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DPP: Defence's questions irrelevant to the charge

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KUALA LUMPUR, Wed. - Ummi Hafilda Ali asked Azizan Abu Bakar to go to the office of former Malacca Menteri Besar Tan Sri Abdul Rahim Tamby Chik in April this year but he refused, the Datuk Seri Anwar Ibrahim trial heard today.

Azizan, the former driver of Anwar's wife, said he told Ummi that he was not interested and switched off his handphone since he was busy at work then.

Moreover, he added, as far as he was concerned the matter was settled and he wanted to start a new life with a new job.

Azizan, the 12th prosecution witness, said this when cross-examined by one of Anwar's lawyers Gurbachan Singh.

Hearing began at 9.27am, seconds after Anwar was ushered into the courtroom.

Questioned by Gurbachan, Azizan agreed that he called ex-commando Ma'amin Latib "Abang" (elder brother).

He also agreed that he told Ma'amin that he had been slandered because he did not know Khalid Jafri (the author of the book 50 Dalil Mengapa Anwar Ibrahim Tidak Boleh Jadi Perdana Menteri).

Gurbachan: Did you also ask Ma'amin to perform the hajat (supplicatory) prayers for you to be freed of the slander since he (Ma'amin) never missed his prayers?

Azizan: Yes, in respect of the book 50 Dalil - its publication and writing.

Azizan said he told Ma'amin this while they were on their way back to Malacca from Kuala Lumpur. He denied calling Ma'amin two days after saying it.

When counsel asked another question similar to the one asked earlier, Senior DPP Mohd Yusof Zainal Abiden objected saying that the defence's questions were irrelevant to the charges as they only concerned the witness' credibility.

The judge ruled that credibility was relevant. However, he could tell counsel to stop as "this is our system".

After some argument, the judge allowed the questions as long as counsel did not touch on irrelevant matters.

Gurbachan thanked the judge and asked Azizan if he told Ma'amin that he was "fed up" with Ummi and Azizan said he could not remember.

Judge: (To Mohd Yusof) This is relevant or not? I am now more satisfied with my earlier ruling.

Gurbachan: We fully agree with your Lordship... (laughter in court) (To Azizan) is it true that Ma'amin asked who was Ummi?

Azizan: Yes.

Gurbachan: Did you say, "Oh ... she's Azmin's sister and all these chaos are her doing"? (Mohamed Azmin was Anwar's former private secretary)

Azizan: I only told him that Ummi was Azmin's sister.

Gurbachan: You did not say "all these chaos are her doing"?

Azizan: I cannot remember.

To a question, Azizan said he could not remember if Ummi called him on his handphone after his conversation with Ma'amin, who called him Zan.

Gurbachan: Did you tell Ma'amin that this case was long settled and Ummi was a bad woman who liked to disturb you and that you did not want to get involved anymore, but she liked to implicate you?

Azizan: I only told him that the case was settled ... I cannot remember if I said the rest of the sentence.

Asked if he told Ma'amin that he and Umami had met Rahim in his office in June, Azizan said he did not.

Gurbachan: What did you say?

Azizan: What I can remember is that, I told him Umami invited me to Tan Sri Rahim's office and I told her that I did not want to go.

Azizan said Umami asked him to go to Rahim's office in early April this year.

Asked why Umami told him to go to Rahim's office, Azizan said: "When she called and wanted me to go to Tan Sri Rahim's office, I told her that I was not interested and I switched off my handphone."

Asked if he was fed up with Umami, Azizan said as far as he was concerned "the case" was settled and he wanted to start a new life with a new job.

At this juncture, Mohd Yusof objected, contending that counsel was asking questions to see if the witness would contradict himself.

After more argument, Paul overruled the objection and told counsel to proceed.

Questioned by Gurbachan, Azizan said when Umami called him, he was trying to forget the matter after the authorities had failed to take any action against Anwar.

Azizan: To me, who do not know the law, I thought the case was settled.

