

'Illegal' evidence OK if relevant to case, court hears in Anwar's sodomy appeal
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BY LEE SHI-IAN

The prosecution in Datuk Seri Anwar Ibrahim's sodomy appeal has sought to establish that the politician did use items in the police lock-up where he was held and from which his DNA was retrieved.

Lead prosecutor Tan Sri Muhammad Shafee Abdullah told the Federal Court today that based on direct evidence, Anwar had used the items, in particular the mineral water bottle.

"(There is) direct evidence that this mineral bottle was... carried by (Anwar) himself into the lock-up. Nobody would carry a (water bottle) unless one is consuming from it," he said.

Shafee was rebutting Anwar's defence team which had submitted last week that the items taken from the lock-up for DNA retrieval had been obtained through "trickery and deception".

Anwar's defence said there was no direct evidence that the opposition leader had indeed used the items – the water bottle, a toothbrush and a "Good Morning" towel.

The DNA found on the items was later matched by government chemists to that of a "Male Y" whose DNA was also found in the rectum of the sodomy complainant, Mohd Saiful Bukhari Azlan.

The prosecution holds that Anwar is Male Y, while the defence says the evidence cannot be trusted due to mishandling and contamination.

Shafee told the court that Anwar was the sole detainee in the lock-up, where he was held overnight to facilitate investigations into Saiful's sodomy claim in 2008.

Citing the testimony of the police officer who had walked Anwar into the cell, Shafee read an excerpt in which the police officer himself said that Anwar had brought a water bottle to the cell.

He then submitted that there was no evidence given by the defence to deny that this was the same water bottle brought from the outside into the cell.

Shafee said that none of the police officers who were in charge of handling the items in the lockup was cross-examined by the defence during the trial stage.

It was "too late" now, he submitted, to bring up matters which should have been brought up at the trial stage.

Shafee argued that even if the items from the lock-up were obtained unlawfully, such evidence was still admissible because of its value to the entire case. He said the value of evidence obtained "illegally" was higher than its prejudicial value.

He then read out case laws which showed the admissibility of such evidence.

Anwar had chosen to withhold giving his DNA sample by refusing a swab at the Kuala Lumpur Hospital where he was taken after his arrest.

Shafee said that Anwar's right to withhold giving his sample was respected. He said a cotton bud had been used to swab the anal region but was not used as evidence later.

"How far we went we obliged him, he said no don't take anything from my body. This cotton bud would have been powerful DNA (evidence)," Shafee said.

Opposition leader Datuk Seri Anwar Ibrahim looks on during recess at the Federal Court in Putrajaya, outside Kuala Lumpur today. – The Malaysian Insider pic by Najjua Zulkefli, November 3, 2014. Opposition leader Datuk Seri Anwar Ibrahim looks on during recess at the Federal Court in Putrajaya, outside Kuala Lumpur today. – The Malaysian Insider pic by Najjua Zulkefli, November 3, 2014. The prosecution also took on the defence's claim that Anwar's arrest prior to being brought to the lock-up was unlawful.

Shafee said the argument by the defence was not communicated effectively. He submitted that Anwar's counsel was already communicating with the investigating officer about the arrest.

He also told the court that Section 377B of the Criminal Procedure Code (on sodomy) under which Anwar is charged did not require an arrest warrant.

The police maintain that they had informed Anwar of the grounds for his arrest, Shafee said.

"It is a valid arrest... he was informed of the grounds and... he was informed soon as he was in the police station... there was no infringement of rights," said Shafee.

The defence's claim that Anwar and his counsel did not know the grounds of his arrest was akin to "asking us to believe that a cow can jump over the moon," Shafee said.

Anwar's defence team of 14 lawyers is led by retired Federal Court judge Datuk Seri Gopal Sri Ram.

A five-member bench led by Chief Justice Tun Arifin Zakaria is hearing the appeal.

Anwar was acquitted by the High Court in January 2012 after a lengthy trial.

This was overturned by the Court of Appeal in March this year and his five-year jail sentence was given a stay of execution pending the outcome of his appeal in the Federal Court.

The opposition leader is alleged to have performed carnal intercourse on Saiful, his former aide, at an apartment in Damansara on June 26, 2008.

This is the second sodomy charge against Anwar. The first was in 1998, after he was sacked from government while still holding the posts of deputy prime minister and finance minister. He was then accused of sodomising his former driver and eventually acquitted by the Federal Court in 2004.

This time, Anwar's political career could come to an end if the apex court upholds the Court of Appeal's conviction and grants the prosecution's request for an enhanced sentence which could be extended up to 20 years under the law. – November 3, 2014.

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