

14/01/1999

Charges amended to focus on alleged corrupt practices

Ruslaini Abbas; Carolyn Hong

KUALA LUMPUR, Wed. - The prosecution today amended its four charges against Datuk Seri Anwar Ibrahim, to make it clear that its case does not focus on the sexual misconduct but on alleged corrupt practices.

The amendments, inserting the word "allegations", state that the sexual misconduct and sodomy which Anwar is charged with trying to cover up, were "allegations".

Another amendment to two of the charges state that Anwar had directed police to get these allegations retracted, to "save himself from embarrassment", rather than "criminal action or proceedings" as originally stated.

High Court judge Datuk S. Augustine Paul allowed the amendments, saying that apart from the terminology, there was no substantive change.

"The elements are the same. The major change, if any, refers to the commission of the sexual misconduct, which on the reading of the (original) charges, is not really a substantive element to be proved," he said.

Anwar's leading counsel Raja Aziz Addruse, in urging the court not to allow the amendment, said the prosecution was seeking a lower onus of proof as it now need not prove the sexual misconduct and sodomy.

He said the prosecution had already smeared Anwar's reputation when it led evidence on the allegations.

"Having smeared his reputation, it is now unjust and highly prejudicial to the accused if the charges are amended as proposed," he said.

In reply, Abdul Gani said the prosecution had never focused on proving the truth of the allegations and in fact, could have called other witnesses to prove them but it did not.

"If we had intended to do this, we could go all the way," he said, adding that the prosecutors were not in court to smear anyone's reputation.

He said chemist Lim Kong Boon was called to restore the credibility of Ummi Hafilda Ali and Azizan Abu Bakar, and to show motive on the part of Anwar.

Ummi had accused Anwar of having an affair with her sister-in-law Shamsidar Taharin while Azizan alleged Anwar had sodomised him.

Lim's DNA evidence had linked Anwar and Shamsidar to semen stains on a mattress found in an apartment where the two had allegedly had sex.

Abdul Gani said the chemist's evidence enabled the prosecution to prove the motive of Anwar in directing Datuk Mohd Said Awang and Datuk Amir Junus, former Special Branch director and his deputy respectively, to get retractions from Ummi and Azizan.

After the amendments were allowed, the new charges were read to Anwar who claimed trial to all of them. The defence was allowed two hours to decide whether they needed to recall any witness. It decided not to.

Abdul Gani then formally closed his case and offered to the defence 47 prosecution witnesses who had not been called.

The judge ordered parties to begin submissions tomorrow, following which he would decide if Anwar should enter his defence.

Before today's proceedings began, Just World president Dr Chandra Muzaffar came in. Anwar, who was escorted in later, spoke to him briefly.

A member of the public also gave Anwar the school tie of the Malay College Kuala Kangsar. (Anwar is a former student and old boys

traditionally wear the tie on Wednesdays). He put it on for a while and, looking at reporters, jokingly said: "Today is Wednesday... Cabinet meeting!".

The DPPs and defence counsel went into chambers and when they emerged, they left the court.

They returned about 10am and hearing began.

Abdul Gani said the prosecution would tender amended charges against Anwar. The judge told him he had to apply for leave to amend the charges.

Abdul Gani: I would like to apply for leave to put in the new charges.

Judge: The defence has anything to say about this application?

Raja Aziz said the defence would object on four grounds. He said the first ground was that the prosecution had from the beginning adduced evidence to show that Anwar had sodomised Azizan in spite of the defence objection against the prejudicial evidence.

Raja Aziz: The prosecution has continuously been focusing on these allegations of sexual misconduct and sodomy as a pivotal part of their case.

He said even as late as yesterday, the chemist was asked in re-examination on his analysis of the 13 stains on the mattress and he testified that sexual activities had taken place between Anwar and Shamsidar.

"This was in spite of the evidence which he gave in cross-examination that he had not identified from the stains whether vaginal fluid was present," he said.

Counsel said it was suggested that the mattress, which was taken into the court even before the prosecution received the chemist's report, was the "scene of the sexual misconduct".

Raja Aziz: Now that the PW21's (Lim's) findings have been challenged severely, and if I may submit, very effectively, the prosecution now says that what they intended to prove by the amended charges concerned only allegations.

Counsel then compared the original charges with the proposed amended charges.

Referring to the first charge, Raja Aziz said it was stated in the original charge that Anwar had committed the act of sodomy against Azizan.

Raja Aziz: Now, what they are trying to do is (to show) that these charges are nothing more than allegations by Ummi and Azizan.

