CHAPTER VI

APPEALS AND THE PUBLIC PROSECUTOR

Besides the accused, the other appellant to the High Court is the Public Prosecutor. Appeals by the Public Prosecutor accounted for an average of 22.6% of the total number of appeals lying from the lower courts for the 4 years under study. Unlike the case of the accused, the factors motivating the Public Prosecutor are directly related to the principles governing the appeals. This chapter will discuss three aspects of appeals by the Public Prosecutor: appeals against acquittal, appeals against sentence and withdrawals of appeals by the Public Prosecutor.

A. Appeals against acquittal

Out of the total number of appeals by the Public Prosecutor from the lower courts in Kuala Lumpur in the years 1971 to 1974, 50%, 40%, 46.15% and 28.57% were appeals against acquittals. Acquittals can be divided into two kinds, namely: acquittals before defence is called or at the end of the prosecution's case and acquittals after defence is called or at the close of the case for the defence.

Principles governing appeals against acquittal

Section 307(i) of the Criminal Procedure Code provides that any person may appeal against any judgement in respect of any error in law or in fact. This provision covers an appeal by the Public Prosecutor against acquittal. This section is subject to the immediately preceeding section of the same Code. Section 306, however provides

that in the case of an acquittal by a Magistrate, the Public Prosecutor can appeal. An appeal against an acquittal may be in respect of errors in law or fact.

Questions of law

Questions of law can be classified under the same three headings as in appeals against conviction:-

i) errors of substantive law

ii) errors in evidence

iii) procedural errors.

The meanings of groups i) and ii) given in Chapter IV[1] are applicable here with obvious alterations. For e.g. whilst the accused would argue that his conviction is bad because one of the ingredients of the offence has not proved, the Public Prosecutor would argue that the acquittal at the close of the case for the prosecution is wrong in law because a prima facie case containing all the ingredients of the offence has been made out

A procedural error includes an acquittal by a Magistrate in a situation other than the three circumstances allowed by law, at the end of the prosecution's case, at the close of the case for the defence or when the Public Prosecutor declines to prosecute further at any stage before the delivery of judgement. In a recent case,[2] a motor accident which occurred in Kuala Lumpur had not been disposed of more

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[1] See p.37 & 38.

[2] The New Straits Times, 8th May, 1976 p.11 Col.2, 3 & 4.

than 2 years after the occurrence because the prosecution could not present it owing to non-completion of investigations by the Traffic Police. Several postponements had been made and when the prosecution asked for an adjournment, counsel for the defence objected that there had been several postponements and that the charge should not be left hanging on the defendant's head for such a long time. At that stage, the Magistrate acquitted the defendant. Mr. Justice Harun set aside the Magistrate's order since the acquittal did not fall within any of the three circumstances stated above and ordered the case to be sent back to the Magistrate for disposal "according to the provisions of the Criminal Procedure Code."

Questions of fact

In Arumugam v R[3], Morley J. observed:-

"..... the proper criterion is that the appellant on questions of fact has to satisfy the Appellate Court that the judgement was against the weight of evidence and that I think must be the test whether it is an appeal against an acquittal or against a conviction."

Thus the cases cited in Chapter IV on appeals against conviction on questions of fact are equally applicable to appeals against acquittal and vice versa.

In P.P. v Ma'arif[4], Abdul Hamid J. said:-

"..... It is true that a Magistrate's decision should not be reversed on the ground of its being against the weight of evidence. However there is no reason why it should not be done if it were found that the decision was grossly against the weight of evidence."

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[3](1947) M.L.J. 45,47.

[4][1969] 2 M.L.J. 65,66.

The following quotation from In Re A.B. Ltd.[5] is also found in the same case:-

"An appeal court may allow an appeal from a determination on a question of fact if it appears to the court that no person acting judicially and properly instructed as to the relevant law could come to the conclusion under appeal."

Abdul Hamid J. found that on the evidence adduced as a whole, a person acting judicially and properly instructed as to the law could not have come to the conclusion that the learned President did and he therefore set aside the order for acquittal and ordered a retrial.

