

Public Prosecutor

AND

Mohamad Sahrel Rifaie bin Haji Mohamad Nasir (D1)
Mohammad Noor Syahril bin Ahmad (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 18 of 2025)

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

Date of Judgment: 07th May 2026

Criminal law – Judgment – D1 & D2 – house trespass - common intention - Jointly charge – section 451 of the Penal Code, Cap 22 read with section 34 of the same – plead not guilty - trial.

DPP Nurulatikah binti Hj Husaini for Public Prosecutor.

D1 and D2 In Person and Unrepresented.

J U D G M E N T

Pg Hjh Norismayanti, Judge:

Introduction

1. Both Defendants, Mohamad Sahrel Rifaie bin Haji Mohamad Nasir (D1) and Mohammad Noor Syahril bin Ahmad (D2) were jointly charged under section 451 of the Penal Code, Cap 22, read with section 34 of the same, for committing house trespass on the 8th March 2025 at approximately 0930 hours at the Sahid Sdn Bhd staff house located at No.25, Simpang 251, Jalan Kecil Lumut, Kampung Sungai Taring, in furtherance of their common intention, in order to commit theft. Both Defendants claimed trial to the said charge.

Charge

2. The following is the joint charge faced by both D1 and D2:

“That both of you, on the 8th March 2025, at about 0930 hours, at a staff-house addressed at No. 25, Simpang 251, Jalan Kecil Sg Tali Lumut, in Brunei Darussalam, in furtherance of your common intention, did commit house-trespass by entering into the said house, used as a human dwelling, in the possession of Sahid Sdn Bhd, in order to commit on offence punishable with imprisonment, to

wit, theft, and that 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. The penalty prescribed under this section 451 imprisonment for a term which may extend to 5 years, and shall also be liable to a fine, and if the offence intended to be committed is theft, the term of imprisonment may extend to 10 years.

The Law

4. The Prosecution must establish beyond a reasonable doubt that: (i) that the accused committed house trespass; and (ii) that the entry was made in order to commit theft or an offence punishable with imprisonment. The Prosecution must further establish common intention shared by both accused at the time of the criminal act.

Prosecution’s Case

5. The prosecution called a total of ten witnesses (PW1 – PW10) and tendered a total of 30 documentary exhibits, including police statements (P6A, P6C, P6D, P9D), CCTV recordings (P11A-P11D), sketch plans (P5A, P6B), photo albums (P7A, P8A), seizure forms (P9A, P9B), and the physical exhibits comprising a blue gas tank (P9C1) and a red fire alarm (P9C2).

Evidence of house trespass

6. The Prosecution submits that the element of house trespass has been established beyond reasonable doubt, principally based on the strength of the Defendants’ own admissions. D1, in his police statement P6D, admitted to entering the staff-house on the material day and confirmed that he did so on two separate occasions.
7. Similarly, D2 admitted in his police statement P6C to having entered the premises and provided further details of his conduct inside the house in his subsequent police statement P9D. The Court notes that there is no evidence before this Court to suggest that either Defendants were granted permission or any lawful authority to enter the said premises, which at all material times was in the lawful possession and occupation of Sahid Sdn Bhd and its occupants.
8. For the record, both D1 and D2 made no objections on the use of their police statements as evidence by the Prosecution and agreed that the statements were made voluntarily with no force, threats, promises, inducements or oppression.

Evidence on intent to commit theft

9. The Prosecution submits that the totality of the evidence adduced plainly establishes that both Defendants entered the staff house with the common intention to commit theft. This submission is made in reliance of three main strands of evidence.

