

## **Court told to acquit Anwar due to 'clear doubt'**

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5.25pm: Court adjourns after Ram indicates that he will finish his submission tomorrow. Shafee indicates that he can start tomorrow for the prosecution team. The hearing is expected to end on Friday.

5.15pm: Ram says Seah reported that in the high rectal swab there is an unidentified male DNA but she reported it as a "dropping".

"The reading of 18 allele, our defence expert says, should be reported.

"This shows the presence of another person or the high rectal swab has been contaminated (like B5 the peri-anal) swab."

5.10pm: Ram says a clear doubt has emerged, and when this appears, a decision must be given in benefit of the accused.

5.05pm: Ram says the contamination could have been due to from doctors or Supt Jude. "It was innocent contamination."

"At the moment we do not know who and how the peri-anal samples were handled."

5.00pm: Ram says there is a possibility of the samples being contaminated.

He says that there is an unknown male DNA found in B5 besides that of "Male Y" in the peri-anal swab.

4.50pm: Ram says there are examples of degradation of other samples.

(There were 12 swabs taken during the HKL doctor's examination of Saiful).

"Some are pristine some are not," says the lawyer.

"... The Court of Appeal judges had erred where the High Court judge had got it right."

4.40pm: Ram says in every mixture in (sexual acts) sperm cells must be separated from the non-sperm cells.

"But the DNA of 'Male Y' is found to be pristine. The point from Mc Donalds B7, B8 and B9 samples are pristine.

"It cannot be pristine. I go further to say they are not the same samples. If they are the same

samples, there will be a lot of degradation," he adds.

4.30pm: Ram says if the samples are not properly preserved, how could it be pristine.

He says in the B8 high rectal swab where there is a mixture i.e. a major and minor contributor.

"It is pristine and this is inconsistent with history.

"Similarly with B9 the lower rectal, it is pristine," he says, adding that the sample was taken after 96 hours but looked fresh.

4.20pm: Ram says if there was a dispute, the prosecution can call its expert witness to rebut.

"The fact is that the samples are found to be pristine."

The defence lawyer says the samples were retrieved after 96 hours, and should show degradation.

Justice Arifin asks if there are samples to show degradation.

"If it is degraded it would become a mess i.e. no reading."

4.10pm: Ram says there is a dispute on the issue of contamination where he feels the appellate judges misdirected themselves.

The lawyer says the defence chemist were "enlightening the court" on what they observed (as to the analysis made by the government chemists).

"There is an 18 allele spotted but it was not reported (in the chemist) report.

"DW4 and DW5' testimonies are from what they observed. The prosecution did not call any witness to rebut their evidence," he says.

3.40pm: Justice Arifin calls for a 15-minute break.

3.30pm: Ram says swabs taken should be frozen.

He points out that the anal swabs were only given to the chemists after 96 hours of the alleged incident

He says the government chemists agree that there will be degradation after 36 hours.

3.15pm: Ram says the Court of Appeal judges description of the defence forensic experts as armchair experts cannot be sustained.

"They are clearly qualified as senior scientists with over 30 years experience," he says.

Ram says Seah's testimony that she found semen samples in Saiful's anus cannot be accepted as the samples were retrieved after 36 hours.

"The DNA obtained, she claimed was in pristine condition as against to it being degraded or badly degraded."

3.05pm: Ram says the court should accept defence witness, forensic expert Brian McDonald's evidence as he is a competent chemist.

He says the Court of Appeal judges did not accept the defence expert's views compared to the High Court (which acquitted Anwar).

Ram notes that the Court of Appeal judges did not consider DW4 (McDonald's) evidence and that of DW2 (David Wells (right)).

"It is pertinent that the trial judge had not criticised DW2 and DW4. The appellate judges could not appreciate the evidence as they did not see them (the foreign experts) testify."

As for the sample taken from Saiful, the defence lawyer questioned its integrity.

"The sample was taken from Saiful on June 28 and it was given to the Chemistry Department on the 30th," he says.

Ram says the samples from Saiful should be stored in a freezer but it was kept in Supt Jude Pereira's cabinet.

