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Steer clear of all sex allegations, parties told

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KUALA LUMPUR, Sat. - High Court judge Datuk S. Augustine Paul today ordered parties to steer clear of the sex allegations when adducing evidence and presenting arguments at the defence stage.

He said it was necessary to say a few words to guide the conduct of the case as both sides had touched on the truth of the allegations.

"It is to be noted that the amended charges merely refer to allegations of sodomy and sexual misconduct and not to the actual commission of it.

"The truth or falsity of the allegations are therefore not an issue in this trial. Any evidence or argument that has or is to be directed on this matter is irrelevant and therefore inadmissible."

Paul had stressed this many times after the prosecution amended its charges two weeks ago to focus on the corrupt practice and not the sex allegations.

Datuk Seri Anwar Ibrahim's leading counsel Raja Aziz Addruse also applied for the court's notes of evidence of six witnesses.

This was because defence had faced problems when its notes did not tally with the prosecution's or the court's. The judge said he would try to assist.

Today's hearing began at 10.40am with the judge amending the charges. Speaking in Bahasa Malaysia, Paul apologised for the delay in proceedings.

He said before giving his decision, he wanted to amend the charges.

Judge: The first amendment is to the English version of the second and fourth charges where the word "against" is amended to the word "from", because the Bahasa Malaysia version uses the word "daripada".

The second amendment is to the first and third charges whereby these words are added in after the date "Aug 5, 1997" so as to meet the evidence which had been presented: "which they had obtained as directed in the form of a written statement dated Aug 18, 1997."

He asked the interpreter to read charges one and three to Anwar.

The court interpreter went to the dock and read out the charges to Anwar. The interpreter said Anwar understood the charges and claimed trial.

The judge said it was not necessary to read the second and fourth charges, as there was no mistake in the Bahasa Malaysia version.

Judge: I shall now make my ruling. I do not propose to give reasons at this stage. After having considered the evidence relevant to the charges and submissions of the learned counsel, I find that the prosecution has made out a prima facie case against the accused on each of the four charges as amended.

In other words, the prosecution has established the ingredients of the offence under section 2(1) Emergency (Essential Powers) Ordinance No. 22/1970.

I therefore call upon the accused to enter his defence on all the four charges as amended. I find it necessary and desirable to say a few words to guide the conduct of the case hereafter, in view of the fact that counsel on both sides had touched on the truth of the allegations in the four charges.

It is to be noted that the amended charges merely refer to allegations of sodomy and sexual misconduct and not to the actual commission of sodomy and sexual misconduct.

The truth or falsity of the allegations are therefore not an issue in

this trial. Any evidence or argument that has or is to be directed on this matter is irrelevant and therefore inadmissible.

Therefore, the evidence proposed to be elicited to meet the prima facie case made out by the prosecution must be confined to the issues raised in the amended charges.

(Speaking in Bahasa Malaysia to Anwar who stood up in the dock) I will now explain the three options to Datuk Seri Anwar.

First, you can remain silent. Second, you can make a statement from the dock where you cannot be asked any question by your lawyer, the prosecution or the court. However, I must tell you that this statement carries a weight which is lower than evidence on oath.

Third, you can enter the witness box and give sworn evidence where you can be questioned by your lawyer, the prosecution and court.

You can now make a choice and in doing this, you can consult your lawyers.

(To Raja Aziz) Do you wish to advise your client?

Raja Aziz: We had discussions with our client on this matter. I have received instructions that he will be giving evidence from the witness box on oath.

(As the judge bent to write this down, Anwar raised his arm).

Raja Aziz told the court the defence would like to record statements from the witnesses made available to them by the prosecution at the end of its case.

He said this was to enable the defence to determine if these witnesses would be "helpful" in their case. Raja Aziz said they had not taken the statements yet as it would have been premature until the defence was called.

The lawyer sought a two-week adjournment.

Judge: That's too long.

Raja Aziz: A lot has to be done, and some of the witnesses are away.

(Anwar's family members whispered Davos, referring to the Prime Minister Datuk Seri Dr Mahathir Mohamad who is attending the World Economic Forum in Davos, Switzerland. The defence had indicated that it might want to call him as a witness.)

Leading prosecutor Datuk Abdul Gani Patail: My Lord, the request for time to prepare the defence, I will leave the matter to the court but to my mind, two weeks is too long.

On the question of recording statements from the witnesses, there are two issues involved. Firstly, I am invoking section 136 of the Evidence Act where the court can exercise its discretion to ask the party proposing to give evidence, in what manner the evidence was relevant.

The second is that there is no law to compel a witness to give a statement to the defence. We can make them available but I cannot say that the statements can be recorded as a matter of right.

My learned friends may find it easier to obtain what they want from these witnesses by explaining and convincing this court as to the materiality of the evidence and of course, the relevancy.

There are four to five witnesses who are public figures who have duties to perform which involve travelling and as of necessity, the defence must be very clear what they want from these witnesses.

(The witnesses are Dr Mahathir, First Finance Minister Tun Daim Zainuddin, Domestic Trade and Consumer Affairs Minister Datuk Seri Megat Junid Megat Ayob, and International Trade and Industry Minister Datuk Seri Rafidah Aziz.)

Gani said if the defence wanted evidence which were not relevant, then these people should be allowed to go about their duties.

