

Public Prosecutor

AND

Muhammad Kamarul bin Kamsul [D1]

Hamdan bin Juki [D2]

Sardini bin Mohd Salleh [D3]

Mohammad Amir Rashid Al Islam bin Abdul Rahman [D4]

Mohammad Madani bin Abdullah @ Lai Chung Sien [D5]

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.21 of 2022)**

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge
18th November 2023

Criminal Law: D3 and D5 only – gang robbery – ambush - theft of a gold necklace and \$3000 cash - section 395 of the Penal Code, Cap 22 – plea of not guilty.

DPP Hjh Attiyah Azzahra POKLSDSLJ Hj Abas for Public Prosecutor.
D3 and D5 Appear In Person (Unrepresented)

Cases cited:

Rosizan bin Jumaat v Public Prosecutor (*Criminal Appeal No.9 of 2021*)

Phan Duc Luc v Public Prosecutor (*Criminal Motion No.39 of 2017*)

J U D G M E N T

Dk Hjh Norismayanti, Judge:

Background

1. This is a case of an alleged robbery involving all five (5) of the above-named defendants. For the record, D1, D2 and D4 have all been convicted of the said charge and are currently serving their sentence. The matter before the court only concerns Sardini bin Mohd Salleh (D3) and Mohammad Madani bin Abdullah (D5) who have entered a plea of not guilty. They are both facing a joint charge of committing theft and in the commission of the offense had caused fear of hurt to, Jong Kiam Kong (“complainant/PW1”). The defendants allegedly stole one (1) gold necklace and cash monies amounting to \$3,000.00 from the said complainant.

Charge

2. The joint charge reads as follows:

“That all of you, on the 21st day of March 2022, sometime between 2200hours and 2300hours, at house address No.12, Simpang 61, Jalan Ban 4, Mulaut in Brunei Darussalam, committed theft of one (1) gold necklace and cash monies amounting to BND\$3000.00 belonging to one Jong Kiam Kong (male, Malaysian national, 45 years old) and in committing the said theft all of you have caused fear of instant hurt to the said Jong Kiam Kong, all of you have thereby committed the offence of gang-robbery punishable under Section 395 of the Penal Code, Chapter 22.”

Penalty

3. The offense carries a penalty of imprisonment for a term not exceeding 30 years and whipping with not less than 12 strokes.

Prosecution’s case

4. The prosecution called a total of 11 witnesses to prove their case. The prosecution’s case focuses on the evidence against D3 and D5 and relies significantly on the evidence of accomplices (D1, D2 and D4) who have pled guilty to the charge. The court will now consider the main evidence adduced by the prosecution below.

Evidence of PW1

5. According to PW1’s evidence, on the night concerned, he and his friends were gambling at his house when suddenly, they heard a loud knocking sound. The loud sound made PW1’s friends all flee. It was then that PW1 saw two men enter the storage area beside his house where he was gambling. He described one man as “fat” whom he later identified as D3 and described the other man as “thin”. He recalls the thin man hitting him on the hand, back and head using a stick. D3 then allegedly pulled at his waist pouch containing \$500. Feeling scared, PW1 told D3 not to pull at his pouch and instead, he gave D3 the money from inside the pouch. D3 then pulled at his gold necklace and took PW1’s mobile phone.
6. PW1 wanted his handphone back so D3 told him to get into PW1’s car, a Pajero with registration number KF6129 (“the Pajero”), parked within the compound of PW1’s house. After PW1 got into the back seat of the car, D3 and the “thin” person got into his car. The thin man then drove the Pajero heading to Ban 5 whilst D3 sat at the back of the car with him. D3 then patted PW1’s trousers and took his wallet which contained \$2,500. During his cross-examination, PW1 gave evidence that he feared DW3 who pulled at his gold necklace and therefore offered him his money. When the car finally stopped somewhere in Ban 5, the thin man then returned his wallet and handphone to him. PW1 emphasized that he was afraid of D3 that night. It is his stance that he did not know D3 and that he never gambled with D3 and the thin person prior to the robbery that night.

