

Public Prosecution

AND

Mohammad Zulazlainie Bin Zoelaliffin [D1]

Zoelaliffin Bin Haji Mohammad Zaini [D2]

Pengiran Rafiuddin Bin Pengiran Mohamad [D3]

(Intermediate Court of Brunei Darussalam)

(Criminal Trial No. 22 of 2024)

Pg Masni Pg Hj Bahar, Judge

Date of Sentence: 10 March 2025

Headnote: Sentence - 11 joint charges - Offence under Section 457 PC read with section 34 of the same- House breaking by night in order to commit offence punishable with imprisonment- Section 34 PC- Acts done by several persons in furtherance of common intention – 4 individual charges- Section 379 PC – Theft- Crime committed by repeated offenders- Planned Professional criminal activity- Public Interest- Deterrent Sentence.

DPP Nurul Husna Aqilah binti Haji Abidin for the Public Prosecutor.
Defendants In Person and Unrepresented.

Cases cited:

Public Prosecutor v Hassan Bin Hj Tahir [HCCT No.5 of 2002]

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

Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009),

Md Ihsan Bin Haji Awang Saini (Criminal Appeal No 12 of 2013).

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

Mohammad Sharifudin Bin Haji Abdullah v Public Prosecutor [Criminal Appeal No. 3 of 2018]

PP v Rosazli bin Haji Metassan (Criminal Motion No.6 of 2018)

Azman@Asrol Bin Jaya v Public Prosecutor [2011] 2 JCBD 120

Ferry Pengiran v PP, Criminal Motion No 15 of 2020

SENTENCE

Pg Masni, Judge:

Introduction:

1. The Defendants, Mohammad Zulazlainie bin Zoelaliffin (D1), Zoelaliffin bin Hj Mohammad Zaini (D2) and Pengiran Rafiuddin bin Pengiran Mohammad (D3) are charged individually and jointly for the offences under section 457 PC read with section 34 of the same and theft of cars under section 379 PC read with section 34 of the same. They are faced with a total of fifteen (15) charges.
2. D1 faces a total of 15 charges, both joint and individual charges. D2 faces 6 joint charges (1st, 8th, 9th, 10th, 11th and 14th charges). D3 faces 10 joint charges (2nd, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 13th and 14th charges).
3. The charges and their respective penalties were read and explained to all the Defendants in Malay. The Defendants informed the court that they understood the charges and its penalties and entered their pleas accordingly.
4. D1 and D3 pleaded guilty to all the charges against them saved for D2. He pleaded guilty to the 1st and the 11th charge and claimed trial to the remaining charges (8th, 9th, 10th and 14th charges). The Prosecution then applied for the charges, which D2 pleaded not guilty to, to be withdrawn not amounting to an acquittal, pursuant to section 186 of the Criminal Procedure Code (CPC).

Charges:

5. The Defendants pleaded guilty to the following charges:
 - i. Amended 1st charge vs D1 and D2 – On the 16th February 2024, at around 0400 hours, D1 and D2, in furtherance of their common intention, committed house-breaking by night with the intention to commit theft at 1 More Pizza, Sunway Centre, an offence under section 457 PC read with section 34 of the same.
 - ii. Amended 2nd charge vs D1 and D3– On the 27th April, 2024, at around 0400 hours, D1 and D3 acting with the common intention, committed house-breaking by night to commit theft at Chick-in Restaurant, Kampong Kilanas, an offence under section 457PC read with s 34 of the same.
 - iii. Additional 3rd charge vs D1: That between February the 5th February 2024 at about 0700 hours and the 25th February 2025 at about 1715 hours, stole a Toyota Kijang (registration KL2349) belonging to Lee Cho Hao from No. 4, Simpang 5, 2nd Floor, Bangunan Bakdiah, Jalan Gadong, an offence punishable under Section 379 of the Penal Code, Chapter 22.
 - iv. Additional 4th charge vs D1: That between 9th April 2024, at 2000 hours and 10th April 2024, at 0630 hours, stole a Toyota Kijang (BP4943) belonging to Wakil Heriyanto, at Simpang 28 Bangunan Abdul Rahman, Menglait, Gadong, an offence under Section 379 of the Penal Code, Chapter 22.