In the Privy Council case of Sheo Swarup & Others v The King-Emperor[6], Lord Russel of Killowen in giving the judgement of the Privy Council, laid down the four factors which the High Court should give proper weight and consideration to before reaching its conclusion on facts. The four factors have been adopted by McIlwaine C.J. in the case of Lee Sang Cheah v P.P. set out in Chapter IV.[7]

Acquittal at the close of the prosecution's case

90% of the appeals against acquittal belong to this group. Section 173(f) of the Criminal Procedure Code provides that "if upon taking all the evidence, the court finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the court shall record an order of acquittal". Hence the broad principle governing appeals against acquittal at the close of prosecution's case

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[5] [1956] M.L.J. 197, 200.

[6] 51 T.L.R. 10.

[7] See p.38.

is that in effect a prima facie case or a case which if unrebutted, would warrant the accused's conviction has in fact been made out and as such, the Magistrate instead of acquitting the accused should have called for the defence to present its case.

Before appealing, the Public Prosecutor will have to double-check that a prima facie case has been made out by the prosecution. To do this, he will consider, amongst other matters the following considerations:-

contradiction by prosecution witnesses:- This is usually the result of cross-examination. The important thing is not that there has been such contradiction but whether the contradiction is material. For e.g. in the case of an accused charged with causing grievous hurt by a broken bottle under Section 326 of the Penal Code, the victim in the examination-in-chief has said that the accused hit him at 10.00 p.m. In cross-examination he said that he was hit at 10.30 p.m. This difference of half-an-hour constitutes a mere contradiction if other ingredients are proved. However if in cross-examination he had said that he was hit by the butt of a pistol, this would constitute a material contradiction. In the case of material contradiction, the Public Prosecutor would usually not appeal whereas the reverse would be true with mere contradictions.

lack of evidence:- This is directly referable to the ingredients of the offence. For e.g. in the case of theft chargeable under Section 379 of the Penal Code, 5 ingredients must be proved:-

i) taking of property belonging to another

ii) taking it without his consent

iii) removal of the property

iv) removal was done by the accused

v) the property must be movable property.

If sufficient evidence has been brought by the prosecution to prove that all the ingredients of the offence are satisfied, the Public Prosecutor would go ahead with the appeal. However, if after reading the grounds of judgement, it is found that insufficient evidence has been produced to satisfy all ingredients of an offence, the Public Prosecutor will withdraw the appeal.

Acquittal at the close of the case for the defence

These appeals constitute only a minor portion of appeals against acquittal. They have been described as "uphill climb cases". To maintain that the accused should not be acquitted, the Public Prosecutor must persuade the appeal court that the defence has not cast a "reasonable doubt" on the case of the prosecution. The appeal will centre around the meaning of reasonable doubt. The Public Prosecutor will assert that the doubt is not any doubt but a reasonable doubt. Several definitions of this term have been given.

In Liew Kaling & Others v P.P.[8], the Federation Court of Appeal without laying down or commending any formula approved the words used by Denning J. (as he then was) in Miller v Minister of Pensions[9],

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[8](1960) 26 M.L.J. 306.

[9][1947] 2 A.E.R. 372, 373.

"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

A more recent case is P.P. v Ramlan alias Ramlah bin Tukiman & Anor.[10] where the Federal Court without commenting on the following summing-up by Dato' Chang Min Tat J. to the jury has indirectly approved the latter's definition of reasonable doubt:-

".... Reasonable doubt is a doubt that you as a reasonable man will entertain. You entertain such doubt as a reasonable man of the world dealing ordinarily with the more important affairs of life. You apply your normal process of thinking and you apply common sense. It is not a fanciful doubt because if you want to go to flights of fancy, you can find doubt present anywhere, but you must act reasonably and the doubt must be reasonable."

Appeals against acquittals and success rates

Though the principles governing appeals against conviction and acquittals are the same, it would seem that it is easier to "maintain an acquittal than a conviction". The Public Prosecutor before taking up an appeal would have seriously estimated the chances of success of the appeal. If the chances are anything less than 90%, the Public Prosecutor will not appeal.

