

## **PUBLIC PROSECUTOR v DATO' SERI ANWAR IBRAHIM**

Prepared by  
Zulkifli Hasan

### **CHARGE:**

Dato' Seri Anwar Ibrahim (DSAI) was charged under s 377B of the Penal Code for committing carnal intercourse against the order of nature to Mohd Saiful Bhukhari bin Azlan on 26 June 2008 between 3.01 p.m. to 4.30 p.m. at Unit 11-5-1, Desa Damansara Condominium, No. 99, Jalan Setiakasih, Bukit Damansara, Kuala Lumpur in the Federal Territory of Kuala Lumpur. S 377B provides that whoever voluntarily commits carnal intercourse against the order of nature if found guilty shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to whipping.

### **FACTS OF THE CASE:**

Mohd Saiful Bukhari bin Azlan (PW1), a young man age 22 years initially worked as a volunteer but later became the a paid member of staff as DSAI's private assistant in early March 2008. The PW1 made a police report alleging that DSAI had sodomised him at a condominium in Damansara on 26 June 2008. The report was made on 28 June 2008, two days after the alleged incident. Mohd Saiful said the incident took place after he and DSAI had completed discussing their work schedule at a unit of the Desa Damansara Condominium.

### **SUMMARY OF THE PROSECUTION AND DEFENCE SUBMISSIONS:**

<b>Prosecution Submission</b>	<b>Defence Submission</b>
<b>PW1 was a credible witness and the court found that his evidence reliable</b>	<b>PW1 was not a truthful witness and his evidence should be rejected</b> <ul style="list-style-type: none"><li>- PW1 had all the opportunity to flee;</li><li>- PW1 did not seek immediate medical attention;</li><li>- PW1 did not lodge a police report immediately after the incident;</li><li>- PW1's conduct did not support his claim of being sodomised as he had a drink and a friendly conversation with DSAI immediately after the incident and attended function and a meeting the next day;</li><li>- PW1 has connection with the Prime Minister and the Inspector General of Police;</li></ul>

Prosecution Submission	Defence Submission
	<ul style="list-style-type: none"> <li>- PW1 could have resisted the appellant as he is younger and physically bigger than DSAI;</li> <li>- DSAI is old and weak with a history of back injury and had undergone a major surgery;</li> <li>- DSAI does not hold any position of power; and</li> <li>- PW1 testified at the trial that he told the medical examiners he had not washed his anus for two days to preserve the evidence;</li> <li>- PW1 testified that the act of sodomy was performed on the carpet at Unit 11-5-1 of the Desa Damansara condominium. The carpet retrieved by the forensics team later was taken from Unit 11-5-2 instead of Unit 11-5-1. No evidence carpet existed in 11-5-1;</li> <li>- PW1 had an affair with a member of the prosecution's team.</li> </ul>
<p><b>DNA in PW1's anus matched DSAI's DNA</b></p>	<p><b>No evidence of anal penetration because the medical report had not found any injury to the anus or rectum:</b> A proctoscopy examination on 28 June 2008 by Dr. Osman who first examined PW1 showed no physical signs of penetration and a normal anus and rectum and three specialist doctors examined him later that night, but again they found no evidence of injury;</p> <p><b>Integrity of the DNA samples were compromised and there was possibility of tampering of the samples:</b> DNA samples didn't arrive at the chemistry laboratory for analysis until two days later and there was some issue about the proper labeling of the exhibits. There was no photographic evidence to positively indicate that the sperms were actually seen in the swabs;</p> <p><b>Possibility of the DNA had been planted:</b> Investigating Officer had opened the plastic package which was heat sealed containing specimen collected from PW1. The samples had been compromised as there was a break in the chain of custody of the evidence.</p> <p><b>Credibility of the prosecution's expert witness were questionable:</b> DNA expert Dr Brian Leslie McDonald from Sydney, Australia, and two forensic experts Prof Dr C. Damodaran from Chennai, India and Associate Professor David Lawrence Noel Wells from Melbourne, Australia said that the evidence given were riddle with doubts and unexplained scientific details thus making them unreliable.</p> <p><b>Degradation and contamination in the samples:</b> 36 to 48 hours might be the limit in which good DNA can</p>