Counsel said after smearing the reputation of Anwar and Shamsidar (the wife of his former private secretary Mohamed Azmin Ali) through Mohd Said, Azizan and Ummi, the prosecution now said the sodomy and sexual misconduct were not a major part of its case.

Referring to Mallal's on Criminal Procedure, Raja Aziz said the judge had the discretion not to amend the charge if it would be unjust and prejudicial to the accused.

Raja Aziz: It is in this context that I relate the matter to the court... because having smeared his (Anwar's) reputation, it is now unjust and highly prejudicial to the accused if the charges are amended as proposed.

On his second ground, counsel said throughout the trial the defence had approached its defence on the basis that apart from Mohd Said and Amir, Ummi and Azizan were also principal witnesses.

Raja Aziz: We are quite entitled to come to the view because P14 and P15 (Ummi's letter alleging sexual misconduct against Anwar, Azizan's sworn statement alleging sodomy and an anonymous letter) were introduced right from the beginning.

Judge: In what way does this cause discomfort to the accused?

Raja Aziz: A witness was asked to read a paragraph (in the document)

highlighting the act of sodomy ... it became public knowledge the next morning, making headlines in the newspapers.

On the third ground, Raja Aziz said the prosecution should have amended the charges much earlier if they had not intended to rely on the sex and sodomy allegations.

Raja Aziz: Because of the delay in amending the charges, the defence had to incur a great deal of inconvenience of getting its experts from overseas to assist counsel in cross-examining PW21 (Lim) whose evidence was a complicated matter which we could not deal on our own.

"To amend the charges at this stage would constitute an abuse of the process of the court."

Abdul Gani said the amendments would not be prejudicial since the charges were still under Ordinance 22 as were the original charges and there was no amendment to the offences.

Abdul Gani: We have never directly focused on the allegations.

Judge: What do you mean? What about the evidence of the chemist?

Abdul Gani: There was so much attack on the credibility of Ummi and Azizan.

He said the two had to be called because they wrote the allegations against Anwar. Abdul Gani said the prosecution called the chemist to restore the witnesses' credibility and to show motive on the part of Anwar.

Motive was relevant to show the reason why Anwar had directed Mohd Said and Amir to obtain the retractions from Ummi and Azizan.

Abdul Gani: We have always maintained that Datuk Mohd Said, Datuk Amir and Musa were our principal witnesses. This is in line with proving the ingredients of the charges.

The DPP said Ummi, Azizan and Lim were relevant witnesses but the prosecution had not called any other witnesses on the allegations.

He said the defence had brought in the affidavits of Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees, and Sukma's letter, but the prosecution did not call any witnesses to rebut this.

(Sukma and Munawar were jailed six months each for sodomy with Anwar. Both have affirmed affidavits alleging that police forced them to admit to the act.)

Abdul Gani: If we had intended to do this, we could go all the way. PW21's (Lim's) evidence had been severely challenged, but definitely it did not damage the prosecution's case.

"The prosecution definitely does not feel threatened by the defence's challenge of the chemist's evidence and we are not here to smear anybody's reputation!

"In fact the defence had tried to do this to several witnesses, including the chemist," he said, adding that the prosecution had adduced facts and "to us, we have proved them".

Abdul Gani: The prosecution still maintains that the chemist's evidence is relevant to show the accused's motive, (to restore) the credibility of our witnesses and to rebut the allegations of conspiracy and fabrication.

On the proper time to amend the charges, Abdul Gani cited a 1947 case which stated that the prosecution could do so after looking at all the evidence.

He said it was up to the court to decide on the "real" complaints against the accused and to "submit" the amendment accordingly.

Raja Aziz said the court should consider that the prosecution had sought a lower onus of proof by amending the charges, since it now need not prove the sexual misconduct and sodomy.

Raja Aziz: The second aspect is (that) the prejudice could be in the way the prosecution has conducted its case so far and, as I have said earlier,

prejudicial evidence which were deliberately adduced, not for motive or credibility, because it was part of the charges.

Counsel said the accused was a politician and, although the defence did not want to think that it was a political case, the smearing of Anwar's name was "quite clear".

Raja Aziz said the prosecution's claim that it had proved its case was not important but the court should see if the ingredients of the charges had been established.

Counsel said because of the evidence adduced so far, the public had the perception that Anwar had committed the sex acts.

The judge allowed the amendments.

He said the prosecution's application was lawful as amendments could be made at any stage of the trial until judgment. However, it was up to the court whether to allow the application.

