

Public Prosecutor

AND

Pengiran Ali Bin Pengiran Mohammad (D1)

Raubanizam Bin Hj Raub (D2)

Harisin Bin Hj Raub (D3)

(Intermediate Court of Brunei Darussalam)
(Criminal Trials No. 56 of 2023 & 58 of 2023 (Consolidated))

Pg Hj Norismayanti binti Pg Hj Ismail, Judge

Date of Judgment: 16th October 2025

Criminal law – Judgment – D2 and D3 only – house breaking by night with intent to commit theft - common intention - Jointly charged with D1 under s. 457 of the Penal Code, Cap 22 read with section 34 of the same – trial.

PO Mohammad Kamal Ariffin bin Ismail for Public Prosecutor.

D2 and D3 In Person and Unrepresented.

J U D G M E N T

Pg Hj Norismayanti, Judge:

Introduction

1. Pg Ali bin Pg Mohammad (D1/PW6), Raubanizam bin Hj Raub (D2) and Harisin bin Hj Raub (D3) faced a joint charge for housebreaking by night under section 457 of the Penal Code, Chapter 22. On the 16th January 2024, D1 pleaded guilty to the charge and was sentenced to 3 years and 4 months' imprisonment on the count of his guilty plea. Both D2 and D3 pleaded not guilty and claimed trial.

Charge

2. The following is the joint charge faced by both D2 and D3:

"That all of you, on the 12th day of December 2023, at about 0200 hours, at house addressed at No. 3, Simpang 38-22, Jalan Pengasing, Kampung Sengkarai Tutong, in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said house, in the possession of Hj Shahrani bin Hj Manan, used 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 you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 22, read with section 34 of the same."

Penalty

3. The penalty prescribed under this section 457 is imprisonment 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.

Prosecution's Case

4. It is the prosecution's case that all 3 defendants committed the offence of house breaking as charged. 9 witnesses were called to testify against D2 and D3 including the former co-defendant Pg Ali bin Pg Mohammad (D1/PW6).

Evidence of PW1 and PW2

5. The alleged incident of housebreaking took place on the 12th December 2023 at about 2.00 a.m. at a house No.3, Simpang 38-22, Jalan Pengasing, Kampung Sengkarai Tutong (the said house). At the time, the complainant, Pg Hajah Kamilahwati binti Pg Hj Mahadar (PW1) was in her bedroom at the said house when she noticed the bedroom door knob being slowly turned from the outside, giving the impression that someone was trying to open the door. As the door was about to open, PW1 held the door shut and shouted "*Pencuri! Pencuri!*" and threatened to call the police. A short time after, PW1 found the main door of the house was left open. She also discovered that the window adjacent to the main door was open and the lock was damaged. PW1 confirmed in her evidence that prior to the incident, all the doors and windows of the house had been properly secured. PW1 then lodged a report with the Tutong Police Station on the same day. PW1's evidence is further corroborated by her husband Hj Shahrani bin Hj Manan (PW2). It is his evidence that he heard his wife slam the bedroom door and heard her shout "*Pencuri! Pencuri!*". PW2 also confirmed that after the incident, the main door and the adjacent window were left open and the lock of the latter was damaged.

Evidence of PW3 and PW4

6. Noor Amal Aziemah binti Mohammad Noor Halim Shah (PW3) gave evidence on receiving and preparing the First Information Report ("*FIR*"/exhibit P6) from PW1. The report was made on the 12th December 2023 at 3.26 p.m. According to the report, PW1 lodged a complaint regarding housebreaking. The prosecution also introduced an album of photographs (exhibit P8) taken at the scene of the incident by Sgt 4218 Zainul Ariffin bin Mahmud (PW4). The FIR and the P8 were all handed over to L/CPI 6930 Helfi Afundi bin Rosdita (PW5).

Evidence of PW5

7. L/CPI 6930 Helfi Afundi bin Rosdita (PW5) testified as the Assistant Investigating Officer assigned to this case. PW5 stated that he and his team arrived at the scene on the same day at about 3.30 a.m. Upon arrival, he met with PW1 and PW2 and proceed with the investigation. PW5 prepared a rough sketch (exhibit P10) of the premises, while PW4 documented the scene with photographs (P8).