Gurbachan: Do you agree that Umami's call and conversation would rekindle the matter?

Azizan: I do not know. It's the defence's opinion. (Laughter in court).

When counsel asked if he agreed that that was Umami's intention, Paul said the witness had answered the question and disallowed it. However, he would record the question.

When Azizan said he could not comment, Paul told counsel to probe Umami's mind when she testifies.

Gurbachan: You are fed up with her?

Azizan: When she called, I had a lot of work at the office.

Gurbachan: Were you fed up with her?

Azizan: No!.

Gurbachan: Did you tell Ma'amin that you would not forget him if the case was settled and there would be something for him for praying for you?

Azizan: I cannot remember.

Questioned by counsel, Azizan denied that he told Ma'amin that Umami had a "group".

Gurbachan: When Ma'amin asked you who is in the group, you said that one of them was Megat Junid's wife Ziela Jalil and you also said not to talk about people as you were fed up?

Senior DPP Abdul Gani Patail objected to the question, contending that Azizan had denied telling Ma'amin that Umami had a group.

Paul ruled that the question was irregular.

When Gurbachan asked Azizan if Ma'amin asked him who were in the group, Paul said the witness had said he did not say anything about any group. The judge disallowed the question.

Counsel then put it to Azizan that he did tell Ma'amin such a thing, to which Azizan disagreed.

When Gurbachan put to the witness that Ma'amin asked him who was in the group, Azizan said he had already told the court that Umami had no group.

Gurbachan: Did you mention Ziela Jalil?

Azizan: Never mentioned that name to Ma'amin!

Asked by counsel if he remembered the day when Ma'amin came to talk to him in his office, Azizan said the ex-commando was always in his office since he (Ma'amin) had been directed by Rahim King (Abdul Rahim Dahalan)

to protect him.

Gurbachan: Was he your bodyguard?

Azizan: I did not employ him. He got orders from Rahim King.

Asked by counsel if he told Ma'amin: "Can you imagine that they slandered Datuk Seri Anwar by saying that he wanted to kill me and my family".

Azizan: Yes, I told him that and I also said that my wife died because of a road accident.

Gurbachan: Who had slandered the accused?

Azizan: I do not know. When I went to the accused's house in June this year, he told me there was a passage in the 50 Dalil book which said that he had killed my wife.

Gurbachan: What do you mean by they?

Azizan: To me, it's the writer and publisher of the book.

Gurbachan: The accused did not say anything like that to you.

Azizan: Not true!

When counsel asked Azizan if it was true that his parents were the only people who knew he was travelling to his wife's home town the night she died in the accident, Paul asked what was the relevance of the question.

Gurbachan said it was relevant to show the conspiracy in which false allegations and fabrication were involved.

After arguments between counsel and Abdul Gani, Paul told Gurbachan that he was allowing counsel to ask about the accident for the last time.

Gurbachan: Did you say: I wanted to go to my wife's home town for the Hari Raya one late night and only my mother, who was ill, and father knew about it.

When I reached a junction, suddenly a car skidded and hit the left side of my car, my wife was injured and she died later.

It is impossible that the accused had wanted to kill me and my family. It couldn't be that my parents had told the accused.

Azizan: Yes.

The court took a short break and when hearing resumed 20 minutes later, counsel asked if he knew how his sworn statement was in the 50 Dalil book.

Azizan said a police officer who recorded his statement told him that the statement was included in the book.

Gurbachan: My question was how it found its way into the book?

Azizan: I do not know.

To a question, Azizan said he knew that Anwar had a driver called Sani who had been working for him since August 1983.

When asked if he agreed that Anwar had an escort called Mokhtar who worked for him from 1982 to Sept 2, this year, Azizan said he knew Mokhtar, but he did not know when he started to work for the accused, although Mokhtar was already there when he (Azizan) started working for Anwar's wife Datin Seri Dr Wan Azizah Wan Ismail in August 1989.

He disagreed with counsel's suggestion that he had only driven Anwar once or twice and even that with his family along.

