 269, Kampung Simbatang, Jalan Temada, Temburong belonging to Tony Anak Sedau sometimes between the 1<sup>st</sup> October 2024 and 5<sup>th</sup> November 2024.
13. D2 admitted driving the school bus and went to the said house with D3. Both Defendants admitted that they entered the said house through a damaged sliding door at the back of the house. When they entered the said house, D2 and D3 admitted stealing 5 red carpets, 1 "MATRIX" Vacuum and 1 aluminium ladder. D2 and D3 admitted carrying these stolen items back into the school bus and left the house.
14. Tony Anak Sedau discovered glass shards on the floor of the living room and the rear sliding door damaged when he went back to the said house on the 6<sup>th</sup> November 2024. He then discovered some of his items were missing.
15. Tony proceeded to lodge a police report. According to him, the house has been left unattended since 2009 as he had moved to another house at Kampung Lambak Kanan. However, he frequently visits the house twice a month and the last time he had visited was sometime in October 2024 whereby the condition of the house was in its original condition.
16. Police investigations led to the arrest of D2 and D3. D2 and D3 admitted that 4 red carpets were sold off in Facebook for BND40 each, and the proceeds were divided between them. They further admitted that the aluminium ladder was sold for BND40, and the proceeds were used for D3's own personal use. D2 and D3 admitted disposing

the vacuum cleaner as it was not functioning well. Only the red carpet was recovered from D3's house, which was positively identified by Tony.

In relation to the 3<sup>rd</sup> Charge [against all Defendants]:

17. D1 admitted that in the morning of October 2024, D2 accompanied him to send students from Bangar Camp to Sultan Hassan Secondary School at Kampong Batu Apoi Temburong using the school bus. After sending the students, D1 and D2 picked D3 from his house at Jalan Sungai Tanit, Kampung Menengah. D2 then drove them to the vicinity of a house addressed No 139, Kampong Bekarut, Temburong PE1951, which belongs to one Hajah Rapiah binti Haji Tamin when they saw the said house was still on. D1, D2 and D3 the form a common intention to commit house trespass with the intention to commit theft.
18. D2 admitted parking the school bus at the vicinity of the said house and all the Defendants admitted waking to the rear part of the house. D1 admitted hitting the rear door and D2 opened it. D3 was acting as a look out at that time. When the door was successfully open, all the Defendants admitted that they entered the house and stole 3 gas cylinders, 1 gold-coloured ring, 13 machete blades, 1 "LG" 32" TV and 1 black torch light. All the Defendants admitted carrying the stolen items back to the school bus and left the premises.
19. Hajah Rapiah went to the said house on the 17<sup>th</sup> November 2024 at around 1553hrs and discovered the house was rummaged and items were missing. She subsequently lodged a police report. According to Hajah Rapiah, she left the said house on 26<sup>th</sup> October 2024 before staying at her children's house at Kampong Sungai Akar, Bandar Seri Begawan, to take care of her grandchildren.
20. Police investigations led to the arrest of all the Defendants. D3 admitted to selling 3 gas cylinders, 1 TV and 3 machete blades, and received a total of BND280 from the sale. Police were only able to recover 1 black torch light from D2's house, which was positively identified by Hajah Rapiah.

In relation to the 4<sup>th</sup> charge [against D1 and D2 only]:

21. D2 admitted picking D1 using the school bus around 0625hrs, from his Flat in Temburong, before picking up students from Bangar Camp to be sent to Sultan Hashim Primary School in Kampong Batu Apoi and then to Sultan Hassan Secondary School at Kampong Batu Apoi. When they were driving around the vicinity of Simpang 808, Kampung Sibulu, Temburong, they saw an unoccupied hut. D2 parked the bus near the vicinity of the hut and they alighted the vehicle. D1 opened the front door, which was damaged and admitted stealing a 2.5 HP Carrier window air conditioner. D1 and D2 admitted carrying the air conditioner to the school bus and drove away, leaving the hut.