8. PW5 further testified that based on the investigation and the arrest of Fayrul Anuar (PW9) and Abd Hafiz (PW8), it was suggested that four (4) individuals were involved in the incident. PW5 identified these individuals as Harisin bin Hj Raub (D3), Raubanizam bin Hj Raub (D2), Jasne bin Hj Abd Rahman (PW7) and Pg Ali bin Pg Muhammad (D1/PW6). According to PW5, during the recording of Jasne's police statement, he stated that he was dropped off by Hafiz (PW7) and Fayrul Anuar (PW9) at Jalan Pengasing Sengkarai Tutong together with D1(PW6), D2 and D3. PW5 relied also on the police statement of D1, in which D1 admitted climbing over a gate together with D2 and D3 at the Pengasing house. D3's statement showed that he entered the main door, which was opened by D2, who entered through a window. In D1's statement, he further stated that he and D3 stayed on the ground floor looking for items to steal while D2 went to the upper floor of the house. It was after they heard the complainant shouting that all three of them darted out of the house, climbed over the gate and ran away in separate directions.
9. During his cross-examination by D2, PW5 agreed that D2 did not plead guilty in his statement and that he said he was allegedly elsewhere at the time of the incident. PW5 also agreed that apart from the witnesses' statements, there were no other evidence to prove D2's involvement in the case. PW5 also disagreed with D2's assertion that D1 and Hafiz's story about his involvement were all lies. Further, during his cross-examination by D3, PW5 denied that D3 was injured and unwell for his police statement to be recorded. PW5 also disagreed with D3's assertion that he was not involved and that his conclusion that D3 was involved is based on D1/PW6's police statement that D3 participated in the housebreaking incident.

Evidence of PW6

10. Next in the prosecution's case is the evidence of the former co-accused Pg Ali bin Pg Muhammad (D1/PW6). PW6 prepared a statement (exhibit P11) for the court as part of his testimony. According to PW6's evidence, on the night of 11th December 2023, he went to Tutong with D2, D3, Jasne (PW7), Hafiz (PW8) and Fayrul Anuar (PW9) in two separate Avanza vehicles. According to PW6, the white Avanza was driven by D2, with PW8 as the front passenger and himself sitting at the back. The black Avanza was driven by PW9 with PW7 and D3 as the passengers. They all met at the back of a building in Tutong to park the white Avanza and used the black Avanza to head towards the house in Kg Sengkarai. When they arrived at the said house, PW6 stated that PW7, D2, D3 and himself alighted from the black Avanza in front of the house while PW8 and PW9 left the scene in the said black Avanza. According to PW6, PW7 waited outside the gate facing towards the front of the house.
11. He also identified references to the names "Risen", "Jam" in the statement as D3 and D2 respectively. In his court testimony, PW6 identified photo TT23-7295 in album P8 as part of the gate that they climbed over on the night in question. PW6 also identified photos TT23-7299 and 7300 showing the window that was pried open by D2 and photo TT23-7312 as the main door that was opened by D2 to let them in. PW6 also admitted in his court testimony that by breaking into the house, they had intended to steal but they did not manage to take anything at the time.
12. During cross-examination by D2, PW6 disagrees with D2's claims that he was never involved in the housebreaking and denies with D2's assertion that all his evidence in his police statement were all lies. PW6 also disagreed that D2 was at his home at the time of the incident. PW6 also denied that he was lying about D2's involvement because of D2's assertion that he had scolded him before about his car problem. PW6 also asserted that Baba, Hafiz and Kojek can support his statement that he was dropped off at the scene of the incident together with D2 and D3. Upon his cross-examination by D3,

PW6 disagreed with D3's claims that he did not know anything about the charge, that he did not commit the offense, he was never out with PW6 that evening and that he was at his fiancée's house at the time of the incident. PW6 also disagreed that he was forced into giving his statement to the police. Further, under re-examination, PW6 gave evidence that he did not hold any grudges against D2 and D3 and that he was telling the truth.

