

06/11/1998

Counsel 'twisted' my evidence, says witness

Carolyn Hong; Ruslaini Abbas

KUALA LUMPUR, Thurs. - The trial of Datuk Seri Anwar Ibrahim was delayed twice today, once for the defence to consult him and soon after hearing began, it stopped again for a witness to "rest".

Outgoing Special Branch director Datuk Mohd Said Awang wanted the second break after he became upset trying to explain how defence counsel Christopher Fernando had "twisted his evidence" yesterday.

Everyone gathered in the courtroom by 9am, including Anwar who was dressed in a white shirt with black stripes with a white ribbon (symbolising justice) pinned on, and navy-blue trousers.

He greeted his family and Filipino congressmen in the gallery.

Before entering the dock, he hugged his daughter Nurul Izzah very tightly.

His leading counsel Raja Aziz Addruse and Fernando, Senior Deputy Public Prosecutors Datuk Abdul Gani Patail and Azahar Mohamad, entered chambers and came out at 9.15am to say the judge had agreed to stand down until 10am.

The break was to allow Anwar to meet his lawyers. He was allowed to move freely around the courtroom and sat at counsel's table.

He also signed a notice of appeal against the judge's decision on the first day to dismiss defence objection to the charges as the law under which they are brought - Emergency (Essential Powers) Ordinance 22 of 1970 - was in the process of being annulled.

After meeting his lawyers, Anwar spoke to his family again, carrying a book on Abraham Lincoln.

He turned to some foreign reporters and said the "local media reports are terrible".

Noticing the local media nearby, he said to them: "I understand. It's not your fault. It's your editors."

He went back into the dock and the judge entered at 10am.

Mohd Said went back into the witness stand. He spoke in English.

Mohd Said: Before we start, can I say something to you (the judge)? I realised this morning after reading the newspapers that learned counsel (Fernando) had twisted the evidence I gave, in his first question (yesterday).

Judge: Let me see what was recorded. You were referred to ID14 (a letter by Ummi Hafilda Ali, sister of Anwar's former private secretary, entitled Perihal Salah Laku TPM which contains allegations of Anwar's sexual misconduct).

Judge (reading his record of Mohd Said's evidence): I may have said we did not believe the allegations.

Mohd Said said the newspapers had written that we (meaning himself, his deputy Datuk Amir Junus and Anwar) did not believe the allegations in the letter.

But he insisted he meant they did not believe Abim and four other Islamic organisations had written the Surat Talqin.

(Surat Talqin is an anonymous letter entitled Talqin Terbuka untuk Anwar Ibrahim, which is similar to Ummi's letter).

Judge: Never mind. The DPP will re-examine you later and rectify it, if necessary. What's important is what I have recorded.

Don't worry about the newspapers. They may not be very accurate in what they report. Counsel didn't twist your evidence. Don't worry, later the

DPP will re-examine.

Mohd Said: I am worried (laughter in the court) for me and my officers who have never appeared in court before.

Judge: Don't worry. If you want to correct it, you can.

Mohd Said: I want to.

Judge: Counsel, ask the question.

Fernando: You said I twisted ...

Judge: Just ask the question again.

Fernando: I am not happy with the allegation (that I twisted the evidence).

Judge: Don't worry about that.

Fernando: You said earlier on, in examination-in-chief, that "We" did not believe those wild allegations.

Mohd Said: My answer now is No, I didn't say that.

Fernando: Yesterday, did anyone speak to you about this matter after court adjourned?

Mohd Said: No. But over the case, many people spoke to me ... my children, my wife, they wanted to know how I gave evidence in court.

Judge: I believe he (Fernando) had in mind not your family members but the police, DPP or anyone with an interest in the case.

Mohd Said: Over this evidence, no.

Fernando: Over this case?

Mohd Said: As I said, I spoke to my wife, my children ...

Judge: At home, we talk a lot of things, all that is not relevant here.

Fernando: Yesterday, you said "I may have said that".

Mohd Said: Yes, but it was based on twisted evidence. My Lord, I can't go on like this if questions are on wrong evidence.

Yes, I said but at that time I can't remember the facts. I had to answer yes or no.

Fernando: You said you were worried for yourself and your officers. What were you worried about?

