

**IN THE INTERMEDIATE COURT OF BRUNEI DARUSSALAM
HOLDEN AT BANDAR SERU BEGAWAN
ICCT/26/2025**

**Public Prosecutor
Vs
Mohammad Shafrie bin Yussof (BYIC NO 00-317875)**

Judgment

Hazarena bte POKSJ DP Hj Hurairah, Judge

Date of Judgment: 3rd September 2026

Date of Sentence 7th September 2026

Criminal Law – Theft in a dwelling – Section 380 Penal Code – Housebreaking to commit theft – Sections 445 and 454 Penal Code – Entry through broken kitchen window – Passage not intended for human entrance – Circumstantial evidence – No eyewitness – Admissions – Police statements – Pointing-out evidence – Recovery of stolen property – Identification and continuity of exhibits – Documentary irregularities – Alibi – Credibility of witnesses – Prosecution’s burden – Proof beyond reasonable doubt – Convicted after trial.

Cases cited:

- *Public Prosecutor v Pg Noor Halimshah bin Pg Hj Tajudin*, ICCT/3/2025
- *Public Prosecutor v Mat Azmi bin Jumat*, ICCT/17/2010
- *Public Prosecutor v Mohammad Aimaduddin bin Zefry* COACM/19/2016.
- *Mohammad Joll bin Tumih and another v Public Prosecutor*, COACM/5/2005
- *Mat Azmi bin Jumat v Public Prosecutor* COACM/1/2012; and
- *Mohd Saufi bin Md Ariff v Public Prosecutor* COACM/5/2000

1. Introduction

1. This judgment pertains to the trial against the abovenamed defendant, Mohd Shafrie, who claimed trial to two charges. The defendant faces the following charges:

1st Charge – Section 380 Penal Code

That you sometime in the early hours of the 9th day of May 2025, at a house located at No. 102, Simpang 165, Jalan 99 Perpindahan Kampong Rimba, in Brunei Darussalam, a building used as a human dwelling did commit theft of property to wit:

- (a) one (1) white CCTV camera
- (b) one (1) black 42 inch Aifa LCD TV and;
- (c) one (1) black 32 inch sharp LCD

belonging to one Norhidayatul Syazwani Binti Muhammad and you have thereby committed an offense punishable under section 380 of the Penal Code, Chapter 22.

Charge 2 – Section 454 Penal Code

That you on the 15th day of May 2025 at about 0500 at a house located at No. 102, Simpang 165, Jalan 99 Perpindahan Kampong Rimba, in Brunei Darussalam, a building used as a human dwelling did commit house breaking by entering into the said building in the possession of Norhidayatul Syazwani Binti Muhammad, to wit by entering into an opening in the window of the said house, in order to commit an offense punishable imprisonment to it left and you have thereby committed an offense punishable under section 454 of the Penal Code, Chapter 22

3. Pleas and procedural history

2. Mohd Shafrie denied committing both offences on 17th May 2025. At the case-management conference on 4 June 2025, Mohd Shafrie put on record that he did not commit the offences and raised an alibi, maintaining that he was at home at the material times. The court took this as his alibi notice.
3. On 5 July 2025, Mohd Shafrie initially indicated that he agreed to the use of the police statements, but later informed the court that he had misunderstood and objected to their admissibility. He alleged that he had been unwell, had a headache, and had felt frightened or pressured because the police officer spoke to him in a raised or stern tone. A voir dire was therefore directed.
4. 8 December 2025 is recorded as the first day 2025 is.
5. The voir dire was ultimately confined to the two statements recorded by Sgt 4435 Mohd Irwan bin Hj Bakar on 15 and 16 May 2025, marked VD1 and VD2. Mohd Shafrie expressly raised no objection to the two statements recorded by W/Cpl 5435 Nurulaini binti Hj Yaakub, which were marked P28A and P28B. Mohd Shafrie elected to give evidence in the voir dire and was cross-examined by the Prosecution. Evidence taken and recorded for the voire dire hearing concluded on 7 February 2026. On 14th February 2026 the parties addressed the Court on the admissibility of the statements and whether a prima facie case had been established.
6. On 3 March 2026, the Court found that the Prosecution had proved beyond reasonable doubt that VD1 and VD2 had been made voluntarily. The Court rejected Mohd Shafrie's allegations of threat, inducement, oppression and involuntariness, finding that his physical condition did not negate voluntariness. VD1 and VD2 were accordingly admitted into evidence. The Court further held that the admissibility of P28A and P28B was not in issue because Mohd Shafrie had not objected to those statements during the voir dire.
7. On the same date (3 March 2026), the Court found that the Prosecution had established a prima facie case on both charges and called upon Mohd Shafrie to enter his defence. After the available options were explained to him, Mohd Shafrie elected to give evidence.
8. Defence case was called starting with Mohd Shafrie who gave sworn evidence in Malay on 20 and 21 May 2026.
9. During the defence case, Mohd Shafrie referred to an earlier representation that he would plead guilty to the section 380 charge if the section 454 charge were withdrawn. This was expressly conditional,

was raised in the context of confidential representations, and did not amount to a plea of guilty. Both charges therefore remained before the Court for determination.

4. The prosecution case

10. The Prosecution called twelve witnesses. Their evidence concerned the discovery and reporting of the two incidents, the ownership and recovery of the property, the condition and layout of the premises, Mohd Shafrie's alleged admissions, how the defendant had pointed out and indicated to various things and the recording of his police statements.

PW1 – WPC 6827 Nur Amalissa binti Omar Ali

11. PW1 was the police officer who recorded the first information report concerning the theft discovered on 9 May 2025. Her section 117B statement was marked as Exhibit P3 and the corresponding first information report was marked as Exhibit P3A. Her evidence established that a report was received and formally recorded in respect of the first incident. PW1 did not witness the theft and could not identify the person responsible. Her evidence was therefore principally formal and provided the starting point for the investigation under BKS/CR/739/2025 which concerns the 1st Charge.

PW2 – Norhidayatul Syazwani binti Muhammad

12. PW2 was the complainant and the person named in the charges as having possession of the property. Her section 117B statement was marked as Exhibit P4. She identified the premises at No. 102, Simpang 165, Jalan 99, Perpindahan Kampong Rimba as her late grandmother's house. Her grandmother had died on 2 May 2025. According to PW2, the house was unoccupied between her grandmother's death and the discovery of the first theft on 9 May 2025. PW2 and her mother were responsible for the house and were the only persons who held its keys.
13. PW2 testified that she became suspicious when she observed that the lights, which were ordinarily left on, were off. Upon inspecting the house, she discovered that two televisions and a CCTV camera were missing and that parts of the house had been damaged. She identified, from the photographs, the original positions of the CCTV camera and the two televisions. She also identified damage to an upstairs bedroom door and the rear portion of the house.
14. PW2 identified the recovered white V380 CCTV camera, the Sharp television and the Aifa television, which were marked as Exhibits P5, P6 and P7 respectively. She also identified a Huawei router, an Aifa air-conditioning unit, a green basket and a mirror, marked as Exhibits P8 to P11. She explained that these items came from her late grandmother's house and did not belong to Mohd Shafrie or his children. Although her original statement referred to an LG television, she explained that she had not been certain of its brand when the report was first made and was able to identify it as a Sharp television after its recovery.
15. PW2 identified Mohd Shafrie in court as her cousin's former husband. The divorce certificate was admitted as Exhibit P12. She said that Mohd Shafrie did not reside at the premises and had not resided there between January and May 2025. PW2 added that Mohd Shafrie was not permitted to enter the house. She further testified that neither she nor her mother gave Mohd Shafrie permission to remove any of the property. Her evidence was relied upon to establish the existence and identity of the property, its possession by another, the absence of consent, the use of the premises as a dwelling house or place for the custody of property, and the fact that Mohd Shafrie had no lawful entitlement to the items.

PW3 – Rubiah binti Haji Serudin

16. PW3's section 117B statement was admitted as Exhibit P13. She testified that she moved into the premises on the night of 15 May 2025, after the second incident had occurred earlier that morning. She had been asked to occupy the house to prevent a further occurrence of theft after the first break-in.
17. PW3 identified the house shown in the photographic album as the same premises at No. 102, Simpang 165. She identified a broken kitchen window at the rear of the house and stated that the air-conditioning unit and Wi-Fi router were found to be missing. She identified the recovered router and air-conditioning unit as Exhibits P8 and P9. She did not know Mohd Shafrie and had no family relationship with him. Her evidence was relied upon to prove the physical breaking or unlawful means of entry associated with the second charge, the fact that property was missing immediately after that entry and the residential character of the premises.

PW4 – WPC 6839 Fatin Aqemmah binti Hasnan

18. PW4's section 117B statement and seizure form were marked as Exhibits P14 and P14A. She testified that she seized the V380 CCTV camera, Aifa television and Sharp television from Haji Mohd bin Haji Mohd Rais. She identified the seized items in court as Exhibits P5, P6 and P7. PW4 did not know how Haji Mohd Raishad obtained the items. Her evidence was therefore relied upon principally to establish the recovery, identity and continuity of possession of the three items forming the subject matter of the first charge.