Evidence of PW7

13. Jasne bin Haji Abd Mokim/PW7's testimony basically corroborates the evidence given by PW6. He testified that in the evening of the 11th December 2023, between 6.00 p.m. and 7.00 p.m., he had travelled to Tutong in two separate Toyota Avanza vehicles, with the same group of people mentioned by PW6. Similarly, PW7 testified that they left the White Avanza behind the Pizza Hut building in Tutong, and went to the targeted house in the Black Avanza. Upon their arrival, PW7 stated that he got out of the car together with D2, D3 and PW6, following instructions from D3. PW7 further testified that he witnesses D2, D3 and PW6 climb over the gate of the house, highlighting photo TT23-7295 of P8, while he remained outside the gate. PW7 then testified that he saw the main door was open and he assumed that the D2, D3 and PW6 managed to enter the house. It was approximately 10 minutes later that PW7 heard loud shouting coming from inside the house and he then saw D2, D3 and PW6 climb back over the gate and then they ran off in different directions.
14. During cross-examination by D2, PW7 admitted he was unsure of the clothes that D2 was wearing on the night of the incident but confirmed that D2 was at the scene since he can recall all the faces present that night. It is also his evidence that he definitely saw D2 climb over the gate and that D2 was the driver of the White Avanza. During his cross-examination by D3, PW7 disagrees with D3's assertions that he was not involved. PW7 also clarified that he did not see them enter the house but he did see D2, D3 and PW6 climb over the gate of the house. PW7 also identified D3 as the man he referred to as "Marisin". He further clarified that although he could not remember the clothes D3 was wearing that night, he can still remember their faces.

Evidence of PW8

15. Abdul Hafiz bin Hj Othman (PW8) also provided corroborative evidence to PW6 and PW7's evidence. He also positively identified D2 and D3 in "Jam" and "Risen". PW8 admitted that he was together with D2, D3, PW6, PW7 and Fayrul Annuar (PW9) as part of the group that travelled to Tutong in two separate Avanza vehicles on the early morning of the 12th December 2023. He similarly testified that he, PW6, D2 and PW8 were in the black Avanza and D3, PW7 and PW9 were in the white Avanza. Upon arrival in Tutong, they parked their car behind Pizza Hut building. They all then left the White Avanza parked behind the building while they all got into the black Avanza and headed to the said house which he identified in photos TT23-7293 and 7294. PW8 also corroborated that D2, D3, PW6 and PW7 were dropped off near the junction close to the house and PW8 together with PW9 drove away and left the scene in the black Avanza.
16. During the cross-examination, PW8 denied that he was not telling the truth and confirmed that he clearly remembered the event on the night of the incident and maintained that D2 and D3 were both present at the scene of the incident. PW8 did however give evidence that whilst in the police van, the police questioned D3 repeatedly to the point that D3 could not talk anymore and admitted to the offence. PW8 stated that it looked forced on D3. He also agreed with D2 that he was not with D2 from 12 am to 1 am on the 12 December. However, in re-examination, PW8 clarified that he was last

together with D2 and D3 at around 1 am on the 12th December at Kg Pengasing, Sengkarai. He confirmed that he saw D2, D3, Pg Ali and Kojek got out of the car at Kg Pengasing.

Evidence of PW9

17. Fayrul Annuar bin Yaakub (PW9) essentially supports PW8's evidence. Similarly, PW9 testified that all of them including D2, D3, PW6, PW7 and PW8 were altogether during their travel to Tutong in the black Avanza and white Avanza. He backed up PW8's story that both cars were parked behind the Pizza Hut building upon their arrival in Tutong. Thereafter, they all went into the black Avanza and headed towards Tutong beach. Further in his evidence, D3 told him to take a turn at Jalan Pengasing and stop outside a house. PW9 stated that they left the area in the black Avanza after dropping of D2, D3, PW6 and PW7 at Jalan Pengasing near the junction shown in photos TT23-7293 and 7294. There is however a slight discrepancy in his testimony where unlike the other witnesses before him, PW9 stated that he did not mention D2 in paragraph 6 of his section 117B statement because he must have overlooked it but he was sure that D2 was already in the black Avanza when they left Sinarubai heading to Tutong.