The prosecutor said he wanted to inform the court that the prosecution

had obtained subpoenas for five witnesses but did not serve them because it felt that their evidence was not material.

The witnesses are Dr Mahathir, Daim, Megat Junid, former Inspector-General of Police Tan Sri Rahim Noor and Attorney-General Tan Sri Mohtar Abdullah.

In reply, Raja Aziz said section 136 had nothing to do with the defence telling the court how it intends to present its case. It has application only to evidence emerging in the course of the trial.

Raja Aziz: What the learned deputy is seeking to do is to have us tell Your Lordship and him as well, what we are going to prove in the defence and that is not the correct position in law.

Gani: I beg to differ on that view because if you read the section, the court is not confined to evidence being given in court. I also support my contention with the fact that the witnesses can apply to set aside the subpoena on the grounds of materiality and relevancy of their evidence.

And about showing their hand, that is a misconception for the simple reason that the defence is supposed to put their case during the prosecution stage. If a new issue comes up during the defence stage, we can rebut.

I am not interested in their strategies or evidence for the defence, but what I am interested in is the materiality and relevancy. I am not here to find out their defence.

Raja Aziz: My learned friend is mixing up the arguments. If you are talking about section 136, don't mix it up with coming to court to set aside the subpoena. We can't show relevance until we have taken the statements.

He can't say that they are very busy people and can't give statements. It is up to us to work that out with the witnesses. I know they are busy people and of high standing in the Government but they are on the witness list. The rule applies that we can take statements from them.

On relevancy, we are not going to come and talk irrelevant things. Give us some credit. We have seen irrelevant evidence expunged, that won't happen with us.

(The court had expunged evidence adduced by the prosecution on the truth or falsity of the allegations which had become irrelevant following the prosecution's amendment to the charges).

Judge: With regard to the interpretation given to section 136, my ruling is this: The court has the power to inquire in what way the evidence of a proposed witness will be relevant and to exclude evidence of proposed witnesses if it is not satisfied that the evidence is relevant.

(He quoted some textbooks on this matter).

It is clear that even at the stage when parties apply for subpoenas, the court can decline to issue the subpoena if it is not satisfied.

But in this case, there is a point. I don't know what difficulties they will encounter. Unless statements are taken from the witnesses, how can they tell the relevance.

They may need to clarify issues and find out if the witness knows certain things based on the instructions to them. They can only know if the witness' evidence is relevant after discussions with the witness.

Gani: I have no objection to them having access to the witnesses. The only thing is to ensure that they give statements in writing, I can't do that.

Judge: Surely they have a right to record statements?

Gani: They can jot down notes during the interview, but a signed statement?

Judge: But the request for two weeks is inordinately long. Parties need not wait for every move of the court. Your complete defence should have

been presented in the course of the prosecution case and you should be able to decide who is relevant. You should have embarked on taking statements as soon as the witnesses were offered.

You have to prepare yourself up to the end. Two weeks is too long, I can't agree to that. (To Gani) How are the witnesses going to be given to them for taking of statements?

Gani: I requested that they tell me when and where but they never came back to me.

Judge: This ought to be done, you can't wait for the last minute. What is the sound I hear? Is it Mr Bachan (defence counsel Gurbachan Singh) talking, that's okay.

Raja Aziz said the defence really needed time as they were still waiting for photocopies of Anwar's diaries which were seized from his office after he was sacked.

"I know Your Lordship is really pressed for time but it would not be unreasonable to ask for that two weeks," he said.

Asked why didn't the defence start interviewing witnesses the moment they were offered about two weeks ago, he said there wasn't much time because of the Hari Raya holidays.

Judge: As I always said, justice does not always mean only to the accused. By virtue of me being stuck here, my other cases are stuck and many are remand cases. ... Why can't your client start (giving evidence) first?

Raja Aziz: The evidence must be co-ordinated ... most of the new evidence will be through these witnesses made available to us.

The judge asked for the court diary and flipped through it.

Judge: I think the only way I can assist is to fix the hearing for Feb 8. Next week liaise with the prosecution to contact the witnesses.

Raja Aziz said some of the witnesses were away and the judge told them to start with those who were in town.

Raja Aziz then made an application for the judge's notes of evidence of former Special Branch director Datuk Mohd Said Awang, Special Branch officers DSP Abdul Aziz Hussin and ACP Mazlan Mohd Din, former Special Branch deputy director II Datuk Amir Junus, investigating officer SAC I Musa Hassan and Umami Hafilda Ali.

The lawyer said this was in light of the problems faced earlier when the defence's notes did not tally with the prosecution's or the court's.

The judge said he would assist but he had difficulties as his typist was tied up with typing his other judgments. Raja Aziz asked for a photocopy of the judge's notes with the judge's comments blanked out.

Judge: I will see what I can do but I can't give you my notes. I have put in little notes, underlined, put double crosses, triple crosses, five stars ...

I thank you all for the support and co-operation. We meet on Feb 8. I hope all statements are recorded by then and at that stage, the defence can be made on the morning of the eighth.

I request the prosecution to ensure that the witnesses are brought within easy reach of the defence.

Start immediately, if necessary today itself. If on the eighth, you apply for an adjournment, I won't grant it.

Hearing adjourned at 11.35am.