

## **'Witnesses not called to prove Anwar's alibi'**

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FREE LIVE Unlike the Court of Appeal that heard PKR de facto leader Anwar Ibrahim's Sodomy II case against complainant Mohd Saiful Bukhari Azlan in the two days allotted last March, the Federal Court has surpassed its two-day allocation for the final appeal, which entered the fifth day today.

1.00pm: Shafee now submits on Anwar not calling the alibi witness.

"None of these witnesses were called to prove the alibi," he says.

Justice Arifin says hearing will resume tomorrow with Shafee continuing his submission.

The prosecutor says he has another one-and-a-half hours to submit tomorrow and then it is done.

12.45pm: Shafee says Yusof (right) made the right decision in not calling Dr Osman.

Justice Arifin asks Shafee to produce Dr Osman's cautioned statements, but he cannot show it.

Ram earlier says police recorded three statements but when asked for assistance by Shafee to show them, Ram replies, "I would not do so."

12.25pm: Shafee says when cross-examined by (then solicitor-general II) Yusof, Dr Osman had said the typewritten report was prepared on June 30, two days after he examined Saiful.

He further reads Osman's cross-examination on a statutory declaration which he made.

"The defence wanted us (prosecution) to call him. This is clearly a witness who was lying," Shafee says.

Justice Arifin asks whether Osman was impeached, and Shafee says no.

Ram Karpal interjects saying there were three statements taken from Dr Osman.

Shafee says Dr Osman's statement was not added, and says it clearly showed the doctor included the (plastic object) after the meeting and added it for someone's benefit.

12.25pm: There are some 150 Anwar supporters outside the court, who are hearing speeches from PKR leaders such as Wanita chief Zuraida Kamaruddin.

They also read the Surah Yassin and prayed that Anwar would be freed.

12.20pm: Shafee further reads Dr Osman's medical report on Saiful.

In the typewritten report, he says, the doctor states that Saiful was sodomised by a VIP.

"This is crystal clear the kind of witness Dr Osman (right) is. It is his imagination or he created it to benefit something else," he adds.

(On cross-examination then by solicitor-general II, Mohd Yusof Zainal Abiden, Dr Osman admitted he had written the report after seeing Saiful).

12.05pm: Shafee further submits on Saiful's credibility with regard to Pusrawi Hospital's Dr Mohd Osman's testimony.

Shafee says Saiful claimed that Dr Osman had lied when he wrote that a plastic object was inserted in the complainant's anus.

He says the doctor may have written what was there in a hurry.

"Doctors do not normally note down patient history," he adds.

Shafee further questions what was the plastic object, allegedly used, whether it was sharp, short, long, etc.

"However, in Dr Osman's typed report, there is no mention of plastic object," adds the prosecutor.

11.55am: Shafee notes that when Saiful says he 'tak rela' (unwilling), what he meant was that he could not stand it anymore.

"Saiful says it was done without his (kerelaan) (willingness). Saiful lodged the report after two days, as a result of him being in a predicament," hShafee says.

Saiful, he adds, could explain the way he was sodomised.

"It is not the first time it happened. It could have been 'rehearsed' before," he says.

11.45am: Reading from Saiful's testimony, Shafee says the alleged victim could not stand it anymore.

He repeats the portion of Anwar ejaculating inside Saiful as before and that the latter felt pain every time the sexual act happened.

The prosecutor says to understand the context of the K-Y jelly being used, all this has to be

taken into context.

"Why shower him with gifts like expensive suits, as this was given as he (Saiful) was dominated by the appellant.

"These gifts are necessary and the court should see Saiful's testimony on the context (of past incidents)."

11.40am: Shafee further submits on why Saiful's claim of previous incidents should be admitted in court.

"Previous episodes and encounters with the accused should be allowed as issue of credibility is at stake. This is important to understand the context," he says.

The prosecutor says there is no serious danger of pre-judicial evidence.

11.15am: Justice Arifin asks for short break.

11.10am: Shafee (right) appears to sidestep when Justice Arifin asks how the 18 allele could be there.

He moves to another topic regarding the three HKL doctors's testimony that they followed the required guideline.

"They used a proctoscope and the possibility of contamination is less as all equipment were sterilised.

"The doctors could not say there was penetration. After they looked at the samples four centimetres into Saiful's anal they found there is penetration."

Justice Arifin asks whether Saiful's testimony of other incidents could be considered pre-judicial.

However, Shafee says the truth is relevant citing the Harun Idris case.

11am: Shafee says there is no third person according to (chemist) Seah as it (the 18 allele) is considered a dropping.

It appeared only once, he adds.

The judges take turns to ask about the conflicting DNA evidence.

"If you can read it, it is not degraded. You either can read or can't. This is an important point to remember," says Shafee.