PW5 – L/Cpl 5607 Zainul Arifin bin Abdul Kadir

19. PW5's section 117B statement was marked as Exhibit P15, and the rough sketch plan prepared by him was marked as Exhibit P15A. He attended and documented the premises at No. 102, Jalan 99. On the sketch plan and by reference to the photographs, he identified the original positions of the televisions and CCTV camera and the damaged doors on the upper floor.
20. PW5 also testified that a hammer was found upstairs near the damaged doors. According to him, the complainant said that the hammer did not belong to the household, and he considered that the damage to the doors could have been caused by it. PW5's evidence was relied upon to document the scene of the first incident, the original locations from which the charged property was allegedly removed and the signs of forced access within the premises. His evidence did not identify the person who caused the damage or removed the property.

PW6 – PC 6412 Mohammad Yamin bin Zakaria

21. PW6 was the photographer who documented the scene of the first incident. His section 117B statement was marked as Exhibit P16, and he prepared the associated photographic album concerning BKS/CR/739/2025, referred to in the exhibit list as Exhibit P16A. The photographs depicted the premises, the locations from which the televisions and CCTV camera were said to have been removed and the damage found inside the house. PW6 did not photograph the broken kitchen window connected with the second charge. His evidence provided a visual record of the scene relevant primarily to the first charge.

PW7 – WPC 6187 Norharedah binti Yakub

22. PW7's section 117B statement was marked as Exhibit P17. She prepared two photographic albums: Exhibit P17A relating to BKS/CR/782/2025, and Exhibit P17B containing photographs relevant to both investigations. She identified Mohd Shafrie in court as the person shown in the photographs.
23. PW7 testified that Mohd Shafrie was taken to the premises and photographed pointing out how he allegedly entered and left the house, the places from which items had been removed and the location of various articles. She identified photographs said to show the entry point and the original locations of the missing property. She also identified the recovered CCTV camera and televisions, Exhibits P5 to P7, and the group of items comprising the router, air-conditioning unit, green basket, mirror, charger adapter, tablet stand and packaged plastic spoons.
24. PW7 said that she understood from members of the Special Duties unit that Mohd Shafrie had admitted taking the items and that he was then asked to show the relevant locations. She did not herself hear the original admission. She observed that Mohd Shafrie appeared healthy, did not complain and did not refuse to participate. She saw no threat, promise, inducement or oppressive conduct during the photographic exercise. When recalled on 11 December 2025, she identified the stone depicted in the last photograph of Exhibit P17A as the same stone collected from the kitchen area. The stone was then admitted as Exhibit P29. Her evidence was relied upon to connect Mohd Shafrie with how he had pointed out and indicated to various things, the alleged route of entry, the locations of the property and the stone said to have been used to break the kitchen window.

PW8 – WL/Cpl 6360 Nurul Fazira binti Roslin

25. PW8's section 117B statement was marked as Exhibit P18. She produced the first information report relating to the second charge, BKS/CR/782/2025, which was admitted without objection as Exhibit P19. The report had been recorded on 15 May 2025 at approximately 11.22 a.m.
26. PW8 was not present at the scene or when Mohd Shafrie was pointing out and indicating various things. She received updates through the police WhatsApp group. She testified that, when Mohd Shafrie was handed to her, he appeared healthy and in good condition, displayed no visible injury and made no complaint apart from hunger. Food and drink were consequently provided. She later handed Mohd Shafrie to Sgt 4435 for statement recording and observed no material change in his condition afterwards.
27. PW8 also identified Exhibits P8 to P11 as the items identified by the complainant during the investigation. Her evidence was relied upon to establish the formal commencement and coordination of the second investigation, the continuity of Mohd Shafrie's custody, his apparent physical condition and the identification of the property associated with the second incident. As she was not present at the scene, her knowledge of the pointing-out exercise was derived from reports made by other officers.

PW9 – L/Cpl 6546 Sheikh Muhammad Al-Aqib bin Sheikh Reduan

28. PW9 was a member of the Special Duties team involved in Mohd Shafrie's arrest and initial investigation. His section 117B statement and investigation diary were marked as Exhibits P20 and P20A. He testified that Mohd Shafrie was initially arrested in connection with BKS/CR/739/2025, the 1st Charge. The police became aware of his possible involvement in BKS/CR/782/2025, the 2nd Charge, only after his detention, following which both matters were investigated.

29. PW9 testified that, when questioned, Mohd Shafrie voluntarily admitted stealing property from the house. He recorded the alleged admissions in his investigation diary. According to PW9, Mohd Shafrie admitted both the earlier theft of the televisions and CCTV camera and the later incident connected with the house-breaking charge. PW9 said that Mohd Shafrie was given an opportunity to read the entries, agreed with their contents and signed them. He maintained that no force, threat, inducement or promise was used and that Mohd Shafrie was cooperative and appeared physically well.
30. PW9's evidence was relied upon as direct evidence of Mohd Shafrie's alleged admissions. Those admissions were said to establish his identity as the person who removed the property in the first charge and as the person involved in the unlawful entry and intended theft in the second charge. Mohd Shafrie disputed the voluntariness and accuracy of the alleged admissions.

PW10 – Sgt 5279 Muhammadin bin Pg Haji Amjah

31. PW10 was also involved in Mohd Shafrie's arrest, questioning and the recovery of the stolen items. His section 117B statement was marked as Exhibit P21. He prepared or produced the associated seizure form, Exhibit P21A, and identified the Aifa air-conditioning unit, green basket, mirror, Huawei router, charger plug, black tablet stand and packaged plastic spoons. These were marked as Exhibits P8 to P11 and P22 to P24.
32. PW10 testified that, after Mohd Shafrie was detained, he admitted going to the house at dawn, taking items from it and leaving some of them at or near the premises. PW10 said that Mohd Shafrie cooperated with the police and showed them the locations from which the property had been taken and where other items had been placed. He referred to Exhibit P17B as photographic confirmation of the pointing-out exercise.
33. PW10 denied that Mohd Shafrie had been forced or instructed merely to point at locations selected by the police. He said that no officer shouted at, threatened, induced or oppressed Mohd Shafrie and that Mohd Shafrie appeared well and unafraid. His evidence was relied upon to corroborate PW9's account of the admissions and to connect Mohd Shafrie with the recovered property, the scene and the pointing-out exercise relevant to both charges.

PW11 – Sgt 4435 Mohd Irwan bin Haji Bakar

34. PW11 prepared two section 117B statements, marked as Exhibits P25 and P26. He also prepared rough sketch plans of the ground and upper floors, marked as Exhibits P25A and P25B. On those plans, he marked the alleged point of entry, the original location of the router and the original location of the air-conditioning unit. He related those locations to the photographs in Exhibit P17A.
35. PW11 recorded two statements from Mohd Shafrie on 15 and 16 May 2025. During the voire dire, these statements were marked VD1 and VD2 and were subsequently admitted after the Court found them to have been made voluntarily. PW11 testified that Mohd Shafrie appeared healthy, made no complaint of headache or illness, was provided with food and was not threatened, induced, oppressed or promised anything. He said that the statements were read or made available to Mohd Shafrie, that Mohd Shafrie agreed with the recorded answers and signed them.
36. The contents of the admitted statements were relied upon by the Prosecution as admissions connecting Mohd Shafrie to the removal of the property, his disposal or handling of the televisions and CCTV camera and his involvement in the second entry into the house. PW11's scene plans were

relied upon to support the alleged method of entry and the locations from which property was taken in the second incident.

PW12 – W/Cpl 5435 Nurulaini binti Haji Yaakub

37. PW12 was involved in coordinating the investigations and recorded two further statements from Mohd Shafrie. Her first section 117B statement was marked as Exhibit P27. Mohd Shafrie's statements recorded by her on 15 and 16 May 2025 were ultimately admitted as Exhibits P28A and P28B; Mohd Shafrie raised no objection to their admission when expressly asked during the voir dire.
38. PW12 testified that Mohd Shafrie was arrested at his home, a few houses away from and visible from the complainant's house. After the arrest, the two police investigations were conducted simultaneously. She received the CCTV camera and the two televisions, together with the seizure documentation, and identified them as Exhibits P5 to P7. She also referred to the admissions recorded in PW9's investigation diary, Exhibit P20A.
39. Before recording each statement, PW12 asked whether Mohd Shafrie was healthy and wished to give a statement. According to her, he answered affirmatively, appeared conscious and in good condition and made no complaint of pain, headache or illness. She denied making any threat, inducement, promise or oppressive demand. She acknowledged speaking firmly during the first interview because Mohd Shafrie repeatedly asked her to repeat questions, but denied shouting or intimidating him. She testified that Mohd Shafrie read or was given the opportunity to read the statements, agreed with the answers and signed them without protest.
40. The Prosecution relied upon Exhibits P28A and P28B as further admissions by Mohd Shafrie. Together with the diary entries, the recovered property, the scene photographs and the pointing-out evidence, these statements were said to identify Mohd Shafrie as the person responsible for both incidents.

Evidential Effect Relating to the First Charge

41. For the charge under section 380 of the Penal Code, the Prosecution relied upon PW2 to establish that the CCTV camera and two televisions were movable property kept at the house, were under her and her mother's control, were removed without consent and did not belong to Mohd Shafrie. PW5 and PW6 documented the original locations of those items and the condition of the premises. PW4 and PW12 established the seizure and identification of the recovered property as Exhibits P5 to P7. PW7, PW9 and PW10 gave evidence concerning Mohd Shafrie's alleged admissions and pointing-out of the places from which the property had been taken. PW11 and PW12 produced Mohd Shafrie's police statements, which the Prosecution relied upon as further admissions. Taken together, this evidence was said to prove the dishonest taking of movable property from the possession of another, without consent, from a building used as a dwelling or for the custody of property, and to identify Mohd Shafrie as the person responsible.

