

Investigating officer tampered with DNA samples, court hears in Anwar appeal
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DNA samples tendered in Datuk Seri Anwar Ibrahim's sodomy trial had been tampered with by the same person who is the police investigating officer, the defence submitted in the opposition leader's appeal at the Federal Court today.

After questioning the failure of government chemists to follow procedure in profiling the DNA samples, co-counsel Ramkarpal Singh said the presence of a third party's DNA in samples from both Anwar and the complainant, Mohd Saiful Bukhari Azlan, had come from investigating officer Supt Jude Pereira who had handled them.

Ramkarpal said there was a break in the chain of evidence caused by Pereira's conduct in handling the samples given to him. This point had been raised during the hearing at the Court of Appeal, which had convicted Anwar of sodomising Saiful in 2008.

Ramkarpal said Pereira had opened the sealed envelope containing separate tubes of the samples, and because Pereira had claimed that he did not see any markings on the tubes, he took it upon himself to put the tubes into separate envelopes and label them himself.

During the Court of Appeal hearing, Pereira had said he was following police standard procedures when handling evidence.

But Ramkarpal told the Federal Court today that Pereira had "absolutely no reason to open a sealed envelope as the tubes were already labelled".

Ramkarpal said this lent credence to the defence's case that DNA samples had been compromised.

He said the Court of Appeal panel should have considered whether Pereira was being truthful when he testified on his handling of the samples.

"It was not considered if Jude was truthful... they took it as gospel," he said.

Ramkarpal also submitted that it was not part of police procedure to open sealed evidence.

Citing testimony from the defence's expert witness, Dr David Wells, Ramkarpal said the tubes containing the DNA samples could have been tampered with by removing the seals and replacing them without detection.

But the Court of Appeal had dismissed Wells's testimony because he had "not witnessed the actual tampering".

Ramkarpal said the appellate court had not addressed doubts over the integrity of the samples and concluded that the trial judge had not proven possible tampering in his findings.

This "completely reversed" the burden of proof from the prosecution to the defence, Ramkarpal said, something that "has never been the law".

The appellate court also failed to consider the testimony of former Pusrawi doctor, Dr Mohd Osman Abdul Hamid, the defence's witness who was the first to examine Saiful after the alleged sodomy.

Ramkarpal said Dr Osman had not found any traces of tear or injury on Saiful consistent with sodomy.

"When he examined Saiful, he found Saiful's anus to be normal," Ramkarpal told the apex court today. This was despite Saiful's complaint that he was in pain.

Ramkarpal also said that Dr Osman's testimony differed from three other doctors who examined Saiful later.

The prosecution did not call Dr Osman to testify, but they also did not impeach him if they doubted his testimony. As such, the doctor's evidence was solid, Ramkarpal said.

Earlier this morning, Ramkarpal began tying up the defence's submissions by noting the contamination of DNA samples indicating a third person.

He said one of the items – a Good Morning towel – seized from the lock-up where Anwar was remanded for investigations in 2008 showed foreign DNA, identified by Allele 18.

Allele 18 did not belong to either the complainant, Mohd Saiful Bukhari Azlan, or to "Male Y", alleged to be Anwar.

Ramkarpal argued that Allele 18 should have been reported by the government chemist, Siti Aidora Saedon, who ran profiles on the lock-up items, but she had failed to do so.

In the trial, Siti Aidora said she had not reported it because it was a "stutter" or negligible. This was a failure to file her report according to procedure, Ramkarpal said.

"She chose to call it a stutter without conducting any other tests. She could have done a second test – if it was a stutter it would have (registered) 10% but it was at 25%," he said.

Ramkarpal asked how a third party's DNA could have been found on an item seized from the lock-up which only Anwar had occupied.

"This Good Morning towel came from lock-up where the prosecution claims Anwar was the sole occupant. So how did this DNA get there?" Ramkarpal told the court.

Allele 18 appeared again after a reamplification test, meaning it was not a one-off contamination of the sample, he added.

Since Allele 18 appeared on the lock-up towel and in samples taken from Saiful's rectum, Ramkarpal said it was possible that both samples had been contaminated by the same person.

But the government chemist failed to investigate this, he said.

The Court of Appeal, which convicted Anwar, had "misdirected itself" by disregarding the defence's doubts over the third party DNA. The burden is on the prosecution to disprove them, Ramkarpal said.

In the Court of Appeal's written judgement, the panel had said that chemists Siti Aidora and Dr Seah Lay Hong had given factual evidence based on their analysis of the samples.

Ramkarpal argued today that this was merely to offer an opinion.

"(The) burden was completely on the prosecution (to show that) Allele18 didn't need to be reported as opposed to (the chemist merely) offering an opinion,

"(Australian expert Brian) McDonald on the other hand said that it should be reported, rendering merit to the defence's case that the samples were tampered with," he said.

He added that this contamination and the degradation of sample on which he submitted yesterday "ought to have rung alarm bells in any objective scientist".

In the first two days of the hearing, the defence challenged Saiful's credibility as a witness, pointing out contradictions between his testimony and other evidence, and 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'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 calling for his defence in 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 prosecution has also filed a cross-appeal to enhance the jail term which could be extended up to 20 years.

The opposition leader is alleged to have performed carnal intercourse on Saiful, his former aide, at an apartment in Damansara on June 26, 2008. – October 30, 2014

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