

CHAPTER V

APPEALS AGAINST SENTENCE

The percentages of appeals against sentence lying from the Sessions and Magistrates' Courts for the years 1972, 1973 and 1974 were 28.58%, 51.73%, 53.84%; and 20%, 44.45% and 33.34% respectively. Prison statistics show that out of the five appeals from the men prisoners, four were against sentence, thus accounting for 80% of the total number of appeals. It is confirmed by the prison authorities that approximately the same percentage of the total number of appeals from the whole population of prisoners appealing through the prison authorities every year is against sentence. The principles governing appeals against sentence by the accused will be dealt with very briefly in the first portion of this chapter. The same factors discussed in the preceding chapter will be tested against such appeals. However the factors of ignorance of the right of appeal and costs will be omitted to avoid redundancy.

Principles governing appeals against sentence

The two parties who will appeal against sentence are the Public Prosecutor and the accused. The Public Prosecutor will base his appeal on the inadequacy of the sentence imposed whereas the accused will appeal against the excessive severity of the sentence.¹ Whilst the

¹Criminal Procedure Code (F.M.S. Cap 6) s.307(i).

right to appeal against sentence is open to all accused persons who may also appeal against conviction, the accused who has pleaded guilty in the lower court and been convicted on such plea is limited to an appeal against sentence only.²

The principles governing appeals against sentence are the same irrespective of whether the appellant is the Public Prosecutor or the accused. These principles will be dealt with in considerable detail in the next chapter. For this chapter, it would suffice to cite two authorities. In Abdullah Rahman bin Ibrahim v P.P.³, it was held that in suitable cases, the Court of Appeal will reduce or enhance the sentence when, having before them all the materials which the trial judge had before him, they consider, having regard to all the circumstances of the case, that the sentence imposed is manifestly excessive or inadequate.

In Liew Chow & Anor v P.P.⁴ the above principle was approved by the Court of Appeal. In that case the Court of Appeal added that the sentence of the court of first instance should not be altered unless the appellate court considered the sentence unjust. An appellate court must reject "the love of nicely calculated less or more" in matters of sentence. Before the sentence could be altered, it must be manifestly wrong, wrong either in the sense of being illegal or being unsuitable to the proved facts and circumstances. In short, the

²Ibid., s.305.

³[1938] M.L.J.219.

⁴[1939] M.L.J.170.

appellate court, in an appeal against the sentence by the accused, must be satisfied that the sentence appealed against is wrong in law or is manifestly excessive on the facts before interfering with the sentence.

Factors influencing the rate of appeals against sentence

The same sources of data and methods of computation of tables will be used in this chapter. Reference should be made to explanations made in the preceding chapter.

Legal Representation

Table 5.1 shows the relationship between legal representation and the number of appeals against sentence lying from the Magistrates' Courts. Table 5.2 shows the same of appeals against sentence lying from the Sessions Courts.

TABLE 5.1
APPEALS FROM MAGISTRATES' COURTS AND LEGAL REPRESENTATION

YEAR	Total No. of appeals	COUNSEL AT		NO COUNSEL AT	
		Trial (1)	Appeal (2)	Trial (3)	Appeal (4)
1971	1			0	1
1972	2	0	2		
1973	3	1	3		
1974	3	0	2	1	1

TABLE 5.2
APPEALS FROM SESSIONS COURTS AND LEGAL REPRESENTATION

YEAR	Total No. of appeals	COUNSEL AT		NO COUNSEL AT	
		Trial (1)	Appeal (2)	Trial (3)	Appeal (4)
1971	10	0	3	7	7
1972	4	2	4		
1973	16	3	13	3	3
1974	14	6	12	2	2

The following observations can be made from the two tables which show remarkably similar results:-

i) In direct contrast with the findings in the previous chapter which showed a negligible number of appeals without legal representation,⁵ a fairly substantial number of such cases were seen from both levels of courts. From the Magistrates' Courts, the only appeal in 1971 and 1 of the 3 appeals in 1974 were not legally represented at the appeal stage. From the Sessions Courts 70%, 18.75% and 14.29% of the total number of appeals in the years 1971, 1973 and 1974 respectively were not legally represented.

ii) A high percentage of cases enjoyed legal representation at the appeal court. From the Magistrates' Courts, these cases accounted for 100% of the total number of appeals in 1972 and 1973 and 66.66% in 1974. Likewise from the Sessions Courts 100%, 81.25% and 85.71% of the total

⁵See Tables 4.1 and 4.2 at p.41 & 42 respectively.

number of appeals in 1972, 1973 and 1974 respectively were legally represented. The only exception was 1971 in which only 30% of the total number of appeals were legally represented at the appeal stage. These findings correspond closely with those pertaining to appeals against conviction and sentence.⁶

iii) Unlike the previous findings that the great majority of represented appellants also enjoyed legal representation in the trial courts,⁷ the tables show that this was not so in appeals against sentence. From the Magistrates' Courts, all such cases besides one in 1973 did not have legal representation at the trial court. From the Sessions Courts, only 0%, 50%, 23.08% and 50% of the total number of legally represented appeals in the years 1971, 1972, 1973 and 1974 respectively had legal representation in the lower courts.