Evidential Effect Relating to the Second Charge

42. For the charge under section 454 of the Penal Code, the Prosecution relied upon PW3's evidence that the kitchen window had been broken and that the router and air-conditioning unit were missing after the early-morning incident on 15 May 2025. PW7's photographs and the stone admitted as Exhibit P29 documented the alleged entry point and the object said to have been used to break the window. PW10 identified the property associated with that incident, while PW7, PW9 and PW10 described

Mohd Shafrie's alleged admissions and pointing-out of the route of entry, the locations from which property was removed and the place where other items were left. PW11's sketch plans and PW12's police statements were relied upon as further support for the alleged method of entry and Mohd Shafrie's involvement. The Prosecution contended that the broken window, the missing property, Mohd Shafrie's alleged admissions and the pointing-out evidence proved house-breaking and supported the inference that the entry was made with the intention of committing theft.

5. The defence case

43. Mohd Shafrie elected to give sworn evidence in Malay. He denied committing either offence and relied principally upon an alibi. He also challenged the accuracy and reliability of the alleged admissions, the police statements, the investigation diary and the pointing-out evidence. In support of his alibi, he called his brother, Shahroni bin Yussof, and his sister, Seliutai binti Yussof.

DW1 – Mohamad Shafrie bin Yussof

44. Mohd Shafrie testified that, at the material time, he lived at his mother's house at No. 87, Simpang 165, Jalan 99, Kampong Rimba. The complainant's late grandmother's house was approximately five houses away and could be seen from his family home. He accepted that he knew the late grandmother and that she had previously cared for his children. He denied, however, that he entered her house or removed any property from it on either occasion.
45. In relation to the first charge, Mohd Shafrie stated that he was at home during the early hours of 9 May 2025, caring for his mother, who was seriously ill. He said that responsibility for his mother's care was shared among members of the family, including his aunt, brother and sister. According to him, his aunt was present on 9 May 2025. He remained at home during the material early-morning period and left only later in the afternoon, at approximately 4.00 p.m., to cycle to his children's home in Selayun, Jerudong. He denied going to No. 102 during the early hours or stealing the televisions and CCTV camera.
46. Mohd Shafrie said that he visited the compound of No. 102 only once after 9 May and before 15 May 2025. He claimed that his mother had asked him to check on the late grandmother because she had not received any news from her. He knocked on the door, received no response and noticed that the compound was untidy. He began cleaning the compound, whereupon a neighbour informed him that the grandmother had died. He then returned home. He denied entering the house during that visit and denied returning there before his arrest.
47. In relation to the second charge, Mohd Shafrie testified that he was at home throughout the early morning of 15 May 2025. His brother was preparing to leave for work at about 5.00 a.m., while his mother was asleep downstairs. His sister and brother-in-law occupied the upper floor. He said that his sister came downstairs after the morning prayers to prepare her children for school and later asked him to care for their mother while she attended to matters involving the village head. He maintained that he remained downstairs caring for his mother until the police arrived and arrested him.
48. Mohd Shafrie denied breaking the kitchen window at No. 102, entering the house or removing the router, air-conditioning unit or any other property. He also denied using the stone admitted as Exhibit P29. His case was that he did not know that a second incident had occurred and learned of the allegations only after he had been taken into police custody.

49. Mohd Shafrie offered an alternative explanation for his reference to a television when first questioned by the police. He said that he believed the police were asking about a television which he had purchased for his child using financial assistance or “anugerah” money. He had sold or pawned that television to a person known as Baji for approximately \$40 to pay a personal debt, with the intention of recovering it when he had sufficient funds. He maintained that this was his own or his child’s television and was not either of the televisions allegedly stolen from No. 102.
50. Mohd Shafrie disputed the police evidence that he led the officers to Baji’s house. He said that he did not know where Baji lived and told the officers to ask his friend, Dillah. According to him, Dillah showed the police the location of Baji’s house. The police then took Mohd Shafrie to No. 102.
51. Mohd Shafrie testified that he did not voluntarily point out the route of entry, the locations from which property had been removed or the objects allegedly used during the offence. He said that, after arriving at No. 102, a male photographer spoke to him harshly and questioned why he was smiling. He was frightened and was instructed by members of the police team to comply with their directions. He claimed that the police told him where to stand and what to point at, and that he pointed to the broken window, the stone, the empty television brackets, the CCTV position, the air-conditioning position and other objects without knowing their significance. He said that some of the items photographed outside the house were already there and had not been placed there by him. His case was that the photographs recorded his compliance with police instructions and not any voluntary identification of places or property connected with an offence.
52. Mohd Shafrie also challenged the confession in police investigation diary and the statements he had given. He denied voluntarily confessing to either offence. He maintained that he had a headache, ear pain and an existing injury near the back of his neck when the statements were recorded. He said that he informed Sgt 4435 that he had a headache, but the officer repeatedly asked whether he could proceed and spoke in a raised or stern tone. Mohd Shafrie said that he became afraid, believed that he might be assaulted and eventually agreed to continue so as not to delay or anger the police.
53. He testified that he did not properly understand or read everything recorded by the police. He alleged that the officers typed answers and that he went along with what was said because he had a headache and was frightened. Although he accepted that certain initial signatures were his, he later denied that all the signatures appearing in the investigation diary and statements were made by him. He specifically denied telling the police that he had taken the CCTV camera and placed it in his bag.
54. Mohd Shafrie’s position concerning the signatures and statements developed during his evidence. He accepted that he had not challenged some of the signatures or diary entries when the relevant police witnesses were cross-examined. He explained that he had forgotten to raise the matter earlier and remembered it only after the documents were shown to him during his defence. He attributed these difficulties to headaches, stress, trauma and forgetfulness. He maintained that any apparent inconsistencies were due to his condition and the passage of time rather than dishonesty.
55. Mohd Shafrie further stated that he had previously informed the Prosecution that he would plead guilty to the charge under section 380 if the section 454 charge were withdrawn. He explained that this had been a conditional proposal and that he had witnesses prepared in relation to the house-breaking charge. The Court informed him that both charges to which Mohd Shafrie continued to deny both charges and relied upon his alibi and his challenges to the alleged admissions.

DW2 – Shahroni bin Yussof

56. DW2 was Mohd Shafrie's brother. He gave sworn evidence in Malay. He testified that he and Mohd Shafrie lived in the same house and took turns caring for their seriously ill mother, who required oxygen support. DW2 ordinarily worked from approximately 5.00 a.m. to 5.00 p.m. and said that Mohd Shafrie would care for their mother while he was at work.
57. DW2 initially had difficulty recalling the relevant date and stated only that the events occurred sometime before his mother died. After being informed that the second charge concerned 15 May 2025, he said that he remembered seeing Mohd Shafrie at home in the early morning. According to DW2, he awoke at approximately 3.00 a.m. and saw Mohd Shafrie preparing fried rice in the kitchen. They ate together while DW2 prepared for work. Before leaving, DW2 reminded Mohd Shafrie to look after their mother. He therefore maintained that Mohd Shafrie was at home before DW2 departed for work at approximately 5.00 a.m.
58. DW2's evidence was relied upon as an alibi for the period immediately before the alleged house-breaking. He accepted, however, that he consistently left for work at about 5.00 a.m. and had no contact with Mohd Shafrie during the day. He could not say what Mohd Shafrie did after he left. He agreed that it was possible for Mohd Shafrie to leave the house after 5.00 a.m. without informing him.
59. DW2 also had difficulty recalling the date of Mohd Shafrie's arrest and the date of their mother's death. He first associated her death with the period before Ramadan or Hari Raya 2025, although it was subsequently established that she was still alive when Mohd Shafrie was arrested in May 2025. He ultimately accepted that his memory of the relevant dates was poor. His evidence did not address Mohd Shafrie's whereabouts during the early hours of 9 May 2025 and therefore did not provide a specific alibi for the first charge.

DW3 – Seliutai binti Yussof

60. DW3 was Mohd Shafrie's sister. She gave sworn evidence in Malay. She testified that she lived in the same two-storey house as Mohd Shafrie and that the family relied upon him to assist in caring for their mother downstairs. DW3 and her family occupied the upper floor.
61. DW3 initially could not remember the precise date of the incident and placed it generally in May or June 2025. After being referred to 15 May 2025, she said that Mohd Shafrie was at home because he was ordinarily there caring for their mother. She recalled that, on the day of the arrest, she had intended to go to the village head and had asked Mohd Shafrie to look after their mother. She said that Mohd Shafrie was drinking with their mother when the police arrived.
62. DW3's evidence was relied upon to show that Mohd Shafrie was present at home later on the morning of 15 May 2025. She accepted, however, that she ordinarily remained upstairs from approximately 10.00 p.m. until 6.00 a.m. She did not know what Mohd Shafrie was doing before she came downstairs at about 6.00 a.m. and could not exclude the possibility that he had left and returned without her knowledge. She was unable to identify any event specific to the early hours of 15 May which independently fixed Mohd Shafrie's presence at home at approximately 5.00 a.m.
63. DW3 confirmed that their mother died on 24 November 2025 and had been ill for about three years. She disagreed with DW2's recollection that their mother had died before Hari Raya 2025 and explained that DW2's memory of the date was inaccurate. Like DW2, she did not give specific evidence concerning Mohd Shafrie's whereabouts during the early hours of 9 May 2025.

