

## CHAPTER I

### INTRODUCTION

The initial spark of interest responsible for this empirical survey of criminal appeals from the lower courts to the High Court is set off by the following table:

TABLE 1.1

CRIMINAL CASES HEARD AND DISPOSED OF : SELANGOR

Level of Court	1971	1972	1973
High Court (Appeals)	210	101	144
Sessions Courts	826	828	870
Magistrates Courts	21, 616	27, 707	23, 866

Source: HIGH COURT REGISTRY

Appeals lie from the Sessions and Magistrates' Courts to the High Court.<sup>1</sup> An obvious observation is that there is a disparity in the number of appeal cases heard and disposed of by the High Court compared with the workload of the lower courts taken together. The cases dealt

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<sup>1</sup>Courts of Judicature Act, 1964 (Revised - 1972) Act 91 s.26.

with by the High Court merely feature within the region of the lower hundreds whereas those of the Sessions and Magistrates' Courts combined centre around the twenty-five thousand mark. Taken at face value, this gives the reader an immediate impression of a low appeal rate.

An appeal is "any proceeding taken to rectify an erroneous decision of a court by bringing it before a higher court".<sup>2</sup> "On any orthodox definition, an appeal includes three basic elements: a decision (usually the judgement of a court or the ruling of an administrative body) from which an appeal is made, a person or persons aggrieved by the decision (who is often, though by no means necessarily, party to the original proceedings), and a reviewing body ready and willing to entertain the appeal. Thus the essence of an appeal is a request to a competent tribunal to reconsider a decision arrived at by another body, or a request to the same body to review its own decision".<sup>3</sup> An appeal from a lower court would mean a proceeding initiated by a party dissatisfied with the judgement of the lower court to the High Court requesting the latter to reconsider the judgement of the lower court.

The right of appeal is subject to one overriding restriction. An appeal against any judgement, sentence or order must be "in respect of any error in law or in fact or on the ground of the alleged excessive

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<sup>2</sup>P.G. Osborne, A Concise Law Dictionary, Fifth Edition, London, Sweet and Maxwell, 1964.

<sup>3</sup>Louis Blom-Cooper, Q.C. and Garvin Drewery, "Final Appeal" Oxford, Clarendon Press, 1972, p.144.

severity or of the alleged inadequacy of any sentence".<sup>4</sup> From this, one can deduce that besides the parties to the proceedings, the third party who can influence the rate of appeals is the Magistrate or the President of the Sessions Court. The number of appeals is directly dependent on the calibre of the Magistrate and the merits of his judgement. Because of the intangibility of this factor the author intends to confine this study to the parties of the proceedings only i.e. the Public Prosecutor and the accused.

With regard to the overriding restriction again, it is humbly submitted that this will in no way affect the accused who is responsible for approximately 70-75% of the total number of appeals each year.<sup>5</sup> The lay accused will probably be ignorant of this restriction or even if aware, will hardly appreciate its meaning or significance. As such, this restriction plays no part in his decision to appeal or not to appeal. This "disability" will be remedied with the engagement of counsel but as will be seen later, the great majority of accused persons cannot afford such a luxury. Besides this restriction, the right of appeal to the High Court is subject to four other restrictions which, when examined will also pose no threat to the said right. They are:-

- i) There can be no appeal in the case of any offence punishable

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<sup>4</sup>Criminal Procedure Code (F.W.S. Cap.6) s.307(i)

<sup>5</sup>See Table 3.5 at p.33.

with fine only not exceeding twenty-five dollars.<sup>6</sup>

ii) A person who has pleaded guilty and has been convicted on such plea, can only appeal regarding the extent or legality of the sentence.<sup>7</sup>

iii) In the case of an acquittal by a Magistrate, there can be no appeal except by or with the sanction in writing of the Public Prosecutor.<sup>8</sup>

iv) The Judge can reject the appeal summarily.<sup>9</sup>

The first restriction hardly proves one in practice since no one realizing the time, finance and resultant inconvenience involved would bother to appeal regarding such a minor offence save in exceptional circumstances. Though a person convicted on his own plea of guilty is debarred from appealing against his conviction, he still has a right of appeal as regards his sentence. Even in the case of an acquittal, the Public Prosecutor can always appeal and in other instances, will hardly withhold his sanction in writing if there are valid grounds on which the appeal is based. The final restriction is more a rarity than a norm.

