

CHAPTER III

THE ACTUAL RATE OF APPEAL

This chapter seeks to test the "low appeal rate" hypothesis with the statistical data collected at the High and lower courts in Kuala Lumpur. The resultant rate is compared with equivalent rates in England and the United States to determine whether the appeal rate of the lower courts in Kuala Lumpur is low or high. To give a more realistic picture, this overall appeal rate of the lower courts combined is broken down to show the separate appeal rates of the Sessions and Magistrates' Courts. These rates are then compared with those of the Sessions and Magistrates' Courts in Petaling Jaya to determine how representative is the "Kuala Lumpur appeal rate" of that of all lower courts in the country and to see if its findings are also true in another district.

Since in Arrest cases, the appellant is either the Public Prosecutor or the accused, an attempt is made to determine the extent to which each party contributes to the total number of appeals each year. Subsequent tables show further breakdowns into types of appeals by both parties.

Selecting the basic sample

The lower courts hear all sorts of criminal cases. Basically, all criminal cases can be divided into Arrest and Summons cases. Summons cases are made up of Private and Traffic Summons cases, the

latter accounting for an extremely high percentage of all Summons cases. Traffic Summons cases average 9,000 each year.¹ An observation made by the author in the course of research at the courts is that most Summons cases do not continue into the appeal stage. Hence in order to arrive at a realistic appeal rate, all Summons cases will be excluded from this study which will take into account only Arrest cases. These cases fall mainly under s.34(1) of the Road Traffic Ordinance, 1958; s.30 of Arms Act, 1960; Prevention of Corruption Act, 1961; Dangerous Drugs Ordinance, 1952; Customs Act, 1967; Excise Act, 1961; Women and Girls Protection Act, 1973 and the Penal Code.

Testing the hypothesis

The formula used in determining the rate of appeal of the lower courts is:-

$$\text{rate of appeal} = \frac{\text{total number of arrest appeals (i)}}{\text{total arrest workload of lower courts (ii)}}$$

The way of getting figure (i) has been explained in Chapter I.² It is only necessary to add that only appeal cases heard and disposed of are included. There were 113 appeals in 1971; 44 in 1972; 56 in 1973 and 65 in 1974. In 1974, there were 28 more appeals registered but the judgements on these appeals had not been entered in the register. This can mean that they are either withdrawn or still pending. Because of

¹Traffic Summons Registers. 1971 - 10,712; 1972 - 9,112
1973 - 9,284; 1974 - 8,820.

²See Chapter I. p. 8.

this uncertainty, it is thought best to exclude them.

The author had encountered some difficulties in computing figure (ii). The figure arrived at as explained by Chapter 1³ is only "second best" since the sum total merely represents cases registered and because of the "back-log" problem, this total will be higher than that of cases heard and disposed of. This should be borne in mind when one looks at the rate of appeal arrived at by the above formula. An attempt to get the actual number of cases heard and disposed of was made by going through the monthly blue returns⁴ of the lower courts. However there were too many missing blue returns so that the resultant total was highly inaccurate. It is thought best to fall back on the registered total which is at least accurate in itself. The registered total for 1972 was 1886; for 1973 it was 2099 and for 1974 the number was 2111. The total for 1971 has been excluded due to registers of three courts for that year being untraceable. The reason may be that the courts in question were not in existence yet or that the registers were misplaced. Because of this, the appeal rate for 1971 cannot be calculated.

³See Chapter 1. p.9.

⁴A Monthly record kept by every court of the breakdown of all cases heard and disposed of in that court into the nature of offences committed. A copy of this has to be submitted to the High Court.

TABLE 3.1

APPEAL RATES OF LOWER COURTS IN KUALA LUMPUR

YEAR	No. of Criminal Appeals	Total Workload of Lower Courts	Rate of Appeal
1972	44	1886	2.33%
1973	56	2099	2.67%
1974	63	2111	2.98%

SOURCE: Drawn from data collected at lower and High Courts in Kuala Lumpur.

The appeal rate as shown above lies between 2-3% of the total workload of the lower courts. Even allowing for a backlog of 10% of the number of cases registered, the rate of appeal for 1972 to 1974 would still be 2.59%, 2.96% and 3.31% respectively.

Interviews with the men prisoners in Padu Prison revealed that only 5 out of 169 of them appealed. This works up to 2.96%. No overall percentage of appeals each year from all prisoners is available because no central record is kept. However, the officer-in-charge of appeals has given a rough estimate that 30-40 appeals lie each year from a total of approximately 1,400 prisoners, giving an approximate appeal rate of 2.14-2.86%. These prison figures seem to corroborate the judicial figures. However, it must be noted that the prisoners come from all over the country and not from Kuala Lumpur alone.