The judge touched on Raja Aziz's submission and said counsel had implicitly argued that the evidence might be irrelevant and to that extent, the amendment would prejudice Anwar.

Judge: In my opinion, prejudice does not operate in that way ... where evidence has been adduced and charges have been amended, it is open to the court to rule as irrelevant evidence that has already been admitted. To that extent the prejudice, if any, does not exist.

"Having considered the old charges and the proposed amendment, I am of the view that apart from the terminology, there is no substantive change in the proposed amendment."

The judge said the elements were still the same and the major change, if any, referred to the commission of the sexual misconduct and sodomy which was not really a substantive element to be proved.

Judge: I rule that the amendments do not cause any prejudice to the accused and would allow it. As to the effect of the amendment, I would invite both parties to submit at a later stage the effect of the evidence that has been adduced so far and whether they cause any prejudice to the accused.

The judge told the interpreter to read the amended charges.

Anwar claimed trial to the new charges.

Abdul Gani said the prosecution was not adducing any further evidence while Raja Aziz said he required time to discuss the matter.

The court took a short break. When it resumed, Raja Aziz said the defence had decided tentatively not to recall witnesses.

Judge: You have to either say yes or no.

Raja Aziz: We have yet to look at the evidence carefully.

Judge: After this, they (prosecution) are going to close their case.

Raja Aziz: Then, we have to look at the evidence very carefully. There are new elements in the charge.

Judge: But the issues to be proved remain the same.

Raja Aziz: We can't say offhand like this. If there is anything we need to establish by recall of witnesses, we have a duty to do it. We can't do it off the cuff. It will be incorrect. evidence is the same and the issues are the same. It doesn't require much time.

Raja Aziz: I am not sure if the issues are the same.

Judge: They are the same. There's nothing really new.

Raja Aziz: Your Lordship mentioned two hours. We will let the court know.

Judge: I will be fair to you but you have to be fair to me. We have to strike a happy balance. Say about 1.30pm?

Raja Aziz: That's fine.

Judge: So, 1.30pm?

Raja Aziz: If that's Your Lordship's decision, we have to accept.

Judge: Am I to record that defence agrees, or is under pressure?

Raja Aziz: Yes, 1.30pm.

Court adjourned. When it resumed, Raja Aziz said the defence had gone through the evidence and decided not to recall any prosecution witnesses.

Abdul Gani: May I proceed? I am repeating the fact that I am closing my case now. In that event, I am making available to the defence what I have here - a total of 47 witnesses. May I provide the list? (Hands list to defence)

My Lord, I also want to give an assurance that if the defence wants any other witnesses outside the list, we will assist to the best of our ability to make them available in court.

The DPP asked the defence to state which witnesses it needed.

Judge: Can you decide now?

Fernando: Yes. The first witness, in the event defence is called, is the Prime Minister.

(Anwar raises his arm and turns to grin at his family).

Judge: No, just tell me the number (in the list).

Fernando: Number 1 (Prime Minister Datuk Seri Dr Mahathir Mohamad), number 2 (Tun Daim Zainuddin, Finance Minister).

Judge: Just the numbers.

Fernando: Numbers 3, 5, 6, 7, 23, 24, 30, 31, 32, 33, 35, 36, 37, 38, 39, 41, 43, 44, 46, 47. And one more witness who is not on the list, Datuk Seri Rafidah Aziz (Minister of International Trade and Industry).

Judge: The ruling on the application yesterday (to recall Umami for impeachment), I am not allowing the application. (To Abdul Gani) You are closing your case?

Abdul Gani: Yes, it's the third time I have mentioned it.

Judge: Now it's officially closed.

Fernando applied for diaries seized from Anwar's office and residence to be returned to the defence.

The judge said since these were not exhibits, he could not make a ruling and asked the defence to liaise with the prosecution.

Fernando whispered with Abdul Gani and counsel told the court that the DPP had agreed to return the diaries.

Judge: Submissions?

Raja Aziz: In view of the amendments, we would like to relook our submissions which were prepared in a hurry. We don't want to touch on something which is not relevant. May I suggest we commence submissions tomorrow morning?

Judge: I think that's quite a fair request (writes in his book). I request parties to address the court on the relevance of the evidence adduced to show the truth or falsity of the allegations in view of the amendments.

Raja Aziz: We would like to be allowed to start at 10am tomorrow. There's hardly any time left.

Judge: No, 9am. Please oblige me.

Court adjourned at 2pm.