Mohd Said: If you start twisting evidence, I am worried about giving wrong evidence.

Fernando: Did you understand my question? I asked a plain straightforward question and you answered: I may have said that.

Mohd Said: It was based on twisted evidence.

Fernando: What do you mean by twisted evidence?

Mohd Said: You asked me wrong facts. My Lord, I am sorry I am not very calm this morning.

Judge: Relax, relax. If you want me to adjourn the court for a while, I can.

Mohd Said: Yes, My Lord.

Judge: When people give evidence, they must be in complete control of themselves. His mind must be clear.

Be relaxed. You can go have a coffee to relax your mind. Don't worry about anything. Relax. We are only here to search for the truth with your assistance.

Mohd Said: May I leave the court now?

Judge: Wait, wait. (Laughter in the court) How long do you need? 10 minutes?

Mohd Said: 10 to 15 minutes.

Judge: I will give 10 minutes. At the end of the day, we want the truth.

Fernando: Can the witness be told not to speak to anyone during the recess?

Judge: He wants to rest. (Turns to witness) Try not to discuss. At the end of the day, we want to get to the truth of it all. Don't worry. We will give about 10 minutes.

Court adjourns and resumes at 10.30am.

Judge (speaking to Mohd Said): When questions are asked, try to understand the question. If the question is too long, you can ask for it to be shortened, for explanation.

If you cannot understand, tell me. Your responsibility is to me. They (counsel and prosecution) are asking questions on my behalf.

If you don't understand, tell me. You can answer 'you don't know'. The most important thing is the truth.

Cross-examination begins. Questioned by Fernando, Mohd Said said he had been in the police force for almost 30 years.

His immediate superior was the Inspector-General of Police, and he had access to the Home Minister and Prime Minister. He also said he took orders from the Home Minister.

He said he keeps the IGP informed and the Home Minister on "certain cases". He had informed the IGP about this case.

Fernando: Did you give a written report to the IGP and Home Minister about this case?

Mohd Said: No.

Fernando: Are you sure about that? Think. You are under oath.

Mohd Said: I know I am under oath. No need to remind me all the time.

Fernando: Just in case.

Fernando: Did you give a written report to the IGP and Home Minister about this case?

Mohd Said: No.

He also said he could not remember giving a copy of the report to Anwar, and said he did not give a report to anyone at all.

Fernando: Are you sure about that?

Mohd Said: (A report about) the role I played. No, no such thing.

Fernando: Did any of your officers put up a report?

Mohd Said: That, you have to ask my men. I wouldn't know. If they don't report to me, I wouldn't know.

He was then asked about "neutralising or turning over" people.

Fernando: What do you mean by neutralising or turning over somebody?

Mohd Said: I already gave my evidence on that.

Judge: You have to repeat what you said earlier.

Mohd Said: I have to check the (court) records. I may say something wrong.

Judge: That's their (defence counsel's) duty. The object of cross-examination is to test what was said in examination-in-chief.

You are not permitted to say I have already answered. You have to answer again.

We have to find out the truth about what was in examination-in-chief and in cross-examination.

If there are material differences, I have to make a finding of what is true. I have to become an expert on the Special Branch ... (laughter in court).

Mohd Said: My answer will still be the same.

Judge: Which is?

Mohd Said: Which is I have to get hold of what I had said.

Judge: You must give evidence of what you know. I can't give you the records. It defeats the purpose of cross-examination.

The question is simple: What do you mean by neutralising?

Mohd Said: My answer is still: I can't repeat what I said in the exact words.

Judge: Not the exact words, the substance.

Mohd Said: Not even the substance. He (Fernando) will twist what I said.

Judge: My role is to protect you and everyone here. You will have to

answer unless it is a state secret.

Mohd Said: Turning over is a process of changing a person's stand. If he has a communist belief, you turn him over so he changes his stand.

Neutralisation is if somebody is a threat to security, we neutralise him so he is no more a threat.

Fernando asked how this was done and Mohd Said said it was a trade secret. Fernando and Abdul Gani submitted briefly on this point and the judge stayed the line of questioning until later.

Mohd Said said neutralising does not mean changing truths into untruths, and untruths into truths.

Fernando: Yesterday, my learned friend (Abdul Gani) asked if your investigation was concerned about the truth of the allegations (against Anwar)?