Summary of the Defence Position

64. The defence case was that Mohd Shafrie was at home caring for his mother at the material times and did not commit either offence. For the first charge, Mohd Shafrie relied substantially upon his own account that he remained at home during the early hours of 9 May 2025 and left only later that afternoon. Neither DW2 nor DW3 gave specific evidence fixing his whereabouts during the material early-morning period on that date.
65. For the second charge, DW2 placed Mohd Shafrie at home between approximately 3.00 a.m. and 5.00 a.m. on 15 May 2025, before DW2 left for work. DW3 placed him at home from approximately 6.00 a.m. onwards and at the time of his arrest. Neither witness could account for his movements during the period after DW2 left and before DW3 came downstairs.
66. Mohd Shafrie denied that the recovered property was in his possession as a result of either offence. He said that his reference to selling a television concerned a different television belonging to him or his child. He disputed that he knew where Baji lived and said that Dillah, rather than Mohd Shafrie, directed the police to Baji's house.
67. Mohd Shafrie further denied that the scene photographs represented voluntary pointing-out or knowledge which only the offender could possess. His alternative account was that the police directed him where to stand and what to point at and that he complied because he was frightened and did not understand the significance of the exercise.
68. Finally, Mohd Shafrie challenged the reliability and weight of the alleged admissions. He relied upon his headache, physical discomfort, fear of the police officer's tone, limited ability to read the statements quickly, stress and forgetfulness. He denied making the material admissions attributed to him and disputed a number of the signatures. The defence therefore contended that the police statements, investigation diary and pointing-out evidence did not constitute reliable proof that Mohd Shafrie committed either offence.

6. Applicable law

A. General Burden of Proof

69. The burden remains upon the Prosecution throughout the trial to prove every essential element of each charge beyond reasonable doubt. Mohd Shafrie is not required to prove his innocence or establish his alibi. A weakness in the defence case cannot remedy a failure by the Prosecution to prove an essential element.
70. The Court must consider all admissible evidence, including any admitted statements, oral testimony, documentary and physical exhibits and circumstantial evidence. A ruling that a statement is admissible determines only that it may be considered; the reliability, accuracy and weight of that statement remain matters for final determination.

B. Elements for First Charge: Theft in a Dwelling House under Section 380

71. Section 380 of the Penal Code, Chapter 22 provides that a person who commits theft in any building, tent or vessel used as a human dwelling or for the custody of property is liable to imprisonment for a term not exceeding seven years and a fine.

72. Section 380 is to be read together with section 378, which defines theft. A person commits theft where, intending dishonestly to take movable property out of another person's possession without that person's consent, he moves that property in order to accomplish the taking.
73. The material elements of the first charge are therefore:
1. the CCTV camera and two televisions were movable property;
 2. the property was in the possession of another person;
 3. Mohd Shafrie moved or caused the property to be moved;
 4. the movement was without the consent of the person in possession;
 5. Mohd Shafrie moved the property in order to take it out of that person's possession;
 6. the taking was dishonest, meaning that it was done with the intention of causing wrongful gain to one person or wrongful loss to another; and
 7. at the time of the theft, the property was in a building used as a human dwelling or for the custody of property.
71. Section 22 defines movable property corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth". The CCTV camera and televisions, once detached and capable of being carried away, fall within the ordinary meaning of movable property.
72. Section 23 defines wrongful gain as "gain by unlawful means of property to which the person gaining is not legally entitled" and "wrongful loss" is defined as "the loss by unlawful means of property to which the person losing it is legally entitled." Wrongful gain includes wrongful retention as well as wrongful acquisition. Wrongful loss includes wrongfully keeping a person out of property as well as wrongfully depriving that person of it.
73. Section 24 provides that a person acts dishonestly when he acts with "intention of causing wrongful gain to one person or wrongful loss to another person". It is not necessary to prove that Mohd Shafrie obtained a permanent financial benefit. Dishonesty may be established where property is deliberately removed without authority with the intention of depriving the person in possession or enabling Mohd Shafrie or another person to retain, sell or otherwise deal with it.
74. In *Public Prosecutor v Pg Noor Halimshah bin Pg Hj Tajudin*, ICCT/3/2025, the Intermediate Court applied sections 22, 23, 24 and 378 in identifying the constituent elements of theft. The Court treated movement, possession, absence of consent and dishonest intention as separate matters which the Prosecution was required to prove beyond reasonable doubt. The decision also confirms that a stated intention to repay or return property does not necessarily negate dishonesty where the property was knowingly removed without consent.

C. Matters Admitted or Not Substantially Disputed on the First Charge

71. It is not materially disputed that a CCTV camera and two televisions are movable property. Mohd Shafrie does not suggest that any of those items, if proved to be the property under the 1st charge, were legally incapable of being stolen.
72. Mohd Shafrie does not claim that he had permission to remove the CCTV camera or televisions. Although he disputes PW2's evidence that he was prohibited from visiting the house and says that he had previously assisted the late grandmother, he does not assert that PW2, her mother or the late

grandmother authorised him to take the charged property. Accordingly, absence of consent to the removal is not substantially disputed if the Court finds that Mohd Shafrie took the items.

73. It is also not seriously disputed that No. 102 was a house which had been occupied as a dwelling and which continued to contain household property after the grandmother's death. The legal character of the premises at the precise time of the offence will be discussed further.
74. Mohd Shafrie accepts that he knew the house, knew the late grandmother and lived only a few houses away. He also accepts that he participated in the photographed pointing-out exercise. What he disputes is the significance and voluntariness of that participation.

D. Matters Remaining Disputed on the First Charge

71. It remains disputed whether Exhibits P5, P6 and P7 are the same property described in the charge. This requires consideration of the differing references to an LG or Sharp television and to a 40-inch or 42-inch Aifa television.
72. It also remains disputed whether PW2 or her mother had possession of the property following the grandmother's death. Legal ownership and possession are not identical. The Prosecution need not necessarily prove title in PW2 if it proves that she or her mother had custody, control or a possessory interest superior to that of Mohd Shafrie. The Court must nevertheless be satisfied beyond reasonable doubt that the property was in the possession of a person other than Mohd Shafrie.
73. The identity of the person who moved and removed the property is wholly disputed. Mohd Shafrie denies entering the house or taking any item. The Prosecution relies upon the alleged admissions, recovery evidence and pointing-out exercise to prove that it was in fact Mohd Shafrie who removed the items.
74. Dishonest intention is also disputed because Mohd Shafrie denies taking the charged property. His explanation that the television sold or pawned to Baji was a different television belonging to him or his child must be assessed against the recovery evidence.
75. The reliability and weight of Exhibit P20A, the admitted police statements and the pointing-out evidence remain disputed. This includes whether the alleged admissions were actually made and accurately recorded, whether the relevant signatures are genuine and whether Mohd Shafrie pointed out locations from his own knowledge or merely complied with police instructions.

E. Elements for the Second Charge: House-Breaking under Section 454

71. Section 454 provides that a person who commits lurking house-trespass or house-breaking in order to commit an offence punishable with imprisonment is liable to imprisonment for a term which may extend to five years and whipping. Where the intended offence is theft, the term of imprisonment may extend to ten years.
72. Section 454 must be read with the statutory definitions of criminal trespass, house-trespass and house-breaking.
73. Under section 441, criminal trespass is committed where a person enters property in another's possession with intent to "commit an offence or to intimidate, insult or annoy a person in possession".

It is also committed where a person who entered lawfully “unlawfully remains there” with such an intention.

74. Under section 442, criminal trespass becomes house-trespass where it is committed by “entering into or remaining in a building, tent or vessel used as a human dwelling, a place of worship or a place for the custody of property”.

75. Under section 445, house-trespass becomes house-breaking where the offender effects his entry or departure by one of six specified means. These include entry through a passage made by the offender or an abettor; entry through a passage not intended for human entrance; entry through a passage opened by a means not intended by the occupier; entry by opening a lock; entry or departure by criminal force, assault or threat; or entry or departure through a passage which had been fastened against entry or departure and was unfastened by the offender or an abettor.

76. The Prosecution’s pleaded case is that Mohd Shafrie broke the kitchen window with a stone and entered through the resulting opening. If proved, entry through a window not intended for ordinary human entrance, or through a window opened by breaking it in a manner not intended by the occupier. It is the prosecutions argument that this is capable of satisfying the relevant mode of house-breaking under section 445.

77. In *Public Prosecutor v Mat Azmi bin Jumat*, ICCT/17/2010, the Intermediate Court held that a charge under section 454 requires proof beyond reasonable doubt that Mohd Shafrie committed house-breaking and did so in order to commit an offence punishable with imprisonment. The Court explained that house-breaking requires house-trespass effected by one of the six modes in section 445 and that house-trespass involves entry into or remaining in a building used as a human dwelling. The case illustrates that entry through a kitchen window which had been prised open, followed by theft inside the premises, is capable of satisfying section 454.

78. The elements of the second charge are therefore:

1. the premises were in the possession of another person;
2. the premises were a building used as a human dwelling or for the custody of property;
3. Mohd Shafrie entered or remained in the premises;
4. his entry or remaining amounted to criminal trespass because it was accompanied by an intention to commit an offence;
5. the entry or departure was effected by one of the modes of house-breaking specified in section 445; and
6. the house-breaking was committed in order to commit an offence punishable with imprisonment, namely theft.

79. The Prosecution need not prove that the intended theft was completed if it proves that the house-breaking was committed with the requisite intention. Evidence that property was actually removed may, however, support an inference as to the purpose of entry.