D3 - Harisin bin Hj Raub's written police statement (exhibit P15)

18. The prosecution also relies on the police statement (P15) given by D3 on the 26 December 2025. P15 was ruled given voluntary and admissible after a voir dire hearing. In P15, D3 admitted to have driven to PW9's house at around 10.00 am on the 11th December 2023 using his Lancer CB1 to hang out and fix his car. Whilst at PW9's house, he sought assistance from D2 and PW9 to help pick up their relative's car, a white Avanza because she was going out with her boyfriend. D3 then stated that he, together with D2 and PW9 made their way to collect the car using a blue Vitara. Upon arrival to their intended destination, D3 saw D2 alight from the car and went to collect the keys to the white Avanza. All three of them then returned back to PW9's house with D2 driving the white Avanza and PW9 driving the black Avanza.
19. Further in P15, D3 claimed that D2 told him, PW9, PW7, PW6 and PW8 to commit theft and that there was a house in Pengasing, Sengkarai which he believed to be unoccupied. After heading towards the said house in the black Avanza, D3 asserted that he, D2, PW6 and PW7 got out of the car and PW8 and PW9 proceeded to leave the vicinity. He then saw D2 and PW6 climb over the gate before himself whilst PW7 stayed behind as a look out.
20. D3 then claimed he saw D2 use an object to pry open a window in order to break-in. Thereafter, D2 opened the main door from the inside to let D3 and PW6 into the said house. He further states that he heard someone shout from the upper floor where D2 was looking for items to steal. Upon hearing this, D3 and PW6 immediately fled from the said house through the main door and climbed over the gate and went their separate ways. D3 also claims that D2 planned the housebreaking at the said house.

Defense case

21. At the end of the prosecution case, the court ruled that there was a prima facie case for the defendants to answer. D2 chose to remain silent. D3 chose to give evidence and call witnesses in his defense.

Harisin bin Hj Raub (D3/DW1)

22. D3 testified that on 11th December 2023, between approximately 11:30 AM and 12:00 PM, he proceeded from his fiancée's residence in Penanjong to PW9's house in Sinarubai to check on his Mazda vehicle which was undergoing repairs. Initially, he stated he was alone; however, he later clarified that PW6, PW8, and PW9 were present in the parking lot, along with individuals identified as 'Alak' and 'Sukur'. PW7, identified as Jasne, arrived later at about 5:00 PM.
23. Further, D3 stated that at approximately 10:00 PM on the same day, D2 arrived in his Vitara vehicle for repairs. Coinciding with this, D3 stated that he received a telephone call from DW2 asking him to collect her Avanza vehicle from A. Ayam Restaurant in Bengkurong. D3 and D2 then travelled there using PW7's black Avanza. Upon collecting the car keys from DW2, D3 informed her that he intended to leave her car keys with PW9 between 10:30 PM and 11:00 PM.
24. Subsequently, D3 asked D2 to drop him off at his fiancée's house in Penanjong using D3's Lancer CB1, given that D2's Vitara was still undergoing repairs. En route, they returned to Baba's house after D2 realized he had forgotten personal belongings in the black Avanza. Upon return, both Avanza vehicles, along with other vehicles present, had departed. D2 then left for Kg. Bolkiah in his Vitara, while D3 proceeded to his fiancée's house.
25. D3 stated that he arrived at his fiancée's residence at approximately 12:55 AM, thereafter he took a shower lasting about 10 minutes. He then had a meal prepared by his fiancée, which they ate together in her room between 1:00 a.m. and 1:30 a.m. and watching the movie *Kingsman* at the same time. They continued to watch television until around 3:00 a.m. before going to sleep. The following morning, they awoke at approximately 7:00 a.m.
26. Under cross-examination, D3 reaffirmed that he showered upon arrival at his fiancée's residence and subsequently had a meal with her. He could not recall the clothing his fiancée wore at that time. He reiterated that they went to sleep at around 3:00 a.m. and awoke at 7:00 a.m. D3 further testified that he traveled to Kampong Bolkiah later in the afternoon.