Mohd Said: May I know from the DPP whether the question was asked?

Fernando: No, no. You answer me. Does your evidence change from day to day?

Mohd Said: No.

Fernando: Why are you afraid? Why do you want to check with the DPP?

Mohd Said: I am afraid you may twist me like yesterday.

Fernando repeated the question, and Mohd Said said he could not remember.

Fernando: That was only yesterday. You are saying under oath that you can't remember a question posed to you only yesterday?

Mohd Said: Yes. But you can help me by telling me what I said yesterday.

Fernando: When I help you, you say I twist facts.

Mohd Said: You didn't help me, you twisted it.

Fernando: Do you have a bad memory?

Mohd Said: Yes and no.

Fernando: What do you mean by yes and no?

Mohd Said: Certain things you can remember very well, certain things you can't remember.

Fernando: Do you have a selective memory?

Mohd Said: I am not a doctor.

Fernando: You don't have to be a doctor.

Mohd Said: Some things you can remember, some things you can't. No, I don't have a selective memory.

Fernando asked how was it he could remember "with remarkable clarity" dates, events and places when answering the prosecution's questions.

Mohd Said said that was not true, there were things he could not remember.

Mohd Said: That's what I said, this guy, this learned lawyer is trying to twist facts.

Fernando: I am trying to show respect to you.
words.

Fernando: You are not here to make comments or be rude.

Mohd Said: I am not being rude. How can I be rude? He asked if I can remember and I said I cannot.

Fernando asked how it was that he could display "a rather good memory" during examination-in-chief but cannot remember a question posed to him yesterday.

He then asked if Mohd Said's investigation concerned the truth of the allegations against Anwar, and he said yes.

Fernando: If someone, your superior, asked you to do something that was illegal or wrong, would you do it?

Mohd Said: No.

Fernando: Similarly, would you do anything even if asked by the IGP, Home Minister or anybody else, which would bring disrepute to the police

force?

Mohd Said: No.

Abdul Gani objected that this was not relevant. The judge overruled the objection.

Fernando: Did you believe the allegations in ID14 (Perihal Salah Laku TPM)?

Mohd Said: Yes.

He said he could not remember if he told Anwar that the allegations were politically motivated and said Anwar may have told him that.

Fernando: If that is your position (that you would not do anything wrong even if asked to), why did you, on the request of Anwar, ask for those allegations to be retracted?

Mohd Said: In the first place, the IGP, Home Minister or PM have never asked me to do anything against the law.

Judge: He asked when Anwar asked you to do it, why did you do it?

Mohd Said: Because he sent instructions.

He said when he did the operations, he did not know it would lead to disrepute or it would be illegal.

Judge: What he (counsel) is trying to say is as you believed the allegations but asked for them to be retracted, did you realise it was wrong?

Mohd Said: At that point of time, I did not realise it was wrong.

He said he did not think it was illegal to ask for a retraction of the allegations even though he believed them to be true.

Fernando: You did not know it was illegal, as the head of Special Branch?

Mohd Said: Yes.

Judge: You are a very senior police officer. You believed the allegations, why did you take steps to have them retracted?

Mohd Said: Because of instructions of DPM.

Judge: But you said if anyone like IGP, Home Minister or PM asked you to do anything wrong, you wouldn't do. Why did you do it?

Mohd Said: These three persons never asked me to do anything illegal.

Judge: What he (counsel) is trying to get at is why did you do it? Next question he is thinking of asking is, if people like IGP asked, you won't do it, why did you do it in this case?

Mohd Said: They never asked me to do anything wrong. But theoretically, if they ask I may have to do it if the situation is such, despite my beliefs.

Fernando: You are in fact saying you are willing to compromise your beliefs?

Mohd Said: No.

Fernando: In this situation, are you telling the court you are prepared to do something illegal because instructions were given to you by DPM?

Mohd Said: I said earlier, when I started the operations, I did not know it would turn out this way.

Judge (smiling): You did not know you would now be sitting here?

Fernando: If instructions were given to you by someone important, are you prepared to break the law?

Mohd Said: It depends on the circumstances. In this case, when I started the operations, I didn't know it'll be illegal.

Judge: It's commonsense, isn't it?