Evidence of PW2 (D1)

7. The prosecution also produced Kamarul bin Kamsul (PW2/D1) who is one of D3’s and D5’s alleged accomplices. The prosecution finds him to be one of the key witnesses in establishing D3’s and D5’s culpability in this case. D1 confirmed that he was accompanied by D3 and D5 on the night concerned and that D5 had driven him to the place of incident. D1 testified that upon arrival at the intended house, he struck the zinc gate with a metal rod which caused everyone to run away. While at the scene, D1 saw D3 was in an argument with a Chinese man named Kong (PW1). According to D1, D3

was tugging at a waist bag that PW1 was wearing. D1 also confirmed that he saw PW1 open his waist bag and tell D3 to take his money. The court also notes that D1 confirmed that he saw D5 and D2 take money from a table in the gambling place. This is consistent with D1's written police statement (P3) dated 31st March 2022.

8. Under cross-examination, PW2 did state that he did not see D3 take money from PW1 by force, and he did not see D3 exercise force against PW1. PW2 then claimed that the defendant all went to PW1's house to gamble and not to commit robbery. In addition to PW2's court testimony, there is also documentary evidence in the form of PW2's police statement (P3). In the said statement, it was recorded that PW2 had asked for money from D3 after the incident. This is confirmed by PW2 in court. In P3, PW2 mentioned that he did ask D3 for some money and D3 gave him \$500. PW2, however, testified that he did not know where the money came from.

Evidence of PW3 (D2)

9. Next, the prosecution called Hamdan bin Juki (PW3/D2) to give supporting evidence. D2 is another of D3's and D5's alleged accomplices. The court finds that his evidence is significant in establishing the purpose of their visit to PW1's house on the night concerned. In his testimony, D2 admitted that he had pled guilty to gang robbery and confirmed that D3 and D5 were also involved. After being referred to his written police statement (P4), D2 explained what happened. He stated that earlier that night of the incident, he was hanging out with D5 when D5 received a phone call. Although he claims he did not know what the call was in relation to, he does recall it had something to do with "ambush" and "money". He further recalls that D5 told him to bring a piece of wood, but he brought two aluminum rods instead. They then met up with PW2 and then proceeded to a house at Ban 4. At the house, D2 stated that he saw D3 verbally argue with a Chinese man and was pulling on his waist bag.
10. Under cross-examination by D3, D2 did clarify that he saw D3 pull on the Chinese man's waist bag in a manner of telling him to pay. He also clarified that he took the Chinese man's handphone and not D3. Under cross-examination of D5, D2 confirmed that D5 did not do anything or take any money from the gambling table at the scene. D2, however, later confirmed that it was D5 who had asked him to come along.

Evidence of PW9 (D4)

11. The next pertinent evidence adduced is that of Mohammad Amir Rashid Al Islam bin Abdul Rahman (PW9/D4). D4 is also one of D3's and D5's accomplices that pled guilty to the same joint charge of robbery. Briefly, it is his evidence that he received a WhatsApp text from D3 asking for him to accompany D3 to Jangsak. D4 agreed and on their way to Jangsak, they picked up D3's friend, a Bangladeshi man he knew as Marul at Ban 5. D4 also stated that two others of D3's friends were in a separate car behind him. D4 then said they proceeded to the gambling place in Ban 4 to gamble. Upon arrival, D4 stayed in the car. D4 also identified one of D3's friends in the car behind them as D5. Whilst staying in the car, D4 recalls seeing D3 bring a metal rod with him and soon after he heard a loud noise of a zinc roof. He then saw D3, D1 and D1's friend heading towards a Pajero car together with a Chinese man. Both cars then headed to Ban 5 where D1 and D3 exited the Pajero car and got into D4's car. Later, D4 received \$100 from D1.