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	<p>be obtained. The PW1 was examined and samples taken more than 56 hours and it took another 40 hours after the incident before the samples reached the chemist. The specimen was not even dry and not frozen, but in fact kept at room temperature. It is therefore impossible for the samples to be in pristine condition</p> <p><b>Doubt on the DNA Sample:</b> The DNA profile derived from swab “B5” consisted of a mixture of male DNA of “Male Y” and one other male contributor. The existence of a third party contributor on the evidence B9 (low rectal swab) and P59A (‘Good Morning’ towel).</p>
<p><b>Evidence illegally obtained remains admissible</b></p>	<p><b>Illegal means of obtaining DNA evidence</b></p> <p>The DNA samples were illegally taken from the lock-up where DSAI was detained. The DNA profiles were developed from the swabs of the toothbrush, the 'Good Morning' towel and the mineral water bottle given by the police in the lock-up.</p>
<p><b>The image on CCTV recordings at Desa Damansara Condominium</b></p>	<p><b>Mere Speculation and Presumption</b></p> <p>The evidence did not show that the PW1 did in fact go to the 5th floor where supposedly sodomy activity took place. He was in fact hiding at one of the floors.</p>
<p><b>The Court did not consider the political conspiracy or malicious prosecution defence</b></p>	<p><b>Malicious Prosecution and Political Conspiracy:</b></p> <ul style="list-style-type: none"> <li>- Refusal of Prosecution to disclose material- No witness list;</li> <li>- Request to the Public Prosecutor for certain documents and materials was refused;</li> <li>- The PW1 admitted that he had met with the Prime Minister at his home. The Prime Minister initially lied that only his officer met PW1 supposedly regarding a scholarship whereas PW1 was unemployed having left his electrical engineering studies at Universiti Tenaga Nasional due to his poor academic performance;</li> <li>- PW1 had met the Assistant Police Chief secretly at a room at a city hotel two days before the offence allegedly occurred;</li> <li>- PW1 has connection with the Inspector General of Police;</li> <li>- The court had failed to order witness critical to defence to attend court to testify on his behalf;</li> </ul>

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	<p>- An attempt to prevent DSAI returning to parliament through a by-election for the Permatang Pauh parliamentary seat in 2008 and Kajang in 2014.</p> <p>- PW1 had campaigned for Barisan Nasional (BN) during the 2008 General Election. PW1 also took religious oath of having been sodomised by DSAI just before the by-election for the Permatang Pauh parliamentary seat.</p>

### COURTS DECISION:

Court	Judgment
<p><b>High Court (HC)</b>  <b>9 January 2012</b>            Judge: Mohamad Zabidin Mohd Diah</p>	<p><b>DSAI is acquitted and discharged from the charge.</b></p> <p>It was not safe to rely on the DNA result only. It is trite law that the court is always reluctant to convict an accused person based solely on the uncorroborated evidence of the PW1.</p>
<p><b>Court of Appeal (COA)</b>  <b>7 March 2014</b>            Judges: Balia Yusof Bin Hj Wahi, Aziah Binti Ali and Mohd Zawawi Bin Salleh:</p>	<p><b>Decision of HC to acquit and discharge DSAI was set aside. DSAI was sentenced to 5 years' imprisonment.</b></p> <p>The evidence of PW1, even without any corroboration is credible and probable, and on its own was sufficient to prove the charge against DSAI. The need for corroboration remains a rule of good practice and prudence.</p>
<p><b>Federal Court (FC)</b>  <b>10 February 2015</b>            Judges: Arifin Zakaria, Raus Sharif, Abdull Hamid Embong, Suriyadi Halim Omar and Ramly Ali;</p>	<p><b>Dismiss the appeal and the sentence of 5 years' imprisonment imposed by the COA is hereby affirmed.</b></p> <p>The court hold that there is overwhelming evidence to support PW1's allegation that he had been sodomised by DSAI. A judge is entitled in law to convict even without corroboration if convinced of the truth of a complainant's evidence.</p>

## NATIONAL AND INTERNATIONAL RESPONSE ON THE CASE OF DATO' SERI ANWAR IBRAHIM:

Sources	Statement
Christopher Leong, President of the Malaysian Bar	"It is remarkable that DSAI has been prosecuted and convicted twice for an alleged offence of sexual acts between adults wherein the charge does not contain elements of coercion. It is a strange world that we live in. These glaring anomalies fuel a perception that Dato' Seri Anwar Ibrahim has been persecuted, and not prosecuted."
P Ramakrishnan, the former President of Aliran Malaysia	"The people must not only free Anwar, they must free the nation from the shackles of tyranny."
K Arumugam, Suara Rakyat Malaysia Acting Executive Director	"Anwar Ibrahim was convicted despite the prosecution's failure to prove his guilt beyond a reasonable doubt. The verdict will further tarnish the credibility of Malaysia's justice system and the country's international image," he pointed out."
S Arutchelvam, Parti Sosialis Malaysia Secretary-General	"The decision today besides creating a political crisis as well as leadership crisis in Pakatan. It will also derail real issues faced by the normal rakyat such as the serious increase in prices of goods, the floods, the dengue epidemic, the implementation of the good and services tax and other real issues."
BERSIH Steering Committee	"Among the core public institutions that need reforming is the Judiciary. This is a political persecution reflective of an extremely flawed democracy."
Pertubuhan IKRAM Malaysia	"IKRAM urges justice in Anwar's case and the judiciary to redress an injustice seen in the Sodomy II case of opposition leader Anwar Ibrahim."
Abdullah Gul, Former Turkey President	"I have learned the conviction and sentencing of Anwar Ibrahim with great sadness and concern. As a long-standing friend of Anwar Ibrahim, I find the charges brought against him very difficult to believe. Anwar Ibrahim is an intellectually oriented leading political figure in the Muslim World who has been a strong advocate of compatibility of Islamic values with democracy, rule of law and human rights."
Karim Lahidji, International Federation for Human Rights President	"The Federal Court's verdict is the disgraceful conclusion of a relentless judicial campaign against Anwar Ibrahim. Malaysia's judiciary failed to demonstrate its independence from the Executive Branch in a trial that had clear political motivations."
The International Commission of Jurists	"DSAI's right to a fair trial had been violated, including his legal right to be presumed innocent until the prosecution proves his guilt beyond a reasonable doubt. DSAI should never have been investigated, charged with, tried, let alone convicted of and sentenced for such charges."