The appeal rate of 2-3% cannot in itself be labelled high or low.

A comparison need to be made with appeal rates of equivalent courts in England and the United States of America. These two countries are chosen because of the availability of their statistical data necessary in computing the appeal rate. For England, the equivalents of the lower courts and High Court are the Magistrates' Courts and the Crown Court respectively.⁵ The cases taken are the indictable offences which correspond to the arrest cases of Kuala Lumpur. The rate of appeal is computed using the same formula. The figures are only available in the Criminal Statistics, England and Wales, a publication of the Home Office of England. Attempts were made at several libraries to obtain the publications of the relevant years but only that of 1973 was available.⁶ The total number of "indictable offences appeals" was 2,453 and the total number of indictable offences heard and disposed of by the Magistrates' Courts was 365,505. This gave an appeal rate of 0.67% for 1973.⁷

⁵ Appeals may also lie from the Magistrates' Courts to the High Court on a point of law by way of "case stated". This is however rare since the cost of such appeals is greater than the fine imposed. The Crown Court is chosen because the majority of appeals from the Magistrates' Courts lie to it and only statistics on such appeals are available.

⁶ Criminal Statistics England and Wales, 1973. London, Her Majesty's Stationery Office.

⁷ This is subject to the caveat mentioned earlier in footnote 5 and to the fact that it is a general rule that the Public Prosecutor cannot appeal against an acquittal.

The equivalent of the lower courts in the United States is the U.S. District Courts, which total 89 in the 50 states. Appeals lie to the eleven U.S. Courts of Appeal.⁸ The criminal statistics of the United States must be treated with extreme caution because there is no breakdown into Arrest and Summons cases. Furthermore, only statistics on "cases commenced" are available. Because the problem of "back-log of cases" is minimal in the United States, there will be only a slight difference in the number of cases commenced and those terminated. With these caveats in mind, the rate of appeal is worked out in the following table.

TABLE 3.2

U.S. RATE OF APPEAL

YEAR	No. of Appeals	Workload of U.S. DISTRICT COURTS	Rate of Appeal
1971	3197	41,290	7.74 %
1972	3980	47,043	8.46 %
1973	4455	38,449	11.58 %
1974	4067	36,105	11.26 %

SOURCE: Statistical Abstract of U.S., 1975⁹

⁸ The Statesman's Year Book 1975-76 Edited by John Paxton. St. Martin's Press, New York p.552.

⁹ Statistical Abstract of the United States, 1975. 96th Annual Edition p. 165.

A comparison of the appeal rate of Kuala Lumpur with that of England and the United States shows that it tends to be on the low side, being higher than the English appeal rate but considerably lower than that of the United States. However the rate compared is merely the overall rate of the lower courts combined. To give a more realistic picture, this rate is broken down into the separate appeal rates of the Sessions and Magistrates' Courts in Kuala Lumpur. In the course of examining every available appeal record, the author found that a substantial number of appeals were from the Sessions Courts. The number of appeals from the Sessions Courts accounted for 75%, 70.3%, 90% and 72.72% of the total number of appeals lying from the lower courts from 1971-74 respectively. This may not in fact be the real percentage since the missing files have not been included. However, it is safe to assume that for Kuala Lumpur, 75% of the total number of appeals lie from the Sessions Courts. Thus using 75% to compute the number of appeals from the Sessions Courts, the following table works

TABLE 3.3

APPEAL RATES OF SESSIONS AND MAGISTRATES' COURTS
IN KUALA LUMPUR

YEAR		1972	1973	1974
S E S S I O N	No. of appeals	33	42	47
	Workload	468	552	579
	Rate of appeal	7.05%	7.61%	8.12%
M A G I S T R A T E S	No. of appeals	11	14	16
	Workload	1418	1547	1532
	Rate of appeal	0.78%	0.90%	1.04%
RATE OF APPEAL OF LOWER COURTS		2.33%	2.66%	2.98%

SOURCE: As in Table 3.1.

out the appeal rates of the Sessions and Magistrates' Courts.

This table shows that the appeal rate of the Magistrates' Courts is low. However it is interesting to note that even by the English and American standards, the appeal rate of the Sessions Courts is relatively high. The author ventures a guess that the difference in the two rates lies in the fact that the Sessions Courts deal with more serious offences and have jurisdiction to sentence offenders to longer periods of imprisonment. The real reasons will emerge in the course of discussions of factors influencing the rate of appeal in subsequent chapters.

To counter-check on whether the above rates are representative of the country as a whole, a comparison is made with another town, Petaling Jaya. The same method of computation is used. The only difference is that the number of appeals lying from the Sessions and Magistrates' Courts is the actual number and not computed on a 75-25% formula.