These observations lead to the conclusion that legal representation does not play as important a role in affecting the number of appeals against sentence than that against conviction and sentence. This is made evident by the greater number of appeal cases which are not legally represented at the appeal and trial courts as well as the high percentage of cases which though having legal representation at the appeal stage do not have the same at the trial courts.

An explanation for the greater number of unrepresented appeals against sentence than against conviction is that most of the appellants had pleaded guilty and been convicted in the lower court but are now dissatisfied with the sentences imposed. It is also possible that it

^{6,7} See Tables 4.1 and 4.2 at p.41 & 42 respectively.

is "simpler" to appeal against sentence which does not involve as many points of law as an appeal against conviction and sentence. Furthermore advice is forthcoming from the officer-in-charge of appeals who, through his long years of service and experience represents a "counsel within-reach" for the prisoners who cannot afford legal representation. The above findings further substantiate the belief that most accused persons desirous of appealing and who possess the means would seek out counsels to represent them on appeals.

Perceived chance of success

TABLE 5.3

APPEALS WITHOUT COUNSELS AND SUCCESS RATES (2)

YEAR	SESSIONS			MAGISTRATES'		
	Total No. of appeals (1)	No. successful (2)	(2) as % of (1)	Total No. of appeals (3)	No. successful (4)	(4) as % of (3)
1971	7	1	14.29			
1972						
1973	3	0	0			
1974	2	0	0	1	0	0

TABLE 5.4

LEGALLY REPRESENTED APPEALS AND SUCCESS RATES (2)

YEAR	SESSIONS			MAGISTRATES'		
	Total No. of appeals (1)	No. successful (2)	(2) as % of (1)	Total No. of appeals (3)	No. successful (4)	(4) as % of (3)
1971	3	0	0			
1972	2	1	50	2	1	50
1973	10	3	30	2	0	0
1974	6	0	0	2	1	50

TABLE 5.5

LEGALLY REPRESENTED TRIALS & APPEALS AND SUCCESS RATES (2)

YEAR	SESSIONS			MAGISTRATES'		
	Total No. of appeals (1)	No. successful (2)	(2) as % of (1)	Total No. of appeals (3)	No. successful (4)	(4) as % of (3)
1971						
1972	2	0	0			
1973	3	0	0	1	1	100
1974	6	3	50			

It is safe to assume that the unrepresented appellants in Table 5.3 are prisoners appealing through the prison authorities since the sentences appealed against include imprisonments and besides counsels, the only other alternative channel of appeal is through the prison authorities. The table shows that besides 1971, the success rate of these appeals is nil. From the interviews with the men prisoners, three out of the four who appealed against sentence did so through the prison authorities. None of them were successful in their appeals and one even had his sentence enhanced.

It is a common practice for the officer-in-charge to tender his advice to each prisoner desirous of appealing. He is more competent to advise prisoners appealing against sentence than against conviction and sentence by virtue of his experience gained through many years of service dealing with such appeals. Valuable though his advice may be, it becomes limited in the "more complicated" cases. Being unequipped with legal training, he may not be able to detect the fine points of law or fact on which the case may turn. The low success rate may be due to this limitation or simply to the "stubborn prisoners" who appeal against advice tendered. It is true therefore that even the "lay accused persons" do estimate their chances of success before appealing.

As expected, the success rates for cases having legal representation at either or both courts are higher than those for cases without legal representation. The average success rates for cases having legal representation at the appeal court only and those having counsels at both the trial and appeal courts are 25.71% and 37.5% respectively.

This is remarkably low compared to the corresponding average rates of 75% and 59.73% of appeals against conviction and sentence.⁸ Another point of interest is that whilst there is no 0% success rates found amongst appeals against conviction and sentence having legal representation,⁹ there are 3 such cases in Table 5.4 and 2 in Table 5.5. A possible explanation is that most appeals against conviction and sentence are on questions of law whereas most appeals against sentence turn on questions of fact. The chances of success are slimmer in the latter case since the appellate court would hesitate to upset the sentence imposed unless it is wrong in law or manifestly excessive on the facts. Whether this is so or not, the fact remains that the accused persons, both represented and unrepresented do consider their chances of success before appealing.