The following table shows the success rates of appeals against acquittal by the Public Prosecutor. The cases constitute all appeals lying from the lower courts in Kuala Lumpur to the High Court. Appeals

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[10] Federal Court Cri. App. 15/76 heard on 23 February 1976 as yet unreported.

withdrawn in open court are deemed failures.

A great point of interest is that an average of approximately 91.42% of the respondents were legally represented. Out of these, 93.75% were also represented in the trial court. However, these percentages were arrived at from files available and hence may not be representative of all respondents. In any case, those high percentages show that the accused would seek counsel in the face of an appeal by the Public Prosecutor against his acquittal.

TABLE 6.1

APPEALS AGAINST ACQUITTAL AND SUCCESS RATES

YEAR	Total No. of appeals	No. of successful appeals	Success Rates
1971	12	8	66.67 %
1972	4	1	25.00 %
1973	6	1	16.67 %
1974	4	2	50.00 %

SOURCE: CRIMINAL APPEALS REGISTERS, HIGH COURT

The success rates of these appeals were 66.67%, 25%, 16.67% and 50% in the years 1971, 1972, 1973 and 1974 respectively. The average success rate for those years is 39.59%. This is comparatively low compared to the average success rates of appeals against conviction and sentence which are legally represented at the appellate only and those represented at both trial and appeal courts being 75% and 59.73%

respectively.[11] This comparison is subject to 3 caveats:-

i) the success rates of "conviction and sentence" cases were arrived at using those files which were available whereas every case was considered in appeals against acquittal,

ii) success in "conviction and sentence" cases included cases in which sentence was reduced though conviction stands,

iii) the average rate of success of appeals against acquittals was for the years 1971 - 1974 whereas that of appeals against conviction and sentence was for 3 years only, namely 1972 - 1974.

Legally represented appeals against conviction and sentence are chosen because it is the only fair basis of comparison since both the Public Prosecutor and the counsels are well trained in law and are at no unfair advantage to the other as the unrepresented accused would be to the Public Prosecutor.

B. Appeals against inadequacy of sentence

Appeals against sentence constituted 50%, 60%, 53.85% and 71.43% of the total number of appeals by the Public Prosecutor from the lower courts in Kuala Lumpur in the 4 years under study. When the accused appeals against conviction alone, the Public Prosecutor generally cross-appeals against inadequacy of the sentence imposed. Such cross-appeals are also made in cases of appeals by the accused against both conviction and sentence but they are comparatively few in number.

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[11] See p.46.

Principles governing appeals against inadequacy of sentence

In Abu Bakar bin Alif v R[12], one important point which arose out of the judgement was the Judge's discretion as to the principles which should guide an appeal court in considering the sentence passed by the court below. Spencer-Wilkinson J. adopted the principles laid down by the Court of Appeal in Rex v Ball[13].

"In the first place, this court does not alter a sentence which is the subject of an appeal merely because the members of the court might have passed a different sentence. The trial judge had seen the prisoner and heard his history and any witnesses to his character he may have chosen to call. It is only when a sentence appears to err in principle that this court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed, there was a failure to apply the right principles, then this court will intervene.

In deciding the appropriate sentence, a court should always be guided by certain considerations. The first and foremost is public interest .... The object of punishing crime is not only to punish the offender, but also to deter others. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again or induce him to turn from a criminal to a honest life."

The Court of Appeal also stressed the importance of the court hearing the antecedents and character of the accused before passing the sentence. Spencer-Wilkinson J. dismissed the appeal against conviction and sentence. As regards the sentence, dismissal was on two grounds namely, the appellate court was unable to say that the sentence was excessive or inadequate to such extent as to be satisfied

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[12](1953) 19 M.L.J. 19.

[13]35 Cr.App.R. 164.

that there was a failure to apply the right principles and the absence of information on the record concerning the accused's background, antecedents or character.

In P.P. v Ismail bin Loyok[14], the Court allowed an appeal by the Public Prosecutor against the inadequacy of a sentence of binding over under Section 294(1) of the Criminal Procedure Code of a clerk of the Telecoms Department who was convicted of a charge of criminal breach of trust. In enhancing the sentence to six months, Smith J remarked that the learned President had not given sufficient consideration to public interest as laid out in Rex v Ball.