TABLE 3.4

APPEAL RATES OF COURTS IN PETALING JAYA

YEAR		1972	1973	1974
S E S S I O N	No. of appeals	1	4	2
	Workload	84	85	114
	Rate of appeal	1.19%	4.71%	1.75%
M A G I S	No. of appeals	5	5	3
	Workload	350	240	311
	Rate of appeal	1.43%	2.08%	0.96%
RATE OF APPEAL OF LOWER COURTS		1.38%	2.77%	1.18%

SOURCE: Petaling Jaya Registry

The following observations can be made:-

i) Besides 1972, the rate of appeal of the Sessions Courts is only slightly higher than that of the Magistrates' Court. The difference is not as stark as that of courts in Kuala Lumpur.

ii) The appeal rate of the Petaling Jaya Magistrate's Court is slightly higher than that of its equivalent in Kuala Lumpur but it can still be considered low.

iii) The overall appeal rate is lower than that of Kuala Lumpur.

From the above findings it would be safe to conclude that the overall appeal rates of these two towns are low. This is especially true of the Magistrates' Courts level. However the appeal rates of the Sessions Courts tend to be higher, being relatively high in the case of Kuala Lumpur. Kuala Lumpur, being the federal capital of the country, may on the whole have a slightly higher rate than that true of the country as a whole. This may be attributed to its society being more affluent and well informed of its rights. But in so far as the Kuala Lumpur overall appeal rate is considered low by foreign standards, this may be a reflection of the overall appeal rate of the country. It is logical to assume that if Kuala Lumpur, the most affluent town in the country can have a low appeal rate, the same would be true of the whole country, which in its computation of its appeal rate would include the less affluent towns, let alone villages. On the same reasoning, the low rate of appeals of the Kuala Lumpur Magistrates' Courts may also be representative of Magistrates' Courts of the country as a whole. Likewise, the rate of appeal of the Kuala Lumpur Sessions Courts will

definitely be higher than that of the country as a whole. There is a possibility though that the appeal rate of Sessions Courts as a whole, may be higher than that of Magistrates' Courts because of reasons advanced earlier on.

A breakdown of appeals in relation to parties appealing

Having established the rate of appeal, it seems appropriate to see the contribution of the Public Prosecutor and the accused in making up the total number of appeals each year. The following table in serving this purpose reveals all too clearly that it is the accused who is responsible for 70-75% of the total number of appeals each year.

TABLE 3.5

APPEALS BY THE PUBLIC PROSECUTOR AND THE ACCUSED

YEAR	No. of Appeals (1)	Appeals by P.P. (2)	(2) as % of (1)	Appeals by Accused (3)	(3) as % of (1)	Gross Appeals (4)	(4) as % of (1)
1971	113	24	21.24	85	75.22	4	3.54
1972	44	10	22.73	32	72.73	2	4.55
1973	56	13	23.21	41	73.21	2	3.57
1974	63	14	22.22	45	71.43	4	6.35

SOURCE: Criminal Appeals Register, High Court

The next breakdown is on the types of appeals made by the Public Prosecutor. Besides the year 1974, there is no substantial difference in the number of appeals against acquittal and inadequacy of sentence, the latter being slightly more than the former.

TABLE 3.6

APPEALS BY THE PUBLIC PROSECUTOR

YEAR	Total No. of appeals by P.P. (1)	Appeals against Acquittal (2)	(2) as % of (1)	Appeals against sentence (3)	(3) as % of (1)
1971	24	12	50	12	50
1972	10	4	40	6	60
1973	13	6	46.15	7	53.85
1974	14	4	28.57	10	71.43

SOURCE: AS IN TABLE 3.5

The breakdown into the types of appeals by the accused is not available in the Appeal Register. Instead, every available arrest appeal record is gone into and a percentage is drawn from this. Because of missing files, the total number is less than that recorded in Table 3.5. For the years 1971 and 1972, approximately three quarters of such appeals were against conviction and sentence. However for the remaining two years, there is no substantial difference between the two types of appeals. These findings are subject to the caveat that they only represent files gone into and not all appeals by the

accused.

TABLE 3.7

APPEALS BY THE ACCUSED

YEAR	Total No. of appeals by Accused (1)	Appeals against conviction & sentence (2)	(2) as % of (1)	Appeals against sentence (3)	(3) as % of (1)
1971	56	45	80.36	11	19.64
1972	24	18	75	6	25
1973	38	19	50	19	50
1974	33	16	48.48	17	51.52

SOURCE: CRIMINAL APPEAL FILES