

Public Prosecutor

AND

**Hj Mohammad Reduan Bin Hussin (D1)
Mohammad Arif Bin Mohd Yasop (D2)
Mohamad Arifin Bin Haji Mohd. Hassan (D3)**

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 23 of 2022 & 24 of 2022)**

Pg Hj Norismayanti binti Pg Hj Ismail, Judge
27th July 2024

Criminal law – D1 only – Jointly charged – house breaking by night - 3 charges under Section 457 of the Penal Code read with section 34 of the same – plea of not guilty - defense of alibi.

DPP Mohammad Kamal Ariffin bin Ismail for Public Prosecutor.
D1 – In person and unrepresented.

J U D G M E N T

Pg Hj Norismayanti, Judge:

Introduction

1. Hj Mohammad Reduan Bin Hussin (D1) is jointly charged with Mohammad Arif bin Mohd Yasop (D2) and Mohamad Arifin bin Hj Mohd Hassan (D3) on four (4) counts under section 457 of the Penal Code, Cap 22 read together with section 34 of the same and a single charge under section 323 of the Penal Code, Cap 22. Initially, D1 entered a plea of not guilty to all charges, however on the 18th of March 2024, D1 changed his plea to guilty for the 2nd and 5th charges and maintains his plea of not guilty for the 1st, 3rd and 4th charges. The trial proceeded on the latter charges accordingly.
2. The disputed charges are as follows:

1st charge (against D1 and D2)

“That both of you, sometime between 24th day of April 2022 at 1630 hours and the 27th day of April 2022 at 0728 hours, at a house addressed at No. 5, Spg 46-3, Kg Madang in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said house, in the possession of one Pg Mohammad Fadly Harfinie bin Pg Hj Mohd Kassim, a building used as a human dwelling, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft, and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.”

Additional 3rd charge (against D1 and D3 only)

“That you and another person, on 3rd day of June 2021, sometime between 0100 hours and 0550 hours, at a house addressed at No. 7, Spg 96, Kg Madang, Mukim Berakas in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said house, in the possession of one Hj Morsidi bin Hj Abu Bakar, a building used as a human dwelling, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft, and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.”

Additional 4th charge (against D1 and D3 only)

“That you and another person, sometime between 1730 hours on the 15th day of January 2022 and 0644 hours on the 17th day of January 2022, at Sekolah Ugama Kampung Madang in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said school, belonging to the Ministry of Religious Affairs, a building used as a custody of property, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft, and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.”

3. D1's co-defendants in the above charges pleaded guilty and are currently serving sentence. D2 plead guilty to the 1st and 2nd charge on the 17th of February 2024 and was sentenced to a total of 7 years imprisonment and 2 strokes, whereas D3 plead guilty to the 3rd and 4th charge on the 2nd of December 2023 and also received a total sentence of 7 years imprisonment and 2 strokes.

Summary of the prosecution case

4. The prosecution called a total of 24 witnesses to prove its case. It is the prosecution's case that D1 committed house breaking and theft at No. 5, Spg 46-3, Kg Madang (1st charge), at No. 7, Spg 96, Kg Madang, Mukim Berakas (3rd charge) and at Sekolah Ugama Kampung Madang (4th charge) together with his jointly charged co-defendants.

Evidence for the 1st charge

5. The prosecution adduced the First Information Report (P4) for BKS/CR/406/2022 on the housebreaking and theft at No. 5, Spg 46-3, Kg Madang (hereafter referred to as House A) through LCPL 4422 Abu Bakri bin Haji Yahya (PW1) who is the investigating officer and the exhibit officer in this case. PW1 further adduced the sketch plan (P5) and List of Exhibits (P6) as part of the prosecution case.
6. The prosecution also called the resident of House A at the time, Pg Mohammad Fadly Harfinie bin Pg Hj Mohd Kassim (PW7). According to PW7, on the 27th April 2022, he discovered that his former government residence House A was broken into and several of his items were stolen. The stolen items included a 55-inch black LG smart TV, a silver Lenovo laptop, and a black WD 1TB hard disk. PW7 gave

evidence that damage was found on the window of the maid's room and the kitchen door. On 10th May 2022, PW7 identified his recovered LG TV at the Berakas Police Station and confirmed this by a warranty and receipts (P17A and P17B). Further, he also reported that he discovered that 4 of his Volkswagen tire rims were also missing from his home.