10. First, D2 admitted in his statement P9D to having removed the red fire alarm (P9C2) from the top of a kitchen cabinet inside the staff house. Significantly, the same statement places D1 inside the house at the material time, giving weight to the inference that both Defendants were acting together.
11. Secondly, the Prosecution relies on the testimony of PW9 (Md Mamun Ar Rashid), an occupant of the staff house who was present at the time of the incident. PW9 testified that he personally confronted D2 and witnessed him fleeing the premises whilst carrying P9C2. He further gave evidence that CCTV footage in P11D shows him in active pursuit of both Defendant outside the premises. His evidence was consistent throughout and remain unshaken under cross-examination. PW9 also positively identified both D1 and D2 in Court.
12. Thirdly, the Prosecution submits that the CCTV footage in P11B (recorded at 0929 hours) and P11C (recorded at 0930 hours) provides objective corroboration in relation to P9C1. The footage showed an individual, not an occupant of the staff-house, removing an item bearing the appearance of a gas tank from outside the kitchen area and placing it near the bushes outside the main gate. PW9 confirmed that the gas tank (P9C1), originally kept outside the kitchen area, was subsequently recovered from that bush area. This sequence of events, viewed together with D1's own admission of entry through the main gate, was consistent with D1 having moved P9C1 toward the parked vehicle in preparation for its removal.
13. The Prosecution further submits that the conduct of both the Defendants upon discovery is itself telling. Their immediate flight, D2's disposal of P9C2 into the bushes during the chase, and the subsequent recovery of P9C1 in close proximity to the parked vehicle shows a clear and deliberate intention to permanently deprive the lawful possessor of the property.

Common intention under Section 34

14. It is the Prosecution's stance that the evidence before this Court sufficiently establishes that both Defendants were acting in furtherance of a common intention. The following considerations supports this contention. Both Defendants arrived together in D1's vehicle, which was parked the car near the bushes adjacent to the staff-house. Both D1 and D2 entered the compound of the staff house together, each removed property from the premises, and both fled the scene together upon being discovered. D2's police statement not only placed D1 inside the staff-house at the material time, but also speaks on their interaction whilst within the premises. Further, the movement of both items toward the area where their vehicle was parked, and their immediate getaway, leaves little doubt that they were pursuing a common unlawful objective. Their conduct throughout was coordinated and consistent with a planned and deliberate joint enterprise.

Prosecution's Case

15. Upon the Court ruling that a prima facie case had been established against both accused, D1 and D2 each elected to give evidence on oath. Neither accused called any witnesses in their defence,

and both relied solely on their own testimony, their own police statements and written submissions dated 13th December 2025, insisting on no further closing submissions.

D1's Defence (DW1)

16. D1's defence was straightforward. He claimed that his presence at the staff-house was entirely innocent and that he had gone there simply to borrow a phone charging port. D1 testified that on 8th March 2025, he and D2 had planned a fishing trip to Lumut Beach. Upon arriving, his mobile phone battery died while he was receiving texts from his wife. He wanted to reply to her messages. As he had a charging cable but no charging port in his car, he went looking for one nearby.
17. D1 testified that upon noticing the staff-house nearby, he approached it to ask the occupants for a charging port. He knocked on the front door but got no answer. He then returned to his vehicle and asked D2 to help him find someone in the house and then went back to the house, and then went back to knock again, this time at the front door whilst D2 went to knock at the back door. D1's position is that D2 subsequently entered the house on his own, while he remained outside at all times.
18. D1 further testified that while waiting outside, he heard shouting coming from inside the house, prompting both he and D2 to flee. He acknowledged that D2 was carrying something when they ran but said he did not know what it was and denied any involvement in the taking of any property. He stated that he did not run and ultimately surrendered himself to one of the occupants, whom he described as a Bangladeshi man, and explained that he had only intended to borrow a charging port. The Bangladeshi man directed him to find D2. D1 located D2, brought him to the Bangladeshi man, and they all waited for the his superior to arrive.
19. Under cross-examination, however, D1's evidence on the key issue of whether he entered the house became notably inconsistent. He initially denied entering the house with D2, but later conceded that he did enter without permission. He also agreed that he had followed D2 through a second interior door, yet maintained that he did not see D2 take the red fire alarm from inside the house.
20. In his written submissions, D1 maintained that he never entered the house at all. D1 specifically relied on his police statement P6A (page 2, first paragraph) in which he stated that he had informed D2 of his intention to borrow a phone charging port, that he knocked on the front door, received no answer, and returned to his car. D1 submitted that this statement was given voluntarily and ought to be given full weight pursuant to section 117 of the Criminal Procedure Code, Chapter 7. He contended that this statement is consistent with an innocent purpose and that his conduct of knocking on the front door and returning to his car when there was no response does not support an inference of theft.

