

**Public Prosecutor**

AND

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

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

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Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

**Date of Sentence: 13<sup>th</sup> May 2025**

*Headnote: Sentencing – D1 & D2 – house trespass – common intention – section 451 of the Penal Code, Cap 22 read with section 34 of the same – convicted after trial – antecedents.*

DPP Nurulatikah binti Hj Husaini for Public Prosecutor.

D1 and D2 In Person and Unrepresented.

**Cases cited:**

*Chua Tiong Tiong v Public Prosecutor* [2001] 3 SLR 425

*Rosazli bin Hj Metassan v Public Prosecutor* (Criminal Motion No.6 of 2018)

*Abdul Wakil bin Samsun Yusra v Public Prosecutor* (Criminal Motion No.35 of 2014)

*Mohammad bin Yusof v Public Prosecutor* (Criminal Appeal No.14 of 2018)

**S E N T E N C I N G**

**Pg Hjh Norismayanti, Judge:**

**Brief introduction**

1. On 7<sup>th</sup> May 2026, both Defendants, Mohamad Sahrel Rifaie bin Haji Mohamad Nasir (D1) and Mohammad Noor Syahril bin Ahmad (D2), were convicted of the joint charge under section 451 of the Penal Code, Cap 22, read with section 34 of the same, for committing house trespass on 8<sup>th</sup> March 2025 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 to commit theft. Both Defendants had claimed trial and were found guilty following a full trial. The Court now proceeds to sentencing.

**Charge**

2. The joint charge against both D1 and D2 is as follows:

*"That both of you, on the 8<sup>th</sup> 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 an 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."*

3. The penalty prescribed under section 451 is imprisonment for a term which may extend to 5 years, and shall also be liable to a fine. Where the offence intended to be committed is theft, as is the case here, the term of imprisonment may extend to 10 years.

#### **Antecedents**

4. The Prosecution submitted before this Court the antecedents of both Defendants. D1 has previous criminal convictions, particulars of which have been tendered to the Court. D2 likewise has previous criminal convictions on record. The Court takes note that the previous convictions of D1 and D2 relevant before this Court concern offences committed against the property of others, spanning offences under sections 379, 380 and 426 of the Penal Code. It is noted that the Defendants committed the present offence notwithstanding their prior criminal proceedings.

#### **Mitigation**

5. Through his mitigation, D1 sought a lighter sentence, asking the Court for a reduction in sentencing and for it to take effect from the date of his arrest. He also sought for the Court to take into account his familial circumstances where he is responsible for the care of his elderly 75-year-old mother and his 6-year-old child. D2 on the other hand chose not to advance anything in mitigation. D2 did not show any remorse for his actions.

#### **Prosecution's submission**

6. The Prosecution submits the following aggravating factors: (i) the offences were committed jointly; (ii) the target was a residential property; (iii) the offences escalated into the interior of the home; (iv) there was direct confrontation with the occupant; (v) both Defendants attempted to flee and dispose of exhibits; and (vi) both have prior convictions. Given these factors and the Defendants' propensity for reoffending, the Prosecution submits that deterrence should be the primary sentencing objective.

#### **Sentencing considerations**

7. In arriving at the appropriate sentence, this Court is guided by the established sentencing principles applicable to offences of this nature. Offences against property, and in particular offences involving the unlawful entry of premises for the purpose of committing theft, are serious

matters which cause real harm to the victims and undermine the sense of security that members of the public are entitled to enjoy in their homes and workplaces.