22. On 28<sup>th</sup> October 2024, at around 1300hrs, one Haji Ajis bin Haji Ahmand who works for the Temburong District Land Office, went to the said hut wooden hut, and discovered that the door lock of the main door of the hut was damaged and a 2.5 HP Carrier window air conditioner was missing. The said hut belonged to the Temburong District Land Office of the Government of Brunei Darussalam.

23. Police investigations led to the arrest of D1 and D2. D1 and D2 admitted selling the air conditioner for BND20 and the proceeds were used for their own personal use. The stolen item has not been recovered.

**Antecedent:**

24. D1 and D2 admitted that they previous convictions related to offences against property. D3 is a first offender.

**Mitigation:**

25. D1, D2 and D3 sought lenient sentence and for the sentence to run concurrently with each other.

**Penalty:**

26. D1, D2 and D3 committed house trespass with the intention to commit theft. Theft is an offence punishable with imprisonment. Hence the penalty falls under the 2<sup>nd</sup> limb, which is imprisonment sentence of 10 years.

**Court's Assessment:**

27. The Appellate Court have stressed over and over again that offences against property are serious offences. The Court has also stressed repeatedly that property belonging to others must be respected and must not be taken away. It is in the public interest to protect the public and their property that a deterrent sentence must be imposed. - ***Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal) (Criminal Appeal No: 11 of 2004)***.

**Appropriate Sentence:**

28. In deciding the appropriate sentence, I refer to the case **Rosazli bin Hj Metassan v PP (Criminal Motion 6 of 2018)**, **Ahmadi bin Hj Nawi v PP (Criminal Motion 1 of 2015)**, **Abdul Wakil bin Samsun Yusra v PP (Criminal Motion 35 of 2014)** and **Mohd Zahiruddin bin Hj Junaidi v PP (Criminal Motion 38 of 2013)**, where the Court of Appeal had upheld the sentence of 2 years' imprisonment after pleas of guilty to s 451 of the Penal Code at an early opportunity. Bearing in mind the range of sentences upheld by the Appellate Court [28], each case has to be considered in its own merits.

29. D1, D2 and D3 pleaded guilty at the earliest opportunity. By doing so they have saved the courts and prosecution time from undergoing a full length trial. Therefore, a discount of one-third from a starting point will be given to the Defendants for pleading guilty.
30. Having considered their guilty pleas, I take note of the Defendants' antecedent. On record, D3 is a first offender but not for D1 and D2. D1 and D2 does not have a clean record. They have had previous conviction on theft related offences. It was held in the case of *Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138*, a higher starting point sentence is justified for an offender with previous convictions.

**Aggravating factors:**

31. Defendants in their mitigation urge the court to impose lenient sentence.
32. Reading from the facts of the case, the Defendants' crime was opportunistic and random. They showed no regard for others' property or respect for the law.
33. Both D1 and D2 were employed and had been given a chance despite their past. However, D2, a bus driver, misused the bus to commit these offences. All the Defendants used the bus to scout for empty houses to steal. Their actions demonstrate a lack of appreciation for the opportunity they were given, as they resorted to theft without hesitation. Their prior convictions did not deter them, making it clear that they will continue to steal whenever the opportunity presents itself. For the said reason, D1 and D2 does not deserve the lower range of starting point. A higher starting point is justified for recalcitrant offenders like the defendant. D1 and D2 are still entitled to a one third discount from the starting point for pleading guilty.
34. D3 is first offender. Consideration will be given within the range of approved sentencing as outlined in [28] but not the case for D1 and D2 as outlined in [33].

**Starting Point:**

35. D3 being a first offender, I impose a starting point of 3 years' imprisonment reduced to 2 years imprisonment.
36. D1 and D2, starting point of 4½ years reduced to 3 years' imprisonment would be appropriate for D1 and D2 for each charge.
37. The individual sentence imposed on D1, D2 and D3 read as follows:

1<sup>st</sup> Charge vs D2 and D3:

D2: 3 years' imprisonment

D3: 2 years' imprisonment

2<sup>nd</sup> Charge vs D2 and D3:

D2: 3 years' imprisonment

D3: 2 years' imprisonment

3<sup>rd</sup> Charge vs D1, D2 and D3:

D1: 3 years' imprisonment

D2: 3 years' imprisonment

D3: 2 years' imprisonment

4<sup>th</sup> Charge vs D1 and D2:

D1: 3 years' imprisonment

D2: 3 years' imprisonment

**Totality Principle:**

38. Having considered their individual sentence, the next question is to determine the appropriate total sentence.

39. The Defendants, in their mitigation, urged the court to impose concurrent sentences. The Defendants committed these offences at four different locations, involving different victims between the 2<sup>nd</sup> October to the 17<sup>th</sup> November 2024. It, therefore, does not constitute offences committed in a single transaction. Given that these offences do not constitute a single transaction, a concurrent sentence is not warranted. Instead, a consecutive sentence is appropriate.

40. The total consecutive sentences of the Defendants will read as follows:

- a. D1: 6 year's imprisonment
- b. D2: 12 years' imprisonment
- c. D3: 6 year's imprisonment

41. A consecutive sentence would be manifestly excessive on the Defendants. In determining a fair global sentence, I have taken into account the nature of the stolen item, which consist primarily of electrical goods- many of which are valuable. The Defendants collectively sold the stolen items for personal gain, and most of the stolen items are not recovered.

42. D1 pleaded guilty to 2 charges to house trespass offence with the intention to commit theft. For the said reason, I am of the view that a global sentence of 5 years'

imprisonment is appropriate for D1 due to his participation in the commission of the offence with D2 and D3.

43. D2 pleaded guilty to 4 charges to house breaking offences with the intention to commit theft. For the reason outlined above, a higher sentence is justified, as he not only participated in the offence but actively facilitate in the commission of the offence. D2 used the bus to transport D1 and D3 in committing the crime to scout random houses to steal, and assisting in the covert transportation of the stolen items. Accordingly, I impose a global sentence of eight years' imprisonment for D2.
44. As for D3, he was involved in three incidents of house trespass alongside D2 and D1. Given the nature of his participation, D3 is equally culpable. A global sentence of 4 years' imprisonment is appropriate.
45. To achieve the said global sentence, my order is as follows:

D1: D1 faces two charges (3<sup>rd</sup> and 4<sup>th</sup> charge), each carrying a sentence of 3 years' imprisonment, totaling 6 years imprisonment. To achieve the global sentence of 5 years sentence, I order that 2 years of the 3 years' sentence from the 4<sup>th</sup> charge to run consecutively with the 3 years' sentence of the 3<sup>rd</sup> charge, resulting in a total of 5 years' imprisonment. The remaining 1 year from the 4<sup>th</sup> charge will run concurrently with the total sentence.

D2: D2 faces a total of four charges (1<sup>st</sup> to the 4<sup>th</sup> charge), each carrying a sentence of 3 years' imprisonment, resulting in a total consecutive sentence of 12 years. However, as stated above, a global sentence of 8 years is appropriate for the reasons outlined in [41]. To achieve this, to order that 2 years' sentence from each charge to run consecutively with each other, amounting to 8 years' imprisonment. The remaining one year from each charge will run concurrently with each other and with the global sentence of 8 years' imprisonment.

D3: D3 faces 3 charges (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> charge), each carrying a sentence of 2 years imprisonment each, totaling 6 years' imprisonment. For the reason outlined in [42], a global sentence of 4 years is appropriate for D3. To achieve this, I order that 1 year's imprisonment from the 3<sup>rd</sup> charge and the 4<sup>th</sup> charge to run consecutively with the 2 years' sentence from the 1<sup>st</sup> charge, resulting in a total of 4 years. The remaining 1 year from the 3<sup>rd</sup> and the 4<sup>th</sup> charge shall run concurrently with this 4 years' imprisonment.

**Final Sentence:**

46. The final sentence faced by the Defendants are as follows:

- a. D1: 5 years' imprisonment
- b. D2: 8 years' imprisonment
- c. D3: 4 years' imprisonment

47. I order that the Defendants to be remanded from the date they were remanded in the Intermediate Court.

**PG MASNI PG HJ BAHAR**  
Judge, Intermediate Court