Evidence of remaining prosecution witnesses

12. WPC 6455 Sarifah binti Hj Awang Mohidin (PW4) prepared the First Information Report (P6) about the complaint made by PW1 regarding the robbery that took place at No. 12, Spg 61 Jln Ban 4, Kg Mulaut whom he claimed was committed by unknown men and they stole his personal belongings.
13. Cpl 4710 Hj Zalihan bin Hj Johan (PW5) was tasked to record D3's statement. He recorded D3's statement (P9) on the 10th April 2022. L/Cpl 6296 Mohammad Azimin bin Omar (PW6) produced before the court a sketch plan that he drew of the place of incident which he prepared on the 22nd March 2022 with the assistance of the explanation given and shown to him by PW1 at the place of incident.
14. L/Cpl 5560 Muhammad Sufri bin Hj Mat Serudin (PW7) was the photographer assigned to the case. He took several sets of photographs at several locations pertinent to the case. All the photographs taken by PW7 were introduced and tendered to the court in a total of 3 photo albums (P13, P14 and P15). Sgt 3515 Abdul Jusri bin Hj Rashid (PW8) recorded D5's police statement (P17) on the 1st April 2022 and a further statement (P18) from D5 on the 5th April 2022.
15. L/Cpl 4965 Johan bin Ahmad (PW10) is the Assistant Investigating Officer as well as the exhibit officer assigned to the case. It is his evidence that he prepared a list of exhibits for all the items he received from Insp Harnie on the 23rd March 2022, 29th March 2022, 31st March 2022, 14th April 2022 and 16th April 2022. The exhibit list is tendered and marked as P22.
16. Lastly, we turn to the evidence of Insp Harnie binti Hj Abd Kahar (PW11) who is the assigned Investigating Officer to the case. PW11 recounts that she was informed of the alleged robbery on the 22nd March 2022. On the same day, PW11 accompanied with other police personnel went to the scene of the incident and met with the complainant/PW1. According to PW11, PW1 informed her that 3 unknown men came to his house demanding money and that he was assaulted with the use of either a piece of wood or metal and his gold necklace was stolen. Other than the assault, PW1 also told PW11 that cash in the sum of approximately \$2500 was taken from him.
17. As a result of the police investigation, the police managed to arrest five individuals, two of whom are D3 and D5. More pertinently PW11 also gave evidence that they took D5 to the scene of the incident on the 31st March 2022 where D5 identified a wooden rod discovered within the vicinity of the house as the wooden rod that he brought with him on the night of the incident.

Defence case

Evidence of Sardini bin Mohd Salleh (D3/DW1)

18. In his defense, D3 chose to give sworn testimony. In his evidence, D3 informed the court of his version of events that happened on the night of the alleged robbery. According to D3, on the 21st March 2022, he met with D1 at a convenience store. D1 then told D3 that Chong, the person who held the gambling den is a cheat and uses a magnetized dice in their games. They then agreed to Chong's house at Ban 4. On arrival, D3 parked his car within the compound of PW1's house and waited for D1's friend to arrive. Soon after D1's friend arrived in a white salon car. D3 then explained that the gambling place was actually outside of PW1's house and it was covered by a canvas and zinc. He recalls that there

were a lot of people gambling at the time but when D1 knocked on the zinc cover, a lot of the people ran away and only a few remained.