2.50pm: The document, says Ram, is important for the defence to show to its (defence) experts.

"None of the documents were produced although they are owned by PW5 (Seah).

"Even Seah failed to enlighten the court on the analysis. Without the benefit of doubt of the documents there is doubt on whether they conducted the tests vigorously," he says.

These documents, Ram argues, are important to ensure the guidelines are followed, on the extraction of sperm and the sperm isolation records.

"The standard documents and the SDR reports were not given. This handicapped the defence," he says.

2.40pm: Ram (right) continues with his submission and says the chemist did not do a swipe of the samples to the receptacle.

He says the chemist cannot verify how much DNA volume was collected from Saiful's samples.

Seah could not say as she does not have the records, adds the defence lawyer.

"Prosecution failed to produce the DNA volume and the sperm isolation record. These documents are not provided to the defence."

2.37pm: The hearing resumes. Penang Chief Minister Lim Guan Eng shares a light moment with Anwar, as he opens the door of the accused dock for the opposition leader.

1pm: Ram says if the guideline says the peak is 12 percent, the Chemistry Department cannot ignore other readings or peaks that are higher.

He adds that Seah is selective in what she reported as stutters as it would reveal more parties other than 'Male Y'

"She did not report the peaks of others. She reported a peak of 13 but not a peak of 17 or 18."

Justice Arifin asks for lunch break. Court will resume at 2.30pm.

12.55pm: Ram says alleles come in pairs.

He notes that Seah (right) came to court without showing the department's guidelines.

"The end result is that the findings are unreliable," he warns.

"The documents are not provided to the defence for us to cross-examine," he reiterates.

12.45pm: Ram says everyone has a different DNA profile and there is a small likelihood that a profile is shared with somebody else.

"It is important to see and to report the correct peaks, and stutters."

"The court is not able to ascertain Seah's evidence in terms of stutters and percentage. Some of these documents are not made available to the defence for cross-examination."

He says that 12 samples were taken from Saiful and marked by Dr Siew Shueu Feng of Hospital Kuala Lumpur.

These are rectal swab, peri-anal, high rectum and low rectum swabs.

12.40pm: Several Pakatan Rakyat representatives arrive in court and among them are Kuala Terengganu MP Raja Kamarul Bahrin and Sungai Petani MP Johari Abdul (right in photo).

Ram further submits on the allele and stutters as adopted by the Chemistry Department.

"It has not been accredited since 2005," he says.

Two chemists testified during the trial, namely Dr Seah Lay Hong and Noraidora Saedon.

12:25pm: Ram Karpal says there was a "Male Y" in the samples found and this was further linked to the DNA samples retrieved from Anwar's cell.

He says the prosecution failed to prove beyond reasonable doubt that "Male Y" is the appellant.

12.15pm: Sangeet submits there were a series of documents that were not provided to the defence.

She says there is no basis for the judge to dismiss the defence's application to get the documents.

"This is to ensure there is equal footing and no trial by ambush," she adds.

In the early stages of the trial, Justice Zabidin did not allow the prosecution to provide the documents.

Sangeet argues there was no fair trial and the arrest was made unlawfully.

"There is a culmination of incidents that display the abuse and conspiracy against Anwar," she argues.

Now Ram Karpal begins his submission on DNA.

12.02pm: Sangeet says the original warrant of arrest tendered during the main trial was unlawful.

"The warrant was only issued at the balai (police station). The judge was wrong in ruling to accept these evidence during the main trial based on the same document (i.e. the original warrant of arrest).

"Hence the retrieval of those (three) items should also be considered illegal."

11.45am: Sangeet says there is other evidence (direct) that the prosecution has and it should not rely on circumstantial evidence.

"The prosecution cannot rely on the main trial to rebut what happened in the trial-within-trial."

11.35am: Sangeet says the trial judge ruled that the items were retrieved through unfair means.

She adds that the initial ruling was when he chose to exercise discretion but in the main trial he accepted the evidence.

"The inclusion of the items are through unlawful means. This amounts to trickery and unfairness."