7. The prosecution also presented the evidence of D1's own admission in a police investigation diary marked as P59. P59 was made by the Special Duties diary man CPL5279 Ak Muhammadin bin Pg Hj Amjah (PW15VD). It is submitted that page 3 of P59 contains D1's admission in relation a number of offences including the offence stated in the 1st charge i.e. the theft at Spg 46-3, Kg Madang together 'Arif' and 'Rahman' relating to BKS/CR/406/2022 (1st charge) and BKS/CR/419/2022 (2nd charge).
8. The prosecution further relies on D2's police statement (P64) wherein he implicated D1 as his accomplice. Based on P64, D2 admitted that they both entered the house through a window which he claimed D1 had pried open using a wrench which D1 brought from home. The statement also included D2's admission that he stole several items from the said house including an LG brand television and 4 tire rims. He stole these items together with D1 who helped him carry them out and place outside the house's front gate. Furthermore, according to P64, they planned to retrieve the said items using a vehicle once D1 takes his car from his house and confirmed that they managed to collect most of the items he stolen except for the tire rims because D1's car was already packed.
9. Having assessed the abovementioned evidence collected in this investigation, PW1 made a finding that D1 was involved in the said housebreaking and theft incident.

Evidence for the 3rd charge

10. For the 3rd charge, the pertinent witnesses are LCPL 4422 Abu Bakri bin Haji Yahya (PW1), Hjh Fatimah binti Ibrahim (PW2), LCPL 6010 Hj Muhammad Syazwan bin Haji Hasib (PW10) and S/SGT3445 Nick Hudson Anak Uding (PW23).
11. PW1 adduced the First Information Report (P7) for BKS/CR/685/2021 and sketch plan (P8) regarding a theft at No. 7, Spg 96, Kg Madang 9 (hereafter referred as House B) on 3rd June 2021 at 0550hrs. Turning to the evidence of PW2, she testified that she found the kitchen window at the said house wide open. According to her the said window was hardly open. She reported that two smartphones, a blue Samsung A12 and a red OPPO F7, were missing. According to her evidence, the said phones were last seen by her husband on the dining room table at around 0100 hours of the same day.
12. The prosecution again refers to diary P59 which includes an entry at page 2 where D1 admitted to committing theft together with his friend named 'Ripin' in relation to BKS/CR/685/2021 (3rd charge).
13. The prosecution also relies on D3's police statement (P66) where he implicated D1 by admitting that he was together with D1 when they broke into a house through its back gate at Kg Madang. The prosecution further relies on the police investigation diary (P67) where D3 made an admission that D1 had instructed him to act as a look-out while D1 climbed the gate and broke into the said house through a sliding window. D3 further stated that 30 minutes later, D1 came out of the said house with

a Samsung phone and thereafter they both went their separate ways. D3 further admitted that the house number of the place they broke into is no.7.

14. Prosecution also adduced the evidence of LCPL 6010 Hj Muhammad Syazwan bin Haji Hasib (PW10) who was instructed by PW1 to process the place of incident on the 3rd of June 2021. PW10 testified that he managed to find a fingerprint on a window near the kitchen. He photographed the fingerprint and used a hinge lifter to collect it as evidence. On 23rd June 2021, the fingerprint file was forwarded to the at the Criminal Records Unit and Fingerprint for analysis.
15. Further to the issue of the above-mentioned fingerprint, the prosecution called S/SGT3445 Nick Hudson Anak Uding (PW23) who is the Fingerprint Result Officer who examined and compared fingerprints collected from House B with D1's fingerprints stored in the police PPBD database. PW23 confirmed that he received the application on the 23rd of June 2021 and conducted the examination on the 4th of December 2021, using a one-to-one method. He recorded his analysis and findings in his report (P56 and P56a) and concluded that the fingerprint collected is identical to D1's left thumbprint.
16. Based on the overall assessment of the evidence gathered in the investigation, PW1 made a finding that D1 and D3 were involved in the housebreaking and theft at House B.

Evidence for the 4th charge

17. The First Information Report (P31) regarding BKS/CR/68/2022 was adduced by LCpl 5607 Md Zainul Ariffin bin Abd Kadir (PW12) who was the investigating officer in charge of this the said investigation. The FIR reported a theft at Sekolah Ugama Kg Madang ("the said school"). The complaint was lodged by the principal, Sabrinah binti Haji Awang Damit (PW11). According to PW11, she received a call on the 17th of January 2022 from the school cleaner who reported a break-in had occurred at the said school. PW11 later discovered damage on the prayer room door. She further discovered that two 12-inch speakers and a DVD player were missing from the said room. She also found damage to the rear sliding window frame of the staff room, and noticed the front school gate was left open. PW11 testified that the last time they were at the school was on 15th January 2022, at around 1730 hours and stated that all doors and windows were locked. She also provided a repair quotation (P27) stating the cost of \$450 to fix the prayer room door.
18. The prosecution again relies on diary P59 where D1 also admitted to helping 'RIPIN' to carry out 2 speakers and one DVD player outside the gate of the said school. Additionally, the prosecution refers to D3's police statement (P65) where D3 also implicated D1. Essentially, D1 had brought him to the said school and watched D1 pry open the gate of the school. D1 then led him down a hallway leading to a place with concrete stairs and a wooden door. According to P65, D3 watched D1 poke at the said door with a sharp 6-8-inch knife to create a hole and then opened the door from the inside through the hole. D1 then proceeded to steal a 12-inch speaker whilst D3 acted as a look-out (4th charge).