19. D3 then testified that he accused PW1 of cheating and told PW1 he wanted his money back. He also told PW1 to take out the dice that he allegedly kept in his waist bag that he was wearing. It was PW1 who then told him to wait and not to make a scene as he did not want people to find out that he was cheating and D3 was afraid the police will come there. It was PW1 who told him to discuss on the matter at a shop so PW1 followed D3. It was also PW1 who told D3 to just use his car which was blocking D3's car. D3 also alleges that it was PW1 who told him to ask D1 to drive.
20. On the way to the shop, D3 sat together with PW1 at the back of the car and that is when D3 asked PW1 to pay him back his money. D3 also stated that he lost approximately \$3,000.00 in gambling. In order not to prolong matters, D3 states that it was PW1 who suggested to him to find more customers to gamble at his place and he will pay D3 for his services. D3 also admitted that PW1 gave him \$3000.00 from his waist bag and gave it to him.
21. It is D3's case that PW1 cheated on him so D3 asked for his money back from PW1. According to D3, PW1 voluntarily took out B\$3,000 from his waist bag and gave it to D3 without force or robbery. D3 claimed that he did not count the money and put it in his waist bag immediately. D3 then warned PW1 to look for more customers and that if he did not pay him, he would report PW1's gambling activities to the police. Later on, after arriving at a shop at Ban 5, D3, D1 and PW1 exited the car. D1 and D3 then went into his friend's car who was following them from behind. PW1 then stood outside the car next to where he was seated and after finalizing their arrangement, PW1 went back into his car and both cars left the scene.
22. D3 also pointed the inconsistency of D1's evidence with D2's evidence. D1 told the court that D3 took his phone where else D2 told the court that he took the phone and not D3.
23. During his cross-examination, D3 confirmed that he saw D5 at the scene of the incident talking to PW1. D3 also claims that he did not see Chong getting hit with the use of a wooden stick. He further claimed that he went to PW1's house with the intent to ask PW1 if it was true that he cheated and if it was true, he would ask PW1 for his money back.
24. Further, D3 testified that he was not so angry with PW1 because they were in good terms at the time. D3 further denied having taken PW1's necklace. In respect of the money he obtained from PW1, D3 asserts that the money he got was his as of right and he used \$1,000 to pay off his debt to D1. D3 asserted that if he did go to PW1's house to rob him, there would not be any money left in PW1's waist bag, meaning he would have taken it all.

Evidence of Mohammad Madani bin Abdullah @ Lai Chung Sien (D5/DW2)

25. D5/DW2 also chose to give sworn testimony. The pertinent parts of his testimony are as follows: D5 testified that on the 21st March 2022, he received a call from D1 around 5 pm, asking to be picked up. D5 then picked up D1 in Masin around 7 pm. D1 then invited D5 to join him and his friends to play crabs "katam" but D5 refused because he was tired. So D5 told D1 that he would only drop him off at Ban 5. Not long after he reached home that night, his friend Popoi (D2) came over to hang out with him. It was about an hour later that D5 received a phone call from D1. D1 specifically told him there

was an ambush and it was about money. D1 then told D5 to come to Ban 4 at the gambling place and D1 did not explain any further. D1 also told D5 to bring a stick with him so D5 told D2 to find him a stick but D2 could only find a short aluminium pipe. As he made his way to Ban 4, D5 met up with D1 who was waiting by the side of car somewhere in Ban 4. D5 told D1 that D2 has an aluminium stick rod with him.