Asked if he went to the Finance Ministry in June this year, Azizan said he did, but could not remember if he registered his name in the visitors' register.

He said he met Anwar's personal assistant Mohd Ahmad to find out the result of a contract submitted by one of his company's directors called Datuk Taufiq Yap Abdullah.

Azizan agreed that Anwar did not see him then and he went to his house that night after the accused's ADC ASP Zull Aznam told him that the sacked Deputy Prime Minister wanted to see him.

Gurbachan: I put it to you that you contacted Zull Aznam because you wanted to see the accused on a personal matter.

Azizan: Not true.

To a question, Azizan agreed that he told Anwar about the accident and the accused and his family extended their condolences on the death of his wife.

Gurbachan: During the meeting you told the accused you never said that he (Anwar) was involved in the murder of your wife.

Azizan: I feel very sad when you (counsel) ask about my wife's death.

Paul asked what was the relevance of the question and, moreover, he had ruled that counsel should not raise the issue again.

Gurbachan said evidence was led that Anwar had told Azizan during the meeting to deny making the sworn statement on the sex allegations.

(Azizan was seen wiping his eyes.)

Counsel said he was not going into detail on the accident, he merely wanted to rebut the prosecution's contention and he asked the court to listen to his question.

Paul then told him to repeat the question and, after hearing it, he disallowed it.

When asked if he told Anwar that he wanted to lead a new life, Azizan said he could not remember.

To another question, Azizan said he told Anwar that he had nothing to do with the author of the 50 Dalil book.

Gurbachan: Did you also say that you were sorry for what had happened and that it would not happen again?

Azizan: I don't remember.

Gurbachan: I put it to you that during the meeting the accused never told you to make any denial to the police.

Azizan: I disagree.

To a question, Azizan denied that Rahim King and Ma'amin were not Anwar's friends, but his.

To another question, Azizan agreed that Dr Ristina Majid (in whose house he and Ummi were arrested on Aug 17, 1997) was not his relative.

Asked by counsel, Azizan said some strangers were following him around after he signed the sworn statement in August last year and after the book 50 Dalil was published this year.

They were either in a car or they waited for him outside his office and house, Azizan said, adding that he did not record the car numbers in 1997, but he recorded the number of the car which tailed him this year.

Azizan said he did not lodge any police report about being tailed.

Gurbachan: Did you lodge a report about the accused calling and scolding you?

Azizan: Which year?

Gurbachan: Does not matter which year.

Azizan: The accused did not call or scold me this year, but he did in early August last year.

Azizan said he did not lodge any report on the incident.

When counsel put to him that Anwar did not scold him, Azizan said he had said he was confused by the question.

When asked again, he disagreed with counsel.

Counsel then questioned him about his meeting with lawyer Karpal Singh and asked if he told Karpal about being followed.

Paul reminded Gurbachan of the rule on client/counsel secrecy to which counsel said he could ask the question if Azizan agreed to answer it.

After the judge allowed the question, and on being asked again by counsel, Azizan answered in the affirmative.

When Gurbachan asked if Karpal advised him to lodge a police report, the judge reminded counsel again and after hearing arguments by Gurbachan, Paul told the interpreter to tell Azizan that he could answer if he

wished.

Azizan said Karpal did not advise him to report against those who had tailed him.

To another question, Azizan said he did not tell Karpal that he was arrested on Aug 17, 1997.

When asked who was Umami's friend who sent the fax on the sworn statement to Karpal's office, Azizan said it was her office mate, but he did not know the name.

Gurbachan then told the court that he wanted to refer to Azizan's statutory declaration (IDD 54) made on Aug 10, this year.

Paul advised him if he wanted to impeach the witness, he had to make the application now and not question him on it then embark on the impeachment proceeding after getting all the answers.

Counsel said he was asking the witness the question to get the evidence for fear that if it was not done now and, just in case the declaration was impeached, there was nothing for the defence to fall back on.