F. Matters Admitted or Not Substantially Disputed on the Second Charge

80. Mohd Shafrie does not materially dispute that the rear kitchen window was broken. He says that he saw the damage when the police brought him to the premises, but denies causing it.

81. Mohd Shafrie does not dispute that he was present during the later pointing-out exercise or that photographs were taken of him indicating the window and other locations. His case is that he pointed only because the police directed him to do so.
82. It is not substantially disputed that the house contained household property, including the router and air-conditioning unit, or that the premises had previously been used as a dwelling. Mohd Shafrie was familiar with the house and its proximity to his own residence.

G. Matters Remaining Disputed on the Second Charge

75. It remains disputed whether the premises met the statutory description of a human dwelling or place for the custody of property at the material time. The grandmother had died and PW3 moved in only after the alleged incident. The Court must determine discuss the temporary absence of an occupant and whether it altered the character of the house, bearing in mind that it remained furnished and continued to be used for the custody of household property in due course.
76. It remains disputed whether Mohd Shafrie broke the kitchen window, entered through it or entered the house at all. No eyewitness observed the breaking or entry. The Prosecution relied upon the alleged admissions, Exhibit P20A, the police statements, Exhibit P17B, the pointing-out evidence and Exhibit P29.
77. The statutory mode of house-breaking must be proved. It is insufficient merely to establish that a window was damaged. The Prosecution must connect Mohd Shafrie to the damage and prove that he effected entry or departure through the window or another passage in one of the ways specified in section 445.
78. Mohd Shafrie's intention is disputed. The Prosecution says that the missing property, the stone, the locations pointed out and the alleged admissions prove that the entry was made to commit theft. Mohd Shafrie denies entering and says that the police supplied the information reflected in the photographs.
79. The identity and continuity of the exhibits connected with the second incident remain disputed. This includes the chain of custody of Exhibit P29, which was not included in the original seizure documentation, and whether all the articles marked P8 to P11 and P22 to P24 were satisfactorily identified as property from the house.
80. Finally, the reliability of the alleged admissions and pointing-out exercise remains disputed for the same reasons applicable to the first charge.

H. Governing Approach

81. The Court must make a separate determination on each charge. Evidence that Mohd Shafrie committed one incident cannot, without a proper evidential basis, be treated as proof that he committed the other.
82. Mohd Shafrie's alibi does not impose upon him a burden to prove that he was at home. The question is whether the Prosecution has excluded the alibi and proved identity beyond reasonable doubt. In relation to the second charge, this requires particular consideration of the period after DW2 left for work at approximately 5.00 a.m. and before DW3 came downstairs at approximately 6.00 a.m.

83. The Court may draw reasonable inferences from proved facts, but an inference of guilt must be based upon reliable evidence and must not rest on speculation. Finally, even where Mohd Shafrie's evidence is rejected as inconsistent or untruthful, the Court must still examine whether the Prosecution's evidence independently proves every statutory element beyond reasonable doubt.

7. Burden and standard of proof

84. The Prosecution bears the legal burden of proving every essential element of each charge beyond reasonable doubt. That burden remains upon the Prosecution throughout the trial and does not shift merely because Mohd Shafrie has elected to give evidence, advanced an alibi or provided an explanation which the Court finds improbable or untruthful.
85. There is no general burden upon Mohd Shafrie to prove his innocence. Where Mohd Shafrie raises an alibi, he bears only an evidential burden to place sufficient evidence before the Court to make the alibi a live issue. Once that issue arises, the ultimate question remains whether the Prosecution has proved beyond reasonable doubt that Mohd Shafrie was at the scene and committed the offence. Mohd Shafrie is not required to establish the alibi on a balance of probabilities.
86. Similarly, where Mohd Shafrie offers an alternative explanation for possession, recovery, admissions, signatures or the pointing-out exercise, he does not bear the legal burden of proving that explanation. The Court must consider whether the explanation is reasonably possible when assessed against the whole of the evidence. If it is reasonably possible, or if it exposes a material gap in the Prosecution's evidence, and Mohd Shafrie is entitled to the benefit of that doubt.

Circumstantial Evidence

87. The absence of an eyewitness does not prevent a conviction. A charge may be proved by circumstantial evidence. This may include recovery of property, conduct, admissions, knowledge of the scene, pointing-out evidence and the correspondence between different pieces of physical and documentary evidence.
88. Circumstantial evidence must, however, be considered together and not as a collection of isolated suspicions. The Court must first decide which facts have been proved by reliable evidence. It may then determine what reasonable inference, or inferences arise from those facts.
89. Where proved facts support both an inference of guilt and a reasonable inference consistent with innocence, the Court cannot be satisfied beyond reasonable doubt. A conviction is justified only where the combined circumstances, viewed as a whole, satisfy the Court of guilt beyond reasonable doubt and leave no reasonable innocent explanation.
90. In the present case, the circumstantial chain relied upon by the Prosecution includes the discovery of the missing property, the condition of the premises, recovery of the exhibits, Mohd Shafrie's alleged admissions, the investigation-diary entries, the police statements, the pointing-out photographs and the proximity of Mohd Shafrie's residence to the house. The Court must determine whether each link has been independently and reliably proved. A weakness in one link may affect the strength of the chain as a whole, particularly where that link connects Mohd Shafrie to the property or place of incident.

91. Evidence of possession or disposal of recently stolen property may be relevant to the identity of the accused and dishonest taking. Before drawing any inference, however, the Court must be satisfied that the property was correctly identified, then deal with whether that continuity of possession was established, and that Mohd Shafrie was connected to its possession or disposal and that his alternative explanation is not reasonably possible.
92. The same approach applies to the pointing-out evidence. The Court must determine whether the locations and objects indicated by Mohd Shafrie demonstrated knowledge which he independently possessed and which tended to identify him as the offender, or whether the police had already supplied the information and directed his actions.

Credibility and Reliability

93. The Court must assess the credibility and reliability of every material witness, whether called by the Prosecution or the defence. This involves considering the witness's opportunity to observe, ability to remember, internal consistency, consistency with contemporaneous documents and physical evidence, responses under cross-examination, possible interest or bias and the extent to which the evidence is independently corroborated.
94. Not every inconsistency destroys credibility. The Court must distinguish minor discrepancies arising from ordinary failures of memory, language, transcription or the passage of time from contradictions affecting the substance of the charge. Greater significance may attach to inconsistencies concerning the identity of the property, the alleged admissions, the means of entry, continuity of an exhibit or the witness's presence during a material event.
95. The admission of VD1 and VD2 following the voir dire does not compel the Court to accept their contents as true. The Prosecution must still prove that the statements were made by Mohd Shafrie, were accurately recorded and are sufficiently reliable to be acted upon. The same applies to Exhibit P20A and the statements marked P28A and P28B. Any dispute concerning signatures, recording, interpretation or Mohd Shafrie's physical condition is relevant to weight, even if it does not affect admissibility.
96. If the Court rejects Mohd Shafrie's evidence or finds that a particular explanation was raised late, that finding may affect his credibility. However, it cannot, fill a gap in the Prosecution's case. A false denial or an afterthought is not a substitute for proof of an essential element. The Court must first be satisfied that the Prosecution's evidence, has considered independently and establishes guilt beyond reasonable doubt.
97. The same principle applies to the alibi witnesses. Their relationship with Mohd Shafrie and inability to recall precise dates may affect the weight of their evidence, but they are not to be rejected solely because they are family members. The Court must assess what periods they could reliably account for and then determine whether the Prosecution has excluded the alibi during the material time.

8. Issues, Assessment of Evidence and Findings

98. The essential question is whether the Prosecution has proved every element of each charge beyond reasonable doubt. Although some evidence is relevant to both charges, each charge concerns a separate incident and must be determined independently.

99. The earlier finding of a prima facie case merely required Mohd Shafrie to enter upon his defence. Similarly, the ruling that statements VD1 and VD2 were voluntarily made determined their admissibility, but not their truth or evidential weight. The Court must evaluate those statements alongside the oral evidence, physical and documentary exhibits, recovery and pointing-out evidence, and Mohd Shafrie's explanations.
100. The Court has also considered the final submissions of both parties. The Prosecution relies upon the cumulative effect of the admissions, recovery, pointing-out and physical evidence. Mohd Shafrie challenges the reliability of each of those evidential links and relies upon his alibi and the absence of an eyewitness. The Court will address those competing submissions when determining each charge.
101. The Prosecution submitted that the evidence, considered as a whole, proved both charges against Mohd Shafrie beyond reasonable doubt. Although no witness saw him enter the house or remove the property, the Prosecution argued that his identity was established through his admissions, the recovery and identification of the stolen property, the pointing-out exercise and the physical condition of the premises.
102. Mohd Shafrie submitted that the Prosecution had not proved that he was the person responsible for either incident. No witness saw him enter the house or remove any property. He maintained that he was at home caring for his seriously ill mother at the material times.
103. He challenged the reliability of the admissions recorded in Exhibit P20A and his police statements. He said that he had a headache and physical discomfort, was frightened by the officers' tone, had difficulty reading and did not properly understand the documents. He denied making the material admissions and disputed a number of the signatures.
104. Mohd Shafrie also submitted that the pointing-out photographs did not demonstrate independent knowledge of either offence. He maintained that the police told him where to stand and what to indicate and that he complied because he was frightened.

