

**'Male Y' DNA In Mohd Saiful's Rectum Anwar's, Rules Federal Court**  
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PUTRAJAYA, Feb 10 (Bernama) -- The DNA profile of a "Male Y" found in complainant Mohd Saiful Bukhari Azlan's rectum belonged to Opposition Leader Datuk Seri Anwar Ibrahim, the Federal Court ruled today.

Chief Justice Tun Arifin Zakaria said the evidence of two chemists, Dr Seah Lay Hong and Nor Aidora Saedon, that the DNA profile of Male Y developed from the seminal extract from Mohd Saiful's rectum matched the profile developed from a tooth brush, a Good Morning towel and a mineral water bottle collected from the lock-up occupied by Anwar.

The Federal Court had dismissed Anwar's appeal against a Court of Appeal decision that overturned a High Court judgement and convicted him and sentenced him to five years jail for having sodomised his former aide Mohd Saiful on June 26, 2008.

Justice Arifin said that considering the other evidence, there was no dispute that the samples which Nor Aidora had examined had come from the items that were used solely by Anwar.

"It is thus indisputable that the profile of Male Y developed and analysed by both the chemists belongs to none other than the appellant," he said.

Justice Arifin pointed out that it was indeed a very high probability based on the DNA of the Malaysian population database that the Male Y DNA belongs to the same person.

Hence, the court held that the DNA evidence of Male Y was the corroborative evidence to the element of penile penetration by Anwar.

The court also held that the evidence by the two chemists fell under expert opinion and the panel had no doubt that they were experts and that Anwar had failed to discredit the duo.

"There was nothing inherently incredible about the evidence of PW5 (prosecution witness five Dr Seah) and PW6 (Nor Aidora)," he said.

The panel also found that the recovery of the exhibits used by Anwar while he was in the lock-up was not transgression of any rule, nor was it an infringement of Anwar's constitutional right to a fair trial.

Justice Arifin said Anwar was lawfully detained at the lock-up and the recovery of evidence by the forensic team was a legal and fair method of police investigation.

Touching on the corroboration of the DNA evidence, he said that based on Dr Seah's testimony that, by logical deduction, if sperm was detected in Mohd Saiful's rectum, then

there must have been penile penetration, this piece of evidence corroborated with the allegation of Mohd Saiful that he was sodomised by Anwar.

"Whether the anus was torn or bruised is not, in our view, an issue which could refute the fact that Mohd Saiful had been sodomised," he said.

He said that according to three government doctors, the absence of such injury could have been due to the lapse of time prior to seeing the doctors, no undue force having been applied, and the use of the lubricant.

"This explanation, in our view, is plausible and we accept it," said Justice Arifin.

On another issue, of degradation of samples, the panel agreed with the prosecution that it was incorrect and misleading to conclude that because of the degradation, the DNA profiling was rendered unreliable.

Justice Arifin said it was thus the apex court finding that the degradation had no effect whatsoever on the DNA profiling in this case.

The chief justice also agreed with the Court of Appeal ruling that the integrity of samples was not compromised as contended by the defence team.

He said Dr Seah, in her testimony, confirmed that she did not detect any tampering of the seals of the exhibits and, therefore, the panel found that there was no break in the chain of custody of those exhibits.

"The fanciful suggestion of the appellant's counsel that the DNA evidence had been planted is therefore unsustainable," he said.

Justice Arifin said the panel was of the view that the trial judge was in error in imposing the "100 per cent certainty" standard of proof on the prosecution to refute the possibility of the samples taken from Mohd Saiful being compromised.

"On the facts of this case, we find that the possibility of the integrity of the samples taken from Mohd Saiful having been compromised before reaching the chemist is remote. Such a suggestion can be dismissed with this one sentence, "of course it is possible, but not in the least probable," the judge said.

On another point, Justice Arifin said Anwar's defence statement that the charge against him was a political conspiracy remained a mere allegation unsubstantiated by any credible witness.

He said the apex court held that the Court of Appeal had adopted the right principle in assessing the appellant's statement from the dock.

"While it is true that it is within the appellant's right to give a statement from the dock, that

statement must, however, amount to a credible defence," he said.

Touching on the evidence from Anwar's defence witness, Dr Muhamed Osman Abdul Hamid from Pusrawi, who first examined Mohd Saiful on June 28, 2008, two days after the sodomy incident, Justice Arifin said the panel agreed with the prosecution that he was an unreliable and untruthful person.

"That explains why the prosecution had chosen not to call him as its witness. It is trite that the discretion to call any witness lies with the prosecution and the court will not interfere with the exercise of that discretion," he said.

The court also said that prosecution rebuttal witness Dr Jeyaindran a/l C. Sinnadurai, who examined Anwar three weeks after the incident, had said that the latter told him that he had sex with his wife one week after the incident.

The witness also said that Anwar did not complain that he was having back pain and, from his observation during the medical examination, Anwar's movement was not restricted by any pain whatsoever.

Justice Arifin said that based on the evidence, the panel was of the view that the opinion by Anwar's defence expert witness, Dr Thomas Hoogland, that Anwar was unable to perform the act was wholly without basis.

"In the result we hold that there is overwhelming evidence to support Mohd Saiful's allegation that he had been sodomised by the appellant," he said.

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