Paul said he was just reminding counsel whom he expected to know the law on impeachment.

Counsel said he would have to discuss with the other counsel and would decide in the afternoon whether to embark on the impeachment proceeding.

When Gurbachan asked Azizan if he agreed that Rahim King and Ma'amin did not give any instruction to lawyer Sukdhev Singh on the declaration, Paul said counsel should decide whether he was going to impeach the witness or not.

Asked if anyone told him that his sworn statement was in the 50 Dalil book, Azizan replied in the negative.

Azizan disagreed he told Sukdhev that "certain quarters" had used him.

When he asked another question, Paul reminded him again on the impeachment, counsel said he was in a dilemma in view of the court's earlier ruling that the defence could apply to impeach the witness at the end of the cross-examination.

Paul said he was quite clear on the rule of impeachment and not in a dilemma.

After some discourse on the issue, the court was adjourned.

Hearing resumed at 2.15pm.

Gurbachan: We have considered the advice of Your Lordship. It is our intention to use the SD both as substantive evidence and for the purposes of impeachment.

In the meantime, I propose to cross-examine further. I have just obtained an original copy of the SD and apply to have it marked.

It was marked as D55.

(To Azizan) Is it not true that on or about July 30, 1998, you contacted Sukhdev?

Azizan: No.

Gurbachan: Did you tell Sukhdev that you had dreamt that Anwar would win his civil suit? (Anwar has filed a libel suit against Khalid Jafri, the author of the 50 Dalil book).

Azizan: Yes.

Gurbachan: You also told him that you had followed the development of that case by reading three newspapers?

Azizan: Yes.

Gurbachan: You also told him that you wanted to make a SD?

Azizan: No.

Gurbachan: Is it true that on Aug 10, 1998, in Sukhdev's office you read the draft of the SD?

Azizan: No, when I reached there, the SD was already prepared.

Gurbachan: I put it to you that on Aug 10, 1998, you not only read the

draft but also made changes to it.

Azizan: When I arrived in Sukhdev's office, the SD was ready and I read para five.

Gurbachan: This amendment was made on Aug 10, 1998?

Azizan: It was Sukhdev who made the amendment and he said para five needed to be changed.

Gurbachan: That was on Aug 10, 1998?

Azizan: Yes.

Gurbachan: Is it not true that the changes were about a police report you wanted to lodge and then changed your mind?

Azizan: I don't remember because there were long sentences in para five.

Gurbachan: My Lord at this stage, I am making an application that we be allowed to interview Rahim King and Ma'amin for the purpose of taking a statement from them or at least to interview them specifically as regards the allegations made by Azizan on the role of Rahim King and Ma'amin, with regard to his meeting with Sukhdev in their presence and with regard to his allegations against them.

Both were called in for identification by the prosecution and are prosecution witnesses. It is our submission that we would be in no position to cross-examine Azizan with regard to his allegations (against Rahim King and Ma'amin) without interviewing them.

We would also not be in a position to challenge Azizan without the benefit of the interview.

It is our submission that there is no property in a witness and that the defence is entitled to interview the two only for this purpose.

This application is made because we do not know whether the prosecution will or will not call them in the course of its case.

In support of my application, the Legal Profession (Practice and Etiquette) Rules 1978, rule 34.

(The rule states that counsel can interview the witness of opposing party, in criminal or civil proceedings, without consent but with notice. The interviewer must scrupulously avoid influencing the witness to deviate from the truth.)

Mohd Yusof: It is not very clear the real purpose to interview witnesses. If it is merely for the purpose stated by counsel, I believe that it can't be done under section 153 of the Evidence Act. This question about Rahim King and Ma'amin goes more to credibility than the charges.

Judge: This application is really bizarre. Do you have case law authorities?

Gurbachan: I don't have.

Judge: I don't think you can find any. If the application can be granted, you will want to interview every prosecution witness.

Is that the practice? If you want to use him, use him during cross-examination when he is called, or if he is not called, when he was made available to the defence. At that stage, you could be accorded the right to interview.