26. On arriving at the house at Spg 61, D5 parked his car inside the compound. D5 alighted from his car and saw D1 also exit his car with a short aluminium rod. D5 further explained that upon seeing dogs at the scene, he got scared and took out a wooden stick which he always kept in his car. Then D5 said D1 had asked him to start asking for the money but D5 told him it was not his problem. It was then that D5 saw PW1's car, a Pajero arrive and parked behind D5's car.
27. D1 then got angry and according to D5, D1 hit the zinc, went inside the gambling area and got angry with PW1. D5 then saw D1's friend, D3 telling PW1 to pay his money. D5 then said that he left the scene and headed towards his car and he was followed by D2. He wanted to leave the area but his car was blocked by PW1's car so all he could do was turn his car around and waited for PW1 to move his car. Soon after D5 saw D1, D3 and PW1 get into the Pajero and left the premises and only then was D5 able to leave as well.
28. Later on that night, D5 received a call from D1 who asked him to pick him up at Ban 5. D5 obliged him and turned his car to pick up D1. D5 also claimed that D2 admitted to him that he took a handphone. D5 also claimed that he told D2 to return the phone and not to take other people's handphone. After picking up D1 and on the way to send him to Masin, D5 claims that he advised D1 that he did not have to be violent with PW1. D1 then gave D5 \$40.00 which he told D5 to just accept.
29. Under cross-examination by the prosecution, D5 confirmed that D1, D2, D3 and D4 were all present at the scene of the incident. He has also known D1 for a very long time and does know that D1 is a gambler. Further, D5 also testified that he saw D1 hit PW1 and PW1 fell. D3 then came to lift PW1 up by grabbing the straps of the waist bag of PW1. D5 was then referred to his police statement where he described D3 and PW1 were struggling and D3 pulled on the strap of PW1's waist bag. D5 however explained that PW3 was actually lifting PW1 up by pulling on the straps of the bag.
30. D5 was also cross-examined on his testimony regarding the phone call he received from D1. It was asserted to him that he already that there was going to be an ambush involving money that night. D5 however explained that he was only told of an ambush but he did not see any ambush around his house and D5 also asked D1 about the money but D1 did not respond. D5 however did admit that he brought a stick with him as requested. D5 however explained that he brought the stick to protect himself from dogs and not to cause fear to PW1 as suggested. D5 completely denies being part of a gang robbery.
31. D5 also called D3 as a witness in his defense. D3 only testified that he did not know why D5 was present at the scene and that D5 was there with D1.

Considerations and findings

32. First of all, the court will address the evidence of the police officers called to testify. The court has carefully evaluated the testimonies of PW4, PW5, PW6, PW7, PW8, PW10 and PW11. After a thorough

examination, the court has found no reason to question their credibility and the reliability of their evidence. Their testimonies have been deemed consistent, coherent, and credible, thus, the court has decided to accept their evidence in its entirety.

33. The court will now address the evidence of PW1, D1 and D2. Based on their evidence, there is ample evidence to prove that both D3 and D5 were at the scene of the incident. Furthermore, the evidence from D1 and D2 shows that D3 was seen arguing with PW1, during which D3 attempted to take PW1's waist bag and PW1 gave money to D3. In light of the available evidence, it can be reasonably inferred by the court that PW1's act of handing over money to D3 was possibly an effort by PW1 to calm the situation and protect himself from potential harm. This act substantiates PW1's assertion of fear of D3.
34. Upon the court's assessment of D4's testimony, the court finds a minor inconsistency in his police statement where he purports to see D3 holding a metal rod as he entered PW1's store premises. In his court testimony, D4 claims that he is unsure if D3 was holding a metal rod. Furthermore, this alleged fact was not substantiated by PW1 at all in his evidence. The court finds that most evidence points towards D1 as the person holding the metal rod as they entered PW1's premises and hit the zinc cover alarming the people on the premises. Therefore, the court is of the view that this inconsistency is most likely due to misconception of the events that happened that night. However, this does not however prove D4's testimony as unreliable nor does it adversely affect D4's credibility. After all, it is not D4's evidence that he saw D3 argue with PW1 whilst holding a metal rod.
35. The evidence before the court also shows that D1 was driven to the scene of the incident by D5, and that he was in the company of D3 and D5 throughout the incident. The evidence suggests a level of premeditation and coordination among the three individuals. Further D2 claimed that he heard D5 talk about ambush and money. This suggests that D5 knew the situation he was getting involved in, particularly when he told D2 to bring a piece of wood. This supports the notion that premeditation was involved.
36. Upon further examination, the court has found that the testimony of D1, which implicates D3 and D5 in the incident, serves to corroborate the account of PW1 regarding the events that occurred. However, the credibility of D1 as a witness is brought into question by his claim of not knowing the origin of the \$500 that he received from D3. This claim is particularly doubtful in light of his own evidence where he claimed to have witnessed PW1 asking D3 to take his money which he took out from his waist bag. D1's testimony on this issue raises questions about his reliability as a witness. However, it is noteworthy that D1 claims not to see if D3 took PW1's money. Nevertheless, this minor inconsistency does not eliminate the fact that he saw and heard D3 asking PW1 for money.
37. D1's testimony on witnessing D3 tugging on PW1's waist bag and PW1 giving D3 money does not only corroborate PW1's evidence but his testimony is also consistent with D2 who also saw D3 pulling on PW1's waist bag. Therefore, there is ample evidence to substantiate D1's evidence on this issue. Overall, the court accepts the testimony of D1 and disregards the minor inconsistency mentioned above.
38. In respect to the evidence given by PW1, the court is satisfied that PW1 is a credible witness and that his evidence presents the truth of what happened. The court is satisfied that D3 stole his gold necklace