Ruling on prima facie

19. Based on the evidence adduced by the prosecution, the court ruled there to be prima facie case for D1 to answer. D1 opted to give sworn evidence and called 1 witness in support of his defense.

Defense case

20. The main defense put forth by D1 is a defense of alibi for all 3 charges. D1 claims that he was never at the scene of the crime in respect to the 1st, 3rd and 4th charge as he was actually at his cousin's house in Kg Bolkiah when the alleged offences were committed. In support of this defense, D1 called the said cousin (DW2) as his alibi witness.

DW1/D1's evidence

21. In his testimony, D1 asserts that he was living at his cousin's house in Kg Bolkiah from 2021 until 2022. He does not recall when in 2021 he started living there but he believes that it was until March 2022. Thereafter, he lived with his mother in Kg Madang. Based on testimony, D1 states that during the period living with his cousin (DW2), he had assisted DW2 to sell *nasi katok* based at his house. As part of the preparation, D1 claimed that he would wake up around 5.00 am in the morning, prepare all the utensils, rice warmer and to prepare the chicken meat to be sold. He uses this defense for all the charges before the court.

22. In relation to the fingerprint evidence adduced by the prosecution for the 3rd charge, D1 disagreed that the fingerprint collected by the police belonged to him. D1 submitted that if it was true that the print belonged to him, he questioned why it took the police 10 months to arrest him on the 9th of May 2022.

Harisin bin Hj Raub (DW2)'s evidence

23. DW2 purports to support D1's story. He testified that both he and D1 sold *nasi katok* during the fasting month from 2.00 pm to 7.00 pm from Monday-Saturday. He further stated that after 7.00 pm, he would bring D1 to buy ingredients for the next day's sale of *nasi katok* and then make the preparation for the next day. According to DW2, this was their routine. It is also his evidence that D1 had stayed at his house until May 2022.

24. Under cross-examination, DW2 further stated that D1 would usually sleep around 10.00 pm in the evening until 6.00 am the next morning and that he would know if D1 leaves the room to use the bathroom because D1 would always wake him up to let him know and he would personally open the door for D1 to go to the toilet. DW2 further confirmed that during the alleged offenses, D1 was sleeping at his house.

Considerations & findings

Credible defense?

25. As mentioned in paragraph no.21 above, the defendant asserts the same defense for all 3 charges. Basically, it is his story that he was at DW2's house in Kg Bolkiah when the alleged offences were committed. He claims that DW2 can verify his story that he was present in Kg Bolkiah during the alleged date and time the offences were committed. In assessing the credibility and reliability of the defendant and DW2's evidence, the court also looks into the overall facts and circumstances involved in this case.

26. Firstly, throughout the prosecution's case, the defendant failed to put forth his case to any of the prosecution's witnesses that he was in Kg Bolkiah and was in the presence of DW2 at the time the alleged offences occurred. There is also no mention of DW2's name during the police investigation especially when it was crucial to establish his alibi defense. This fact adds weight on the prosecution's submission that the defendant merely fabricated his evidence and is a mere afterthought.
27. The court further agrees that the defendant's explanation of his presence at Kg Bolkiah when the offenses were committed is vague and inconsistent to the evidence of his alibi witness, DW2. The fact is that the testimony of the defendant living with DW2 is inconsistent considering D1 stated that he lived with DW2 from sometime (he could not recall from when) in 2021 until March 2022. DW2 on the other hand states that the defendant lived with him until May 2022.
28. The court also found further inconsistencies in the defendant's story of when he prepared for the sale of *Nasi Katok*. The defendant mentions preparations being made as soon as he wakes up early in the morning whereas DW2 mentions preparations being made after 7.00 in the evening as it was their usual routine. The court also notes that in his evidence the defendant mentioned that he would wake up at 5.00 am every morning but it is DW2's evidence that the defendant would usually sleep from 10 pm to 6 am the next day. Although this is just a minor inconsistency, it does affect the reliability of their evidence as a whole.
29. The court now refers to DW2's evidence where he specifically states that he was sure that the defendant was sleeping at his house during the relevant period of times and that he would know if the defendant had woken up and had left the bedroom. Despite his evidence, the court finds that DW2 cannot account for the defendant's whereabouts when the offenses were committed for certain as he claims to be sleeping during the night. DW2 himself said that he would know if the defendant woke up to leave the room because the defendant would wake him up. In other words, DW2 is deducing that the defendant would still be sleeping in his room throughout the night if the defendant did not wake him up. In the circumstances, the court is not satisfied that DW2 can verify D1's whereabouts when the offences were committed and therefore D1 has failed to establish an alibi defense.
30. There is also the fact that DW2 is currently remanded in the same prison facility with the defendant which the prosecution submits provides both ample time to make up their story in the defendant's defense. The court agrees that this makes it more believable that D1 had fabricated his alibi defense whilst in remand together with DW2.
31. Based on the abovementioned facts and circumstances as well as the inconsistencies and vagueness in the defendant's defense, the court finds that both the defendant and DW2 are not credible witnesses and their evidence as unreliable. The defendant therefore fails to establish a valid defense.