21. D1 also made a distinction between borrowing a “phone charger” and borrowing a “charging port”, submitting that he had only ever said the latter. He further submitted that the CCTV footage in P11B and P11C supported his account, arguing that the footage shows a person entering the compound, knocking on the door, and leaving when there was no response.
22. Finally, D1 challenged the reliability of PW9's evidence regarding the CCTV footage. He argued that PW9 could not credibly confirm that P11B and P11C showed someone leaving the staff house carrying an item, given that PW9 was not present at the scene at the material time. D1 submitted that PW9's evidence on this point was an attempt to mislead the Court.

D2's Defence (DW2)

23. D2's version of events was largely consistent with D1's evidence on the background facts. Both had planned to go on a fishing trip at the beach near the staff house on the morning of the 8th March 2025. D2 testified that while at the beach, he noticed D1 was busy texting his wife and, after burning some wires, D1 said he wanted to look for a charging port for his phone. D2 further corroborated D1's evidence in that D1 returned back to the car and told him that he had knocked on the door but no one answered and then sought D2 to help. As they headed towards the staff house, D2 claimed that both of them noticed that there was an open window and concluded that someone must be inside.
24. D2 went on to say that they took a short cut by climbing over the gate and proceed to the kitchen door. D2 claimed that he knocked on the kitchen door and receiving no answer, he opened the door since it was not locked. Once inside he said there were three doors. He knocked on the first door but it was locked. He proceeded to knock on the second door and the door was open. D2 then saw a Bangladeshi man sleeping inside. D2 then went back to the kitchen to inform D1 that there was a Bangladeshi man inside the room and that if he wanted to speak to the man about charging his phone.
25. After informing D1 about the man, D2 then testified that he saw a red item which to him looked something like a fishing spool. He took the red item from on top of a kitchen cabinet just to look at it and it was at that time he heard the Bangladeshi man scream. Hearing the scream, D2 together with D1 fled the scene. As he ran towards the beach, only then did D2 realize that he was holding the red item. D2 stated that the Bangladeshi man stopped chasing him only after he threw away the red item (later identified as a fire alarm) into the bushes. He then hid in the nearby forest until D1 came to look for him.
26. When D1 found him, D2 said that D1 told him that he had explained to the Bangladeshi man that they had come to borrow a charging port, but the man wanted D1 to bring D2 back or he would report the matter to the police. D2 then accompanied D1 back, met the Bangladeshi man at D1's car, and both waited for the man's superior to arrive.

27. In his final submission, D2 agrees that his statement (P9D) was given voluntarily without any threats, force, inducements or promises. On that basis, he maintains that he was telling the truth when he said he had gone to the staff-house to help D1 to borrow a charging port. He acknowledged that he entered the premises without permission when no one answered the door, and that he was carrying something when he ran out. He maintained, however, that he had no intention to steal anything from the house.
28. D2 further pointed out that his purpose of going to the staff house was clearly stated in P9D, where it is recorded that he went to the staff house to help D1 to charge his phone. In support of this, D2 referred to a statement he made to D1 in Malay: “*Rel ada kaling di dalam bilik tidur tu kalau ko kan mencharging telipun*” – which the Court notes as D2 telling D1 that there was a man in the bedroom if he wanted to charge his phone. D2 submitted that this shows that they had no intention to steal.

Considerations and findings

29. Having carefully considered the evidence adduced at trial in its entirety, including the testimony of all witnesses, the documentary and physical exhibits, the CCTV recordings, and the written submissions of both the Prosecution and the Defence, this Court is satisfied that the Defence of both D1 and D2 must be dismissed. For the reasons set out below, this Court finds that the Prosecution has proven its case beyond a reasonable doubt against both accused.

Assessment of D1's Defence

30. D1's central claim is that he was at the staff house on 8th March 2025 for an entirely innocent reason. He simply wanted to borrow a phone charging port after his phone battery died. This Court has considered that account carefully and does not find it believable.
31. At the outset, there is a vital inconsistency in D1's own evidence that this Court cannot overlook. During cross-examination, D1 initially denied entering the staff house altogether. He then changed his position and admitted that he had in fact entered without permission. He went further and conceded that he had followed D2 through the second interior door of the premises. This shifting account goes to the core of D1's credibility. A witness who cannot maintain a consistent account on something as basic as whether he entered the premises at all is not a witness that this Court can rely upon.
32. This inconsistency is made worse by the fact that D1's testimony in Court differs materially from his police statement P6A. In P6A, D1's account is that he knocked on the door, got no answer, and went back to his car. At trial, he admitted entry into the compound and gave a more detailed account of his movements within. D1 sought to rely on P6A as a consistent prior statement given voluntarily, which ought to be accorded full weight pursuant to section 117 of the Criminal Procedure Code, Chapter 7. This Court does not accept that submission. The very inconsistency between P6A and his oral evidence weakens rather than supports his credibility. If D1's account