Norzillah binti Nassar (DW2)

27. In DW2's evidence, she corroborated D3's evidence stating that she called him on the 11th December 2023 at around 10.00 p.m. to 10.30 p.m., asking him to pick up her white Avanza vehicle before she left to go out with her boyfriend. She further testified that D3 informed her he would leave the car keys at PW9's house because he could not return home late. DW2 further acknowledged that he knew PW9 through D2 and D3 but could not recall PW9's appearance or real name. She was aware that PW9 resided at Kg. Sinarubai.
28. Further, DW2 confirmed receiving WhatsApp messages from PW9 concerning her vehicle's license plate, which had been changed without her consent. She stated she did not know the whereabouts of the key after D3 handed them to PW9, nor who transported the vehicle to Tutong on the night of

the 11th December 2025. She learned from PW9, via a call at dawn, that he was at Tutong Police Station. DW2 agreed with D3 that D3 was not involved in any housebreaking incident.

29. However, during cross-examination, DW2 gave a contradictory account. She testified that she met D3 at A. Ayam Restaurant after 11:00 p.m. and personally handed over the car key to him, in the presence of D2. She was also inconsistent with her police statement when she testified that she was waiting in her boyfriend's van when she handed the key to D3 but in her police statement, DW2 stated that she was waiting in her car when she handed over the key. She then confirmed that D3 told her he would leave the keys with PW9 due to his inability to return home late, which contradicts her earlier statement that she had a brief conversation with D3 before he left in her white Avanza, and that the keys would be left with PW9.
30. Further during cross-examination, DW2 also agreed in court that, contrary to her earlier oral testimony, she had in fact given her car key to D2, not D3, as stated in her police statement (exhibit P16). She accepted that her police statement was more accurate and reliable than her testimony in court.

Dr Mohammad Yusri bin Mohd Yusof (DW3)

31. DW3 was called as a witness for D3 in his capacity as the medical doctor who examined D3 while he was remanded at Maraburong Prison pending trial. Although DW3 did not recall D3 personally, he confirmed having attended to him on multiple occasions. He gave evidence that he had limited recollection of the details of D3's injuries and based his assessment on clinical records maintained in the BruHims system. He stated that D3 complained of pain in his left ribs and was prescribed Paracetamol and Ibuprofen. DW3 did not recall D3 mentioning any assault by CID officers, however, the clinical notes recorded an allegation that D3 was kicked by a law enforcement officer.
32. Under cross-examination, DW3 reiterated his limited memory of the consultation and confirmed that his findings were based solely on the clinical notes. He was unable to verify whether D3 had, in fact, been kicked by a law enforcer. Upon physical examination, DW3 found no abdominal injuries; the abdomen was soft, non-tender, and no visible or obvious injuries were recorded in the medical notes. However, according to the clinical notes, there was tenderness on the 6th and 7th rib on the left side of his body. DW3 further states that it would be difficult to tell if a patient is faking pain or injury.

Ellina binti Ali (DW4)

33. DW4 is D3's fiancée and his alibi witness. DW4 basically confirms and support's D3's testimony regarding his whereabouts between the 12.55 a.m to 7.00 p.m. of the 12th December 2023. It is her evidence that D3 arrived at her house in Kg Penanjong, Tutong at around 12.55 a.m. to 1.00 a.m. using his brown Mitusbishi Lancer CB1. She corroborated D3's story that upon his arrival at her house, he took a shower and ate food she prepared together in her bedroom whilst watching a movie called "Kingsmen". They then slept around 3.00 a.m. until the early morning. DW4 confirmed that D3 stayed in her room and did not leave the room until around 7.00 a.m. to 8.00 a.m.
34. Further, DW4 testified that she and D3 went to Kg Keriam at around 4.00 p.m. and thereafter visited D3's family in Kg Bolkiah before returning to Penanjong so that D3 could meet a friend. DW4 claims

that D3 was not involved in the alleged offense and confirmed that she was giving evidence voluntarily and was not forced or coached by anyone.

35. During her cross-examination, DW4 stated that she saw D3 when she woke up that morning and she made him a drink. She recalls that D3 went for a smoke break before he returned back to sleep. She also recalls that her children were not in school at the time because of the school holidays. Contrary to D3's testimony, she did not wake up at 7.00 a.m. to send her children to school. In fact, DW4 stated that she remained in her room until noon. She however did corroborate D3's story that they went to Kampong Keriam before going to Kampong Bolkiah later in the day.
36. Further during cross-examination, DW4 disagreed with D3's testimony that she sent her children to school that morning because they were on a school holiday. She also disagreed with D3's testimony that he woke up around 9.00 a.m. to 10.00 a.m. that morning stating that he was a forgetful person. She also disagreed that D3 took a shower after he woke up, ate with DW4 after and also played mobile games. DW4 also recalls providing the police with a statement regarding the night turning the 12th December 2023. Importantly, DW4 agreed with the prosecution that her testimony is inconsistent with the police statement (exhibit P16) that she voluntarily gave.

