

In Sodomy II, juicy bits aside, was Anwar 'Male Y'?
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A good morning towel, a toothbrush and a plastic mineral water bottle have become the subject of dispute between the prosecution and the defence in the on-going hearing of Datuk Seri Anwar Ibrahim sodomy appeal before the Federal Court.

These items are crucial to the chain of evidence for the prosecution's case that Anwar's DNA matched the sample of "Male Y" taken from the rectum of the complainant, Mohd Saiful Bukhari Azlan.

Day 5 of the hearing today saw the lead prosecutor, Umno lawyer Tan Sri Muhammad Shafee Abdullah, rebutting the defence's submissions last week that there was no proof that Anwar had used the three items when he spent a night in a Kuala Lumpur police lock-up after being arrested on July 16, 2008.

Last week, Anwar's counsel Sangeet Kaur Deo told the court that the prosecution had only provided circumstantial evidence on the grounds that Anwar was the sole occupant of the lockup and therefore must have used the items. She said that at the trial stage, the prosecution had only made the assumption that Anwar "must have" drunk from the bottle and that the accused "must have" used the toothbrush.

"The point is that there is no evidence at all that anyone saw the accused (Anwar) use the said items," she had said.

She said three policemen who watched over Anwar while in the lock-up did not give evidence to prove that the accused was seen using the items.

"Circumstantial evidence is usually relied only when there is no direct evidence. But we have witnesses watching Anwar's movement but none adverted to him using the items," she said.

The three items are crucial for the prosecution to prove its case and Shafee today contended that even if they were obtained illegally, they could still be admissible because of their value to the case.

The defence had submitted last week that the items should not be admissible because they were obtained using "trickery and deception".

Shafee (pic, right) today told the bench that Anwar was the sole occupant in the cell

and that he must have used the items.

He said a police officer had heard Anwar brushing his teeth but this was not challenged by the defence team during trial.

"When Anwar left the lock-up, these items, which were previously in a plastic bag were all over the floor. This shows the items were used by Anwar," he submitted.

Shafee also referred to the testimony of investigating officer Jude Pereira who said he saw Anwar bring a mineral water bottle when escorting the accused to the lock-up.

"The investigating officer testified that Anwar carried the 'Cactus' mineral water bottle. The same bottle was recovered in the cell," Shafee said.

He said the defence did not deny that this was the same water bottle brought by Anwar.

Shafee also said the defence did not cross examine the three policemen who took the stand and it was too late to raise it now.

Curiously, contentions over the lockup and the items retrieved from the cell for DNA profiling were not raised by both parties at the Court of Appeal.

Shafee has also attacked the credibility of former Pusrawi doctor Dr Mohd Osman Abdul Hamid who said he found no evidence of sodomy on Saiful, and rebutted the defence claim that no penetration occurred.

Shafee today also raised the issue of "previous encounters" of a sexual nature between Anwar and Saiful, saying they were not prejudicial but could be considered as part of the case's context.

The High Court, however, had expunged these references and kept to the circumstances of the charge.

Despite all these details, the case rests either way on whether Anwar is indeed "Male Y".

The chain of evidence between the identity of 'Male Y' and Anwar would be broken if the defence convinces the apex court about doubts in the prosecution's case.

Anwar's lawyers are expected to reply to Shafee's submission tomorrow afternoon, the last day of the appeal hearing. – November 3, 2014.

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