The defence lawyer says the fact it was done through unfair means did not change and hence, there is no need for the trial judge to review his ruling.

Justice Mohd Zabidin, had at first not accepted the three items - towel, toothbrush and water bottle - as evidence during a trial within trial but later reversed his decision.

10.47am: However, Justice Arifin points out that illegally obtained evidence is also admissible in Malaysia.

Sangeet replies that the appellant was arrested in Jalan Segambut and met Jude at the police station at about 8pm and was taken to HKL.

"Anwar declined to give his DNA at the hospital. He was exercising his constitutional right not to do so.

"The entire procedure was wrong as it was against lock-up rules (as prisoners are supposed to be in the lock-up by 6pm)."

Sangeet says the police had detained Anwar overnight when they knew they were there only to record his statement.

"The gave him the three packets and the next morning these items were carefully removed.

"It is his legal right which is being trampled over," she says.

10.45am: Defence lawyer Sangeet says the three items were illegally obtained through trickery and deception and the arrest was unlawful.

The arrest was made without a warrant. "There was an arrest but the warrant of arrest was only issued at IPK KL. Taufik says the arrest is made based on Section 377B (of the Penal Code)."

The judge initially ruled in our favour, says the defence counsel, in not admitting the three items.

"He ruled that the items were unfairly used."

10.40pm: Sangeet says a trial within a trial was held to determine the admissibility of the three items - the Good Morning towel, toothbrush and mineral water bottle.

"(Defence lawyers) Sankara Nair and R Sivarasa (right) testified and they related how Anwar's car was ambushed (by police) in the arrest.

"One superintendent Taufik testified that they got orders to arrest Anwar. There were no grounds given by Taufik to make the arrest, who testified as the only witness in the prosecution," she says.

10.30am: Sangeet argues 'Male Y' could be anyone and not necessarily Anwar.

She says during the trial in the High Court, crime scene investigator (CSI) Supt Amidon gave evidence and the deputy public prosecutor (DPP) had asked for the three items to be tendered.

"However, (then lead defence lawyer) Karpal Singh objected. The admission of the three items are wrong. The High Court judge did not want to admit the items.

"However, the judge reviewed the application just before the prosecution closed its case."

10.20am: Justice Abdull Hamid asks when was the water bottle given, and Sangeet says the bottle was given during interrogation.

"You cannot use circumstantial evidence when you have direct evidence through witnesses," reiterates defence lawyer Sangeet.

The judge asks whether there are authorities on the matter. Sangeet says there are none.

"Are you saying we should use direct evidence in preferential to circumstantial evidence?" ask Justice Abdull Hamid.

"Yes," says Sangeet. She argues there is no link between the DNA profile of 'Male Y' and the appellant (Anwar).

10.15am: Justice Arifin asks whether any material was left in the cell before Anwar went into it.

Defence lawyer Sangeet refers to the lock-up diary. It shows that the lock-up was empty and there were no other detainees.

Another member of the five-member Federal Court panel, Justice Md Raus, says the three items were given to Anwar but Sangeet was asking whether they were used by Anwar.

10.10am: Defence lawyer Sangeet says the High Court judgment states a police officer saw Anwar used the cell toilet and brushed his teeth the morning of July 17, 2008.

However, Sangeet says the police officer only heard as if Anwar was brushing his teeth. He did not see it himself.

"This witness is not allude to the fact that the appellant is brushing his teeth," she argues.

There is an error of fact in this finding by the trial judge, says Sangeet.

"We have witnesses who are asked but they did not see (Anwar using those items)," she said.

"Prosecution cannot rely on circumstantial evidence when direct evidence was there - the police officer did not see."

10.05pm: Pointing to the lock-up diary, defence lawyer Sangeet says it notes that Anwar was found to be sleeping at night, waking up and leaning against the lock-up bars, and then taking ablution and performing his 'sunat' prayers.

Anwar was arrested on July 16, 2008 and after going to Hospital Kuala Lumpur, he spent the night at the Kuala Lumpur police headquarters lock-up.

"There is direct evidence and the prosecution cannot rely on the circumstantial evidence when there is direct evidence."