A. First charge: Theft under section 380 of the Penal Code

105. The first charge alleges that Mohd Shafrie dishonestly removed two television sets and a CCTV unit from a building used as a human dwelling or for the custody of property.
106. For the first charge, the Prosecution relied on PW2's evidence that the CCTV camera and two televisions were kept in the house and were removed without consent. PW2 identified the recovered articles as Exhibits P5, P6 and P7. PW4 seized those articles from Baji, while PW12 subsequently received them with the accompanying seizure documents.
107. The Prosecution submitted that the differences concerning the brand and size of the televisions were minor errors of description. PW2 was familiar with the house and its contents and positively identified the recovered articles in Court. The discrepancies did not show that unrelated property had been substituted or recovered.
108. The Prosecution further relied on PW9's evidence that Mohd Shafrie admitted taking the televisions and CCTV camera. Those admissions were recorded in Exhibit P20A. The Prosecution also

relied on the police statements recorded by PW11 and PW12 and on PW10's evidence concerning Mohd Shafrie's admissions, the recovery of property and his directions to the police.

109. According to the Prosecution, Mohd Shafrie's explanation that the television transferred to Baji belonged to him or his child was unsupported. He did not produce a receipt, purchase record or witness to confirm that account. His explanation also failed to account for the recovery from Baji of three articles identified by PW2 as having come from the house.
110. The Prosecution therefore submitted that Mohd Shafrie dishonestly removed movable property from the possession of PW2's family without consent. The house remained a building used as a human dwelling or for the custody of property despite being temporarily unoccupied following the grandmother's death. All the elements of the first charge under section 380 were accordingly established.
111. In relation to the first charge, Mohd Shafrie submitted upon the differences in the descriptions of the televisions and the fact that the property was recovered from Baji rather than from him. He maintained that the television he had sold or pawned to Baji belonged to him or his child and was not one of the televisions taken from the house.

Identity and possession of the property

112. PW2 identified Exhibits P5, P6 and P7 as the television sets and CCTV unit kept in her late grandmother's house. The Court acknowledges the differences between the initial description of one television as an LG television and its later identification as a Sharp television, as well as the descriptions of the Aifa television as either 40 or 42 inches.
113. These discrepancies reduce the precision of the original descriptions, but they do not create a reasonable doubt about the identity of the exhibits. PW2 was familiar with the house and its contents and identified the recovered articles in Court. There is no basis to find that she mistakenly identified wholly unrelated property or fabricated the loss. The Court therefore finds that Exhibits P5, P6 and P7 (the two TVs and CCTV) were, in fact, the articles removed from the premises.
114. Although PW2 did not assert personal ownership, strict proof of legal title is unnecessary for theft. The material question is whether the property was in the possession of someone other than Mohd Shafrie. After the grandmother's death, PW2 and her mother retained the only keys, assumed responsibility for the house and exercised control over the property kept there. Mohd Shafrie had no possessory or proprietary right over P5, P6 and P7. The Court therefore finds that the charged property was in the possession and control of PW2's family.
115. For purposes of completeness, since his divorce, Mohd Shafrie is not a member of PW2's family.

Absence of consent

116. PW2 testified that Mohd Shafrie did not live at the premises and had no permission to enter and remove property. Mohd Shafrie maintained that he had previously visited the grandmother and had assisted around the compound. Even if that previous familiarity or permission is accepted, it did not confer continuing authority after the grandmother's death and, more importantly, did not authorise him to remove or dispose of the property.

117. The removal was discovered as a loss and was reported to the police. There is no evidence that PW2, her mother or anyone entitled to control the articles consented to their removal. The Court therefore finds that the property was taken without consent.

Identity of the person who removed the property

118. No witness saw Mohd Shafrie enter the house or physically remove the televisions and CCTV unit. The Prosecution's case is therefore circumstantial and depends principally upon:

1. Mohd Shafrie's admissions recorded by PW9 in Exhibit P20A and in his police statements;
2. The recovery of Exhibits P5, P6 and P7 from Haji Mohd bin Haji Mohd Rais, also known as Baji;
3. The evidence connecting Mohd Shafrie with Baji and the disposal of a television;
4. Mohd Shafrie's directions and conduct during the pointing-out exercise; and
5. The identification of the recovered articles by PW2.

119. PW4 seized the articles from Baji but did not personally know how they came into his possession. Recovery from Baji, considered by itself, would not prove that Mohd Shafrie stole them. The implication of this fact lies in Mohd Shafrie's alleged admissions and the information and directions attributed to him.

120. Mohd Shafrie offered an alternative explanation that a television belonging to him or his child had been acquired through financial assistance and later sold or pawned to Baji for BND40. That account was not supported by a receipt, purchase record or evidence from the alleged supplier, the child or Baji. More significantly, it did not explain why three articles recovered from Baji were identified by PW2 as having come from the house.

121. The connection of evidence concerning the three items was established. PW4 identified the seizure form, Exhibit P14A, and the three items seized from Baji. PW12 subsequently received the articles and accompanying seizure documents from members of the Special Duties team. While there were differences in certain exhibit descriptions and references, those irregularities do not demonstrate substitution, fabrication or a material break in the chain of evidence of Exhibits P5, P6 and P7.

Reliability of the admissions and pointing-out evidence

122. PW9 gave direct evidence that Mohd Shafrie made admissions concerning the first incident, that those admissions were recorded in Exhibit P20A and that Mohd Shafrie read, or was read, the record before signing it. PW10 also gave evidence concerning Mohd Shafrie's admissions and directions to relevant places and articles. PW11 and PW12 testified about the recording of Mohd Shafrie's statements and described him as conscious, responsive and capable of communicating.

123. Mohd Shafrie said that he had a headache, was confused, had difficulty reading, did not understand the questions and signed because he was frightened. He also disputed several signatures. The Court has considered those complaints independently of the voir dire ruling. No medical evidence established that Mohd Shafrie was incapable of understanding the interviews or the significance of his answers. A firm or raised tone, without more, does not establish that an admission was false.

124. The challenge to the signatures also developed during the proceedings. Mohd Shafrie initially acknowledged certain signatures and later disputed others. The fact that the challenge was not raised during the voir dire or when the relevant officers were first cross-examined materially weakens the credibility of this argument.

125. The Court does not rely upon second-hand accounts from officers who did not personally hear the admissions. In particular, PW7's evidence about what other officers told him is not treated as proof that Mohd Shafrie confessed. The Court relies instead on the evidence of officers who dealt directly with Mohd Shafrie, the contemporaneous records and the objective circumstances corresponding with those records.
126. PW9 gave direct evidence that Mohd Shafrie made admissions concerning both incidents and that he recorded them in Exhibit P20A. PW10 likewise attributed to Mohd Shafrie admissions that he broke the kitchen window with a stone, entered the premises and removed or relocated property. To the extent that PW9 and PW10 personally heard those statements, their evidence is direct evidence of the admissions. PW11 and PW12 may support the circumstances in which the formal police statements were recorded, but their evidence cannot prove admissions made outside their presence.
127. By contrast, PW7 did not hear the original admission attributed to Mohd Shafrie. He learned of it from members of the Special Duties team. The Court therefore does not rely upon PW7's repetition of what those officers told him as proof that Mohd Shafrie confessed. PW7's evidence is relevant only to matters within his personal knowledge, including his participation in or observation of the pointing-out and photographic exercise.
128. The records relied upon are Exhibit P20A and Mohd Shafrie's admitted police statements. Before describing Exhibit P20A as a contemporaneous record, I would add that the Court is satisfied from PW9's evidence that the relevant entries were made at or sufficiently near the time of the alleged admissions. The ruling following the voir dire establishes only that the formal statements were voluntarily made and admissible; their accuracy and weight must still be determined from the evidence at trial.
129. I am satisfied that there are objective facts and evidence that correspond with the recorded accounts. This includes the recovery of Exhibits P5, P6 and P7 from Baji and their identification by PW2; the broken rear kitchen window observed by PW3 and depicted in Exhibit P17A; the route and locations recorded during the pointing-out exercise in Exhibit P17B; and the missing or relocated property shown in the scene evidence and plans. These facts corroborate the admissions to prove that Mohd Shafrie supplied the relevant information before the police disclosed or independently showed the information to him.
130. Mohd Shafrie further alleged that the police instructed him where to stand and what to indicate during the pointing-out exercise. The photographs do not independently establish guilt, and the Court does not treat the mere act of pointing as conclusive. Nevertheless, the number and specificity of the locations and items indicated, considered together with the recorded admissions and recovery of the identified property, make Mohd Shafrie's explanation reasonably improbable. The pointing-out evidence provides corroboration rather than the sole basis for the finding.
131. The Court is therefore satisfied that the material admissions were made and were accurately recorded. Their connection with the recovered articles, relevant locations and physical evidence makes them reliable in their essential particulars.

Alibi

132. Mohd Shafrie maintained that he was at home caring for his mother during the early hours of 9 May 2025 and did not leave until later that afternoon. Neither DW2 nor DW3 specifically accounted for his whereabouts at the material time of the first incident. Their evidence was principally directed to the second incident and was affected by uncertainty concerning dates.

133. The absence of a complete alibi does not prove guilt. In this case, however, Mohd Shafrie's unsupported account does not raise a reasonable doubt when considered against the reliable admissions, recovery evidence, identification of the property and corroborative pointing-out evidence.

134. The Court consequently finds beyond reasonable doubt that Mohd Shafrie was the person who removed Exhibits P5, P6 and P7 from the house.

Dishonesty

135. Mohd Shafrie had no claim of right to the articles and no consent to remove them. The removal of the property and its subsequent transfer or disposal to Baji demonstrate an intention to obtain wrongful gain for himself or another and to cause wrongful loss to those entitled to possess the property.