10.55am: Shafee says Anwar and Saiful's DNA were found on the latter's grey underwear.

The prosecutor says in the peri-anal swab from Saiful, Anwar and Saiful's DNA were present from "top to bottom".

He adds that Anwar's DNA was also found on the high rectal non-sperm extract.

"It is on every locus," he said.

Shafee explains the third person could have been as a result of Saiful sitting on a toilet seat.

10.40am: Shafee says Male Y is Anwar.

The peri-anal area of Saiful was obtained, where Male Y and another male contributor were found. Shafee says he will explain about the other male contributor later.

Shafee says chemist Noraidora Saedon testified that the DNA swab from the toothbrush corroborated with that of Male Y.

Justice Arifin asks whether the unidentified male was only found in the peri-anal swab and Shafee replies in the affirmative.

He says the allele 18 was only in sperm extract in low rectal b9.

"What the chemist says appears in one locus (18 allele) and we ignored it," he adds.

10.35am: These exhibits from the cell, he says, are admissible in fact and also in law.

Anwar, he adds, had refused to give his sample at Kuala Lumpur Hospital (HKL) even though there is evidence that a cotton bud had been inserted in his (Anwar's) anal region there.

"However, this cotton bud was not used as Anwar refused to give his sample though it could comprise of powerful evidence."

Now, Shafee moves on to Saiful's underwear, another piece of evidence admitted earlier.

10.25am: Shafee says even if court admits the items were illegally obtained, it could still be accepted by the court as evidence.

He adds that the evidence from the lockup were those used by Anwar, as the police witnesses had testified.

Reading the lockup report, Shafee says the cell was clear and clean before Anwar arrived.

"If Anwar was brushing his teeth, Anwar could use the tap inside (the cell)" he adds, countering the defence claim that it was not possible.

10.13am: The prosecutor further submits case laws where entrapment evidence could be allowed in court.

"The court has no discretion to exclude it,' he submits.

The defence had earlier submitted that the evidence from the cell was done through trickery and deception.

10am: Shafee argues now on the admissibility of the evidence.

He says the late Karpal Singh had questioned Jude extensively during the initial trial.

He says there is no need for a 'trial within trial' to be held to admit the three pieces of evidence.

Shafee says while defence has countered that the evidence must be admitted in a trial within trial, he points out that it could also be admitted during the main trial.

"In the main trial, the counsel is required to question all, and Karpal did cross-examine Jude (right) (again).

"There is no prejudice for the judge to admit the evidence," Shafee says

He adds that the judge at the time had ruled on the production of the original warrant of arrest, and had allowed the tendering of those items as evidence.

9.50am: Shafee moves on to the circumstances of Anwar's arrest.

The defence, the prosecutor says, is akin to asking if "the cow is jumping over the moon".

Shafee says Anwar would be the last person not to know what the offence under Section 377 is.

"The offence is a serious and seizeable offence? It is carnal intercourse outside the order of nature and there is no need for a warrant of arrest."

"This is a valid arrest, and he was informed of the grounds at the police station. There is no infringement of his constitutional right."

Justice Suriyadi points out that the warrant of arrest states a different numbered condominium unit address and Shafee admits it was an error.

What is important, says Shafee, is that the complainant (Mohd Saiful Bukhari Azlan) was named.

Shafee argues it is not necessary for the grounds of arrest to remain the same, as it is up to the prosecutor.

9.45am: Shafee says the police testimony was neutral and there is clear fact that Anwar brought the bottle of mineral water and consumed it while in the lockup.

He adds that the evidence should not be considered illegally obtained evidence.

"Anwar was arrested when his car was stopped (when heading to his Bukit Segambut home). However, what is not in dispute was that the warrant of arrest was shown to Anwar at the IPK Kuala Lumpur."

"Anwar was communicated the grounds of his arrest and shown the charge."

9.38am: Shafee concludes there would have been no opportunity for fabrication of evidence.

He now reads the testimony where the police witness (the officer on duty manning the cell) testify that he saw Anwar bring the mineral water bottle into the cell.

The police, he adds, allowed Anwar to bring the bottle.

Jude, the prosecutor says, also testified that when escorting Anwar to the lockup he saw Anwar bring a mineral water bottle.

"Jude says Anwar carried the 'Cactus' mineral water bottle. The item recovered from the cell (the next day) was also a Cactus mineral water bottle."

In the face of the evidence from the two police officers, Shafee says those items should be accepted as evidence.

"They were simply stating what they saw. There is no conspiracy," he adds.

The mineral water bottle, toothbrush and towel were tested for Anwar's DNA.

9.33am: Shafee says while the defence had earlier raised the manner in which the recovery of the items had been made, he pointed out this was not raised during the Court of Appeal hearings.

He says the police were not cross-examined on the issue.

