

Public Prosecutor

AND

Pg Noor Halimshah Bin Pg Hj Tajudin

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 3 of 2025)**

Pg Masni Pg Hj Bahar, Judge

Date of Judgment: 9 August 2025

Headnote: Section 380A PC- Theft from a building used as a place of worship- Section 378 PC- Definition of theft- Section 22 PC- Definition of movable property- Section 23 – “Wrongful gain and “wrongful loss”- Section 24 PC- Dishonestly- Pleaded not guilty- Convicted after trial.

DPP Nurul Husna Aqilah Hj Abidin for the Public Prosecutor.
Defendant In Person and Unrepresented.

JUDGMENT

Pg Masni, Judge:

Introduction

1. The Defendant, Pg Noorhalimshah bin Pg Hj Tajuddin, is facing one count of charge for stealing money from a donation box from a place of worship, an offence contrary to section 380A of the Penal Code.

Charge:

2. The charge provides that:

That you on the 5th January 2025, at about 0820 hours, at Balai Ibadat Persekutuan Pengakap Negara Brunei Darussalam, Jalan Gadong, in Brunei Darussalam, in a building used a place of worship, did commit theft of property, to wit BND\$4.00 from a donation box, in the possession of Balai Ibadat Persekutuan Pengakap Negara Brunei Darussalam, and you have thereby committed an offence punishable under section 380 A Penal Code, Cap 22.

Penalty:

3. The penalty under Section 380 A PC provides for an imprisonment sentence which may be extended to 10 years and with whipping.
4. The charge and its penalty were read and explained to the Defendant in Malay language.
5. The Defendant claimed trial. Having received the Defendant's plea of not guilty, court sets date for trial. Prosecution called a total of seven (7) witnesses to prove her case.

The Law:

6. It is the cardinal rule that the burden to proof the case against the Defendants lies with the prosecution and that the burden does not shift to the Defendants.
7. For the prosecution to gain a conviction, the prosecution has to prove their case beyond reasonable doubt that all the Defendants committed the said offence.
8. I have summarized the evidence of the witnesses that is salient. However, this does not mean that only that part of the evidence has been taken into account in deriving my decision. I have given full and proper weight to all the admissible evidence put before me.
9. I have also given consideration and proper weigh before reaching to my conclusion to any inconsistencies in the evidence of the witness and to any contradictions between the testimonies of different witnesses.

Defendant's case:

10. The Defendant admitted that on the 5th of January 2025, took BND \$4.00 (money) from the donation box from Balai Ibadat Persekutuan Pengakap, a place of worship (Surau).
11. The Defendant evidence is that on the said day, he went for a drive in his father's car. While driving, he observed that his father's car was running low on petrol and he had no cash with him. He recalled that there is a Surau nearby to the Scout Center. He believed that someone would be present there performing prayers. The Defendant admitted driving to the Surau with the intention to borrow money from the people who is in the Surau. He drove into the Surau parking area and parked his car at the rear of the premises near the dumping area.
12. The Defendant testified that after he parked his car, he entered into the Surau through the ablution room, which lead to the main prayer hall. He states that he waited at the main prayer hall in hope of borrowing from someone. It is the Defendant's case that he waited for around 10-15 minutes but no one appeared. He then noticed a donation box and decided to take money from the donation box with the intention repay it later.

13. Defendant admitted using his phone flashlight to peek inside the donation box. The Defendant told the court that he saw money in it. He then decided to take the money from the donation box with the measuring tape that he brought along with him. Defendant also admitted that he brought along a double-sided tape which he attached it on to the measuring tape. The Defendant admitted inserting the measuring tape into the donation box and retrieve money from the donation box.
14. The Defendant state that on his first attempt, he managed to retrieve one BND1 note; on the second attempt, he retrieved an envelope; on his third attempt, he managed to retrieve two (2) BND1 notes; on this fourth attempt, he did not manage to retrieve anything out from the donation box; and on his fifth attempt, the Defendant told the court that he managed to pull out another BND1. The Defendant told the court that he managed to collect a total of BND4, which he decided was enough for him to buy fuel. He then left the mosque with the BND\$4.00.
15. The Defendant told the court that he then went back home and after he had his lunch, he reflected back what he did in the Surau. He then decided to dispose the measuring tape in Bengkurong that afternoon as shown in the picture P5B.
16. The Defendant claimed that he had intended to return the BND4.00 to the Surau but was arrested on 7th January 2025, shortly after returning from Limbang, Malaysia, and was therefore unable to repay the money.