- v. Additional 5th charge vs D1 and D3: *On the 12th April 2024, at approximately 0500 hours, that both of you, in furtherance of your common intention, committed housebreaking by night and commit theft at Egg Monster Restaurant, Bangunan An-Nuha, Kg Tanjung Bunut, an offence punishable under Section 457 of the Penal Code, Chapter 22, read with Section 34 of the same.*
- vi. Additional 6th charge vs D1 and D3: *That both of on the 12th April 2024, at around 0500 hours, acting with common intention, committed house-breaking by night and commit theft at Farmbasket Restaurant, Brunei Darussalam, an offence under section 457 of the Penal Code read with Section 34 of the same.*
- vii. Amended additional 7th charge vs D1 and D3: *That both of you between the 15th April 2024, at 2200 hours and the 16th of April 1, 2024, at 0600 hours, in furtherance of your common intention stole a Toyota Corolla (BJ 3502) belonging to Ahsan Ahmad at Spg 949, Kg Tanah Jambu 1, an offence under Section 379 PC read with Section 34.*
- viii. Additional 8th Charge vs all D1 and D3: *That both of you on the 16th April 2024 at around 0200 hours, in furtherance of your common intention, commit house breaking by night at Mytown Eating House, Batu Satu, Brunei Darussalam and to commit theft, an offence under section 457 of the Penal Code read with Section 34 of the same.*
- ix. Additional 9th Charge vs D1 and D3: *That both of you on the 16th April 2024, at about 0400 hours, acting with common intention, committed house-breaking by night to commit theft at Nimanja Store in The Arch, Gadong, an offence under section 457 of the Penal Code read with Section 34 of the same.*
- x. Additional 10th Charge vs D1 and D3: *That both of you on the 16th April 2024 at about 0400 hours at Clinic Perdana Afiat Jerudong, No. 6, Spg 79, Jalan Jerudong, Mukim Sengkurong in furtherance of your common intention, did commit house-breaking by night, by entering into the said clinic in order theft, an offence punishable under Section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.*
- xi. Additional 11th Charge vs D1, D2 and D3: *That all of you on the 8th day of April 2024, at about 0400 hours, Nimanja Pet Link Veterinary Care, Sungai Tilong, in furtherance of your common intention, did commit house-breaking by night, by entering into the said Veterinary clinic in order to commit theft, an offence under section 457 of the Penal Code read with Section 34 of the same.*
- xii. Amended Additional 12th Charge vs D1: *That you sometimes on the 8th day of March 2024, at about 1700 hours and the 9th day of March 2024 at about 0600 hours stole a car, Toyota Kijang bearing registration number BJ8669, in the*

possession of Norman Jabinar Gadrinab, at the vicinity of Simpang 5, Bangunan Azahari, Jalan Gadong, an offence under section 379 Penal Code.

- xiii. Additional 13th Charge vs D1 and D3: *That both of you on the 14th day of March 2024, at about 0330 hours, in furtherance of your common intention, commit house breaking by night at Restaurant Naili'ss Jalan Bukit Kabun at Kampong Kapok in order to commit theft, an offence punishable under Section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.*
- xiv. Additional 14th charge vs D1 and D3: *That both of you on the 20th day of March 2024, at about 0300 hours, in furtherance of your common intention, did commit house-breaking by night, by entering into Ya Nur Supermarket in Jalan Muara in order to the commit theft, an offence punishable under Section 457 of the Penal Code, Chapter 22 read with Section 34 of the same.*
- xv. Additional 15th charge vs D1: *That you on the 29th day of March 2024, at about 0413 hours stole a Toyota Kijang bearing registration number KH 8275, in the possession of Md Rezaul Karim at the vicinity of No.488, Kg Sg Hanching, Jalan Muara, an offence punishable under Section 379 of the Penal Code, Chapter 22.*

- 6. Having satisfied that the Defendants understood the charges and its penalties, I accepted their guilty plea as I am satisfied that D1, D2 and D3 understood the nature and the consequences of their plea. Hence complying with section 175 CPC.

Statement of Facts:

- 7. Defendants admitted to the following facts.

Amended 1st charge vs D1 and D2:

- 8. On 16th February 2024, around 0400 hours, D1 and D2 were using the stolen Toyota Kijang in Manggis, KL 2349 (in relation to the 3rd charge), the car driven by D2 drove to 1More Pizza Restaurant Sunway Centre on the instruction of D1. At the said place, D1 admitted breaking into the 1More Pizza Restaurant through the window. Upon gaining entry, D1 admitted stealing a cash register, a Redmi tablet, and a Dell laptop and handing them to D2 before they fled. The theft was recorded on the CCTV. The CCTV also captured the Kijang car and its licence plate used in the commission of the offence.
- 9. The owner of the restaurant, Mohammad Amal Rafiqi, was informed by the employees about the break in and the theft. A police report was lodged and investigation led to the arrest of D1 and D2. D1 and D2 admitted to the said offence. D1 admitted selling the tablet and laptop. The stolen items, worth BND \$1,435, were not recovered.

For the Amended 2nd charge (against D1 and D3 only):

10. On the 27th April 2024, around midnight, D1 and D3 were driving in D1's vehicle when D1 lost money gambling online. D1 tried to look for people to ask for money but failed.
11. At about 0400 hours, they then went to the vicinity of Ban 6, D1 parked the car near the Chick-in Restaurant (the said restaurant) at Simpang 42, Ban 6, Kampong Kilanas, in Brunei Darussalam. It was then they formed the common intention to break into the said restaurant with the intention to steal. They went to the entrance of the said restaurant with their faces covered with face masks and hoodies. D3 used a screwdriver and a L- wrenched that he brought along with him to force opened the restaurant's entrance. D1 joined D3 in breaking the restaurant entrance.
12. When they entered the said restaurant, D1 and D3 admitted unhooking the cash register, with D3 taking it, while D1 stole a tip box labeled "THANK YOU" and a CCTV camera. Their crime was captured by the CCTV. On the way home, D1 and D3 admitted that they split the stolen money, discarded the cash register. They used the money for online gambling, while the stolen CCTV and tip box were later seized from D1's house.
13. At 0730 hours, the restaurant's chef, Mr. Sunhong Soon, discovered the break-in and reported the break in to the police. The police report led to the arrest of D1 and D3, who admitted to the said crime. The total value of stolen items was BND \$700, but only the cash from the tip box and the Vivo Y16 phone remained unrecovered.

