

Defence witnesses 'not credible', says prosecution

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By Aidila Razak

The prosecution's submission in the Kuala Lumpur High Court today caps the long-running sodomy trial involving Anwar Ibrahim.

NONETHis is also expected to be the last appearance for prosecution head Yusof Zainal Abidin (left) as Solicitor-General II.

His third application for optional retirement since 2009 has been accepted and he will retire on Jan 1 or Feb 1, 2012 regardless of the trial outcome.

Yesterday, Justice Mohamad Zabidin Mohd Diah had heard a three-part submission by the defence team which called for an acquittal on grounds of reasonable doubt.

Central to its argument was the credibility of star prosecution witness and complainant Mohd Saiful Bukhari Azlan.

Tazlanhe submissions attempted to place him at the "epicentre of the conspiracy web" involving Anwar's "nemeses" - then deputy premier Najib Abdul Razak, then police chief Musa Hassan and SAC Mohd Rodwan Mohd Yusof.

Lawyer Sankara Nair also called Saiful a "consummate liar".

Saiful's alleged romantic affair with DPP Farah Azlina Latif, who was on the prosecution team until the allegations arose, was brought to the fore with lead defence lawyer Karpal Singh calling for an adjournment to recall Saiful and to summon Farah Azlina to disprove claims about the relationship.

Counsel Ram Karpal cited unchallenged evidence on the lack of degradation in the DNA samples from Saiful's rectal swabs, despite these being held for about 96 hours without preservation before testing.

He submitted that this casts doubt that the samples, which were never proven to be from sperm cells, had indeed come from Saiful's anus.

LIVE REPORTS

1.35pm: The public gallery is filling up. Both the defence and prosecution teams have arrived, but some have yet to enter the courtroom.

1.45pm: Anwar arrives with an entourage of family members and PKR leaders.

1.47pm: Solicitor-General II Yusof Zainal Abidin begins his submission.

1.48pm: He says the defence has tried to raise the points that the offence never happened, could not have happened, and that the DNA specimens collected by Hospital Kuala Lumpur had degraded in quality.

"(And) No 4, that even if these have degraded, they did not come from sperm cells," he says.

1.50pm: Yusof says the court "may wonder why (Anwar) chose not to make a statement under oath".

"Was he afraid there would be unfair cross-examination? That wouldn't be true...as the court can protect him from unfair statements."

He contends that the court can draw any inference from Anwar's hesitance to be cross-examined.

1.51pm: Yusof submits that Anwar's statement from the dock "does not dispute" the facts of the case.

"I didn't do it, and that was all," he says.

Anwar's statement, Yusof submits, does not dispute the CCTV recording placing complainant Mohd Saiful Bukhari Azlan at Desa Damansara on the day of the alleged incident, or that the documents were sent by Saiful to Anwar there, on the instructions of the latter's chief of staff.

"(Without dispute) it amounts to an admission, and must be taken as corroborative evidence against (the accused)," he says.

1.54pm: He submits that Anwar must explain why sperm was found on Saiful's rectal swabs.

"Failure to explain would amount to failure to enter a defence."

1.56pm: The defence submissions on the credibility of Saiful and the two Chemistry Department chemists have already been considered in the prima facie finding, he points out.

azlan2pm: Referring to the alleged conspiracy involving then deputy premier Najib Abdul Razak, as submitted by defence counsel Sankara Nair, Yusof says: "The meeting took place on June 24, 2008, the offence was committed June 26 and the (police) report was lodged June 28. What conspiracy are we talking about?"

"Neither Saiful or Najib could have forced (Anwar) to do what he is supposed to have done. It would have involved willing participation of the accused."

2.05pm: On the testimony of Saiful's college-mate Mohd Najwan Halimi, Yusof said the witness said Saiful had "leadership qualities, principles and (is) firm".

"But suddenly in the next hour, (they) say this man cannot be trusted," he says.

Mohd Najwan had testified that he had emailed Anwar to say that Saiful cannot be trusted as he is a BN stalwart and believes that Anwar is munafik (hypocrite).

Yusof submits that Mohd Najwan feels a "tinge of jealousy", as Saiful - and not he - was hired as Anwar's aide.

Mohd Najwan now assists Anwar in the latter's capacity as Selangor economic advisor.

2.10pm: Yusof refers to the statement by Dr Mohd Osman Abdul Hamid, that Saiful claimed that plastic had been inserted into his anus.