The nature of the offence

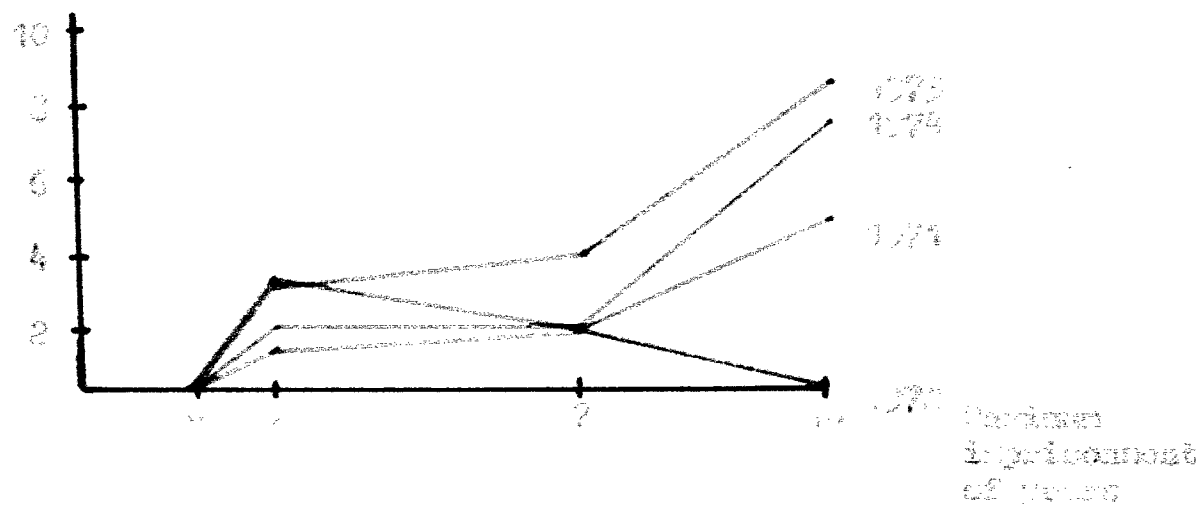
TABLE 5.6
APPEALS AND NATURE OF OFFENCES (2)

YEAR	MAGISTRATES'		SESSIONS	
	OFFENCES PUNISHABLE WITH MAXIMUM IMPRISONMENT OF			
	2 Years	3 Years	7 Years	10 Years
1971	0	1	2	5
1972	0	2	2	0
1973	0	3	4	2
1974	0	3	2	8

⁸ See p.45, 46.

⁹ See Tables 4.4 and 4.5 at p.45,46.

A P P E A L S



For 1975 the four years, there were 90 appeals in 1970 and 100 in 1975. In other words there was a numerical improvement of 3 years, with those periods being 1970, 1971, 1972, and 1974. In the year 1972, the number of appeals was 4, and in 1974 it was 8. In respect of the number of appeals, by means of improvement of the law seven years ago, it is 100. In other words, it is a tendency to improve the law, and the number of appeals is also improved. The only exception is the year 1971, when there were 2 appeals. In other words, the law is improved in 1971. The number of appeals is also improved in 1971, and the number of appeals is also improved in 1971. The nature of the evidence presented in this sentence by the evidence improvement that may be improved, and the number of appeals. The finding differs from the "negative" findings made in relation to appeals against conviction on facts of.¹⁰ The fact that the seriousness

¹⁰ See p. 57

of the offence affects the number of appeals against sentence helps to explain in part the greater number of appeals lying from the Sessions Courts.

Nature of the Sentence Imposed

The group of offences chosen from the Magistrates' Courts is that punishable by a maximum sentence of 3 years since they are the only cases available.

TABLE 5.7

APPEALS FROM MAGISTRATES' COURTS & SENTENCE IMPOSED (2)

YEAR	Total No. of cases punishable with 3 years	ACTUAL SENTENCE IMPOSED			
		6 Mths	6 Mths-1 Yr	1-2 Yrs	2 Yrs
1971	1			1	
1972	2			1	1
1973	3	1	1		1
1974	3	1	1		1

For 1971 and 1972, the only appeals were against sentences exceeding one year. In 1973 and 1974 such appeals accounted for 33.33% of the total number of appeals against sentence. However, because the number of cases involved is small, nothing conclusive can be drawn from the table above.

TABLE 5.8

APPEALS FROM SESSIONS COURTS AND SENTENCES IMPOSED (2)

YEAR	Total No. of cases punishable with 10 years	APPEALS AGAINST SENTENCES IMPOSED			
		3 Yrs	4 Yrs	5 Yrs	6 Yrs
1971	5	2		1	2
1973	9	2	4	3	
1974	8	1	4	2	1

It can be seen that there were more appeals against sentences of more than 3 years. In 1971, 1973 and 1974, 60%, 77.7% and 87.5% of the total number of appeals against sentence were in respect of sentences exceeding three years. However if one considers the number of appeals in relation to each column of the table, it does not show that the number of appeals increases with every increase in the number of years imposed.