For the Additional 3rd charge (against D1 only):

14. Sometimes between the 5th and the 25th February 2024, D1 asked Person A to drop him off near TK restaurant in Gadong. D1 then walked to the Jing Chew building area, where he found a white Toyota Kijang (KL 2349) with an open driver's seat window. He used the scissors that he brought along to start the engine and drove the car. He then drove the said stolen car and picked the Person A to commit the offence as in the 1st charge. D1 then abandoned the car in the Jalan Pasir Berakas area.
15. On 25th February, Lee Cho Hao, discovered his car was missing, reported his missing car to the police. An investigation led to D1's arrest, where he admitted to the crime. The stolen vehicle was recovered and identified by its owner.

For the Additional 4th Charge (against D1 only):

16. Sometimes between the 9th April 2024 at about 2000 hours and the about 060 hours on the 10th April 2024, D1 was driving his car, Mitsubishi Lancer, around KFC in Gadong when his car ran out of petrol. D1 pushed his car to the side of the road and tried to call for help. However, his phone ran out of credit.

17. D1 then left his car and walked towards Menglait, where he found a Toyota Kijang (BP 4943). D1 broke into the Kijang car using the scissors that he brought along. He then found the key in the car and drove the Kijang to where he left his car.
18. D1 then refuelled his car using the petrol in the jerry can that was in the Kijang. After refuelling, D1 drove the Toyota Kijang to the DHL building in Gadong in search of WiFi. Failing to connect to the WiFi, D1 searched the drawers of the Toyota Kijang and found an 'easi card' worth of BND \$10.00. D1 stole the credit from the said 'easi card' to top up his phone and called Person A to pick up his car from the side of the road in Gadong. D1 then continued to drive the Toyota Kijang to Jalan Pasir Berakas and left it near a tyre shop.
19. The vehicle's owner, Wakil Heriyanto, discovered his Kijang car went missing on the 10th April and reported it to the police. Police investigations led to D1's arrest, where he admitted to steal the Kijang car. The Kijang was eventually recovered and identified by the owner.
20. Further inquiries revealed that D1 and D3 had used the stolen Kijang car to commit offences (the additional 5th and 6th charge) and shared the stolen money.

For the Additional 5th Charge (against D1 and D3 only):

21. On 12th April 2024, around 0500 hours, D1 and D3 drove the Toyota Kijang, BP4943 (the 4th Charge) to the vicinity of Kg Tanjung Bunut and parked in front of Egg Monster restaurant. They then formed a common intention to break into the Egg Monster restaurant to steal. Both D1 and D3 wore a face masks to disguise their identity. D3 admitted using the L-shaped wrench to open the entrance door. When the door is opened, D1 admitted heading up to the cashier counter. D3 took the cash register, placed it in the stolen vehicle, and both later returned to steal the tip box. Their actions were recorded on the CCTV. D1 and D3 admitted sharing the stolen money.
22. The restaurant owner discovered the break-in, missing items, and reported it to the police. Investigations led to D1 and D3's arrest, and they admitted to committing the offence. The stolen cash register and a passport were recovered, but the tip box remained missing. The total loss amounted to BND \$2,000.

For the Additional 6th Charge (against D1 and D3 only):

23. On 12th April 2024, at around 0500 hours, D1 and D3 drove to the Farmbasket Restaurant in Tanjung Bunut using the stolen Kijang (in relation to the 4th charge) where they planned to commit house-breaking and commit theft.

24. D3 forced open the restaurant's main door with an L-shaped wrench, entered, and stole a cash register and an air-conditioner remote. Inside the vehicle, they found only \$2 and loose change in the register, which they split.
25. Later that morning, at 0835 hours, restaurant employee Dedi Irawan discovered the break-in and reported the missing items. A police investigation led to the arrests of D1 and D3, who admitted to the crime. The total loss was estimated at BND750, and the stolen cash register was later found in Jalan Paya Panchor, Kampung Sungai Buloh, and identified by the complainant.

For the Additional 7th Charge (against D1 and D3 only):

26. D1 and D3 admitted that sometimes between 15th April 2024 at about 2200 hours and the morning of 16th April 2024, D1 admitted stealing an unlocked Toyota Corolla (BJ 3502) at the vicinity of Simpang 949, Kampong Tanah Jambu 1. D3 admitted acting as a sentry while D1 used the scissors he brought along with him to start the engine. After successfully starting the vehicle, D1 drove D3 to Kampong Salambigar, where they met Person A. Since the Mitsubishi Lancer was low on fuel, Person A joined them in the stolen car.
27. D1 and D3 admitted using the stolen Toyota Corolla to commit the offence in the additional 8th, 9th and the 10th charge. After committed the additional offence (8th, 9th and 10th charges), D3 and Person A went home, while D1 attempted to return the vehicle to its original location. However, the car overheated, D1 abandoned it on Muara Tutong Highway. D1 was later picked up by Person A.
28. The owner of the said car, Ahsan Ahmad, discovered his car went missing on the 16th April 2024 and reported the matter to the Police. Investigations led to the arrest of D1 and D3, who admitted to stealing the car. The stolen vehicle was recovered and identified by its owner.