Mohd Yusof: Even if he has the right, it is not relevant and is precluded under section 153. It does not prove or disprove the charges.

Gurbachan: At this stage, it's not our intention to interview Rahim King and Ma'amin for the purpose of contradicting Azizan.

Our purpose is to know what actually transpired so that we can cross-examine him. Rule 34 does not say this right can only be exercised during the defence case.

Judge: Rule 34, even if it had legal force, can only be exercised by giving notice. I don't know what conditions they (the prosecution) will impose.

Gurbachan: We are giving notice now.

Judge: You are giving notice to me, not to them.

Gurbachan: We said yesterday ...

Judge: In these things, you must give written notice.

Abdul Gani: About the Legal Profession Act, how does it apply to criminal cases? It's for the legal practice. I wonder if the rule is null and void in the first place as there is nothing in the Act to govern this area.

Judge: It might relate to private summonses. Some matters in a criminal case are privileged, like the investigation papers.

You are not asking for the IP but what he said is in the IP. Is this how criminal prosecution is conducted?

Gurbachan: What is the purpose of the rule then? Is it dead letter?

Judge: I don't know. It does not have the force of law. In absence of authorities on rule 34, it would apply to situations when individuals commence private prosecution.

Not ordinary trials or this would lead to the ridiculous situation of the defence applying to interview prosecution witnesses each time he gives evidence.

The only time the prosecution will allow this is at the end of its case when it offers the witnesses to the defence.

It is then quite fair because you are going to use them as your witnesses. In the absence of any better authority than rule 34, I'm afraid I am unable to agree.

Gurbachan: Rule 34 nowhere restricts the right to interview a witness or prospective witness either (in cases of) private complaints or to when the prosecution closes its case and offers its witnesses.

Azahar: The rules are made pursuant to section 72 of the Legal Profession Act. It's the Bar Council which makes the rules, surely we are not bound by them.

Gurbachan: Section 72 (2) states that the rules are only operational after it is gazetted and approved by the Attorney-General.

Judge: Adjourn for five minutes. I will give it a little bit of thought.

Court resumes a few minutes later.

Judge: I considered the matter and I am of the opinion that the court has nothing to do with the matter. It has to be resolved by the parties. They may impose conditions, this is for you all to decide. Proceed with the case.

Gurbachan then said the defence wanted to give the prosecution oral notice and the judge told him to deal with them. When asked to record this, he said "this book is not for writing everything."

Gurbachan: Very well. We like to proceed with the impeachment application.

We wish to impeach the credit of Azizan with regard the SD in particular para five. May I hand to Your Lordship a copy of it wherein I have underlined it.

The judge asked Gurbachan if he wanted to adopt into the impeachment proceeding all evidence adduced during cross-examination, including the portions where Azizan mentioned he was pressured and forced into making the SD. The judge said it would be a waste of time to do it all over again.

Mohd Yusof: Which aspects of Azizan's evidence which para five materially contradicts? The problem is that para five talks about the 50 Dalil book ...

Judge: That's a good point. Where's the book? I have to have the book ...

Gurbachan: The contradiction is as follows: In evidence yesterday, he denied that para five was true whereas in the SD signed under oath, he

said the book to the extent that it refers to him is totally untrue. Clearly his evidence is a repudiation of the SD.

Further, Azizan also admitted the truth of paras one to four, and six.

At para four, it is clearly indicated that the portions of the book concerning him were referred to him by the police. Hence the contradiction is material and obvious.

The relevant pages of the book in pages 76 to 78, and 81, 86 and 87, were also specifically referred to him. We wish to hand the book to Your Lordship.

The judge asked for a summary. Gurbachan said pages 76 to 78 reproduces Azizan's sworn statement alleging that Anwar had sodomised him.

Page 81 listed instances in which Anwar allegedly co-operated with the police to cheat Datuk Seri Dr Mahathir Mohamad, Umno and all Malaysians.