136. The Court therefore finds that the taking was dishonest.

Character of the premises

137. At the time of the theft, the house was temporarily unoccupied following the grandmother's death. It nevertheless remained furnished, contained household property and continued to be controlled by PW2's family. The fact that the house was not occupied at the time of the first incident does not deprive it of its character as a residential building or a building used for the custody of property.

Finding on the first charge

138. The Court finds that:

1. Exhibits P5, P6 and P7 were movable property kept in the house;
2. They were in the possession and control of persons other than Mohd Shafrie;
3. Mohd Shafrie moved and removed them without consent;
4. He did so dishonestly;
5. The property was removed from a building used as a human dwelling or for the custody of property; and
6. The discrepancies in description and documentation do not create a reasonable doubt when the evidence is considered as a whole.

139. Every element of theft under section 380 of the Penal Code has therefore been proved beyond reasonable doubt.

B. Second charge: Housebreaking under section 454 of the Penal Code

140. The second charge alleges that, at approximately 5.00 a.m. on 15 May 2025, Mohd Shafrie committed housebreaking by entering the premises through a broken rear kitchen window with the intention of committing theft. The condition of the window was documented in Exhibit P17A, while PW11's plans identified the alleged point of entry and the original locations of the router and air-conditioning unit.

141. The Prosecution submitted that entry through the kitchen window amounted to housebreaking under section 445(b), because a window is a passage not ordinarily intended for human entrance. The broken window, condition of the house and movement of property supported the inference that an intruder entered through it.
142. The Prosecution relied upon the admissions attributed to Mohd Shafrie by PW9 and PW10. It also relied on his ability to indicate the route of entry, the broken window and the locations of relevant property during the pointing-out exercise recorded in Exhibit P17B. According to the Prosecution, the number and specificity of the places and articles indicated demonstrated knowledge consistent with his participation in the offence.
143. The Prosecution submitted that Mohd Shafrie's allegation that the police directed the entire pointing-out exercise was not credible. PW10 denied that the police selected the locations for him or forced him to participate. PW7 also observed no threat, inducement or oppressive conduct during the photographic exercise.
144. Although Exhibit P29 was not included in the original seizure documentation, the Prosecution maintained that the broken window and method of entry were established independently by PW3's evidence, the scene photographs and the plans. According to the Prosecution, the case did not depend entirely upon proving that Exhibit P29 was the precise stone used.
145. The Prosecution argued that Mohd Shafrie's intention to commit theft could be inferred from the forced entry, the removal or relocation of property and his admissions. There was no evidence of any innocent reason for entering the house through the rear kitchen window.
146. The Prosecution also submitted that the defence alibi did not raise a reasonable doubt. Neither DW2 nor DW3 accounted for Mohd Shafrie's whereabouts during the early hours of 9 May 2025. For the second incident, DW2 could not account for his movements after approximately 5.00 a.m., while DW3 could not account for them before approximately 6.00 a.m. Their uncertainty concerning the relevant dates further reduced the weight of their evidence.
147. Finally, the Prosecution submitted that Mohd Shafrie's complaints about his headache, fear, limited reading ability and disputed signatures did not make the admissions unreliable. The relevant officers described him as conscious, responsive and physically well. His challenge to some signatures was raised late and had not been put to the relevant witnesses when they were first cross-examined.
148. In his submissions, Mohd Shafrie denied breaking or entering through the kitchen window. He relied upon the uncertainty surrounding Exhibit P29, including its omission from the original seizure documentation, and submitted that the Prosecution had not reliably proved that it was the stone used to break the window.
149. Mohd Shafrie further relied upon the evidence of DW2 and DW3 as supporting his alibi. He submitted that the weaknesses or gaps in their recollection did not amount to proof that he was present at the scene. He therefore invited the Court to find that the recovery, admission, exhibit and pointing-out evidence was unreliable and that the Prosecution had failed to prove either charge beyond reasonable doubt.

Whether housebreaking occurred

150. PW3 discovered that the rear kitchen window had been broken and that property, including a router and air-conditioning equipment, was missing or had been removed. The damaged window was recorded in the scene photographs contained in Exhibit P17A, while PW11's plans, Exhibits P25A and P25B, identified the window as the alleged point of entry and showed the original locations of the affected property.
151. No witness saw the window being broken or the offender entering through it. Nevertheless, its condition was inconsistent with ordinary access or accidental opening. The damage, missing property and condition of the interior support the inference that the window was deliberately broken to create or open a passage for unlawful entry.
152. Exhibit P29 was alleged to be the stone used to break the window. Its omission from the original seizure documentation and its later formal identification weaken its continuity. The Court therefore gives it limited weight and does not find it necessary to determine that P29 was the precise object used.
153. Under section 445(b) of the Penal Code, housebreaking is committed where a person effects entry through a passage not intended for human entrance. A kitchen window is not ordinarily intended as a passage for persons to enter the house. Indeed, the statutory illustrations to section 445 expressly recognise entry into a house through a window as housebreaking. The broken window, scene photographs and PW3's evidence establish the physical circumstances from which entry through the window has been established. The Court therefore finds that, entry into the premises was through the rear kitchen window.

Character and possession of the premises

154. Although the house was unoccupied after the grandmother's death and PW3 moved into it only after discovering the second incident, it remained furnished and continued to contain household property. It was under the possession and control of PW2's family. Again, Mohd Shafrie is not a member of PW2's family.
155. A temporary absence of residents did not deprive the premises of their character as a building used as a human dwelling or for the custody of property. Mohd Shafrie neither resided there nor had consent or lawful authority to enter. His previous familiarity with the grandmother or the compound did not allow him permission to enter through a broken window.

Identity of the person who entered

156. No eyewitness placed Mohd Shafrie at the premises at approximately 5.00 a.m. The Prosecution relies upon his alleged admissions to PW9 and PW10, Exhibit P20A, his police statements, the pointing-out exercise and the correspondence between his alleged account and the physical condition of the scene.
157. For the reasons given in relation to the first charge, the Court accepts the evidence of PW9 and PW10 concerning the admissions made directly to them. It also accepts the statements as reliable in their material particulars. Mohd Shafrie's complaints about headache, confusion, fear and limited reading ability do not satisfactorily explain the detailed information recorded or its correspondence with the broken window and locations of the affected property. I have no reason to doubt the confession found in his police statements.

158. Exhibit P17B shows Mohd Shafrie indicating the route of entry and various locations and objects. PW7 did not hear the original admission and was informed of it by other officers. Her second-hand account is therefore not relied upon as proof of the admission. Her direct evidence concerning the photographs and the conduct of the exercise remains relevant, although the Court acknowledges that a supervising officer took or adjusted some of the photographs.

159. The photographs alone would not establish that Mohd Shafrie was the offender. When considered with the direct evidence of PW9 and PW10, the contemporaneous records and the physical condition of the premises, however, Mohd Shafrie's knowledge of the route and relevant locations significantly corroborates his admissions.

160. Mohd Shafrie claimed that the police told him where to stand and what to point at. However, he pointed out several specific places and objects connected to the offences. Mohd Shafrie was unable to provide any further or specific details of this point. The information he provided make his claim that the police directed everything made his story less believable. The Court therefore rejects Mohd Shafrie's explanation.

Property connected with the second incident

161. The Court accepts PW2's identification of the router, air-conditioning unit, basket and mirror as articles from the house. The evidence concerning Exhibits P22 to P24 is less precise because the record does not clearly show that PW2 personally identified every item.

162. The Court accordingly does not place equal or decisive weight on every item. It is sufficient that the reliably identified property was missing, removed or relocated following the forced entry. The deficiencies concerning some of the subsidiary exhibits do not undermine the evidence of housebreaking or the principal missing property.

Intention accompanying entry

163. There is no direct evidence of Mohd Shafrie's state of mind at the instant of entry. Intention may, however, be inferred from the circumstances.

164. Entry was obtained by breaking the rear kitchen window. Property inside the house was subsequently removed or and placed outside away from the house. Mohd Shafrie had no lawful reason to enter, and no innocent explanation to explain the manner of entry. His admissions and knowledge of the affected locations further demonstrate that his purpose was to commit theft, an offence punishable with imprisonment.

165. The Court therefore finds that the unlawful entry was accompanied by the intention required under section 454.

Alibi

166. DW2 testified that Mohd Shafrie was at home preparing fried rice at approximately 3.00 a.m. and was still there when DW2 left for work at about 5.00 a.m. DW2 could not account for his movements after leaving and was uncertain about the precise date.

167. DW3 said that she ordinarily came downstairs at approximately 6.00 a.m. and found Mohd Shafrie at home, but she could not account for his movements before that time and likewise had difficulty recalling the date independently of the arrest.
168. The Court does not find that DW2 or DW3 deliberately gave false evidence. Their evidence, however, was based partly on routine and uncertain recollection and left a material gap between approximately 5.00 and 6.00 a.m.
169. That gap does not reverse the burden of proof and is not treated as positive evidence of guilt. It means only that the defence evidence does not provide a continuous alibi or raise a reasonable doubt when weighed against Mohd Shafrie's reliable admissions and the corroborative physical and pointing-out evidence.