For the Additional 8th Charge (against D1 and D3):

29. On 16th April 2024, around 0200 hours, D1 instructed Person A to drive a stolen Toyota Corolla (7th charge) and searched for a place to commit housebreaking. At the vicinity of Batu Satu, they targeted the Restaurant MyTown Eating House.
30. D1 and D3 admitted exiting from the stolen car wearing face masks, leaving Person A inside. D3 admitted using an L-shaped wrench to break open the restaurant's sliding door. When they broke into the Restaurant, D3 removed the cash register monitors while D1 unhooked the wires. They admitted stealing two cash registers and a wooden tip. No money was found in the cash registers but they discovered BND \$7 in the tip box, which they split amongst themselves. The break in and the theft was captured by the CCTV.

31. At 0750 hours, the restaurant's assistant administrator, Muhammad Hazim, was informed of the theft. He reviewed CCTV footage and reported the crime to the police.
32. Subsequent investigations led to the Defendants' arrests, where they confessed. The stolen vehicle was recovered, and the stolen items were found the car which was positively identified by the complainant.

For the Additional 9th Charge (against D1 and D3):

33. On April 16, 2024, at around 0400 hours, after MyTown Eating House Restaurant, Person A drove D1 and D3 in a stolen Toyota Corolla (7th charge) to Nimanja Store with the joint intention to commit a house-breaking and to commit theft.
34. After arriving at Nimanja Store, D1 and D3, both masked their faces and with D3 carrying an L-shaped wrench, attempted to break into the store. After several failed attempts, they managed to force the door open, causing it to fall off its hinges. D3 took the cash register, and they left the store. On their way to Kampong Sengkuring, they discovered that the cash register was empty, so D3 discarded it. The store's CCTV captured the crime.
35. At 0800 hours, the store's cashier, Nurhusna Haziqah, discovered the break-in, and a police report was filed. Investigations led to the arrest of the Defendants, who admitted their actions. The stolen cash register, valued at BND \$120, was never recovered.

For the Additional 10th Charge (against D1 and D3):

36. On the 16th April 2024, at around 0400 hours, the Defendants, D1 and D3 and Person A went to the vicinity of Simpang 79, Jalan Jerudong in Brunei, using a stolen Toyota Corolla (7th charge) with the intention to break-into Clinic Perdana Afiat at No.6, Simpang 79, Jalan Jerudong, Mukim Sengkuring. At the said Clinic, D3 forced open the front door using the L-shaped wrench that he brought along, and searched for items to steal.
37. Both D1 and D3 admitted that they broke into the said clinic wearing face masks. D3 admitted that he wore a hat while D1 covered himself with the hood.
38. Whilst inside the clinic, both D1 and D3 admitted looking for things to steal at the clinic's counter. D1 admitted stealing a small plastic bag with money. The two left with the money, which they later divided among themselves, totaling around BND \$2,000. The clinic's CCTV recorded their crime.
39. The next morning, the clinic's owner, Sara Haji Matasan, discovered the theft and reported it to the police, noting that the stolen money was approximately BND \$9,000.

40. Investigations led to the arrest of D1 and D3, who confessed to the crime. However, the stolen money was not recovered.

For the Additional 11th Charge (against all of the Defendants):

41. D1, D2, and D3 admitted that they were driving around Sungai Tiling in a Toyota Kijang (BAX 6153) on the 8th April 2024, at about 0400 hours looking for places to steal from in order to cover their gambling debts.
42. D2 was driving the said Kijang, when D1 instructed D2 to stop at Nimanja Pet Link Veterinary Care (said Clinic) in Sungai Tiling. They then form a common intention to break in and steal from the said Clinic. D1 and D3 went to the said clinic, while D2 waited in the car. D1 and D3 attempted to break in using a screwdriver which D3 brought along. They managed to force the door open by damaging the lock.
43. Inside, D1 and D3 stole an HP laptop, a cash register with money, a Bluetooth speaker, and a tip box. The theft was captured on CCTV. They later divided the money, discarded the cash register and tip box, sold the laptop, and exchanged the speaker for drugs.
44. At 0749 hours the sales assistant, Siti Nur Safarina, discovered the break-in and reported it to the police. The Defendants were arrested and they admitted to committing the said offence.
45. The suffered a loss of approximately BND \$2,000, and none of the stolen items were recovered.