Saiful had testified that he did not know this was written in the medical report, nor did he say it, says Yusof.

"It is my submission that (the doctor) is not credible or truthful."

2.15pm: He submits that the defence had concluded that Saiful is a younger and stronger man, so could have fended off Anwar's overtures.

"In NONE regard to the act itself...(Anwar) never said I could have done it because physically I am not capable.

"Dr (Thomas) Hoogland (left) was brought in to say this. He had operated on Anwar...in 2004...and

between 2005 and 2007 (Hoogland) did not see him."

Yusof submits that Hoogland "did not really know the state of Anwar's physical health" and was "speculating".

2.22pm: Selangor Menteri Besar Abdul Khalid Ibrahim is spotted in the public gallery.

2.26pm: Referring to CCTV footage of Anwar picking up his coat in a lift, Yusof says the real-time footage shows he was "not troubled" by any back pain.

2.30pm: HKL doctor Dr S Jayeindran, who had examined Anwar on July 16, 2008, had testified that the politician was not in pain.

"This was about a month after the alleged incident, compared with Hoogland who has not seen Anwar since 2007."

2.31pm: "We have the direct evidence of Saiful, the findings of the chemists, the CCTV and Jayeindran, as opposed to Hoogland who was speculating...his opinion is of some dispute," Yusof submits.

Yusof says Hoogland is "trying his luck" as he was going beyond what had happened "outside of his operating theatre".

2.35pm: Yusof refers to defence witness Dr David Wells' testimony that it is unlikely to find sperm cells in the anus after 65 hours.

"What you think cannot happen is not the same as what happens. (Government chemist) Dr Seah (Lay Hong) found sperm heads," Yusof says.

2.40pm: There is literature stating that sperm cells can be found in the anus, even after defecation, the court is told.

"(Our) case was 56 hours without defecation. We have the literature and the finding, so what is the problem?" he asks.

2.50pm: DNA expert Dr Brian McDonald was "speculative" in saying that a sample would have degraded after approximately 96 hours if it had not been preserved before testing.

Yusof cites literature to show it is possible to develop DNA profile even if degradation occurs.

2.55pm: On the risk of contamination of, and tampering with, samples, Yusof says: "We should not talk about possibilities...but (of the) probability (this could) happen".

On the 18 allele which appeared in two different samples and in separate analyses, he says this does not show that someone had planted the sperm.

One of these specimens was not collected by investigating officer Jude Blacious Pereira, so he could not have planted anything, Yusof points out.

2.55pm: Yusof submits there was no evidence that Anwar had come in contact with the specimens.

"The possibility that (Anwar's) DNA had 'contaminated' the specimen does not arise," he says.

Yusof then applies for a 15-minute break, which is granted.

3.30pm: Yusof continues with his submission.

Other than saying that Anwar was hampered from performing the (sex) act, he says, the defence has failed to show that the accused had sought medical treatment other than in 2004 and 2005.

3.45pm: Yusof goes into the details of the Chemistry Department's laboratory accreditation.

NONEHe submits that the two chemists who testified, Seah (right) and Nor Aidora Saedon, have undergone competency tests. This is to rebut the defence assertion that they had not analysed the specimens thoroughly.

"(They) are more competent than McDonald who last sat the test in 2004 and is not involved in (conducting) the tests, as robots do it for him," he says.

3.50pm: "Seah conducted the test to detect the presence of semen on the swab...and (she) confirmed the presence of sperm and semen.

"She made a slide, and what she observed were sperm cells, non-sperm cells and bacteria."

4pm: Yusof submits that the DNA of the accused only appeared in the section which came from the sperm cell.

If the DNA had been planted, then it would have been seen in the non-sperm cell section of the specimen, he says.

4.15pm: A third contributor's profile (18 allele) was only found in one specimen, and it did not form a peak in the graphs from the analyses.

4.20pm: Reverting to Anwar's chosen mode of defence and citing case law, Yusof says a statement from the dock should not be given the same weight as one which can be cross-examined.

4.25pm: "Even if a denial is made under oath, the court will judge accordingly"

Yusof submits that Wells' evidence is neutral at best, McDonald's evidence is "flip flop" as he was "bent" on favouring the accused while Hoogland was "speculative".

He ends his submission by saying the prosecution has proven beyond reasonable doubt that Anwar had committed the crime.

4.41pm: The proceedings are adjourned to 9.30am on Thursday, when the defence team will reply to points raised by the prosecution.

The judge is expected to then set a date to deliver the verdict.

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