Sources	Statement
Phil Robertson, Human Rights Watch, Deputy Asia Director	“The conviction of opposition leader Anwar Ibrahim after seven years of politically motivated proceedings under an abusive and archaic law is a major setback for human rights in Malaysia.”
Amnesty International	“The Anwar conviction and sentence was an oppressive ruling that would have a chilling effect on freedom of expression in the country. This is a deplorable judgment, and just the latest chapter in the Malaysian authorities’ relentless attempts to silence government critics. The ‘sodomy’ charges against Anwar have always been politically motivated, and he should be released immediately.”
European Union	“The conviction and sentencing of opposition leader Anwar Ibrahim raises serious questions regarding due process of law. The European Union regards Malaysia as a key political and economic partner in South East Asia. In that spirit of partnership, the EU wishes to underscore that trust in the administration of justice is an essential component of the democratic process.”
Mark Trowell, a Queen’s Counsel of the IPU, LAWASIA, and the Law Council of Australia	“The decision of the Federal Court was unconvincing and lacked a detailed analysis of the facts. In reaching the conclusions, the court rejected or ignored the evidence that raised serious doubts about the reliability of so-called independence evidence and the credibility of the complainant.”
Dan Slater, a Southeast Asia specialist, University of Chicago	“When the government decided to appeal Anwar’s acquittal in the High Court, the government’s actions became “nothing better than a witch-hunt.”
Progressive Alliance	“The selective and politically motivated prosecution of members of the opposition has a dramatic detrimental effect on political and social development in Malaysia. We call for fairness, transparency, and the rule of law. Malaysia’s government has to recognize the importance of confidence in its judicial system and has to restore trust in its commitment to human rights.”
The United States Embassy	“The United States has followed the trial of Malaysian opposition leader Anwar Ibrahim closely. The decision to prosecute Mr. Anwar, and his trial, have raised serious concerns regarding the rule of law and the independence of the courts.”
The High Commission of Canada in Malaysia	“The conviction of Anwar Ibrahim is of deep concern to Canada. It raises serious questions about judicial independence and selective prosecutions in Malaysia.”
Hugo Swire, Minister for Asia, United Kingdom	"I am deeply concerned by the imprisonment of Malaysia’s opposition leader Anwar Ibrahim. His case raises worrying questions about the independence of the judiciary and rule of law in Malaysia. As such, we have consistently raised our concerns with the Malaysian government.”
Al Gore, Former Vice President of the United States	“The politically motivated conviction of Anwar Ibrahim in Malaysian court today is an affront to democracy and the rule of law worldwide. By using the judiciary to attack its political opposition, Malaysia's ruling party has diminished its standing.”

Sources	Statement
Australian Foreign Ministry	“We are deeply concerned by the severity of the sentence and we have made our concerns known to the Malaysian Government. Australia has welcomed Prime Minister Najib’s recent messages about moderation and tolerance. As a friend of Malaysia, Australia encourages the Malaysian Government to consider the impact of recent decisions, including the Anwar verdict and the retention of the Sedition Act, on its international standing and its commitment to human rights.”
Rupert Colville, Spokesperson for the UN High Commissioner for Human Rights	“We are disappointed by the Federal Court ruling today. There are allegations that this case has been politically motivated and the trial marred by violations of due process rights in relation to the opportunities provided to the defence, raising concerns about the fairness of the judicial process.”
Bernadette Meehan, National Security Council Spokesperson, White House	“The United States is deeply disappointed with Mr. Anwar’s conviction following a government appeal of the original verdict finding him not guilty. The decision to prosecute Mr. Anwar and the conduct of his trial have raised a number of serious concerns about rule of law and the fairness of the judicial system in Malaysia. We urge the Government of Malaysia to apply the rule of law fairly, transparently, and apolitically in order to promote confidence in Malaysia’s democracy, judiciary, and economy.”
The Washington Post	“ The criminal case used to imprison Mr Anwar, who has been one of the foremost advocates of liberal democracy in the Muslim world, was as morally reprehensible as it was farcical. The case against him was thin enough to be dismissed by a court in 2012. That Mr Najib’s government managed to have that decision reversed by an appeals court and upheld by the Supreme Court demonstrated only that Malaysia still lacks an independent judiciary.”
The Wall Street Journal	“UMNO’s decades-long vendetta against Mr Anwar has brought discredit on Malaysia’s government and political culture. It is likely to accelerate the ruling party’s loss of support from a maturing population repulsed by such dirty tricks. Prime Minister Najib Razak’s failure to call an end to this farce is a stain on his legacy.”
ABIM	ABIM stands in solidarity with Dato’ Seri Anwar Ibrahim and urge the Malaysian judiciary to redress any elements of injustice in the case.