For the Additional 12th Charge (against D1 only):

46. D1 admitted that on the 8th March 2024, around 1700 hours, and on 9th March 2024, at 0600 hours, he was walking around the vicinity of Kampong Menglait Gadong when he saw a Toyota Kijang (BJ 8669) parked at the vicinity of Simpang 5, Bangunan Azahari, Jalan Gadong. When he approached the said car, he felt that the engine was still warm. Using the scissors that he brought along, he unlocks the car and start the vehicle and drove away.
47. On 9th March 2024, at 0600 hours, the owner, Norman Jabinar Gadrinab, discovered his car was missing and reported it to the police. Investigations led to D1's arrest, where he admitted to the theft. The stolen vehicle was later recovered and identified by the owner.

For the Additional 13th Charge (against D1 and D3 only):

48. D1 and D3 admitted that on the 14th March 2024, at about 0330 hours, they and a Person A used the stolen Toyota Kijang, (related to the additional 2nd Charge) to Lambak

Kanan, formed a common intention to commit house breaking Restaurant Naili's on Jalan Bukit Kabun, Kampong Kapok in order to steal from that said restaurant. The Person A drove the car to the said place upon the instruction of D1. At the said place D1 then instructed Person A to park in front of the restaurant.

49. D1 and D3 admitted jumping the counter in front of the restaurant to reach the sliding door leading into the restaurant. D3 then forced open the door using an L-shaped wrench that he brought along. When they successfully opened the door, D1 and D3 went to the cashier counter, D1 took a cash register from the counter and threw it on the floor and took money from inside the said cash register while D3 took a box from the said counter. The Defendants' actions were caught by the CCTV camera.
50. Both of them then returned to the vehicle with the stolen items. D1 instructed Person A to drive to Lambak Kanan. Inside the vehicle, D1 and D3 divided the money among themselves. D1 and D3 then abandoned the vehicle in the vicinity of Kampong Pasir Berakas and left the area using D1's vehicle.
51. On 14th March 2024, at about 1030 hours, the Complainant, Miftahkhul Hayat, a waiter at the said restaurant discovered the said cash register was on the floor with money missing and the said sliding door was damaged. The Complainant duly lodged a police report.
52. Police investigations led to the arrest of D1 and D3. In the course of police investigations, both D1 and D3 admitted to committing the above off

For the Additional 14th Charge (against D1 and D3):

53. D1 and D3 admitted that on the 20th March 2024, formed the common intention to commit house breaking and stole from Ya Nur Restaurant in Jalan Muara. It was admitted that a Person A drove them to Ya Nur. At the said place, D1 and D3 admitted alighting from the car and searched for items to steal through the front. However, D1 and D3 heard someone coughing from the second floor of the building. They rushed back to the vehicle, and Person A immediately drove away.
54. On the same day, at about 0315 hours, D1 and D3 admitted that they returned to the area. D1 and D3 once again alighted from the vehicle while Person A waited inside. D3 went to the Ya Nur Restaurant, followed by D1. D3 tried to open a small window of the restaurant, but as D3 pried it open, it shattered and fell. D3 slowly placed the shattered window on the ground. Looking inside through the small window, D3 discovered it did not lead to the cash register of the restaurant.
55. Both D1 and D3 then proceeded to the Ya Nur Supermarket, directly beside the restaurant. D1 took a metal pipe and tried to pry open the lock of the said supermarket's steel shutter, but to no avail. They saw a cash register through the window of the supermarket. D1 broke the window using the metal pipe to access the

cash register. D3 forcefully pulled the monitor of the cash register through the window, detaching it from its cables and wires. Meanwhile, D1 stole a bundle of matches. The actions of D1 and D3 were caught on the CCTV camera of the Ya Nur Supermarket.

56. Both D1 and D3 returned to the vehicle with the stolen items. Once inside the vehicle, Person A immediately drove away. Inside the vehicle, the money from the cash register was divided among themselves. D3 then threw the cash register on the side of the road. They all then returned home.
57. At the time of the offense, D1 and D3 were wearing face masks and had their hoodies pulled up to conceal their identities.
58. On the 20th March 2024, at about 0735 hours, the Complainant, Fitrin Fathzullah, the Human Resources officer of Ya Nur was informed that Ya Nur Supermarket, Jalan Muara was broken into. The Complainant found two windows at Ya Nur Restaurant and Ya Nur Supermarket, the said supermarket's steel shutter was damaged, and the cash register set (the monitor and drawer) went missing from the said supermarket. The Complainant duly lodged a police report.
59. Police investigations led to the arrest of the Defendants. In the course of investigations, the Defendants admitted to committing the said offence. The value of the stolen cash register set was about BND \$250 which remains unrecovered.

