

Defence lawyers demand acquittal of Malaysian opposition leader

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After exposing gaping holes in the government's case in the 15-month sodomy trial of Malaysian opposition leader Anwar Ibrahim, his lawyers have called for Anwar's immediate acquittal.

However, the prosecution, led by Solicitor General Modh Yusof Zainful Abidin, has asked the judge in the no-jury trial to rule that the state has established a strong case, and that the defence must be ordered to call its witnesses.

The prosecution concluded its case in the High Court in Kuala Lumpur on April 26. Judge Mohamad Zaidin Mohd Diah is due to hand down his ruling on the opposing submissions on May 16.

Anwar is charged under Section 377B of the Criminal Code with having had a homosexual relationship with his former aide Saiful Bukhari Azian in a condominium unit between 3.01 p.m. and 4.30 p.m. on June 26, 2008.

If convicted under Malaysia's reactionary anti-homosexual laws, Anwar faces up to 20 years in jail. A conviction would effectively end his leadership of the three-party People's Alliance or Pakatan Rakyat (PR). The PR is the main official opposition to Prime Minister Najib Razak's United Malays National Organisation (UMNO)-led coalition government. UMNO has led alliances that have ruled the country since independence from Britain in 1957.

Anwar and his supporters have condemned the allegations as a politically-motivated frame-up. Anwar was convicted on a similar charge in 2000, only to have it overturned by the Federal Court in 2004 as "unreliable". The appellate courts, however, upheld a related corruption charge that resulted in Anwar's jailing for six years and banned him from holding office until 2008.

The first round of charges followed a major split in UMNO over the direction of economic policy in the wake of

the 1997-98 Asian financial crisis. Anwar as finance minister advocated the free-market structural reforms demanded by the International Monetary Fund, but the UMNO leadership moved to protect Malay businesses with capital and currency controls.

Prime Minister Mahathir Mohamed sacked Anwar from his posts as deputy prime minister and finance minister, and expelled him from UMNO. When Anwar organised an opposition movement and attracted large numbers to rallies, he was arrested, beaten up by the national police chief then tried on trumped-up charges.

The latest charge was laid as Anwar sought successfully to enter parliament in a by-election after the PR had delivered a stunning blow to UMNO and its partners in the March 2008 national elections. The opposition increased its representation in the 222-seat national parliament from 19 to 82 and won office in 5 of Malaysia's 13 states.

In its acquittal submission, the defence team led by Karpal Singh and Sankara Nair called for Saiful, the alleged victim and Anwar's principal accuser, to be charged with perjury and perverting the course of justice. The defence lawyers first pointed to Anwar's alibi that he was in a meeting in a different apartment when the alleged offence occurred and that Saiful was not at the condominium complex on the day in question.

The defence then turned to a number of contradictions in Saiful's testimony. Although the charge related to consensual sex, Saiful claimed he had been forced into it. Yet he could not explain why he had stayed in the apartment for some time afterward to enjoy a snack.

Under questioning, Saiful had admitted that he had met with then then deputy prime minister Najib and Najib's wife Rosmah two days before the alleged sodomy took place. Saiful had been taken to Najib's house after he had

complained to Najib's aide Khairil Anas about Anwar's treatment of him as an aide.

Later that day, Saiful phoned police chief Musa Hassan who had been the investigating officer in Anwar's first sodomy case. That evening Saiful met assistant police chief Rodwan Mohd Yusof in the Melia Hotel and then again the next day in the Concorde Hotel. Rodwan had become well known during the first sodomy accusations against Anwar when he allegedly took Anwar's DNA samples from forensic storage and planted them on a mattress supposedly used in the act of sodomy.

The day after the alleged sodomy, Saiful continued his meetings with well connected political figures, in particular Ezam Mohd Noor, who had been a youth leader in Anwar's Keadilan party before leaving in 2007. A month before, he had publicly rejoined UMNO in a ceremony at parliament house presided over by the prime minister. Last year, for services rendered, he was made a senator.

Saiful did not report to Pusrawi Hospital until 2.00 p.m. on June 28 2008, two days after the alleged crime, to complain that he had been sodomised by a "very important person". The examining doctor, Mohd Osman Abdul Hamid, found no evidence of sexual activity and suggested Saiful go to a government hospital.

Saiful then turned up at the Hospital Kuala Lumpur and a sample was taken from his anus. Under cross-examination, Saiful claimed that he had not been to the toilet or drunk any water during the 56-hour gap between the alleged sodomy and the taking of samples.

Defence lawyer Karpal pointed to the lack of security regarding this key evidence. The investigating officer, Jude Pereira, had not only ignored orders to freeze the hospital sample bag but had tampered with the samples when he cut open the bag.

Government chemist Dr Seah Lay Hong testified that the samples she had examined produced two identified DNA profiles, one of which was Anwar's. She admitted that there were other combinations that suggested that Saiful could have had sex with up to 10 people.

Anwar's DNA was only admitted into evidence early last month. Concerned over the misuse of DNA evidence in his first trial, Anwar had refused to give a sample and was not legally required to do so. Police instead obtained samples from a toothbrush, water bottle and towel he had left behind in a cell after his arrest in 2008. Judge Mohamad Zaidin initially ruled the evidence inadmissible because there had

been no consent. However, responding to a prosecution demand, he reversed his ruling last month.

Alongside these trial anomalies, the pro-government media mounted a series of attacks on Anwar, including a flimsy claim that a grainy video showed the accused having sex with a female prostitute.

Any ruling by the judge to acquit Anwar would run counter to the government's determined campaign to remove Anwar from the political scene.

When, as a result of the 2008 election debacle, Najib replaced Abdullah Bawadi as prime minister in 2009 he at once stepped up the operation against the PR opposition, determined to re-gain UMNO's unchallenged position as the centre of political power and patronage in Malaysia.

This operation has included repeated attempts to induce defections from the PR. Early last year, an UMNO-led coalition regained control of Perak state through a series of sordid deals. Last December, parliamentary manoeuvres saw Anwar and three other PR leaders suspended from the parliament until the end of next month. The government thus regained a two-thirds parliamentary majority, allowing it to alter the constitution or electoral boundaries in preparation for a possible early election.

The April 16 state election in Sarawak was supposed to give UMNO's plans a boost. While the ruling coalition easily held onto political power in the state, UMNO's ethnic Chinese-based coalition partner lost out to the Democratic Action Party, a member of the PR coalition. A major factor in the 2008 election setback was the ruling coalition's loss of the Chinese vote.

The UMNO hierarchy will certainly want the Anwar trial and the destabilisation of the PR leadership to continue in the run-up to the next major electoral contest.



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