Considerations and findings

Evidence of PW1 and PW2

37. Evidence of PW1 and PW2 are accepted to prove that a house break-in did occur on the 12th December 2023 at about 2.00 a.m. at the stated address. Both witnesses are deemed credible witnesses and the court accepts their evidence in its entirety.

Evidence of PW3 and PW4

38. The court also finds no issue on the testimony of PW3 and PW4 and accepts their evidence accordingly.

Evidence of PW5

39. The court finds the evidence of PW5 to be credible and consistent with the investigation. His evidence outlined the investigative steps taken in the case, the preparation of a rough sketch, photographic evidence and the recording of police statements. PW5's evidence was supported by police statements from witnesses and suspects and identified D1, D2, D3 and PW7 as the individuals involved in the housebreaking. The account of the events, as described in these statements, was coherent and detailed, describing the manner of entry and the subsequent flee from the premises upon the complainant's alarm.
40. The court also considers that apart from witnesses' statements, PW5 acknowledged that there was no other direct evidence proving D2's involvement, and that D2 denied involvement but the court also notes that PW5 rejected D2's assertions that the statements implication of D2 are false. Similarly, PW5 rejected D3's claim of non-involvement and denied that D3 was unfit to provide a police statement due to injury or illness. The court further considers that PW5's conclusions on D3's involvement is largely based on D1's police statement.

Evidence of PW6, PW7, PW8 and PW9

41. After careful consideration of the evidence presented by PW6, PW7, PW8 and PW9, the court makes the following findings: The testimonies of PW6, PW7, PW8 and PW9 are generally consistent in identifying D2 and D3 as part of the group who travelled together to Tutong on the night of the 11th December 2023 using two Avanza vehicles - one black and one white in colour. However, the court finds that PW9 provided an inconsistent account on the passengers inside each vehicle on that particular trip.
42. Specifically, PW6, PW7 and PW8 testified that D2 drove the white Avanza together with PW6 and PW8 as passengers, while D3 and PW7 were passengers in the black Avanza driven by PW9. On the other hand, PW9 stated that the black Avanza was driven by PW7 and the passengers were D2, D3 and PW6, and that he drove the white Avanza with PW8 as a passenger. The court finds this discrepancy to be a minor inconsistency that does not significantly affect the overall reliability of their testimonies, given the substantial agreement among all four witnesses.
43. All witnesses consistently stated that the white Avanza was parked behind the Pizza Hut building in Tutong before proceeding to Kg Sengkarai in the black Avanza. PW6 and PW7 testified that they, together with D2 and D3 all alighted from the black Avanza at the junction of Jalan Pengasing, after which PW8 and PW9 left the scene in the black Avanza. PW8 and PW9 confirmed PW6 and PW7's testimony that after dropping off D2, D3, PW6 and PW7 at the scene, PW8 and PW9 left the scene as testified by PW6 and PW7. The evidence is sufficient to establish that D2, D3, PW6 and PW7 were near the place of incident on the night in question.

Crucial testimony of PW6

44. The court finds that the crucial evidence implicating D2 and D3 is that of PW6, who is also identified as D1, their former co-accused. PW6 provided direct evidence that D2 and D3 were with him at the time of the break-in at the residence of PW1 and PW2 in Kg Sengkarai, Tutong. PW6 gave his evidence confidently and without hesitation, asserting clearly that D2 and D3 accompanied him and PW7 to the vicinity of Jalan Pengasing, near the complainants' house.
45. PW6 gave a detailed account of the events at the scene. He testified that while PW7 remained outside the gate, he, together with D2 and D3, climbed over the gate into the compound. PW6 observed D2 prying open a window, after which D2 entered the house through that window. Subsequently, D2 opened the main door to allow D3 and PW6 to enter. PW6 candidly admitted that their intention was to search the house for items to steal.
46. Moreover, PW6 testified that D3 proceeded to the upper level of the house while he and D2 stayed on the ground floor. This evidence is consistent with PW1's testimony, who stated that she saw her bedroom door knob being turned, indicating an attempted entry into the bedroom.
47. Importantly, PW6 testified that they all fled the scene upon hearing a scream from inside the house. This corresponds with PW1's account that she screamed when she suspected someone was trying to

open her bedroom door. Additionally, PW6's evidence aligns with PW2's statement that there was damage to the window adjacent to the main door—the same window PW6 said D2 had pried open.