For the Additional 15th Charge (against D1 only):

60. On 29th March 2024, sometime after midnight, D1 was driving together with Person A using a Mitsubishi Lancer vehicle heading towards Manggis. On their way, the said Mitsubishi Lancer ran out of fuel and stopped at the vicinity of SKH Sg Hanching. D1 and Person A walked to his friend's house nearby to ask for fuel, however the said friend was not at home.
61. D1 and Person A continued to walk until they reached the front of a house at No.488, Kg Sungai Hanching, Jalan Muara, in Brunei Darussalam (the said address) at about 0413 hours. D1 saw a Toyota Kijang bearing registration number KH 8275 parked at the vicinity of the said address. D1 initially intended to take fuel from the said vehicle, however D1 discovered one of the windows of the said vehicle was left ajar, and the door was not locked. D1 then entered the said vehicle and tried to use a pair of scissors to ignite the engine of the said vehicle.
62. Once D1 successfully ignited the engine of the said vehicle, D1 drove to Person A and told him to enter the said vehicle. D1's actions were caught by the CCTV camera of the said house.
63. D1 drove the said Toyota Kijang to get fuel for the said Mitsubishi Lancer from a gas station. Once they got the fuel, D1 drove Person A back to the said Mitsubishi Lancer

and left him there. D1 then continued to drive the said Toyota Kijang until he reached at a parking lot nearby a store at Simpang 274 and left the said Toyota Kijang there.

64. Few days later, D1 went back to the said Toyota Kijang and used it to find scrap metals. When he arrived at the vicinity of workshop areas in Kampong Menglait, D1 saw two license plates BAK 6153 and took it. D1 then changed the original license plates of the said Toyota Kijang, KH 8275 to BAK 6153. After a few hours of driving the said Toyota Kijang, D1 left the said Toyota Kijang at the same place at Jalan Pasir Berakas.
65. Few days later, D1 went back again to the said Toyota Kijang and used it for a few hours before abandoning it near an electrical substation at the vicinity of No.42, Simpang 24, Jalan Mahawangsa, Kampong Lambak.
66. On 29th March 2024, at about 0630 hours, the Complainant, Md Rezaul Karim discovered the Toyota Kijang bearing registration number KH 8275 with its content, was missing from the vicinity of No.488, Kampong Sungai Hanching, Jalan Muara in Brunei Darussalam. The Complainant duly lodged a police report.
67. Police investigations led to the arrest of the D1.
68. In the course of police investigations, D1 admitted to committing the above offence.
69. The value of the said Toyota Kijang together with its content was about BND \$4,780. However, only the said Toyota Kijang and the said welding machine were recovered.

Antecedent:

70. On records all the Defendants have previous criminal convictions.

D1:

71. D1 admitted that he was convicted for theft (s 379 PC) in 2019 where he was sentenced to 8 months' imprisonment. In the year 2020, he was sentenced to 3 years and 4 months and 2 strokes for house breaking by night. On record this is D1's second offence under section 457 PC.

D2:

72. D2 has a long history of conviction on theft related cases. His first theft offence was in 1992 and D2 repeatedly commits the same offence. In 2006, D2 was convicted for offence under section 379 PC where he was sentenced to a total of one-year imprisonment. In 2006, D2 was convicted for housebreaking offence under section 457 PC, where he was sentenced to 4 years and 3 strokes. In 2018, D2 was further convicted for multiple charges of theft related offences (section 379 PC, 457 PC) where he was

sentenced to 8 years and 2 months. D2 informed the court that he was released from Prison in February 2021.

73. On record this is D3 third offence under section 457 PC.

D3:

74. D3 admitted that he was sentenced to 2 months' imprisonment for offence under section 370 PC in 2020.

Mitigation:

75. In mitigation, all the Defendants sought lenient sentence and for this court to disregard their previous conviction in considering the appropriate sentence.

Court's Consideration:

76. I shall first deal with offence under section 457 PC.

Penalty under section 457 PC:

77. The penalty under section 457 PC warrants for Imprisonment sentence for a term which may extend to 5 years and with whipping, and, if the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

78. D1, D2 and D3 commit the multiple house breaking with the intention to commit theft offences. Therefore, the prescribe penalty is imprisonment may extend to 15 years and whipping.

79. In the case of **Public Prosecutor v Hassan Bin Hj Tahir [HCCT No.5 of 2002]**, Justice Dato Steven Chong (as he was then) stated that; *"House –breaking was very serious crime. Great distress was caused to victims who do not only suffered loss of property but often a feeling of insecurity. The Court had a duty to do all it could to protect members of the public against offenders like the defendant. It was necessary, therefore, that offenders be dealt with severely and by custodial sentences which had a deterrent effect"*.

80. In the case of **Daud Bin Hj Zainal vs Public Prosecutor (Criminal Appeal No: 11 of 2004)**, it was held that as a matter of public interest and protection of the public, house breaking warrants for a custodial sentence and it justifiable for a deterrent sentence.

Range of Sentencing:

81. Sentences for housebreaking by night in order to commit an offence, especially the offence of theft, in Brunei is prevalence and depending on the facts of the case, the sentence ranges between 4-5 years' imprisonment for first offender- **Ilham Syarif vs**

Public Prosecutor (Criminal Appeal No. 3 of 2009), Md Ihsan Bin Haji Awang Saini (Criminal Appeal No 12 of 2013).

82. 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. In the case of ***Mohammad Sharifudin Bin Haji Abdullah v Public Prosecutor [Criminal Appeal No. 3 of 2018]*** a starting point sentence of 6 years' imprisonment was considered appropriate for repeated offender for housebreaking.

