

No need to invoke adverse inference against Anwar, says chief justice
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The Federal Court today said that no adverse inference should be drawn on Datuk Seri Anwar Ibrahim for dropping his alibi defence.

In rejecting the prosecution's submission that adverse inference must be drawn against Anwar for abandoning his alibi defence, the Federal Court said it still subscribes to a 1988 Supreme Court ruling which approved the proposition.

"It is still a good law and therefore decline the invitation to invoke adverse inference against Anwar for abandonment of his alibi witness," Chief Justice Tun Arifin Zakaria read out in the unanimous ruling that found the opposition leader guilty of having carnal intercourse with his former aide Mohd Saiful Bukhari Azlan.

Anwar had given notice to the prosecution in 2009 that he was not at the place of the alleged incident.

In his notice of alibi, Anwar listed 13 witnesses.

However, when the defence was called, Anwar chose not to call any of his alibi witnesses.

The defence had explained that they decided against calling their witnesses as they had been harassed and subject to interrogation.

The Federal Court also found Anwar's unsworn statement from the dock was treated rightly by the Court of Appeal and as such, found no merit on his complaint that the appellate court had seriously misdirected itself in making adverse comments for his dock statement.

Arifin said that while it was true that it was Anwar's right to give a statement from the dock, it must amount to a credible defence.

"A mere denial does not amount to a credible defence.

"We hold that the defence of political conspiracy remains a mere allegation unsubstantiated by a credible witness," he added.

The defence had argued that the charge against Anwar was a political conspiracy as Saiful had admitted meeting Prime Minister Datuk Seri Najib Razak, and had called the then inspector-general of police Tan Sri Musa Hassan.

Saiful had also met senior police officer Senior Assistant Commissioner Mohd Rodwan

Mohd Yusof who was involved in Anwar's first sodomy case.

The court also said today that the doctor who first examined Saiful after the alleged incident was an unreliable and untruthful person.

Arifin said this was the reason the prosecution chose not to call Dr Osman Abdul Hamid as their witness.

Osman in his evidence as a defence witness, had said that Saiful had told him that he had been assaulted by the insertion of a plastic object into his anus.

Arifin, however, said that if Osman had been called as a prosecution witness, there would have been two versions – that Saiful was sodomised by Anwar or a plastic object was inserted into his anus.

He added that it was the discretion of the prosecution who it wanted to call as a witness, and that the court would not interfere.

"The non-calling of Osman by the prosecution in our view does not create any gap in this case as it had been fully narrated through the evidence of Saiful and corroborated by three doctors and two chemists," the chief justice said. – February 10, 2015.

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