Prosecution case:

17. Prosecution called a total of seven (7) witness. All the Prosecution witnesses gave their evidence by way of S117 B CPC statements. The Defendant had been furnished with all the Prosecutions' statements prior to the trial.
18. During the trial, all the Prosecution witnesses read out their statements in court in Malay. Defendant informed the court that he is literate. After each of the Prosecution witness gave their evidence in chief, the Defendant confirmed that he understood their Evidence in Chief and raised no objection to their evidence in court.
19. The Defendant did not deny his action of driving to the Surau and taking money out from the donation box save that he did not intent to steal. He informed the court that he has the intention to repay the money he took from the donation box.
20. The prosecution case are as follows. I will summarise the key evidence presented by the Prosecution witness.

PW1- W/L/Cpl 6457 Siti Mutteah binti Hj Omar

21. She received a complaint from Hj Rosaimi bin Hj Othman (PW4) regarding the theft in the Surau Persekutuan Pengakap Negara Brunei Darussalam (Hereinafter refer to as the Surau).PW1 record the information into their ARMS system and forwarded it to Investigation Team C. She then prepared the 24 hours Report and the First Information Report (P3A) and hands it over to the investigation officer, LCPL 4627 Ibnu Khalid.

PW2- L/CPL 6282 Hj Muhammad Hanis bin Hj Hamidon:

22. He informed the court that he went to the said Surau and met with PW4 on the 5th of January 2025. PW4 informed him regarding the theft after viewed the CCTV video. PW2 then drew PW2 drew the rough sketch plan of the said Surau as exhibited in P4A.

PW3- L/CPL 4285 Mohidi bin Hj Mohamad:

23. He was instructed to take the photograph of the Surau by PW4. He went to the said Surau together with PW2 where he met with PW4. PW4 then directed him the path taken by the suspect the moment he arrives and to the point when he left the premises. PW4 also showed him the location of the location of the donation box.
24. PW3 took photographs of the said Surau as directed by PW4 and produced the photo album P5A.
25. PW3 also went to a stall near to a shop by the name of Perusahaan Yazid Bersaudaraan SDN BHD in Kampong Sengkurong, where he took four (4) photographs as exhibited in P5B on the 7th January 2025. PW3 explained that he took photographs of the bin because it is suspected that the suspect threw evidence in the said bin.

And on the same day, he took another two photographs of a pair blue jeans and a blue T- shirt at the Central Police station as exhibited in P5C.

PW 4- Hj Rosaimi bin Hj Othman:

26. PW4 is the Religious Commissioner and Manager of the Scout Association Prayer Hall (the said Surau). He confirmed that he filed a police report on evening of the 5th January 2025 regarding theft in the said Surau.
27. He told the court that he was informed by one of the cleaners of the said Surau texted him and asked him to check the CCTV from his mobile phone app.
28. PW4 then opened the CCTV Mobile App from his phone and from CCTV no 1, he saw a white/silver car drove into rear part of the Surau and park by the rear gate. He then saw from the no 1 footage CCTV that a man whom he identified in court as the Defendant alighted from the car and walked into the surau through the ablution room.

29. PW4 then saw the Defendant walked to the donation box from the CCTV no 2 located inside the Prayer hall. PW4 told the court that the Defendant took out what seems to look like a measuring tape that the Defendant brought along. PW4 then told the court that from the CCTV, he saw the Defendant using a double-sided tape and stick it to the measuring tape. PW4 told the court that he saw from the 2nd CCTV that the Defendant inserted the measuring tape into the opening of the donation box and successfully pulled out couple of paper money. PW4 told the court that he could see from the CCTV the Defendant inserted the measuring tape into the opening of the donation box and stole money from the donation box. After that the Defendant left the main prayer hall. He then looked back at the 1st CCTV and saw the Defendant got into the car and drove away.
30. PW4 informed the court that he filed police report on the same day and the Police came over to the said Surau. PW4 corroborate the evidence of PW2 and PW3.
31. PW4 also told the court that he called the manager of MTK, the Company who install the CCTV, to ask a technician to transfer the CCTV footage into a pen drive. PW4 confirmed that when the MTK technician came over to the Surau, he was present and witness the technician transfer the CCTV footage into a pen drive. The technician then played back the 3 CCTV footage and handed over to him.
32. PW4 told the court that he then gave a copy of the pen drive to the police.
33. The content of the pen drive consists of three folders. The folders are labelled as IPC_20250105081258, IPC_20250105081833 and IPC_20250105082119. The contents of these folders were played in court and was seen by the Defendant. Defendant has no objection for the content of the three folders in the pen drive. The Defendant agrees with content of these three folders. The content of the pen drives was tendered as P8, P9 and P10.
34. PW4 identified the pen drive in court. The content in the pen drive was played in court. The content in the pen drive (P8, 9 and P10) was not challenged by the Defendant.
35. The Prosecution played P8 (IPC- 20250105081258) in court. The Defendant did not challenge PW4 on his evidence regarding P8, P9 and P10.
36. The Defendant did not challenge PW4 when he explained that P8 shows the CCTV footage of camera 1 and the date shown in P8 was the 5th January 2025. P8 was played in court with intermittent paused at the request of PW8. The Defendant did not challenge PW4 explanation that at the time stamp:
- i. @ 00:12 sec, showed the rear parking area of the Surau;