Finding on the second charge

170. The Court finds that:
1. The rear kitchen window was deliberately broken to effect entry;
 2. Entry through that opening constituted housebreaking;
 3. The premises remained a building used as a human dwelling or for the custody of property;
 4. Mohd Shafrie had no consent or lawful authority to enter;
 5. Mohd Shafrie was the person who effected the entry;
 6. His purpose in entering was to commit theft; and
 7. The weaknesses concerning Exhibit P29 and some subsidiary exhibits do not create a reasonable doubt because the conviction does not depend upon them.
171. The Prosecution has therefore proved beyond reasonable doubt that Mohd Shafrie committed housebreaking in order to commit theft, contrary to section 454 of the Penal Code.

9. Conclusion on guilt

172. The Court has not inferred guilt merely because Mohd Shafrie's explanations were unconvincing, or because property was recovered from Baji or because Mohd Shafrie appeared in pointing-out photographs. The findings rest upon the collective effect of mutually supporting evidence. I am satisfied that prosecution had proven beyond reasonable doubt, the interference with the premises, the disappearance and recovery of identified property, Mohd Shafrie's accepted recorded admissions, his knowledge of relevant locations, the physical and photographic evidence and the absence of a defence explanation capable of raising a reasonable doubt.
173. The discrepancies concerning brands, dimensions, exhibit references and the admission of Exhibit P29 warranted caution. They did not, individually or collectively, break the essential evidential links or create a reasonable possibility that Mohd Shafrie was innocent.
174. Accordingly, on the first charge under section 380 of the Penal Code, the Court finds Mohd Shafrie **guilty and convicts him accordingly.**
175. On the second charge under section 454 of the Penal Code, the Court finds Mohd Shafrie **guilty and convicts him accordingly.**

10. Sentence

176. The Defendant has been convicted after trial of two charges. The first is an offence of theft in a dwelling contrary to section 380 of the Penal Code, committed on 9 May 2025. The second is an offence of housebreaking in order to commit theft contrary to section 454 of the Penal Code, committed on 15 May 2025.
177. Having been convicted after trial, the Defendant is not entitled to the reduction in sentence ordinarily afforded to an offender who pleads guilty and thereby demonstrates an acceptance of responsibility and saves judicial time.
178. I have considered the circumstances of the offences, the Defendant's antecedents, the mitigation advanced on his behalf, the aggravating features of the offending and the relevant sentencing authorities. I have also considered the appropriate relationship between the sentences on the two charges and the totality of the resulting sentence.

Antecedents

179. The Defendant is not a first offender. He has a previous conviction in 2021 for theft contrary to section 379 of the Penal Code.
180. I regard that conviction as a relevant antecedent. It is an offence of the same general character as the present offences, namely dishonesty involving the taking of another person's property. Although approximately four years separate the previous conviction from the present offending, I take into account that the Defendant has previously been before the Court and punished for theft.
181. Its relevance is that the Defendant has previously been sentenced for theft and nevertheless proceeded to commit further and more serious offences of dishonesty.

First Charge – Section 380

181. The first offence concerns theft from a dwelling. In assessing the appropriate sentence, I have considered the Brunei authorities concerning sentences for theft from buildings and dwellings.
182. The authorities demonstrate that sentences for such offences must reflect the particular circumstances of the theft, including the nature of the premises, the value and nature of the property stolen, whether the property was recovered, the degree of planning and the offender's antecedents.
183. In *Abdul Faiz bin Zaidin v Public Prosecutor, COACM/17/2015*, the Court of Appeal considered sentences imposed for a series of offences including housebreaking, housebreaking and theft, house trespass and theft in a building. The decision demonstrates that individual sentences must ultimately be considered in the context of the offender's overall criminality and the totality principle. The defendant pleaded guilty, to which the lower court had taken a starting point of 12 months reduced to 8 months for 3 charges under section 380 of the Penal Code.
184. In the present case, the Defendant was convicted after trial. There is accordingly no basis for reducing the sentence to reflect a guilty plea.
185. I consider the following as aggravating features:
(a) the offence involved property taken from a house/dwelling;

- (b) the property included retail items such as televisions and CCTV equipment that can easily be sold on;
- (c) property was disposed of to a third party; and
- (e) the Defendant has a relevant previous conviction for theft under section 379.

186. Taking these circumstances together, I consider that a sentence of **14 months' imprisonment** is appropriate for the first charge.

Second Charge – Section 454

187. The second offence is more serious. The Defendant returned to the same premises on 15 May 2025, only six days after the first offence, and committed housebreaking in order to commit theft.

188. The principal sentencing authority is *Public Prosecutor v Mohammad Aimaduddin bin Zefry (COACM/19/2016)*.

189. In *Aimaduddin*, the respondent had pleaded guilty to two offences of housebreaking under section 454 and one offence of theft under section 379. He also had a previous conviction for theft under section 380 for which he had received eight months' imprisonment.

190. The Court of Appeal considered the sentences imposed for the section 454 offences to be manifestly inadequate. In doing so, the Court referred to its earlier decisions in *Mohammad Joll bin Tumih and another v Public Prosecutor COACM/5/2005, reported at [2007] 2 JCBD 183, Mat Azmi bin Jumat v Public Prosecutor COACM/1/2012, and Mohd Saufi bin Md Ariff v Public Prosecutor COACM/5/2000*.

191. The significance of *Aimaduddin* for present purposes is that the Court of Appeal regarded three years' imprisonment following conviction after trial as being at the lower end of the sentencing range for an offence under section 454.

192. I therefore approach three years' imprisonment as being at the lower end of the applicable range, rather than as a fixed sentence which must be imposed in every case. The appropriate sentence within that range depends upon the particular aggravating and mitigating circumstances.

Aggravating Features of the Section 454 Offence

193. There are several aggravating features in the present case.

194. First, the offence involved unlawful entry into a residential property. Offending involving intrusion into a person's home is inherently serious because it involves not merely loss of property but an invasion of the security and privacy which an occupier is entitled to expect within his or her home.

195. Second, the Defendant caused damage to the window in order to gain entry. This was therefore not a case of simply taking advantage of premises which happened to have been left open.

196. Third, and importantly, the Defendant had already stolen from the same premises only six days earlier. His return to the same house constituted a fresh and deliberate episode of offending. The first offence did not deter him. Instead, he returned to the premises and committed the more serious offence of housebreaking in order to steal.

197. Fourth, the Defendant has the relevant 2021 conviction for theft under section 379. This further distinguishes him from a first offender and demonstrates a repetition of offending involving dishonesty and theft.

198. Taking these matters cumulatively, I consider that a sentence at the very bottom of the section 454 range would inadequately reflect the seriousness of this offence.

199. I therefore impose a sentence of **3 years and 6 months' imprisonment and two strokes** of the cane on the second charge.

Concurrent or Consecutive Sentences

200. I next consider whether the sentences should run concurrently or consecutively.

201. The offences were committed on separate dates, six days apart. Although they concerned the same premises, they were plainly not part of one continuous transaction. After committing the first offence on 9 May 2025, the Defendant made a separate decision to return to the premises on 15 May 2025 and commit further offending.

202. In *Public Prosecutor v Mohammad Aimaduddin bin Zefry*, the Court of Appeal emphasised the significance of offences committed on separate occasions when determining whether sentences should be concurrent or consecutive. The ultimate sentence must nevertheless remain proportionate to the offender's overall criminality.

203. I am satisfied that wholly concurrent sentences would fail adequately to reflect the fact that there were two distinct episodes of criminal conduct. If the whole of the first sentence were made concurrent, there would effectively be no additional punishment for the separate theft committed six days earlier.

204. Conversely, I do not consider it necessary to make the whole of the 14-month sentence consecutive. To do so would result in an aggregate sentence of over five years' imprisonment, which I consider greater than is necessary to reflect the Defendant's overall criminality in the circumstances of this case.

205. I therefore consider partial consecutiveness to be appropriate.

Totality

206. Standing back and considering the offending as a whole, I must ensure that the aggregate sentence is just and proportionate.

207. The Defendant has committed two separate property offences against the same premises within a short period. The second offence represents an escalation in seriousness. He also has a relevant previous conviction for theft. These considerations require an overall sentence which adequately reflects punishment, deterrence and the repetition of offending.

208. At the same time, the Court must ensure that the cumulative effect of consecutive sentences does not result in a sentence disproportionate to the Defendant's overall offending.

209. I consider that an overall sentence of four years' imprisonment, together with 2 strokes punishment imposed in respect of the section 454 offence, appropriately reflects the totality of the Defendant's criminality.

Sentence

210. Accordingly, the sentences of the Court are as follows:

**First Charge – section 380 of the Penal Code
14 months' imprisonment.**

**Second Charge – section 454 of the Penal Code
3 years and 6 months' imprisonment and two strokes of the cane.**

211. I order that **six months of the sentence on the first charge shall run consecutively** to the sentence imposed on the second charge. The remaining 8 months shall run concurrently.

212. The Defendant will therefore serve an **overall sentence of four years' imprisonment and two strokes.**

213. The date of imprisonment shall take effect on the date on which the Defendant was first remanded in custody in connection with these offences (15th May 2025).

14. Right of appeal and other Orders.

211. The Defendant is informed that he has a right of appeal against his conviction and/or sentence. The notice of appeal must ordinarily be given **within 28 days** from the date of conviction or, in the case of an appeal against sentence, from the date on which sentence is passed. The Court of Appeal has power to extend the time for giving notice of appeal should the defendant fail to file within the prescribed time. It is further ordered that all recovered items be returned to their rightful owners.


Hazarena bte ROKSJ DP Hj Hurairah
Judge
Intermediate Court