10am: Sangeet Kaur says a toothbrush, soap and towel was given to Anwar while in the lock-up.

She argues none of the evidence from the police witnesses show Anwar had used the items.

"The lock-up diary only states Anwar is in the cell and that he prays in the morning," Sangeet submits.

The three items - a Good Morning towel, toothbrush and mineral water bottle - were allegedly used by the police to obtain Anwar's DNA without his knowledge.

9.50am: It is now defence lawyer Sangeet Kaur Deo's turn to make her submission.

She says that lead defence counsel Gopal Sri Ram had submitted that Saiful is not a credible witness and she reiterates that the Court of Appeal in finding the alleged victim as a credible witness could not stand as they did not see him testify.

Sangeet adds that DNA from Anwar was obtained from items retrieved through the cell where he was in.

The prosecution had failed to link male Y to the case, she stresses.

"The court cannot rely on circumstantial position as there is direct evidence as it comes from the testimony of the police officers who were guarding the cell."

9.45am: Defence lawyer N Surendran begins his submission by citing various authorities on why statement from the dock can be of weight.

According to him, Anwar is the only person who gave a statement from the dock who is acquitted of a crime when the Kuala Lumpur High Court judge found him not guilty.

An accused have three options when defence is called - testifying from the witness dock, keep quiet or give an unsworn statement from the dock which could not be cross-examined.

"The court should consider Dr Mohd Osman's statement which was in conflict of Saiful. The Court of Appeal should give weight to Anwar's testimony in court.

"This amounts to serious misdirection which warrants the apex court intervention," said Surendran.

9.40am: Court in session with with Chief Justice Arifin presiding.

Some of those who are seated in the public gallery, including lawyers in their robes, are asked to leave the courtroom to make way for those with passes.

9.30am: Lead prosecutor Shafee arrives. In the public gallery, there is grumbling about there being not enough seats for everyone.

Also in the courtroom is Sepang MP Mohd Hanipa Maidin, who is also a lawyer. He is seen wearing the lawyer's robe.

PKR vice-president and secretary-general Rafizi Ramli is also in the courtroom.

9.20am: The courtroom is already packed with those unable to get a seat being ushered out.

Anwar's lead counsel Gopal Sri Ram had indicated yesterday that he may be late and the other defence lawyers will make their submissions without him.

Lead prosecutor Muhammad Shafee Abdullah is expected to arrive soon. The proceedings are expected to start in 10 minutes.

8.57am: Anwar Ibrahim arrives in court with his wife, Dr Wan Azizah Wan Ismail and their children. He shakes hand with supporters as they pose for photographs.

Also seen with Anwar's family are defence lawyers N Surendran and Latheefa Koya

8.50am: PKR vice-president and Batu MP Tian Chua speaks to the Anwar supporters gathered about 300 metres from the Palace of Justice.

Tian says he had asked the police to allow them to gather in front of the court but they said no.

"Today, we are are much further away (than yesterday)," he laments.

The barricades have been moved further from the front of the Palace of Justice.

8.40am: Lawyers representing Anwar have started trickling in. Among them are Eric Paulsen, Sangeet Kaur Deo and Ram Karpal Singh.

Journalists are seated on the left side of the court while the international observers, who have started to arrive, are seated on the right.

The seats in the middle of the public gallery are allocated for Anwar's family members and supporters.

Yesterday, when the hearing opened, the courtroom was packed with about 80 people in the public gallery, including journalists, international observers and opposition supporters.

8.38am: Outside the Palace of Justice, some protesters attempt to break the barricades erected by the police.

They tried to topple the makeshift fence as they shouted "push, push". About 50 police officers defend the barricades.

However, the situation came under control after Nik Nazmi urged the protesters to remain calm and not to break the barricades.

8.25am: About 300 people in red and black T-shirts, led by PKR leaders Nik Nazmi and Tian Chua, march from Tuanku Mizan mosque to the Palace of Justice about a stone's throw away.

They carry a banner bearing the words 'Rakyat Hakim Negara' (People are the judge of the nation) as well as 'Justice for Anwar' placards.