Fernando: You said you are prepared to break the law if you receive instructions. Were you prepared to break the law if instructions were given to you by the accused?

Mohd Said: I would do it but I will not say I would go all out to do it.

Fernando: That was only the DPM, right? If someone higher than the DPM

were to instruct you to come and lie to court, would you do it?

Mohd Said: They never asked me.

Fernando: If you were asked, would you do it?

(Abdul Gani objects, saying this was conjecture. The judge said latitude must be allowed for cross-examination. He allowed the question.)

Mohd Said: It depends on the situation.

Judge: You may lie?

Mohd Said: I may or may not, My Lord.

Judge: What are the instances in which you would lie?

Mohd Said: I wouldn't know.

Fernando: I put it to you that you are a most unscrupulous man.

Mohd Said: That's his (Fernando's) opinion.

Fernando: I put it to you that I am justified in saying it, based on your answers.

Mohd Said: From your own questioning, you are also unscrupulous.

Judge: I do not think the question is very fair.

Fernando then asked if Mohd Said was on optional retirement, and he confirmed it. Fernando asked if Mohd Said was afraid he would not get his pension.

Abdul Gani objected that it was a scandalous question but the judge allowed it. Mohd Said said there was no reason to be afraid.

He also told the court Anwar had asked him to investigate the matter deeply and he understood it to mean to get to the truth.

He said he informed the IGP about the investigations and was aware that the PM had said the allegations (against Anwar) were baseless.

Fernando produced a New Straits Times article dated Aug 25, 1997, titled PM: An attempt to sabotage Anwar's chances as a successor.

Mohd Said was asked to read it out but said the print was too small. Fernando read it out.

The NST article quoted the Prime Minister as saying the allegations were not true and he had received a report on it.

Mohd Said said he gave the report to the PM but could not remember giving one to Anwar.

Asked for the report, he said it was with the PM. Asked for a copy, he said he had handed over his duties and may have left a copy in the office.

Fernando asked the judge to direct Mohd Said to produce a copy. Abdul Gani said since Fernando suggested that Anwar had a copy, he should produce it.

The judge said the defence could produce it and get Mohd Said to confirm if he wrote the report. The court adjourned for lunch.

When hearing resumed at 2.22pm, Mohd Said said he had never given any false report to the IGP and neither had he ever given a false report to the Prime Minister who is also the Home Minister.

When Fernando showed Mohd Said the NST report, and asked if the PM's statement was based on his report, Abdul Gani stood up and objected and cited section 42 of the Evidence Act relating to leading question.

Judge: Why not let the witness answer.

Mohd Said: I do not think that the statement was based on my report.

Fernando: Why did you say that?

Mohd Said: It contains a lot of things that I probably did not report to him ... this is just a Press report.

When Fernando asked if his report (to the PM) said that the allegations against Anwar were false, Mohd Said said he could have said that.

Mohd Said if he was not mistaken, his report to the PM involved a short note in a cover letter and two letters of apology written by Umami Hafilda and Azizan.

When asked what was the gist of his report, Mohd Said he could not

remember, but he knew that he enclosed the two letters of apology.

Fernando: Did you state that the allegations against Datuk Seri Anwar were false and baseless?

Mohd Said: The letter was written in Malay and I may have said to that effect.

Fernando: What difference does it make, English or Malay?

At this juncture, Anwar turned to the public gallery and smiled at his mother-in-law.

Counsel said since the allegations were false and baseless, then it was legitimate for Anwar to get the retraction.

After a pause of about 10 seconds, Mohd Said answered in the positive and again Anwar turned to the public gallery while his lawyers, Zulkifli and Kamar Aniah turned to him in the dock behind them.

Fernando: Your report to the PM also contained a statement from you that the allegations were politically motivated?

After pausing for several seconds, Mohd Said said he could not remember.

Fernando: In that report, you did state that Datuk Megat Junid ...

Paul interrupted saying that counsel was too loud and told him to push the microphone away from him.

This was followed by laughter from the gallery while Fernando adjusted the microphone and said something.

Fernando: Did you say that Datuk Megat Junid, his wife and several others were behind a plot to topple the accused?

Mohd Said: I doubt that I said such things.