Section 379 PC:

83. D1 and D3 also pleaded guilty to theft of vehicles. Both D1 and D3 took opportunity to steal cars and used it to commit the house breaking offences.
84. The penalty under section 379 PC warrants for an imprisonment sentence which may extend to 3 years, fine or both.

Appropriate Sentence:

85. Returning to this case, this is not D1, D2 and D3 first encounter with the law. D1 and D2 had multiple convictions on housebreaking offences and D3 had previous conviction of theft. D2 was released from the Prison for the same offence in February 2021.
86. Their modus operandi indicates that all the Defendants specifically targeted shops and restaurants, knowing these locations would likely have cash in the registers. The mode of entry was usually through the window/ front entrance which the D1 and D3 would pry using a screwdriver and scissors D1 and D3 equipped themselves to facilitate the break-ins. The Defendants also used the stolen car they stole to commit the break in to the shops, restaurant and clinic. Anti-Theft devices such as the CCTV did not prevent the Defendants from pursuing with their criminal enterprise. These factors tantamount to an aggravating factor. The stolen items were included cash, electronic items most of which were not recovered. The loss suffered by the victims are substantial.
87. These Defendants are serial burglars. They planned and executed the offence well. They are a danger to society, and the public must be protected from these Defendants. Therefore, a deterrent sentence must be passed in the interest of protecting the public. A lenient sentence will not deter and a clear message must be sent to those like-minded criminals that committing these offences will be taken seriously. I am unable to entertain their plea for leniency by disregarding their prior convictions during sentencing. Their poor record of previous offences is considered an aggravating factor, justifying an increase in the starting point of their sentence. There is nothing commendable about the Defendants' actions, apart from their guilty plea.
88. The appropriate starting for the Defendants are as follows:

Housebreaking by night with the intention to commit theft- Section 457 PC:

89. D1 and D2 are repeated offenders for house breaking.

D1:

90. D1 played an active role in orchestrating the offence, masterminding, directing, and providing the necessary resources alongside his accomplices. D1 and his accomplices committed 12 burglaries and 3 car thefts over three months (February to April 2024). Despite his prior convictions, he remained undeterred, demonstrating a blatant disregard for the law, authority, and the property of others.

91. For the said reason, I am of the view that the starting point of 7 ½ years' imprisonment (90 months) and 2 strokes of reduced to 5 years' imprisonment and 2 strokes of whipping would be appropriate for the reasons mentioned above.

D2:

92. D2 cannot be said to be less culpable. He drove D1 and D3 to commit the burglary. Knowing that it is an offence, being a third offence (last offence in 2018 where he was released in 2021). D2 showed lack of remorse and undeterred by his previous convictions. D2 last convictions in 2018, he was sentenced to 7 years and 3 strokes for a total of 9 charges of burglary and theft of cars.

93. For the said reason, the starting point of 7½ years' imprisonment (90 months) and 2 strokes of reduced to 5 years' imprisonment and 2 strokes of whipping would be appropriate for the reasons mentioned above.

D3:

94. As for D3, despite being first offender for house breaking by night offence, D3 and D1 committed the burglary like a professional thief. He equipped himself with tools. A starting point of 6 years' imprisonment reduced to 4 years' imprisonment and 2 strokes of whipping for first offender under section 457 PC.

Theft of vehicles under section 379 PC:

95. Following the case of ***PP v Rosazli bin Haji Metassan (Criminal Motion No.6 of 2018)***, a starting point of 18 months' imprisonment was imposed for each of the offences of theft of a motor car reduced in each case to 12 months' imprisonment to reflect the pleas of guilty. For each charge of theft of vehicles, I sentence D1 and D3 to 12 months' imprisonment.

Sentence:

96. Therefore, the sentences imposed on D1, D2 and D3 are as follows:

Amended 1st Charge (against D1 and D2 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D2: 5 years' imprisonment and 2 strokes of whipping

Amended 2nd Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 3rd Charge (against D1 only):

D1: 12 months' imprisonment

Additional 4th Charge (against D1 only):

D1: 12 months' imprisonment

Additional 5th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 6th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Amended Additional 7th Charge (against D1 and D3 only):

D1: 12 months' imprisonment

D3: 12 months' imprisonment

Additional 8th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 9th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 10th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 11th Charge (against D1, D2 and D3):

D1: 5 years' imprisonment and 2 strokes of whipping

D2: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Amended Additional 12th Charge (against D1 only):

D1: 12 months' imprisonment

Additional 13th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Additional 14th Charge (against D1 and D3 only):

D1: 5 years' imprisonment and 2 strokes of whipping

D3: 4 years' imprisonment and 2 strokes of whipping

Amended Additional 15th Charge (against D1 only):

D1: 12 months' imprisonment

Totality Principle:

97. The Defendants broke into different shops and stole cars from different owners. The Defendants used the car they stole to commit the break in to the shops, restaurant and clinic. The Defendants committed the offences on different individuals. Hence it warrants for a consecutive sentence.

Totality Sentence of D1:

98. D1 faces a total of fifteen (15) charges, both joint and individual charges. Of these 15 charges, 12 of these charges are offences under section 457 PC read with section 34 of the same.