The right of appeal to the High Court is thus relatively unrestricted. If the contrary is true, it can help explain the low rate of appeals. As such, the finding further throws an aura of

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<sup>6</sup>Criminal Procedure Code (F.M.S. Cap.6) s.304.

<sup>7</sup>Ibid., s.305.

<sup>8</sup>Ibid., s.306.

<sup>9</sup>Ibid., s.312(i).

mystery around the supposedly low rate of appeals. Motivated by a desire to unravel this mystery and the challenge that the solution will lead into virgin territory, it is the object of the author to test the hypothesis that the appeal rate to the High Court is low and to account for the result. To this end, criminal appeals from the lower courts of Kuala Lumpur to the High Court will be examined as a representation of the general appeal rate of appeals from all lower courts to the High Court.

The underlying objective of this study is to see how the lower income group relates to the law and vice versa. Hence, only appeals of a criminal nature will be examined on the assumption that the great majority of criminals come from the lower income group by the very fact of their circumstances. Likewise the stage of appeal to be examined is that of the lower courts to the High Court since these people generally feature at this level and very seldom can appeal to the Federal Court. In the course of meeting these objectives, this study will also give a "general look-into" appeals from the lower courts to the High Court touching on various aspects of these appeals.

### Scope of the Study

Since the appellate process takes on meaning only when examined together with the jurisdiction of the courts, Chapter II is devoted to outlining the structure of courts and their criminal jurisdiction. The procedure to be followed by a party desirous of appealing to the High Court is also dealt with in the same chapter.

The study proper begins with Chapter III in which the hypothesis

is tested with statistical data collected. The rate arrived at is compared with the relevant appeal rates of the United States and Britain in order to determine whether the rate in Malaysia is high or low. The same chapter seeks to compare the difference in the number of appeals brought by the Public Prosecutor and the accused as well as the nature of these appeals.

Having tested the hypothesis, the study goes on to investigate into the factors responsible for the rate of appeal. The appellant in any case is either the Public Prosecutor or the accused. The accused usually appeals against conviction and/or sentence. The Public Prosecutor either appeals against acquittal or inadequacy of sentence. The factors affecting the number of appeals from the accused are quite different from those relating to the Public Prosecutor. For this reason, these factors will be considered in separate chapters.

Chapter IV lays out the principles governing appeals against conviction and sentence as provided by the relevant statutes and discussed in decided cases. Several factors which are thought extremely likely to influence the rate of appeals against conviction and sentence are considered and they include:- legal representation, the meagre contribution of Legal Aid towards legal representation, ignorance of the right of appeal, the finance involved, satisfaction with the sentences imposed, the nature of offences committed and the perceived chance of success. Interviews with the prisoners have shown that attitudes such as an acknowledgement that they had done wrong or that "the case is proved" or a passive resignation to his "fate" are largely

instrumental in causing them to let matters be and not even contemplate the possibility of appealing.

Chapter V examines the principles and factors governing appeals against sentence by the accused. Chapter VI, on the other hand, attempts a look into the mind of the Public Prosecutor as to why he appeals. The chapter also throws light on the internal arrangements between the police personnel who prosecutes and the staff at the Attorney-General's Chambers and how this affects the rate of appeal.

Some suggestions by which certain shortcomings can be overcome are discussed in Chapter VII. Some ideas are inspired through a study of foreign systems of justice. The final chapter lends the finishing touch to the study by consolidating all findings of preceding chapters and deliberating on their implications.

