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Court-Anwar

SODOMY CHARGES TRUMPED UP, LAWYER TELLS ANWAR TRIAL

KUALA LUMPUR, Sept 8 (Bernama) -- The sodomy charges against Datuk Seri Anwar Ibrahim and his adopted brother are false and fabricated, a lawyer told the High Court here today.

Christopher Fernando said this could be seen by the way the prosecution kept amending the date in the charges, originally from "one night in May, 1994" to "one night in May, 1992" and later to "one night between the month of January and March, 1993."

Fernando said these amendments only proved the defence contention that the charges were trumped up.

Fernando, who is the leading counsel for the former deputy prime minister, said this in his submissions at the close of the prosecution's case in the trial which entered its 49th day today.

Anwar, 52, and Sukma Darmawan Sasmitaat Madja, 38, are jointly tried for sodomising Azizan Abu Bakar, former driver of Anwar's wife, at Sukma's apartment in Tivoli Villa, Bangsar here, at 7.45 one night between the month of January and March 1993.

Sukma, a businessman, faces another charge of abetting Anwar of committing the offence at the same time and place.

Fernando said the first time the charges were amended was after Azizan, the prosecution's star witness, testified in Anwar's corruption trial that he was no longer sodomised after September 1992.

He said in the light of Azizan's testimony, the prosecution did not have any option but to amend the charges.

However, Fernando contended that the prosecution chose May 1992 as the date because it wanted "a breathing space" and it did not want to go to September 1992.

Counsel said Azizan had also testified that he did not tell the police he was sodomised by Anwar and Sukma on "one night in May 1992."

"If Azizan did not inform the police, who had fabricated this evidence?" asked Fernando.

"This is a sodomy case and there was no witness to the sodomy act. The only evidence must come, out of necessity, from Azizan and he had said that he did not inform the police (about May 1992)," Fernando said.

Fernando said the prosecution had admitted the second amendment was made after discovering later from the defence that Tivoli Villa, where the alleged sodomy took place, was still under construction in 1992.

He said the defence was magnanimous enough to tell the prosecution about this and saved it from "untold embarrassment" had the case proceeded on the first amended charge which stated that the offence was committed in 1992.

However, Fernando agreed with the judge that the defence should have kept quiet about the non-existence of the venue of the alleged sodomy in 1992.

"Were proper investigation carried out before such serious charges were brought against both accused? It was obvious that the investigation was a slipshod and done in a cavalier manner, or perhaps no investigation was carried out at all.

"This is like missing an elephant in the desert," he said, and the court erupted in laughter.

"This is a most hilarious situation that would make a cat laugh to accuse two persons to commit an offence at a place which was not in

existence," said Fernando.

"So, for that alone, the court could see that they (the prosecution) were not serious enough to seek justice. From the surrounding circumstances and from the evidence adduced before this court, I think that justice was the last thing on the mind of those who charged Datuk Seri Anwar and Sukma," he added.

Fernando said the prosecution also failed to show that Anwar's and Sukma's defence of alibi was false although Attorney-General Tan Sri Mohtar Abdullah told the court that they had a record of Anwar's movements from 1992 to 1997.

"I submit that this is a very bold statement to make but not credible. If indeed Datuk Seri Anwar's movements have been traced, have been monitored so closely, why is it the charge was framed in such a vague manner?" he said.

If indeed the prosecution had the record as claimed, it would have been able to identify at least the time or the dates that Anwar was at Tivoli Villa, Fernando said.

Fernando said the prosecution had made an empty claim and did not verify Anwar's movement at all and had been shooting in the dark from the day the charges were framed.

He said the prosecution should adduce evidence to show that Anwar and Sukma were at Tivoli Villa at least one night in those three months as stated in the charges against them.

"Here there is not an iota of evidence to even show that both accused were at Tivoli Villa at any time, during the period mentioned in the charges. This is another crucial question left unanswered," Fernando said.

He described the prosecution's case as riddled with doubts and inconsistencies.

"As a result, we have a charge which is vague, inconsistent and last but not least, doubtful," he added.

Fernando said another pertinent point for the court to consider was that Azizhan in his testimony had grudgingly admitted that the investigating officer of the case, SAC I Musa Hassan, had asked him to change the date of the incident.

He said the court should not accept Azizhan's testimony because the witness had contradicted himself severely throughout his testimony.

The counsel also submitted that Sukma's confession, although had been admitted by the court, could not be used to get a conviction against Anwar, unless there was a cogent evidence against him which was corroborated by other witnesses.

"The only evidence they have is weak, shaky, contradictory and doubtful," he contended.

Fernando said the prosecution had failed to make out a prima facie case against Anwar and Sukma and that the standard of proof which the court had to consider should be one of beyond any reasonable doubt.

Anwar's other counsel, Karpal Singh, told the court that before it could decide whether to call Anwar and Sukma to enter their defence, the court must give a maximum evaluation of the evidence adduced by witnesses during the trial.

Karpal said a charge on the allegation of sodomy was easily made but very difficult to rebut, therefore the evidence before the court must be very convincing in order to convict the accused person.

He said there must be a corroboration of that very convincing evidence in order to establish the case of sodomy.

"If the accused person elects to remain silence, then the evidence must be of such quality impact that the court must convict him," Karpal said.

He said in the present case, there were gaps in the prosecution's case

after it did not call certain material witnesses such as Prime Minister Datuk Seri Dr Mahathir Mohamad and former Inspector-General of Police Tan Sri Abdul Rahim Noor.

Dr Mahathir must be called to testify since he was the one who Azizan first made the complaint to about the sodomy and Abdul Rahim for giving press statements in 1997 that the allegations of sexual misconduct against Anwar were baseless and unfounded.

Hearing continues tomorrow.

-- BERNAMA

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