To a another question by counsel, Mohd Said said he could have mentioned the names of PM's political secretary Datuk Aziz Shamsuddin, Tun Daim Zainuddin, Tan Sri Rahim Tamby Chik, Datuk Megat Junid Megat Ayob and his wife Norzilah Jalil in his report.

However, later he said he was not sure.

Fernando: In what context did you mention them?

Mohd Said: In the first place, I am not sure if I put up a report as mentioned by counsel ... but I do not deny mentioning the names of these people in the report.

To a question, Mohd Said said he could have mentioned two imposters, but he did not remember whether he said that they were sent to pressure Ummi Hafilda and Anwar's former driver Azizan (Abu Bakar) to make false allegations against Anwar.

Mohd Said said he did not remember if he had mentioned that Daim had met Ummi Hafilda as part of the scheme to topple the former DPM.

To another question, Mohd Said said he was not sure if he had mentioned Dr Ristina Majid's name in the report, but the Prime Minister asked him whether the police had used machine guns when they raided her house to arrest Ummi Hafilda and Azizan.

Mohd Said said he thought he had told the Prime Minister that the police did not use any machine gun when they entered the doctor's house.

When asked how many reports he gave the Prime Minister, Mohd Said said at the most two.

At this juncture, Fernando made an application for the report to be produced saying that it was crucial to the defence.

Paul said he did not want the defence to go on a fishing trip. Fernando then read the provisions of section 51 of the Criminal Procedure Code under which his application was made.

Abdul Gani said the document was not with the prosecution and he had to find out about it.

However, he said the defence had to follow procedures in order to get the report as enunciated by two decided cases.

Paul said the application should be made by way of a summons and in the

meanwhile he could not make any order.

Gurbachan Singh, another defence lawyer, said the cases cited by Abdul Gani involved applications made before proceedings commenced, unlike the present application which was made in the midst of a trial.

Paul said he was reading section 51 and it was quite necessary that a formal application be made since the document, though produced, may not be admissible.

Judge: If I make the order, it (the report) may operate against the defence and I think, in the interest of justice, it would be fair if you look at the document first as it may not be favourable to the accused.

Gurbachan: If the court allows the application we will decide whether to tender the document or not.

Judge: I think you have to comply with the law by making a formal application ... what happened to the copy that you all have? Lost, cannot be found?

Christopher: The report is crucial, may be the prosecution can show it to us.

Paul said it would be alright if the prosecution showed it to the defence, if it wanted to cut short the legal procedure.

Abdul Gani said he did not object to the application, but it had to follow procedure as he was not certain whether the document was classified since it was a Special Branch report.

The judge said Government documents could be classified if they were Rahsia Besar (big secret).

However, he added documents could be declassified and "we just have to comply with the law".

Raja Aziz Addruse, Anwar's leading counsel, said it was a matter of principle.

Judge: Unfortunately, we have to follow the law. You cannot demand for the document now. I have made my ruling.

Raja Aziz: If they won't produce it what will the court do?

Judge: Then you have to make the application.

Paul then ordered Fernando to continue and counsel said it was difficult for him to cross-examine the witness without the report. Fernando then asked Mohd Said if he remembered saying that the person mentioned in his report had conspired to topple Anwar.

Mohd Said: May I know the names please, My Lord.

Fernando: All the names mentioned earlier.

Mohd Said: No!

Mohd Said said he did not think that he stated in his report that those people, including some corporate leaders, had conspired against Anwar.

Fernando stopped his cross-examination which was taken over by Gurbachan who, among other things, asked Mohd Said if he agreed that he did not order his officers to force Ummi Hafilda and Azizan to tell lies.

Mohd Said agreed that Ummi Hafilda and Azizan were arrested in Dr Ristina's house.

He also agreed that the doctor was the sister-in-law of Datuk Shamsuddin Othman, who is the secretary-general of the Home Ministry.

Gurbachan: At the material time Dr Mahathir Mohamad was the Home Minister?

Mohd Said: I think so.

Gurbachan: You are not sure?

Mohd Said: I said so because he (Dr Mahathir) may be away then and the accused may be acting.

There was a buzz in the gallery.

Gurbachan: The Deputy (Home Minister) was Megat Junid?

Mohd Said: I think so ... maybe he was already a Minister of Trade and

Consumer Affairs.
Hearing continues.