48. The consistencies between PW6's testimony and those of PW1 and PW2 strengthens the credibility of PW6's account implicating D2 and D3 in the break-in. After careful consideration, the court is satisfied that PW6 is a credible and reliable witness and accepts his evidence accordingly.

Submissions by D2

49. The court notes that D2 elected not to testify in his own defense and did not call any witnesses to support his case. He was duly informed and fully aware that by remaining silent, the court is entitled to draw such inferences as it deems proper from his refusal to give evidence, including any adverse inferences against him.
50. After choosing to remain silent, D2 stated that he relied solely on his police statements, which he mentioned in his submissions in reply to the prima facie case. The court, however, finds the statements carries no evidential weight. Since D2 neither affirmed nor formally submitted the statement as evidence during the trial and maintained silence throughout, the prosecution was deprived of the opportunity to cross-examine him about it. In these circumstances, the court will disregard and reject the statements as evidence. I have also given due consideration of his final submissions in assessing the relevant witness testimonies.
51. After a careful and thorough evaluation of all the evidence presented, particularly the detailed and consistent testimony of PW6, and in the complete absence of any credible or substantive evidence from D2 in his defense, the court finds that the evidence clearly establishes that D2 unlawfully entered the premises with the intention to commit theft. The court finds that no reasonable explanation other than D2's guilt can be reasonably inferred from the facts and evidence before it. Accordingly, having considered both the evidence and the adverse inferences permissible due to D2's silence, the court hereby finds D2 guilty of the offence of housebreaking with intent to commit theft.

Evidence of D3 (DW1) and DW4

52. The crux of D3's defense is an alibi. He claims that at the material time of the housebreaking, he was at his fiancée's house (DW4) in Kg Penanjong and therefore could not have participated in the incident at Kg Sengkarai. Accordingly, the strength of his defense depends largely on the credibility of his own testimony and that of his alibi witness, DW4. However, upon thorough and careful consideration of the evidence presented by D3 and DW4, the court finds several inconsistencies in both testimonies, which significantly weakened the reliability of their evidence. The court does acknowledge, however, that the minor inconsistencies relate to the timing of certain events between 1.00 a.m. to 3.30 a.m. - namely when D3 took a shower, ate in DW4's room and watched television, and went to sleep, all of which allegedly occurred between 1 am to 3.30 am that early morning.
53. After careful consideration, the court finds that the following are the main inconsistencies:
- (i) D3 claimed that he was wearing a t-shirt and long pants when he arrived at DW4's house, DW4 however testified that D3 was wearing a football jersey top and short pants;

- (ii) After falling asleep around 3.00 a.m., D3 stated that he woke up briefly around 7.00 a.m. and went back to sleep, DW4 on the other hand stated that when D3 woke up that morning, she made him a drink and he went for a smoke break before going back to sleep;
- (iii) D3 claims that DW4 woke up at 7.00 a.m. to send her children to school but DW4 disagreed with D3's testimony as her children were on school holiday and thus she did not have to send her children to school;
- iv. D3 then said he woke up around 9.00 a.m. to 10.00 a.m. but DW4 states that she had stayed in her room from early morning to midday and D3 only woke up around 12 to 1.00 p.m. and;
- v. D3 claimed that he and DW4 left for his mother's house in Kg Bolkiah in the afternoon but DW4 states that they were still at her house in the afternoon and only left for Kg Bolkiah around 3.00 p.m.