Meanwhile, another group of 200 supporters have gathered outside the court complex. The crowd size has grown to about 500.

8.20am: Already in the courtroom are deputy head of the prosecution division of the Attorney-General's Chambers Mohd Hanafiah Zakaria and Saiful's lawyer Zamri Idrus.

The court hearing is expected to start at 9.30am.

8.05am: Court staff arrive early and they go through the barricades opened by police at the

back entrance of the sprawling court complex.

Some PKR and PAS politicians are already inside the building. They include Kelana Jaya MP Wong Chen, PAS vice-president Sallehuddin Ayub, PAS information chief and Pokok Sena MP Mahfuz Omar, Batu Buruk assemblyperson Syed Azman Syed Mohamad and former PKR secretary-general Saifuddin Nasution Ismail.

8am: The number of supporters outside the Tuanku Mizan Zainal Abidin Mosque have swelled to 100. Among them are PKR Youth chief Nik Nazmi Nik Ahmad and activists Hishamuddin Rais and Adam Adli.

Adam and four others are playing upbeat music to energise the early morning crowd.

Chants of 'Allahuakhbar', 'Reformasi' and 'Bebas Anwar' fill the air.

7.20am: Several dozen supporters of Anwar Ibrahim are gathering at the Tuanku Mizan Zainal Abidin Mosque across the road from the Palace of Justice in Putrajaya which housed the Federal Court - the country's highest court.

Among them are members of the Kelantan 'Royalti' NGO. Others have come from Kedah and Penang overnight via chartered buses.

Many are expecting a decision today although it is likely that proceedings may drag on for another day or so.

Like yesterday, there is heavy police presence and security is tight with key roads leading to the court complex barricaded.

7am: The final appeal against Anwar Ibrahim's sodomy conviction and five-year prison sentence and the prosecution's cross-appeal to extend the jail term meted out to the opposition leader will resume today at the Federal Court in Putrajaya.

Chief Justice Arifin Zakaria leads a five-member bench in the highly charged case, which is also closely watched by a number of international observers sitting in the public gallery of the packed courtroom.

The biggest surprise yesterday was the appointment of former Federal Court judge Gopal Sri Ram who retired in 2010, to lead Anwar's defence team. He replaced senior lawyer Sulaiman Abdullah who has not fully recovered from his leg surgery.

The inclusion of 70-year-old Gopal in the defence team had resulted in the judges who are mostly his peers or juniors not to abruptly cut him off as they sometimes do with other lawyers, as he delivered points after points in attacking alleged victim Mohd Saiful Bukhari Azlan's credibility as the key witness.

The defence is compelled to do this after the trial judge at the Kuala Lumpur High Court, Justice Mohd Zabidin Mohd Diah, and a three-member bench at the Court of Appeal

maintained that Saiful was a credible witness.

Among the points submitted by Gopal centred on the use of lubricant K-Y jelly during the alleged sex act, the alleged smearing of the gel on the carpet floor, Saiful's demeanour, and the possibility of impeaching the star witness for conflicts on the point of non-consensual and consensual sex.

Today, Anwar's counsel N Surendran will continue with his submissions in arguing that weightage should be given to the opposition leader's statement from the dock where he claimed of a political conspiracy against him.

This is followed by Ram Karpal Singh's submission on DNA evidence and then his sister Sangeet Kaur Deo's submission on evidence taken from Anwar's cell on July 16, 2008 to be tested for DNA.

This was after the PKR de facto leader refused to provide his DNA sample at Hospital Kuala Lumpur following allegations of tampering in Anwar's first sodomy trial in 1998.

After the defence team has completed its submissions, it is government-appointed lawyer Muhammad Shafee Abdullah's turn to make his arguments. It is understood that Shafee's submissions is about 221 pages long.

The appeal may go longer than the two days initially allocated by the court to hear the case.

Shafee has mentioned in court yesterday that his prosecution team, which includes deputy head of the prosecution division of the Attorney-General's Chambers Mohd Hanafiah Zakaria, is prepared for the trial to continue until Friday.