It has been remarked by the prisoners interviewed that they appealed because of the "strokes". To test the truth of this statement and to complement Table 5.8, a breakdown of the number of strokes imposed is shown in Table 5.9. Only the years 1973 and 1974 will be shown since in 1971 no strokes were included in the sentences imposed.

TABLE 5.9

APPEALS AND STROKES

YEAR	No. of cases involving strokes	Actual No. of strokes imposed				
		2	3	4	5	6
1973	9	1	1	5		2
1974	7	1	3	1	1	1

Compared with Table 5.8, it is clear that all cases in 1973 had 'strokes' included in the sentences imposed. Only 1 case in 1974 was exempted from having to undergo whipping. This finding proves that there is some grain of truth in the prisoners' remarks on this point which is also shared by several lawyers. There were more appeals against sentences involving 4 or 6 strokes in 1973. In 1974, there were more appeals against sentences involving 3 or more strokes.

Whilst it is not conclusive that the length of sentences imposed will affect the number of appeals in the Magistrates' Courts, there is some relationship between the nature of sentences imposed (inclusive of 'strokes') and the number of appeals in the Sessions Courts. This offers another reason why there are more appeals from the Sessions Courts.

Satisfaction with sentence imposed

18.75% of the lawyers interviewed have considered this as a factor why the accused prefers not to appeal. 50 or 26.9% of the men prisoners attributed their not appealing to this factor. An attempt to look into their reasoning has led to the following tables. Table 5.10 deals with

those accused persons who were convicted of offences punishable with a maximum imprisonment of 3 years and the actual sentences imposed.

Table 5.11 deals with offences punishable with a maximum sentence of 7 years.

TABLE 5.10

APPEALS AND SATISFACTION WITH SENTENCES IMPOSED (1)

Total No. of cases punishable with 3 years	ACTUAL SENTENCE IMPOSED			
	3 Mths	3-6 Mths	7-9 Mths	1 Year
13	7	3	1	2

TABLE 5.11

APPEALS AND SATISFACTION WITH SENTENCES IMPOSED (2)

Total No. of cases punishable with 7 years	ACTUAL SENTENCE IMPOSED		
	1 Yr	2 Yrs	4 Yrs
6	2	3	1

Compared with Table 5.7 which deals with appeals from offences punishable by the same maximum number of years, it would seem that from Table 5.10, the prisoners have come to the correct conclusion that their sentences are light. This is again true of Table 5.11 except that 4 years cannot be considered light. Perhaps in the light of the circumstances, best known to the accused, it may in fact be light.

Fear of sentence being enhanced

Section 316(1)(b) of the Criminal Procedure Code confers jurisdiction on the Judge to enhance the sentence imposed by the lower courts.

56.25% of the lawyers interviewed remarked that from their experiences, the sheer possibility of the High Court enhancing the sentence has dissuaded many an accused person from appealing in a 50-50 chance case. The majority of the prisoners seem well informed of this possibility and 15 men prisoners specifically mentioned this factor as their reason for not appealing.

The instances in which sentences have been enhanced are shown in the following table. It is alarming to note that the number of cases in which this is so is relatively high. Even amongst the 4 appeals from the prisoners interviewed, one has its sentence enhanced to include 6 strokes. It is not surprising then that persons satisfied with their appeals would not appeal in the face of a relatively high possibility of their sentences being enhanced.

TABLE 5.12
APPEALS AND SENTENCES BEING ENHANCED

YEAR	SESSIONS			MAGISTRATES'		
	Total No. of appeals (1)	No. of sentences enhanced (2)	(2) as % of (1)	Total No. of appeals (3)	No. of sentences enhanced (4)	(4) as % of (3)
1971	10	2	20	1	1	100
1972	4	1	25			
1973				3	1	33.33
1974	14	1	7.14	3	1	33.33

SOURCE: APPEAL FILES

Conclusion

The factors which influence the rate of appeals against conviction and sentence also affect appeals against sentence. The extent of influence of these factors, however, is different in these two instances. It is found that legal representation does not play as significant a role in influencing the rate of appeals against sentence as in appeals against conviction and sentence. Thus prisoners desirous of appealing would proceed without counsel. The nature of the offence committed and the nature of the sentence imposed (especially when it includes whipping) clearly play a part in influencing the rate of these appeals. This helps to account for the greater number of appeals lying from the Sessions Courts. Yet the underlying factor is still the attitude of the accused in whom lies the final decision as to whether to appeal or not.