in P6A contained the whole truth, there would have been no reason for him to revise his account in Court to admit entry at all.

33. D1's explanation that he had entered merely to borrow a charging port (not a phone charger) is an implausible and contrived distinction. This Court finds it difficult to accept that an ordinary person, wishing only to borrow the use of a charging port, would climb over the gate of a stranger's staff house compound without permission, proceed to the kitchen entrance, and enter through an unlocked door, particularly when there had been no answer at the front door. The innocent explanation offered by D1 is neither credible nor consistent with how people ordinarily behave.
34. D1 also challenged PW9's evidence on the CCTV footage in P11B and P11C, arguing that since PW9 was not present at the scene at the material time, he could not reliably say what the footage showed. This Court rejects this argument. The CCTV footage was tendered as objective evidence and its content speaks for itself. Moreover, PW9 testified that he personally saw D2 fleeing whilst carrying P9C2, and that P11D showed him in pursuit of both Defendants. His evidence was tested in cross-examination and remained consistent and unshaken. PW9 also made positive in-court identifications of both D1 and D2. This Court accepts PW9's evidence as credible and reliable.
35. D1's submission that the CCTV footage in P11B and P11C supports his account, by showing someone knocking on the door and leaving unanswered, does not assist his defence. On the contrary, the same footage, viewed in its totality, shows a person removing an item resembling a gas tank from outside the kitchen area and placing it near the bushes where D1's vehicle was parked. This is entirely inconsistent with an innocent errand to borrow a charging port. The subsequent recovery of P9C1 from those same bushes by PW9 provides a strong corroboration that the item was being moved in preparation for removal from the premises.

Assessment of D2's Defence

36. D2's account is that his presence at the staff house was also innocent. He was there to assist D1 to find someone to lend D1 a charging port. D2 accepted that he entered the staff house without permission but claimed that he picked up the red fire alarm (P9C2) believing it to look like a fishing spool, and that he only realized he was still carrying it whilst he was fleeing the staff-house after hearing a scream.
37. This Court finds D2's account no more credible than D1's. The suggestion that D2 entered a stranger's home without permission, proceeded through multiple interior doors, entered a room where he found a man sleeping, and removed an item from a kitchen cabinet, and did all of this innocently in a quest to borrow a phone charger on behalf of D1, is one this Court is unable to accept. D2's own admission in his statement P9D that he removed P9C2 from atop a kitchen cabinet inside the house is fundamentally inconsistent with the innocent purpose he now advances.

38. D2's claim that he mistook P9C2 for a fishing spool is also not accepted. P9C2 was recovered as a physical exhibit and is before this Court. This Court finds it difficult to accept that any person exercising ordinary observation would confuse a fire alarm with a fishing spool, particularly when the item was taken from the top of a kitchen cabinet inside premises that had been entered without permission.
39. D2 sought to rely on a portion of his statement P9D in which he told D1 that there was a man in the bedroom if D1 wanted to charge his phone. D2 contends that neither of them had any intention to steal. This Court disagrees. Rather than helping D2's case, P9D reveals that he had entered further into the staff house, had inspected occupied rooms, and then communicated that information to D1. Read in context, this is more consistent with the behaviour of persons who had entered the premises for an unlawful purpose than with innocent persons seeking assistance.
40. D2 agreed in his final submission that statement P9D was given voluntarily without threats, force, inducements or promises. He further accepted that he had entered the staff-house without permission and that he was carrying something as he fled. He stated that he only realised he was carrying P9C2 after he had run out of the house, and that he disposed of it into the bushes during the chase. This Court finds that the act of disposing of P9C2 into the bushes upon being pursued is wholly inconsistent with the innocent account advanced by D2. A person who had inadvertently carried an item out of the house without any dishonest intent would have no reason to discard it upon being chased. The disposal of P9C2 during the chase is more readily explained as a deliberate attempt to get rid of incriminating evidence.