Pages 86 and 87 is the insinuation that Anwar was involved in the death of Azizan's wife.

Mohd Yusof: We need to see the book. We ask for some time to see if we want to submit if there are material contradictions.

Judge: While you are all pondering, I will also read the book. Take 10 minutes.

Court resumed after 10 minutes.

Gurbachan: May I make the position clear? Our application for impeachment is strictly confined to the contradiction that appears in para five and his oral testimony yesterday where Azizan denied the truth of para five.

We do not intend to go beyond that and make an issue of what appears in the Dalil book.

Judge: This is a very odd way to impeach him. Para five says wherever his name appears in the book, it's not true.

Page 76 of the book is his sworn statement. So it's relevant, it calls for explanation since he has said (in court) that his sworn statement is true.

Gurbachan: We are not going into that, only that he denied para five.

Judge: Later, you can confine yourself to where you want. My ruling: In my opinion, this application for impeachment is riddled with more breaches than compliance with the law.

Be that as it may be, in the interest of justice and to afford the accused an opportunity to defend himself, I order there be proceedings to impeach in so far as pages 76 to 78 of the Dalil book with reference to para five. With regard to pages 81, 86 and 87, it is my view that they are not relevant.

Gurbachan: Very well, My Lord. I have one other application to make. In the impeachment proceedings, can Your Lordship make a ruling whether we have to show the voluntariness of the SD (where para five is contained)?

Judge: This is my view, it is subject to what they (the prosecution) have to say. It is an issue in this sense, if he says he was compelled to make it, (it was) under duress, this (the SD) falls. I think it will be an issue.

Gurbachan said he would like to call witnesses to show voluntariness. The judge said since Azizan was already present, the defence might as well finish questioning him first.

Gurbachan: (to Azizan) Referring to para five, you agree it was in an SD which you signed?

Azizan: Yes.

Gurbachan: You agree that you read the SD in Sukhdev's office before you signed it?

Azizan: Yes.

Gurbachan: Yesterday, you gave evidence that para five was not true?

Azizan: Yes.

Gurbachan: You are aware that in an SD, you must speak only the truth?

Azizan: But I was forced to sign it after constantly being contacted by Ma'amin and Rahim King.

Azizan: Yes.

Gurbachan: I put it to you that no one influenced you to make para five.

Azizan: I don't agree.

Gurbachan: I put it to you that you made para five voluntarily.

Azizan: I don't agree.

Gurbachan said he wants to call witnesses to prove voluntariness and the judge told him to finish with Azizan first.

Gurbachan: (to Azizan) You agree that on Aug 10, 1998 when you signed the SD, Rahim King and Ma'amin were not present?

Azizan: They were not there because before this, Ma'amin was always in my office (in Malacca) asking me to go to Kuala Lumpur to sign the SD which he said was ready.

Gurbachan: That's all, My Lord.

Judge: (to prosecution) Do you want to continue now? (it was 4.15pm) I don't mind continuing but they (indicating the court staff) may have personal family problems.

(laughter in court)

Abdul Gani indicated that they would continue tomorrow. Anwar's leading counsel Raja Aziz Addruse said he, Christopher Fernando and Sulaiman Abdullah have matters before other courts tomorrow and would not be present.

He also said Anwar had a civil case on tomorrow, his suit against the Government for wrongful dismissal.

Judge: It's a civil matter? Mr Bachan (Gurbachan) will be here? He can do it. He is competent enough, quite capable of taking care of the show.

Raja Aziz: Since he (Azizan) is the main witness in the case ...

Judge: I also have to move along. Your client need not be there, it's a civil proceeding.

Gurbachan: I would feel more comfortable (if the other lawyers are in court).

Judge: Whenever you make a mistake, I will help you. Datuk Gani, there is a man (a reporter in the public gallery) who is repeatedly putting his hand up. Find out what he wants, I don't want to hear him now.

(The reporter wanted a copy of the judge's ruling to allow impeachment proceedings).

Hearing continues tomorrow.