that he wore around his neck as well as \$500.00 from his waist bag which he offered to D3 in fear of what D3 might do to him if he did not.

39. Based on the evidence given by PW1 and D3, the court is also satisfied that D3 also took \$2,500 from PW1's wallet whilst they were both in the back seat of PW1's Pajero on the way to Ban 5. D4's testimony also supports the fact that D3 was inside the Pajero car when both cars left the scene of the incident heading towards Ban 5.
40. The court now turns to the testimony of D3. It is clear that his defense is one of mere denial. He denies stealing a total of \$3000 and a gold necklace from PW1. He claims to have gone to PW1's house merely to ask for his money back which he lost through gambling with PW1. He alleges that PW1 cheated in his gambling by using a magnetized dice and therefore the money he took was rightly his money. On this basis, he denies to have stolen PW1's money. Upon examination of the overall evidence before the court, the court is satisfied that there was an element of threat used by D3 on PW1. The court accepts that D3 went to the scene with several other men and started arguing with PW1 and pulling at PW1's waist bag asking for money.
41. D3's case is that he was not forcibly pulling on PW1's waist bag but was merely asking PW1 to pay him back his money. This claim remains unsubstantiated in light of the evidence given by PW1, D1 and D2. The court accepts that in order to safeguard himself from any form of hurt, PW1 decided to hand over his money to D3. The court further believes PW1's claim of fear particularly when he claimed that D3 forcibly pulled and stole his gold necklace. As such, there was a clear use of force by D3 during the incident. Upon a thorough consideration of the facts and circumstances of the case, the court concludes that PW1 was indeed in a state of fear, and it was this fear that led PW1 to cooperate in order to avoid potential harm.
42. The court now moves on to D3's pat down of PW1's trousers whilst in the latter's Pajero. PW1 alleges that D3 stole about \$2500 from his wallet. D3 disputes this, claiming that PW1 willingly handed over the money, indicating that there was no coercion involved. Having considered the overall facts and circumstances of the case, the court accepts that PW1 did not willingly give D3 his money from his wallet and that D3 took approximately \$2500.00 but returned his wallet albeit with some money left inside. In his defense, D3 submits that he was only taking money which he believed to be rightfully his. Having regard to the overall circumstances of the case, the court is satisfied that there was threat and violence used in the course of the robbery albeit not by all the defendants involved in this case. Taking money by force or threat, even if D3 believed that the money is rightfully his is considered illegal and tantamount to robbery. The court therefore finds D3's defense as incredible and unreliable.
43. The court moves on to consider the issue of inconsistency between the evidence of D1 and D2 as pointed out by D3. The court acknowledges that there is an inconsistency between D1's and D2's evidence on who took PW1's handphone at the scene but the court finds that this as a minor inconsistency and is insufficient to cast doubt on the overall reliability of D1 and D2's evidence in regards to the offense charged.
44. The court now considers the case against D5. It has already been established that D5 was indeed present at the scene with the other co-defendants, a fact which D5 does not dispute. D5 himself gave evidence that he drove D1 and D2 to the place of the incident. One of the main contentions argued by D5 is that he, D1 and D2 all went to PW1's house to gamble and not to commit robbery. However,

based on D5's own testimony, and the testimony of D1, D2, D4 and even D3, the court found that there is a lack of evidence before the court to substantiate this.