- ii. 02:42 sec, the white/silver car drove into the rear area of the Surau parking compound and parked at the rear gate and
 - iii. @4:51 sec, the Defendant entered into the ablution area as mentioned by him in his paragraph 5 of his S117 B statement.
37. The Defendant also did not object to the Prosecution application to play the next folder, P9 (IPC_2025010581833). When P9 was played the Defendant did not object and challenged PW4's evidence in chief. The Defendant challenge when PW4 explained to court that P9 shows the CCTV of camera no 2, which is located at the prayer hall. The Defendant did not challenge when PW4 explained that the date in P9 also show the 5th January 2024 and the time stamp is stamped at 8.20 am as stated in his para 6. The Defendant did not challenge when PW4 explained at the intermittent pause as requested by PW4 that:
- i. @00:21 sec shows the Prayer hall
 - ii. @ 01:52 sec shows the Defendant entering into the prayer room and head towards the donation box. PW4 pointed the location of the donation box. PW4 informed the court that the donation located at the side of the wall and it is seated on a white box. The video shows the Defendant looked into the donation box and took out a measuring tape for his trousers' pocket and inserted the tape into the donation box.
38. The Defendant did not challenge when PW4 explained that at time stamp @02:43 sec, the Defendant was seen taking something that looks like a measuring tape from his pocket and it can also be seen that the Defendant took out a double-sided tape and the Defendant inserted it into the donation box. It could be seen that the Defendant inserted the measuring tape into the donation box a couple of time.
39. Prosecution played P10 (IPC_20250105082119). PW4 told the court that P9 is the CCTV footage at camera no 3. In P9 it shows the Defendant left the Surau. PW4 explained that the Defendant can be seen leaving the Surau from the sliding door reflection 4.18 sec, where the Defendant can be seen waling out from the ablution room and enter into his car. PW4 explained that he explained the Defendant's movement in P9 in his paragraph 8 of his S117 B statement.
40. Having watched P8, P7 and P9, I accept PW4 evidence in court and the content in P8, P 9 and P10 as it was not challenged by the Defendant. The Defendant told the court that he agrees with PW4's evidence in chief. The Defendant's evidence in court also corroborates the content of the CCTV footage in P8, P9 and P10.

41. PW4 also corroborates the evidence of PW1, PW2 and PW3. He agrees that he went to the Police station to lodge a Police report pertaining to the theft from the donation box from Surau as stated in his paragraph 2.
42. He also corroborates PW2 and PW3's evidence that the police went to the Surau to conduct investigation as stated in his paragraph 10.

PW5: LCPL 4627 Ibnu Khalid Awg Besar

43. The Defendant did not challenge PW5's evidence.
44. PW5, the Investigating Officer assigned on 5th January 2025, also served as exhibits officer. PW5 seized the Defendant's clothes, recorded his statement (P7A).
45. Defendant did not challenge his statement being recorded by PW5. Defendant admitted that he gave his statement to PW5 voluntarily and the content of P7A are the truth.

P7(A) Statement:

46. In P7 A, the Defendant agrees that he told PW5 that (@ page 2 Question 6) he parked his car near to the gate of the mosque and on the 4th line, he prepared himself with a measuring tape and double-sided tape and placed it in his left trousers' pocket and at line 11 from the top, he managed to retrieve BND\$4 from the donation box. The Defendant also admitted that he used the money he took from the donation box to buy petrol (2nd line Q no 6). The Defendant also admitted in his statement (Q no 10) that the person in the CCTV P8, 9 and 10 was him.
47. PW5 compiled all relevant materials—including the Defendant's statement, seized exhibits, seizure list, sketch plan, photo albums, and FIR—into the investigation file (BSB/CR/23/2025) and handed it to PW6 along with other physical exhibits.