8. This Court has repeatedly stated in past sentencing that the prevalence of such offences in today's society makes it all the more necessary for the courts to adopt a firm and consistent approach to sentencing, one that gives sufficient weight to the need for both general and specific deterrence. The Court also refers to the case of *Chua Tiong Tiong v Public Prosecutor [2001] 3 SLR 425* where the sentence imposed is also to serve as a deterrence to potential offenders and to influence past offenders not to reoffend again, not just to punish the offender.
9. In this case, the Court has found that D1 and D2 acted in a coordinated and premeditated manner. They arrived together at the staff house in D1's vehicle, entered the compound together without authorisation, each undertook separate acts directed at removing property belonging to the occupants, and fled together upon discovery. The offence involved a degree of planning and was not a momentary lapse in judgment. The conduct of both accused during and after the offence, including the disposal of stolen property and flight from the scene, reflects a deliberate commission of the offence.
10. The Court further takes into account that both D1 and D2 claimed their right to trial. However, the consequence of doing so and being convicted after trial is that neither Defendant is entitled to the sentencing discount ordinarily afforded to those who enter timely pleas of guilty. The evidence against both accused was overwhelming. Their defences were found to be implausible, inconsistent, and contradicted by the objective evidence. The trial has consumed court resources and caused the Prosecution and its witnesses to attend and give evidence. In these circumstances, no reduction in sentences is warranted.
11. In respect of D1's familial circumstances, the Court is of the view that hardship occasioned to the family of an offender is, in most cases, an inevitable and foreseeable consequence of criminal conviction. Such hardship, whilst unfortunate, flows naturally from the conduct of the offender himself, and cannot therefore be relied upon by the Court as a mitigating consideration. Accordingly, D1's familial circumstances are not a factor that weighs in his favour for the purposes of mitigation.
12. The Court also places significant weight on the previous convictions of both Defendants. For his last offence in 2021, D1 received a sentence of 16 months imprisonment for theft under section 379 of the Penal Code. D2 on the other hand was also last convicted in 2021 for 2 charges of theft under section 379 as well as causing damage under section 426 of the Penal Code. He was sentenced to a total of 27 months imprisonment. Their previous convictions clearly demonstrate that they have not been deterred from reoffending. The commission of the present offence after prior convictions aggravates the culpability of both Defendants and strengthens the need for a sentence that emphasises deterrence.

## Case Authorities

13. The Court refers to the sentencing precedents established in previous cases involving section 451 of the Penal Code. In *Rosazli bin Hj Metassan v Public Prosecutor (Criminal Motion No.6 of 2018)*, the Court of Appeal upheld a sentence of 2 years' imprisonment following pleas of guilty at an early stage. In *Abdul Wakil bin Samsun Yusra v Public Prosecutor (Criminal Motion No.35 of 2014)*, the sentencing court took a starting point of 3 years' imprisonment and reduced it to 2 years in view of the defendant's guilty plea and clear record. The appeal was dismissed by the Court of Appeal, observing that the sentences were entirely proper and that the appeal would have no prospect of success.
14. In *Mohammad bin Yusof v Public Prosecutor (Criminal Appeal No.14 of 2018)*, the Court of Appeal affirmed that a sentence of 2 years' imprisonment for section 451 offences where a guilty plea is entered is consistent with sentencing practice in similar cases and that no unusual features existed to justify departure from that position.
15. The foregoing authorities establish a sentencing range that takes as its starting point 3 years' imprisonment, with a reduction to 2 years available to defendants who plead guilty at an early opportunity and who appear before the court with a clear record. These cases therefore set a baseline against which the present cases must be assessed. Where, as here, neither of those mitigating factors is present, there being no guilty plea and no clear record, there is no basis for reducing the sentence from the starting point. On the contrary, the factors identified earlier, namely the trial conviction, the previous criminal records, and the coordinated nature of the offending, call for a sentence that is higher than that which would be imposed on a first-time offender who pleads guilty.

## Appropriate Sentence

16. Having regard to all the circumstances of the case, including conviction after trial, relevant antecedents, and the need for deterrence, the Court takes a starting point of 3 years and 6 months' imprisonment. In the absence of any mitigating factors, including the absence of mitigation arising from a plea of guilty, this Court finds no basis to reduce the starting point.

## Final Sentence

17. Accordingly, the Court sentences both D1 and D2 to 3 years and 6 months' imprisonment, reflecting their individual culpability in this coordinated offense. The sentences of both Defendants shall take effect from the first date of each Defendants' respective remand.



DK HJH NORISMAYANTI PG HJ ISMAIL  
Judge

