

Day Of Reckoning For Anwar Ibrahim?

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KUALA LUMPUR, (Bernama) -- Will the highest court in the country maintain the five-year jail sentence PKR advisor Datuk Seri Anwar Ibrahim has to serve for having sodomised his former aide, enhance or reduce the jail term, or overturn his conviction?

These are the questions on the minds of the people as they await the Federal Court hearing on Oct 28 and 29 of Anwar's final appeal against his conviction and jail sentence imposed by the Court of Appeal on March 7 this year after finding him guilty of having sodomised Mohd Saiful Bukhari Azlan, 27.

Anwar, 67, was charged under Section 377B of the Penal Code, which carries a jail term of up to 20 years and whipping, upon conviction.

If the MP for Permatang Pauh loses the appeal, he could be disqualified as a member of parliament as per Article 48(1)(e) of the Federal Constitution, which states that an MP would be disqualified if he or she is sentenced to a jail term of more than a year or fined more than RM2,000.

This is the second case of sodomy against Anwar. In the first case, he was found guilty of having sodomised his family driver Azizan Abu Bakar at Tivoli Villa here in 1994 and was sentenced to nine years' jail by the High Court on Aug 8, 2000.

The High Court had ordered Anwar to serve the sentence after the completion of his six-year jail term for corruption. The High Court had convicted Anwar on four charges of corruption on April 4, 1999.

However, after spending nearly six years in jail for corruption, Anwar was released on Sept 2, 2004, as the Federal Court led by Justice Tun Abdul Hamid Mohamad, who went on to become the chief justice, overturned his conviction and set aside the jail sentence on the charge of having sodomised Azizan, in a 2-1 majority decision.

Anwar's second sodomy trial at the High Court drew attention nationwide as the trial was postponed almost 70 times.

Most of the time, the postponement was granted at the request of Anwar's defence team for various reasons, among others, to have the trial judge recuse himself from hearing his case.

It was the same when the prosecution's appeal against his acquittal came up at the Court of Appeal. The appeal was postponed more than five times because of the several applications filed by Anwar.

The Court of Appeal, in a written judgment dated April 11, had stated that "it should be

noted that most of the applications to adjourn were at the instance of the respondent (Anwar) who had filed one application after another".

Anwar had alleged that his sodomy charge was a political conspiracy. However, senior lawyer Datuk N. Sivananthan told Bernama that when someone is charged, it was based on the fact that the prosecution feels there is sufficient evidence.

"So, I like to believe that the prosecution acts independent of political pressure. If it turns out otherwise, it's a sad day for our criminal justice system," Sivananthan, who is a list counsel of the International Criminal Court (ICC), said.

He is of the view that when the prosecution charges someone, it is based on the believe that it can secure a conviction. He earnestly hopes that the appeal is decided purely on law and nothing else.

One of Anwar's lawyers, Ramkarpal Singh, confirmed that the hearing would proceed on Oct 28 and 29.

Asked whether the Federal Court would give its decision straightaway after hearing the appeal as the Court of Appeal had done in the matter of the prosecution's appeal or the panel would reserve its judgment to another date, Ramkarpal Singh said he was unsure of that.

The Court of Appeal, headed by Justice Datuk Balia Yusof Wahi, had given its oral decision straightaway after hearing the appeal over two days.

As to whether the defence team would file for a review of the Federal Court ruling if Anwar failed in his appeal, Ramkarpal Singh replied that "a review depends on how the court decides".

Rule 137 of the Federal Court Rules 1995 allows the losing party to seek a review of a Federal Court decision.

Although the Federal Court has the jurisdiction to review its own decision to prevent injustice and abuse of the court process, generally this will only be exercised in very exceptional circumstances.

In his appeal, Anwar will be represented by a team of prominent lawyers led by veteran Datuk Sulaiman Abdullah who has taken over as the lead counsel following the death of lawyer Karpal Singh in a road accident on April 17.

A senior lawyer, Tan Sri Muhammad Shafee Abdullah, is to lead the prosecution team in the appeal.

On Oct 14, the Federal Court chaired by Chief Justice Tun Arifin Zakaria dismissed Anwar's request to disqualify Muhammad Shafee and ruled that he is a proper and fit person to lead

the prosecution team, thus ending Anwar's third attempt to disqualify Muhammad Shafee from leading the prosecution.

Muhammad Shafee was appointed by Attorney-General Tan Sri Abdul Gani Patail by fiat (authorisation) under Section 376 (3) of the Criminal Procedure Code (CPC) and Article 145 (3) of the Federal Constitution to conduct the appeal at the Court of Appeal.

On Jan 9, 2012, the Kuala Lumpur High Court acquitted and discharged Anwar on a charge of having sodomised Mohd Saiful at a Desa Damansara condominium unit in Bukit Damansara here between 3.10 pm and 4.30 pm on June 26, 2008.

However, the Court of Appeal overturned the High Court decision after allowing the prosecution's appeal.

Justice Balia Yusof, in his oral verdict when convicting Anwar of having sodomised Mohd Saiful, said the panel unanimously held that the trial judge had erred in his findings that the integrity of DNA samples used in the case had been compromised.

Justice Balia Yusof and two other justices, Datuk Aziah Ali and Datuk Mohd Zawawi Salleh, in an 85-page written judgment dated April 11, ruled that it is safe for the court to convict Anwar on the charge of having sodomised Mohd Saiful as there was ample evidence which could be confirmed and proved.

The court said that even assuming that there was no corroboration to support Mohd Saiful's evidence on the factum of penetration, it was safe to convict Anwar.

The panel also held that Anwar's statement from the dock in his defence against the sodomy charge as a mere denial which did not amount to any doubt and that for Anwar to succeed in his defence, it was incumbent upon him to adduce evidence to refute the allegations levelled against him.

However, Anwar had not even denied that he was at the scene of the crime at the material time and date as stated in the charge, the panel said.

"He never disputed that his car was seen entering and leaving the condominium at the material time. He also did not dispute that he was seen entering the lift to the fifth floor of the condominium and later leaving the place," said the three judges.

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