1st charge

32. Upon consideration of the prosecution evidence, the court is satisfied that the main evidence that connects D1 to the charge is his admission contained in P59. The court is satisfied that the defendant made the admission to PW15 that he was basically acting in concert with *Arif* and *Rahman* committing

theft at Spg 46-3 Kg Madang. The court is further satisfied that the name *Arif* mentioned in P59 is D2 in the present case. The defendant's admission is also consistent with D2's police statement P64 where D2 admitted that he and D1 committed the theft at Kg Madang, entering House A through a window pried open by D1, and that D2 stole several items from the house.

33. In regards to the defendant's defense, the court points out that the housebreaking took place in April 2022 and the defendant himself testified that after March 2022, he had went to live with his mother in Kg Madang. DW2 on the other hand gave an inconsistent testimony stating that the defendant lived with him until May 2022.
34. Based on the above considerations, the court is satisfied that the defendant did commit house breaking with the intent to commit theft together with D2.

3rd charge

35. For the 3rd charge, the pertinent evidence establishing D1's involvement in the commission of the offense is the evidence of his fingerprint found on a window near the kitchen which has been proven match D1's left thumbprint. The court also accepts P59 to contain D1's admission that he committed theft together with his friend named *Ripin*. It is further accepted that the name *Ripin* is in reference to D3 in the present case. The court is also satisfied that D3's police statement P66 provides consistent evidence to D1's admission in P59. The court accepts that D3 was together with D1 during the break-in at Kg Madang, where he acted as a look-out while D1 entered the house through a sliding window and later emerged with a Samsung phone.
36. It is the court's finding that D1 failed to establish an alibi defense. The court cannot accept for certain that DW2 was aware of D1's whereabouts at all times during the period when the alleged offense was committed. If it was to be believed that D1 was living with DW2 during the relevant time, the court finds it difficulty to believe that DW2 would know of D1's whereabouts if D1 did not wake him up. This is based on DW2's own testimony that he would only know if D1 was awake if D1 woke him up. For this very reason, the court finds the purported alibi unconvincing and unreliable. In other words, D1 has failed to adduce sufficient evidence to establish that he was in Kg Bolkiah together with DW2 at the relevant time.
37. D1 also failed to provide a reasonable explanation as to why his fingerprint was found at the scene or failed to prove the finger print found is not his. In the circumstances, the court finds neither witnesses convincing and reliable. In the absence of a credible defense, the court is satisfied beyond a reasonable doubt that the defendant had committed housebreaking with the intent to commit theft together with D2. Based on the above-mentioned findings, the court is satisfied that the defendant did commit house breaking with the intent to commit theft together with D3.

4th charge

38. Moving on to the 4th charge, the prosecution also relies on the police investigation diary P59 to prove D1's involvement in the commission of the offence. The court accepts P59 contains D1's admission that he assisted '*Ripin*' to carry two speakers and one DVD player outside the school gate. The court further accepts D3's police statement (P65) is consistent to D1's earlier admission. In P65, D3 particularly stated that during the break-in at Sekolah Uqama Kg Madang, D1 pried open the gate, used a knife to open a locked door and stole a speaker while D3 acted as a look-out. This corroborates

the allegation based on the fact that both mentioned each other as being present at the scene and had helped each other out during the commission of the offence.

39. In the absence of a credible defense, the court is satisfied that the prosecution has established a case beyond a reasonable doubt that both D1 and D3 were involved in the commission of the offense at the said school.

Conclusion

40. Having considered the overall evidence adduced by the prosecution for all three charges and D1's lack of a credible defense, the Court is satisfied that all prosecution witnesses are credible witness and accepts their evidence in its entirety.
41. Based on the above considerations and findings, the court finds that the prosecution has established a case beyond reasonable doubt against the defendant for the 1st, 3rd and 4th charge. The defendant is hereby found guilty of each of the said charges and convicts him accordingly.

PG HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court