

**Shafee raises 'previous encounters' as sodomy evidence in Anwar's appeal**  
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Arguing that penetration did occur in Datuk Seri Anwar Ibrahim's alleged sodomy of a former aide, the prosecution said the lack of injury or tear on the complainant was because of the lubricant used in addition to the possibility of "previous encounters".

Lead prosecutor Tan Sri Muhammad Shafee Abdullah was submitting against the defence's contention that the alleged sodomy could not have happened because of the lack of tear or injury on the complainant, Mohd Saiful Bukhari Azlan.

Anwar is appealing to the Federal Court to overturn his conviction of sodomising Saiful on June 26, 2008.

"There was no injury because of the use of lubricant, no undue force was used and delay in getting to the doctor. I would add to that previous encounters may also explain it," Shafee told the court's five-man bench today.

He added: "We are not interested in the fact if there was truth of the previous incidents but that would explain many of the factual matters in this case."

Last week when beginning submissions for the prosecution, Shafee said Anwar and Saiful had what could be construed as "a relationship" because of the perks and allowances Saiful received while working for the opposition leader.

Shafee also said the appellant and complainant had previous sexual encounters based on a question with sexual innuendo that Anwar had asked Saiful.

The lead judge on the bench, Chief Justice Tun Arifin Zakaria, asked Shafee if references to earlier encounters could be prejudicial. Shafee said they could be considered without being prejudicial.

He said he would submit on reasons to allow evidence of previous incidents which were expunged from the testimonies.

He said the innuendo with which Anwar had allegedly spoken to Saiful in the word "today" indicated that similar incidents had happened before.

"(Saiful also said) that he didn't want to do it today (and) that he was not willing to do it again," Shafee said.

These lines, he submitted, were pregnant with information that there were other encounters.

"These are phrases you can't edit. It provides description of the actual act," he said.

He also countered the defence's argument as to why Saiful did not act earlier on earlier occasions.

Shafee said that for four months Saiful was "bullied, dominated and taken advantage of".

In his submissions last week, Shafee had also said that Saiful should be considered a "victim" of sexual harassment who, as with some victims, would not take immediate action against their perpetrator.

"Saiful has become familiar to the predicament," he said.

Today, Shafee also rebutted the defence's claim that the DNA evidence had degraded to the point of being compromised due to mishandling by the police investigating officer and the incompetence of government chemists.

Opposition leader Datuk Seri Anwar Ibrahim (centre) walks towards the Federal Court after recess in Putrajaya, outside Kuala Lumpur today. – The Malaysian Insider pic by Najjua Zulkefli, November 3, 2014. Opposition leader Datuk Seri Anwar Ibrahim (centre) walks towards the Federal Court after recess in Putrajaya, outside Kuala Lumpur today. – The Malaysian Insider pic by Najjua Zulkefli, November 3, 2014. Shafee said if there were extreme degradation, the DNA would not even be readable.

"(This is a point) I have to stress. If there is degradation, it just can't be read. The DNA's identity cannot be changed due to degradation – you either can read it or not read it. That's why (DNA of) MH17 (victims) can still be read... there are parts (which can be read). Its good enough, degradation that has not reached a stage," he said.

Shafee said the word "pristine" used to describe the condition of the samples taken had never been said by the government chemist, but was introduced by the defence experts.

"(To say that the) DNA was in pristine stage, that is a misquotation," he told the court.

Shafee then turned on defence witness, former Pusrawi doctor Dr Mohd Osman Abdul Hamid, who was the first to examine Saiful after the alleged sodomy.

Calling him a "discredited witness with an incredible story", Shafee said that Dr Osman's written report after examining Saiful contained a part about a plastic object inserted into the complainant's rectum.

Saiful had initially told Dr Osman that a plastic object was inserted into his anus.

This part had been written "in a cramped manner", Shafee said, in trying to show that Dr Osman's testimony was fabricated.

"He (Dr Osman) himself admitted that he had put in (the part) later. (Dr Osman) never asked if it was (done by) a third party or if he did it himself. Never asked what was the nature of the plastic inserted," Shafee said.

He submitted that Dr Osman may have been persuaded to add information about the plastic object to his report.

"This witness is as good as impeached. He added that the plastic object was inserted days later to benefit a certain individual," Shafee said.

The defence had asked the prosecution to call Dr Osman as a witness, but Shafee said the deputy public prosecutor would have "lost his job" if he had done so because the doctor was lying.

Chief Justice Arifin asked if Dr Osman had been impeached, and Shafee said no, saying that there was no need to do so as the doctor's testimony was already discredited under cross-examination.

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

The hearing began last Tuesday and was initially scheduled for two days only over October 28 and 29 but the court has extended it till tomorrow.

The defence took three days last week to make submissions on the DNA samples used in the trial, which it said had been compromised due to mishandling and forensic incompetence.

The defence had also challenged Saiful's credibility as a witness, pointing out contradictions between his testimony and other evidence, and also sought to demolish the link between DNA profiles found on items supposedly used by Anwar in the police lock-up and the samples taken from Saiful's rectum.

Anwar was acquitted by the High Court in January 2012 after a lengthy trial based on findings that the DNA evidence was not reliable.

The defence is seeking to restore this finding.

The acquittal was overturned by the Court of Appeal in March this year.

A five-year jail sentence was also imposed but 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. He was the deputy prime minister and finance minister at the time. 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 enhance sentence which could be extended up to 20 years under the law. – November 3, 2014

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