54. D3 also asserted that PW9 had a motive to implicate him in the housebreaking incident, alleging that he had expressed anger towards PW9 for failing to repair his car properly. According to D3, PW9 retaliated by fabricating the story that D3 was involved in the housebreaking. While this assertion may appear convenient, it does equate the gravity of the incidents involved. Moreover, I also find insufficient evidence to support this claim and it is therefore dismissed.

55. Aside from the inconsistencies referred to earlier, the court cannot ignore the fact that DW4's police statement (exhibit P17) did not account for the detailed testimony she provided in court. DW4 mentioned D3's arrival at her house after 12 midnight on the 12th December 2023, she invited him to eat and watch television and then sleep. He did not leave the house after that and recalls still being with him in the afternoon and specifically remembers him asking her who she was texting on her mobile phone. DW4 then ended her statement stating that D3 went to sleep. DW4 did not mention anything about going to Kg Keriam to eat at a restaurant or to Kg Bolkiah in the afternoon of the 12th December. D3 also never mentioned this fact in his statement. There is a clear discrepancy in the statement given by DW4 as opposed to her oral testimony.

56. The court also takes into consideration the fact that DW4 had the opportunity to meet D3 prior to his arrest on the 26th December 2023 and also during his remand where DW4 claims to have visited him at least once a month. The prosecution submits that the notion that DW4 fabricated her evidence in favour of the defendant's defense cannot be ignored.

D3's police statement (exhibit P15)

57. A further reason to doubt D3's credibility and reliability of his court testimony is his police statement (P15). In his statement, D3 basically admits to participating in the housebreaking as charged. This is in total contrast from his court testimony. P15 is also consistent with the evidence given by PW6, PW7, PW8 and PW9.

Overall findings

58. After careful consideration and analysis of the prosecution evidence and the defense evidence, the court makes the following findings:

- (i) The court finds that a house break-in occurred on the 12th December 2023 around 2.00 a.m. at the stated address, based on credible and consistent evidence from PW1 and PW2.

- (ii) The testimonies of PW3, PW4 are accepted without issue.
- (iii) PW5's evidence forms a significant part of the prosecution's case. While some limitations exist regarding direct evidence against D2, the overall investigative findings, including the corroborated police statements, support the involvement of both D2 and D3 beyond a reasonable doubt.
- (iv) Witnesses PW6, PW7, PW8, and PW9 provide generally consistent accounts identifying D2 and D3 traveling together to Tutong on the night in question. Minor discrepancies in their testimonies, particularly from PW9, are found to be insignificant and do not affect their overall reliability. Their evidence sufficiently establishes that D2, D3, PW6, and PW7 were in the vicinity of the place of incident.
- (v) PW6, who is also D1 and a former co-accused, provides crucial, detailed, and credible evidence directly implicating D2 and D3 in the break-in. His testimony aligns closely with PW1 and PW2's accounts regarding the attempt to enter the complainants' house, the actions at the scene, and their flight after a scream was heard. The court accepts PW6's evidence as reliable.
- (vi) Based on the testimony of DW3 and the clinical records, the court finds that D3 experienced tenderness in the left rib area; however, there is no conclusive medical evidence to substantiate the alleged assault by law enforcement officers. The evidence regarding the injury is limited and does not satisfy the standard of proof beyond a reasonable doubt.
- (vii) D2 elected not to testify or call any witnesses and relied solely on his police statements, which the court disregards due to lack of cross-examination. Considering the strong prosecution evidence and D2's silence, the court finds D2 guilty of housebreaking with intent to commit theft.
- (viii) D3's defense rests on an alibi supported by his testimony and that of DW4. However, the court finds multiple significant inconsistencies and contradictions in their evidence, weakening the credibility of the alibi. DW4's in-court testimony also differs markedly from her police statement, raising further doubts about reliability. The court notes the possibility of fabrication influenced by DW4's contact with D3 during remand.
- (ix) D3's own police statement admits to involvement in the housebreaking, conflicting with his trial testimony but consistent with the prosecution witnesses.

Final Conclusion

59. Overall, the court finds the prosecution evidence establishing D2 and D3's presence and participation in the housebreaking to be credible and convincing beyond a reasonable doubt, while the defenses offered lack sufficient credibility or explanation. The court therefore finds both D2 and D3 guilty as charged under section 457 of the Penal Code, Cap 22.



PG HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court