PW6: P/Insp Muhd Hisyam Assanudin Asmali

48. PW6 confirmed he received all Investigating file from PW5. He confirmed the file contained all the documents stated by PW5. Based on the investigation file, he made recommendation to the Prosecution to charge the Defendant for offence under section 380 PC.
49. PW6 evidence was not challenged by the Defendant.

PW7- John Leo Soriano Cabanilla

50. PW7 gave evidence about his role in handling the CCTV recordings related to the theft of money from a mosque's donation box.

51. PW7 identified himself as a CCTV technician employed by MTK Enterprise since 2022. He was responsible for installing and maintaining surveillance systems of the said Surau.
52. He explained that his superior instructed him to attend to matters at the SCOUT Building, which housed the control center for the CCTV system installed at the mosque in question.
53. At the request of PW4, who was present at the control center, PW7 replayed the footage from cameras covering the mosque premises. Guided by PW4, he began by playing a recording from 5 January 2025, at around 8:00 a.m..
54. PW7 told the court that the first video showed a vehicle arriving and parking in front of the mosque, followed by a man exiting the car and entering the mosque premises. The second video displayed footage from inside the mosque, capturing the same individual entering through the main entrance, sitting briefly, and then approaching the donation box. The footage revealed the man using a flashlight to peek into the box, removing an object from his pocket, and eventually extracting money from the donation box. The third video, taken from a camera facing the mosque's door, depicted the same man leaving the mosque and returning to the parked car, as confirmed by his reflection in the glass.
55. PW7 stated that after reviewing all three CCTV recordings, he transferred them individually from the recorder into a pen drive, marked as P11. He confirmed that he checked the contents of the pen drive to ensure accuracy before handing it over to PW4.
56. During the trial, the prosecution applied to play the recordings contained in P11. PW7 identified the relevant folders and explained that the files were labeled under "IPC," denoting Internet Protocol Camera recordings. He was able to match each video file with the corresponding sequence of events he had earlier described.
57. While narrating the contents of the videos in court, PW7 pointed out significant moments, such as the suspect approaching the donation box, using a flashlight, retrieving money, and later exiting the mosque. The durations of the videos varied between four and eight minutes, collectively documenting the sequence of the crime.
58. PW7 further clarified that he was called to the SCOUT Building because of his expertise as the technician who had originally installed the mosque's CCTV system, though he could not recall the exact date of installation. His sole role, he emphasized, was to replay, extract, and save the CCTV recordings as instructed, with no other involvement beyond handing the pen drive to PW4.

Court's Consideration:

59. The Defendant is charged for offence under section 380 A of the Penal Code for stealing money from donation box from a place of worship.

Burden of proof:

60. I bear in mind that the burden of proof lies with the prosecution throughout the trial on the standard of beyond reasonable doubt. Prosecution has to prove beyond reasonable doubt that:

- a. The property in question is movable property;
- b. That such property was in the possession of another person;
- c. That the accused moved such property whilst in the possession of that person;
- d. That he did so without the consent of that person;
- e. There was some movement of the said property so as to constitute taking.
- f. That he did so in order to take the same out of the possession of that person;
- g. That he did so with intent to cause wrongful loss to that person or wrongful gain to himself; and
- h. That the property was at the time of the theft in a protected place or any building used as a place of worship.

61. I am satisfied beyond reasonable doubt that:

- a. the donation box is property belonging to Surau;
- b. the Surau is a place of worship,
- c. money was taken out from the donation box;
- d. there is no consent. PW4 was responsible for managing the Surau and by his act of reporting to the police regarding the theft shows no consent was given for the removal of money;
- e. money falls within the definition of movable property as define in section 22 PC. Section 22 PC provides that the word "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

62. Defendant did not deny the actus reus, the taking money from the donation box in Surau. He admitted taking BND\$4 from the donation box. His defence was that he intended to repay the money later but was unable to do so as he was arrested before having the opportunity. The Defendant was captured from the CCTV Footage (P8, P9, P10) from the pen drive P11 taking money out from the donation box in Surau.

63. The Defendant did not raise any objection to the Prosecution witnesses' evidence, nor to the admission of the Pen drive (P11) and its contents (P8, P9, and P10). However,

notwithstanding the absence of such challenge, it remains incumbent upon the Court to assess and evaluate the Prosecution's evidence in its entirety.