Inconsistencies Between D1 and D2

41. Beyond the internal inconsistencies within each Defendant's individual account, there are material inconsistencies between the accounts of D1 and D2 that further undermine both their credibility.
42. Most significantly, D1 maintained at one stage of his evidence that he remained outside the staff house throughout and did not enter at all. D2, on the other hand, stated that he returned to the kitchen to inform D1, who was then inside the staff-house, that there was a Bangladeshi man sleeping in the bedroom. These two accounts are directly contradictory. Either D1 was inside the house when D2 communicated this information, as D2 avers, or he was not, as D1 initially claimed. These irreconcilable versions cannot both be true, and this Court finds that this fundamental contradiction severely damages the credibility of both accused.
43. The Court further notes that D1 admitted during cross-examination that he had in fact entered the premises and followed D2 through a second interior door. That admission directly contradicts his earlier denial and is more consistent with D2's account of D1's presence inside the house. Yet even after making that admission, D1 denied seeing D2 take P9C2. Given D1's demonstrated readiness to shift his evidence when pressed, this Court does not find his selective admissions and denials to be credible.

44. This Court further observes that both D1 and D2 claimed that the reason for their presence in the vicinity of the staff house on the morning in question was to go fishing at the nearby beach. This claim is entirely unsupported by the evidence. No fishing equipment was found in the possession of either accused, nor was any such equipment found in or around D1's vehicle, which was parked near the staff house at the material time. With no corroborating evidence to support this aspect of their account, this Court finds that the fishing story explanation put forward to justify their presence at the scene is a mere fabrication. The failure of both accused to adduce any evidence whatsoever in support of this claim further undermines the credibility of their overall version of events.

Findings on the Elements of the Charge

45. On the element of house trespass, this Court is satisfied beyond a reasonable doubt that both D1 and D2 entered the staff house without the permission or lawful authority of the possessor, Sahid Sdn Bhd, and its occupants. Both Defendants have, at various points in their evidence and in their statements, admitted to entering the compound and the premises without permission. The element of house trespass is therefore established.

46. On the element of intent to commit theft, this Court finds that the evidence overwhelmingly supports the Prosecution's case. D2 admitted to removing P9C2 from inside the kitchen of the staff house. The CCTV footage in P11B and P11C shows a person removing an item resembling P9C1 from outside the kitchen area and placing it near the bushes where D1's vehicle was parked. P9C1 was subsequently recovered from that location by PW9. The coordinated nature of these acts, the flight of both accused upon discovery, the disposal of P9C2 by D2 during the chase, and the positioning of P9C1 near their parked vehicle are all consistent with a pre-formed intention to take property from the premises. This Court finds that no innocent explanation has been established for any of these acts.

47. On the element of common intention under section 34 of the Penal Code, this Court is satisfied that D1 and D2 were acting in furtherance of a shared unlawful purpose. They arrived together in D1's vehicle, entered the compound together, each undertook acts directed at removing property, and they fled together upon being discovered. Their conduct was not merely similar, it was coordinated. D2's statement placed D1 inside the house and documented their interaction there. The movement of both P9C1 and P9C2 towards the vicinity of their parked vehicle further demonstrates a unified criminal enterprise. This Court finds that the element of common intention has been proven beyond a reasonable doubt.

Conclusion

48. For the reasons set out above, this Court finds that the defences of both D1 and D2 fails to raise any reasonable doubt in the Prosecution's case. The accounts put forward by both Defendants are inconsistent, implausible, and difficult to reconcile with the objective evidence, particularly the CCTV footage, the physical exhibits, and the unshaken testimony of PW9. Both D1 and D2

have demonstrated a lack of credibility in their evidence, having given contradictory accounts both internally and as between themselves.

Verdict

49. The Prosecution has proven each element of the charge: (i) house trespass, (ii) intent to commit theft, and (iii) common intention, beyond a reasonable doubt. Accordingly, this Court finds both D1 and D2, guilty of the charge under section 451 read with section 34 of the Penal Code, Chapter 22, and convicts them accordingly.



PG HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court