99. The court imposed 5 years' imprisonment and 2 strokes for each individual charges for offence under section 457 PC read with section 34 of the same.

100. The remaining charges are theft of vehicle where D1 is sentenced to 12 months' imprisonment for each count.

101. A consecutive sentence for the whole of 15 charges would be manifestly excessive. To determine the appropriate sentence, I refer to the Court of Appeal decision for the case of **Azman@Asrol Bin Jaya v Public Prosecutor [2011] 2 JCBD 120**. In the case of **Azman@Asrol Bin Jaya**, he pleaded guilty to 14 charges of housebreaking by night, simple housebreaking, theft in a building, simple theft and mischief. Another 13 charges of housebreaking by night and simple housebreaking were taken into consideration. Davies, JA, delivering the judgment of the Court of Appeal, commented that the total sentence of imprisonment of 9 years and one month and 8 strokes “*while high was not manifestly excessive*” and the appeal was dismissed.
102. Similarly, in the case of **Ferry Pengiran v PP, Criminal Motion No 15 of 2020**, 9 years imprisonment and 5 strokes were imposed for pleading guilty to 17 charges of housebreaking contrary to section 457 of PC over a period of 7 months.
103. D1 and the other Defendants committed these 15 offences in a span of three months. For the reason mentioned above, I am of the view that a totality of 10 years’ imprisonment and 4 strokes of whipping would be appropriate to reflect the seriousness of the offence.
104. In order to achieve that, I hereby order for the 1st and 2nd charge to run consecutively with each other, which brings the total sentence of 10 years’ imprisonment and 4 strokes of whipping and the remaining charges to run concurrently with the 10 years’ imprisonment and 4 strokes of whipping.
105. Total sentence of D1 is 10 years’ imprisonment and 4 strokes of whipping.

Totality Sentence of D2:

106. D2 pleaded guilty to the 1st and 11th charges of housebreaking by night with intent to commit theft, contrary to Section 457 of the Penal Code read with Section 34 of the same. The court imposed a sentence of 5 years’ imprisonment and 2 strokes of the whipping for each offence under Section 457 PC.
107. I acknowledge that an overall sentence of 7 years’ imprisonment and 4 strokes of the whipping may initially appear slightly excessive. However, I find it appropriate, given the seriousness of the offence and D2’s status as a repeat offender.
108. To achieve a total sentence of 7 years’ imprisonment and 4 strokes of the whipping, I order that 2 years of imprisonment and 2 strokes of whipping from the 11th charge run to consecutively with the 1st charge (5 years’ imprisonment and 2 strokes of whipping). The remaining 3 years of imprisonment from the 11th charge shall run concurrently.
109. D2 is 56 years old. Section 258 of the CPC, no whipping shall be imposed on male over the age of 50. By virtue of section 258 CPC, D2 is exempted from whipping.

110. D2 is hereby sentenced to 7 years' imprisonment

Totality Sentence of D3:

111. D3 pleaded guilty to a total of 10 joint charges (2nd, 5th, 6th 7th, 8th, 9th, 10th, 11th, 13th and 14th charges).

112. He pleaded guilty to 9 joint charges of housebreaking contrary to section 457 PC read with section 34 of the same with D1 and one joint charge of theft of car with D1, offence under section 379 PC.

113. The court impose an individual sentence of 4 years' imprisonment and 2 strokes of whipping for housebreaking contrary to section 457 PC read with section 34 of the same and 12 months for theft of car, contrary to section 379 PC read with section 34 of the same.

114. This is D3's first conviction for housebreaking. However, he has prior conviction for theft under section 379 PC in 2020 where he was sentenced to 2 months' imprisonment.

115. D3 cannot be considered less culpable. D3 admitted with the facts of the case that he equipped himself with an L- wrenched tool and screwdriver to gain access in the commission of the offence demonstrating the behaviour of a professional thief. As mentioned above, housebreaking offence is a serious offence. An overall sentence of 6 years' imprisonment and 4 strokes of whipping is necessary to reflect the severity of the crime committed by D3.

116. To achieve the 6 years' imprisonment and 4 strokes of whipping, I order that 2 years of imprisonment and 2 strokes of whipping from the Addition 5th charge run to consecutively with the Amended 2nd charge, which brings a total of 6 years' imprisonment and 4 strokes of whipping. The remaining sentence - 2 years from the 5th charge, the 6th 7th, 8th, 9th, 10th, 11th, 13th and 14th charges- shall run concurrently with the overall sentence of 6 years' imprisonment and 4 strokes of whipping.

117. D3 is hereby sentenced to 6 years' imprisonment and 4 strokes of whipping.

Final Sentence:

118. The final sentence imposed on the Defendants are as follows:

D1: 10 years' imprisonment and 4 strokes of whipping

D2: 7 years' imprisonment

D3: 6 years' imprisonment and 4 strokes of whipping

119. I order for the Defendants' sentence to run from the date of their remand. And for all recovered items to be returned to the rightful owner.

PG MASNI PG HJ BAHAR
Judge, Intermediate Court