

17/01/1999

The week that was

THE last witness, government chemist Lim Kong Boon, completed his evidence in the early part of the week.

He was cross-examined in great scientific detail before re-examination. However, his evidence has been expunged along with the other evidence going to prove or rebut the sex allegations.

This order to expunge followed an amendment to all the four charges, to make clear that the prosecution's case focused not on the sexual misconduct but on alleged corrupt practices.

The judge ordered the evidence had to be expunged as it had become irrelevant, and might prejudice Datuk Seri Anwar Ibrahim if left on record.

The defence also applied to impeach Ummi Hafilda Ali. Ummi had accused Anwar of adultery and sodomy, allegations which Anwar is charged with trying to cover up by using his government position.

The defence said Ummi's testimony contradicted her statements recorded in four audio tapes. The tapes contain a purported conversation between her and Datuk Sng Chee Hua.

The judge rejected the application.

After these matters had been dealt with, the prosecution closed its case and offered 47 witnesses to the defence. The defence indicated it wanted to call 22 on the list, and another Minister who was not on the list.

Day 43, Mon, Jan 11

LIM gave evidence under cross-examination. He was asked about the concept of a "prosecutor's fallacy" and the possibility of semen being planted on a mattress. His competence as an expert and ethics was also challenged.

Day 44, Tues, Jan 12

LIM remained in the stand for re-examination.

After that was completed, parties submitted on whether seven police reports which had been marked for identification but not as exhibits, could be admitted if the people who lodged them were not called as witnesses.

The defence argued that this cannot be done, while the prosecution argued the opposite, saying that police reports were public documents.

The judge allowed the reports to be admitted to show the fact that they were made but not in proof of their contents.

The defence also applied to impeach Ummi. Counsel Gurbachan Singh argued that even though the court had doubts about the authenticity of the tapes, he could still use them to confront Ummi.

He said only if Ummi denied the conversation, would the defence need to prove the tapes. The judge reserved judgment on this until the following day.

Senior deputy public prosecutor Datuk Abdul Gani Patail then gave notice that he would amend the charges the next day. He said the changes would only affect the words used and not the offence itself.

He also asked for an embargo on publication in the media but this was not granted.

Day 45, Wed, Jan 13

THE prosecution amended its four charges, to make it clear that its case did 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 the allegations retracted, to "save himself from embarrassment", rather than "criminal action or proceedings" as originally stated.

The judge allowed the amendments, saying that apart from the terminology, "there is 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.

After the amendments were allowed, the new charges were read to Anwar who claimed trial to all of them.

The defence decided not to recall any witnesses.

Abdul Gani formally closed his case and offered 47 witnesses to the defence.

The defence indicated it intended to call Prime Minister Datuk Seri Dr Mahathir Mohamad, Finance Minister Tun Daim Zainuddin, Minister of Trade and International Industry Datuk Seri Rafidah Aziz, and Domestic Trade and Consumer Affairs Minister Datuk Seri Megat Junid Megat Ayob.

Rafidah is not on the list.

Other potential witnesses include former Inspector-General of Police Tan Sri Abdul Rahim Noor, the Prime Minister's Political Secretary Datuk Aziz Shamsuddin, former Criminal Investigation Department director Datuk Ismail Che Rus, several sibilings of Ummi, Sng, Dr Ristina Majid, Norzilah Jalil (Megat Junid's second wife) and Zull Aznam Haron (Anwar's former ADC).

The judge also rejected the application to impeach Ummi.

Day 46, Thurs, Jan 14

THE court expunged all evidence adduced to prove or rebut the sex allegations against Anwar, and ordered the trial to focus only on his alleged corrupt practices.

The judge made the order following the amendment to the charges. He said the truth or falsity of the allegations might have had some bearing to the original charges but the amended charges refer to them only as allegations.

Abdul Gani said the prosecution had only to prove the ingredients of the charges under the Emergency (Essential Powers) Ordinance - that Anwar was a member of the administration and had misused that position to his advantage.

"The advantage is quite clear (that retractions were obtained)," the prosecutor said.

Raja Aziz argued that the prosecution must prove the sex allegations to show that Anwar had obtained "real advantage" from his alleged misuse of power.

"How does one protect oneself (from criminal action as stated in two of the charges) if the allegations are untrue?" he said.

Another defence counsel Sulaiman Abdullah said proving the allegations was important, as the defence wanted to show that Anwar was justified in obtaining the retractions because the allegations were false.

After the judge expunged the evidence, Raja Aziz urged him to "express regret" over the prosecution's conduct in adducing the prejudicial evidence, which had led to "injustice".

The judge said the evidence might have been relevant at that time but was no longer so. "I am in no position to say anything more than that," he said.

Hearing was adjourned to Jan 26.

(END)