

Anwar denied access to clinical notes in sodomy trial
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KUALA LUMPUR - Anwar Ibrahim was denied access to the clinical notes of the three doctors from Hospital Kuala Lumpur (HKL) who had examined complainant Mohd Saiful Bukhari Azlan, for his second sodomy trial on Monday.

According to High Court judge Mohd Zabidin Mohd Diah, the defence had failed to meet the legal requirements to access the medical examination notes which were recorded on June 28, 2008.

The defence had argued that the documents could provide clues to what had actually happened during Saiful's three-hour medical examination at the HKL.

Judge Mohd Zabidin said that in Malaysia, the right for an accused to be supplied with the necessary documents depended on the existing criminal procedure code (CPC) and the prosecution team.

He said and quoted by MI, "Dr Razali Ibrahim (SP2) was called by the prosecution, what is important for the court is his oral testimony."

"Notes are only to be used to refresh SP2's memory... it is not legally admissible, and SP2 has said he does need to refer to the notes to refresh his memory," the judge said.

Mohd Zabidin also said: "The notes are only admissible, if the prosecution decides so. If prosecution does not decide, then the defence cannot demand for the notes."

Anwar's lawyer, Karpal Singh, said it was a "perverse decision" from the judge which he said the latter should base his decision on the provisions of Section 45 of the Evidence Act.

"Evidence by expert would bear little weight if not supported by evidence. It is not a question of admissibility alone," Karpal said.

"The function of the expert is to give his honest opinion and place before the court all the data on which he bases his opinions, because it is the court who has to decide the case and accept or reject his opinions.

"In the absence of a clear and precise statement of his reasons, it is difficult for the court to appreciate the opinion of the expert. It is also not fair to the opposite side who is to cross-examine the expert on the correctness of his opinion," MI quoted the lead counsel as saying.

The defence has accepted Mohd Zabidin's decision but Sankara Nair, another lawyer of Anwar, said they will file for an appeal if it is necessary.

Anwar, 63, has claimed trial to a charge of sodomising Mohd Saiful, 25, at Desa Damansara Condominium in Jalan Setiakasih, Bukit Damansara, here, on June 26, 2008.