The prosecutor says a police officer had heard Anwar brushing his teeth, and this was not challenged by the defence team at the time.

"All this are not challenged. When Anwar left the lockup these items, which were previously in a plastic bag were all over the floor."

"This shows usage of these items by the appellant (Anwar)."

Last week the defence argued that there was no sink in Anwar's cell and therefore he could not have brushed his teeth.

The seized items were used to procure Anwar's DNA.

9.25am: Shafee begins his submission. He informs there is a third bundle which he has submitted to the judges.

He is now submitting on the items seized from Anwar's cell on July 17, 2008.

The prosecutor says police had taken a strand of hair, the 'good morning' towel, toothbrush, water bottle to be used as evidence.

Anwar had placed these items on the half wall inside the cell.

Supt Amidon Anan, he says, took extra precaution when retrieving the items and sending it to the chemist via the investigating officer (IO, DSP Jude Balacious Pereira).

9.23am: Court begins session with justice Arifin presiding.

9.10am: Also in the courtroom is Sungai Petani MP Johari Abdul and Alor Setar MP Gooi Hsiao Leung.

Anwar's lawyer from sodomy I, Zainur Zakaria also shows up.

9am: Court is getting ready as the orderly (those at the back assisting the judges) are arranging the documents.

8.48am: Anwar enters the courtroom with his wife and PKR president Dr Wan Azizah Wan Ismail and his supporters. The courtroom is already filled to the brim.

The opposition leader is seen discussing with Sri Ram.

8.36am: Shafee has entered the court and is seated on the right side with DPP Mohd Hanafiah. The international observers have also taken their seats.

Outside the court building 12 Anwar supporters have gathered. The area is packed with media personnel and police on duty.

8.25am: As usual the police scan those entering the court room and ensure they have the required passes.

Already in court are defence lawyers Gopal Sri Ram, Sangeet Kaur and Latheefa Koya.

DPP Mohd Hanafiah and Zamri have also entered.

Those in the public gallery include Wangsa Maju MP Tan Kee Kwong, Kelana Jaya MP Wong Chen and former Bar Council president Yeo Yang Poh.

9.23am: Around 30 Saiful supporters show up in front of the courthouse.

Dressed in red T-shirts, they shout, 'Punish Anwar', 'Punish the Sodomite' and 'The youth hate Anwar'.

Anwar when passing notices them but does not react. His own supporters however are not happy and see it as provocation.

In retort, some of Anwar's supporters shout back. "You were paid RM30!"

After five minutes, the pro-Saiful group move away roughly 500m from the Anwar group.

8.17am: Saiful's lawyer Zamri Idrus and DPP Mohd Hanafiah Zakaria are among the people waiting to enter the courtroom.

Also in the queue are the international observers.

7.45am: Five blue police trucks are seen parked at the back of the Putrajaya Syariah and Lower Civil Courts.

Police presence is quite large on the fifth day.

Media personnel covering the appeal are queueing to get their passes.

7.30am: The prosecution led by government-appointed third-party lawyer Muhammad Shafee Abdullah will continue where he left off on Friday, by submitting why the appellate court decision to convict Anwar was correct.

This is after the defence led by former Federal Court judge, Gopal Sri Ram questioned alleged victim Mohd Saiful Bukhari Azlan's credibility last Tuesday.

On Friday, Shafee tried to show that Anwar and Saiful had a relationship, where the opposition leader would allegedly show preferential treatment to the university dropout.

This included showering him with expensive gifts like a Brioni suit, special allowances and allowing Saiful to accompany him for trips to Singapore and Hong Kong prior to the alleged sodomy incident.

Commenting on Shafee's submissions, Anwar had said the Umno-linked lawyer was just making "juicy" remarks for the benefit of the mainstream media rather than replying on the

issues raised by his defence lawyer.

Today, Shafee is expected to touch further on the DNA evidence and debunk the possibility of a third DNA found in Saiful's samples taken at Hospital Kuala Lumpur six years' ago.

He is also expected to submit on why Anwar's arrest is legal and the samples taken from the Permatang Pauh MP from his cell at the Kuala Lumpur police contingent headquarters should be accepted.

On Wednesday, defence lawyer Sangeet Kaur Deo questioned whether Anwar's arrest was lawful or otherwise, as trial judge Mohd Zabidin Mohd Diah had initially ruled in a trial within a trial that it was not lawful by not allowing the evidence taken from the politician's cell on July 17, 2008.

Sangeet says the initial ruling should stand as the police had obtained the samples through "trickery and deception".

Sri Ram and the other defence lawyers are expected to reply after Shafee finishes his submission, either today or tomorrow.

It remains to be seen whether the apex court's five-member bench led by chief justice Arifin Zakaria will decide immediately when both have finished their submissions.

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