Credibility of Prosecution Witness:

64. I am satisfied beyond a reasonable doubt with the evidence given by all the Prosecution witnesses. I find them credible, as their testimonies are substantially corroborated by one another.
65. Having read the evidence before me, I find the Prosecution witnesses to be credible and accept their evidence in its entirety. I will now summarise the salient aspects of their evidence. Accordingly, I accept the evidence of:
- a. PW1 prepared the First Information Report (P3A). Her evidence was corroborated by PW4 who identified and testified the veracity of P3A.
 - b. PW2 drew the sketch plan (P4A). His presence at the crime scene was corroborated by PW3, PW4 and PW5
 - c. PW3 took photographs of the crime scene in Surau, the measuring tape at house next to a convenience shop Sengkurong and the Defendant's cloths worn by him during the commission of the crime as exhibited in P 5(A) (B) and (C).
 - d. PW5, the investigating officer who instructed PW2 to draw the sketch plan and PW3 to take photographs (P5(A), (B) and (C)), whose evidence were corroborated by PW2, PW3 and PW4
 - e. PW4, the Religious Commissioner and Manager of the Scout Association Prayer Hall (the said Surau). He is the key prosecution witness. He gave account of what he observed in the CCTV footage. I am satisfied that his evidence regarding the CCTV footage (P8, P9 and P10) is consistent and corresponds with each other. I am satisfied that he did not give his consent to the Defendant to take the money from the donation box based on the police report (P3A) that he filed.
 - f. I am also satisfied that the content in the Pen Drive have not tempered. PW7 showed to court the time stamp and the date corroborates the date in the charge. PW4 and PW7 are consistent with the CCTV footage.
 - g. PW6 compiled all documents and suggested to the Prosecution to charge the Defendant under section 380 PC.

Defendant's Defence:

66. As mentioned above, the Defendant states that he intends to repay the BND\$4. However, the management of Surau did not consent to the Defendant taking the money from the donation box. Hence, there was lack of consent.

Lack of consent:

67. The question before this court which becomes relevant once there is a lack of consent is the state of mind of the Defendant, which is the *mens rea* element of dishonest intention.

Section 378 PC:

68. Theft is defined in S 378 Penal Code. It provides that, whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit "theft".

69. Dishonestly is define in section 24 PC as whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "*dishonestly*".

70. Wrongful gain and wrongful loss is defined in section 23 PC. Section 23 (1) PC define "*wrongful gain*" as gain by unlawful means of property to which the person gaining is not legally entitled: and "*wrongful loss*" is the loss by unlawful means of property to which the person losing it is legally entitled.

71. It further states in (2) that a person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully.

72. Subsection (3) provides that a person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.

Defendant's Credibility:

73. I do not find the Defendant a credible witness. I find the Defendant's actions are inconsistent with his stated intention to borrow money from anyone at Surau and to repay it back.

74. If, at all the Defendant's intention were truly innocent, it is incomprehensible as to why he would equipped himself with tools such as a measuring tape and double-sided tape—items clearly designed to assist in retrieving money from the donation box. The Defendant's act of in possession of the measuring tape and brought along with him to Surau shows that the Defendant premediated the theft. The Defendant's action tantamount to dishonesty.

75. Even if his intention were genuine, his act of disposing the measuring tape is an act of concealing the instrument which the Defendant used to commit the crime. This is another element of dishonesty.

76. Moreover, if his intention were truly honest, the Defendant did not attempt to return the money to the Surau or try to contact the management of Surau. He was only apprehended two days after crossing the border with the funds from the donation box. The Defendant's failing to repay the money the first reasonable opportunity shows that he did not intent to repay the money back.

77. His action has caused wrong loss to the donors who donated the money with the intention for it to be donated.

Decision:

78. I, therefore, am satisfied beyond reasonable doubt that the Defendant acted dishonestly when he equipped himself with tools and went to the *Surau*. His dishonest act commenced when he inserted a measuring tape affixed with double-sided adhesive into the donation box and retrieved BND \$4 for his own use. By this, he gained property improperly and caused loss to the *Surau*. I am satisfied that the elements of theft are satisfied.

Conclusion:

79. For reason mentioned above, I find the Defendant guilty and convict the Defendant for committing theft of property, to with BND \$4.00 from a donation box, in the possession of Balai Ibadat Persekutuan Pengakap Negara Brunei Darussalam, Jalan Gadong, in Brunei Darussalam, a place of worship, on the 5th January 2025, at about 0820 hours, an offence under section 380 PC, Cap 22.

PG MASNI PG HJ BAHAR
Judge, Intermediate Court