### Methodology

Due to the unexplored nature of the subject matter of this study, there is as yet no written material available on it. As such, this study is largely dependent on the analysis of relevant statistical data collected. It would be ideal to make a study of criminal appeals from all lower courts to the High Court and thence to the Federal Court. However due to the lack of time and resources, this study is confined to criminal appeals from the lower courts in Kuala Lumpur to the High Court. The study covers a span of four years from 1971 to 1974 with the hope that a good representation of the appeal rate will be shown.

## Sources of data

The two main sources of data are court records and interviews. Only general comments will be made concerning the data. The particular problems faced in the selection, collection and compilation of the data will be dealt with in the particular chapters in which the data is used.

I Court Records: These are mainly of two sorts.

i) Court Registers: These are useful in the computation of the percentage of criminal appeals lying to the High Court. The number of such appeals per year is computed from figures available in the High Court Criminal Appeal Register. This Register records the number of criminal appeals from all lower courts in Selangor. There is no breakdown into appeals from each district nor into "Summons" or "Arrest" appeals. Since the study is confined to criminal arrest appeals from Kuala Lumpur alone, the relevant total per year is arrived at by counting each relevant arrest appeal and noting its total.

There is no one central register which records the total number of criminal cases heard a year in all the lower courts in Kuala Lumpur. There are four Sessions Courts, two of which are presided over by Special Sessions Presidents, four Magistrates'



Courts and one Traffic Court. Each court keeps an annual register on the total number of cases heard in its court. The register relevant to this study is the "Criminal Arrest Cases Register". The total number of arrest cases of these courts per year is obtained by adding together the recorded totals in these registers (excluding that of the Traffic Court).

ii) Court Files: Two sets of court files have been looked into.

a) Files of the lower courts: It would be ideal if every criminal case can be considered. This is rendered impossible by the immense workload involved and the problem of missing files. The sample chosen consists of all cases registered from 1971 to 1974 involving offences against the person as listed in the Penal Code which are triable by the lower courts and under s.34(A)1 of the Road Traffic Ordinance 1958.<sup>10</sup> The fact that these cases are a reasonable representation of all criminal cases account for their choice.

The main problem encountered is that though every relevant file has been examined, the total

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<sup>10</sup> Causing death by driving a vehicle in a manner which having regard to all the circumstances was dangerous to the public.

of all such files does not tally with the registered total. The reason lies in some files being lost.

- b) Files of the High Court: Unlike the lower courts, it is not necessary to pick out a sample containing all offences against the person only. It is possible to examine every arrest appeal because the number, being around the hundred mark is manageable. Hence every arrest appeal registered from 1971 to 1974 has been examined. The same problem in the lower courts of the non-reconciliation of the two totals is also encountered here for the same reason.

II Interviews: Interviews with the following persons who either directly or indirectly influence the rate of appeal were held.

- i) The accused persons: Persons likely to appeal are those who have lost their cases at the courts of first instance. The judgement may consist of a fine only, a term of imprisonment and a fine or a term of imprisonment only. Since persons who have paid their fines are difficult to trace, only those undergoing imprisonment can be interviewed. Interviews with all women prisoners (13 only) and 175 men prisoners were held. These

prisoners were interviewed at random and there is no basis for their selection. The information offered helps a great deal to account for the current appeal rate.

ii) Staff at the Attorney-General's Chambers: Interviews with two Deputy Public Prosecutors have furnished much information towards this study especially regarding Chapter VI.

iii) Lawyers: The author has interviewed twenty lawyers who deal quite extensively with criminal cases. From their experiences, they offered useful information as to why the accused persons do not appeal. They have been kind enough to reveal their scheme of fees without which discussion of how finance influences appeal rates would be seriously hampered.

This study is merely an attempt at discovering the actual appeal rate and to account for it. Since the empirical survey conducted is confined only to courts within Kuala Lumpur, it would be too presumptuous to assert that this rate represents that of the entire country. This is rendered more so by the limitations of the data collected as explained above and elaborated upon in subsequent chapters. Nevertheless the appeal rate of courts in Kuala Lumpur may yet be a pale reflection of that true of the whole country.