45. In reference to D5's own testimony, the court finds interesting the interaction between D5 and D1 soon after they alighted from D5's car at the scene of the incident. According to D5, D1 told him to start asking for the money. The court finds D5's response to D1 quite telling. D5 told D1 it was not his problem. Hence, if D5 was indeed telling the truth about this conversation, it seems to suggest that D1 knew that they were present at the house not to gamble but to address D1's problem involving money. Based on the facts and circumstances before the court, it is reasonable to infer that the aluminium stick carried by D1 and possibly the wooden stick carried by D5 were intended to be used as weapons or threats in their attempt to get money. These circumstances alone cast doubt on the credibility and reliability of D5's testimony that they went to PW1's house to gamble.
46. D5 also claims that he did not benefit anything from the incident that particular night. However, it is in his own evidence that he received \$40.00 from D1 later on that night.
47. D5 asserts that there is no basis to charge him with the offence of robbery. The basis of his defense is that if he did commit the offense of robbery, he would do so in front of PW1 and that PW1 would easily identify him. D5 further asserts that PW1 is unable to identify him or state what D5 was doing at PW1's premises. Based on the evidence before the court and consideration of this defense, the court is of the view that it need not matter if the defendant was seen PW1 in the commission of the offense. The court can reasonably conclude that indeed D5 did not have a significant role in this case but nevertheless, the court does not find his culpability in the commission of the offense any different from his other co-defendant who took a more active role. In support of this position, the court refers to the case of *Rosizan bin Jumaat v Public Prosecutor* (Criminal Appeal No.9 of 2021). In *Rosizan's case*, his role in the gang robbery was only as a getaway driver. The Court of Appeal hearing the appeal stated:
- "..... the appellant's culpability was not reduced in comparison with that of Muhammad Amirul by the fact that, with that knowledge and agreement to the plan, he played his role in the joint enterprise by remaining in the car as the getaway driver, whereas Muhammad Amirul wielded and brandished the machete within the Goldsmith shop."*
48. The prosecution also cited the case of *Phan Duc Luc v Public Prosecutor* (Criminal Motion No.39 of 2017) which involved multiple defendants committing two offenses of house breaking by night. Phan Duc Luc served as the driver of a vehicle that drove them to the place where they committed the offenses without entering the premises. Despite the appellant's limited role in the robbery, the Honourable Justice Burrell stated *"In normal circumstances, the driver in a serious criminal enterprise such as this should bear equal responsibility with those who entered the premises."*
49. In the present case, there is ample evidence to prove that D5 drove his co-defendants D1 and D2 to the scene where the offense was committed. The court is also satisfied that D5 was aware that they did not go to the premises just to gamble and it is reasonable to suspect that D5 knew that something illicit was going to happen that required them to bring wooden or aluminium sticks and he admitted he heard it had something to do with ambush and money. The court notes that he went along with D1's instructions regardless of this knowledge.

50. Furthermore, the court is satisfied that based on the above-mentioned cases, D5 need not be in the same room or even be seen by PW1 in order for the prosecution to prove his involvement in the commission of the offense. The court therefore finds D5's defense cannot stand.
51. In addition, the court also accepts that D5 did benefit from the robbery based on the evidence of D1 who saw him take money at the scene and the fact that he also received \$40.00 from D1 later that night. Overall, the court finds that his actions are not those of an innocent person but clearly shows that he was cooperating with his co-defendants i.e. drove D1 and D2 to the premises and also drove D1 to Masin later that night when D1 gave him the money.
52. Overall, the court is satisfied that there about 5 people involved in the gang robbery on the night concerned and that all 5 had a role in it in some way or another, including D3 and D5.

Overall finding and conclusion

53. Based on the findings referred to above, the court concludes that both D3's and D5's defense lack merits and credibility. The court is satisfied that the prosecution has established a case beyond reasonable doubt against both D3 and D5 for the offense charged. Both D3 and D5 are found guilty of the offense and are convicted accordingly.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court