In P.P. v Tengku Mahmood Iskandar & Anor.[15], the Public Prosecutor appealed against the binding over order of the accused under Section 173A of the Criminal Procedure Code. In allowing the appeal, Raja Azlan Shah said:-

"It is well settled that the sentence must reflect the gravity of the offence. In the present case, it is not so much the triviality of the injury but the circumstances culminating in the commission of the offence which is important."[16]

In P.P. v Mohamad Ramly[17], the respondent had been bound over under Section 173A of the Criminal Procedure Code by the Magistrate after being convicted of two charges of forging two M.C.E. certificates and using the forged certificates. In an appeal by the Public Prosecutor against the inadequacy of such sentence, Mohamed Azmi J. said:-

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[14] (1958) 24 M.L.J. 223.

[15] [1973] 1 M.L.J. 128.

[16] Ibid., p.129.

[17] [illegible]

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[14] (1958) 24 M.L.J. 223.

[15] [1973] 1 M.L.J. 128.

[16] Ibid., p.129.

[17] [1974] 1 M.L.J. 95.

"In my view the learned Magistrate failed to consider sufficiently the serious nature of the offence committed and the deliberate manner in which the crime had been perpetuated. .... In assessing sentence, a proper balance should be struck between public interest and the interest of the accused. In the present case, the Magistrate was too preoccupied with the interest of the accused whilst giving no adequate consideration to public interest."[18]

He accordingly set aside the binding over order and sentenced the respondent to a fine of $500/= in default 6 months' imprisonment on the first charge and a fine of $250/= in default 3 months' imprisonment on the second charge.

In Yong Pak Yong v P.P.[19] Good J. was of the opinion that in dealing with a matter of sentences as distinct from whether a person ought to be convicted or not of the offence, the courts are entitled to take judicial notice of what is notorious, of what everyone knows.

The above cases lay down the principle that before interfering with the sentence, an appellate court should check that the sentence has been passed, striking a proper balance between public interest and the interest of the accused.

Factors influencing appeals against inadequacy of sentence

In practice, the Public Prosecutor in appealing against inadequacy of sentence would weigh the following factors:-

i) the nature of the offence: the gravity of the offence must be reflected in the sentence imposed.

ii) the drcumstances in which the offence was committed: this has

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[18] Ibid., p.96.

[19] [1959] M.L.J. 176.

been sufficiently stressed by Raja Azlan Shah in P.P. v Tengku Mahmood Iskandar & Anor.

iii) the degree of deliberation shown: the greater the deliberation, the heavier the sentence.

iv) prevalence of the crime: it has been said in Yong Pak Yong v P.P. that a court can take judicial notice of what is notorious. It is a notorious fact that crimes are on the rise. The Director of C.I.D., Deputy Commissioner, Abdul Rahman Ismail had given an elaborate account of the increase in crimes in a report.[20] The relevant portion of the report is as follows:-

"The increase was highest in motor vehicle thefts. In 1970 there were 1,152 thefts compared with 5,669 last year, making it an increase of 311.9 percent.

Next came robbery which rose from a mere 800 cases in 1970 to 3,111 cases last year - an increase of 288.9 percent. Between 1974 and last year robberies increased by 902 cases or 40.83 percent.

Housebreaking and theft was third highest. In 1970 there were 6,310 cases compared with 13,235 last year - an increase of 109.7 percent. In 1974 there were 10,398 cases and this is an increase of 27.28 percent.

Extortion cases rose from 428 in 1970 to 697 last year."

Encik Abdul Rahman said that the crime rate was higher in the urban areas including rural towns and villages. For e.g. in house-breaking between May 8 - May 14 this year, 240 of the 281 break-ins occurred in the urban areas while 41 took place in rural areas. Kuala Lumpur with a floating population of more than one million (according to 1970 census) was said to have the highest crime rate.

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[20] The New Sunday Times, 30 May 1976, p.1 Col. 1-3.

The above account demands that the sentence passed be commensurate with the prevailing rate of the crime committed and the place in which it was committed. For e.g. a bank robbery in Kuala Lumpur would deserve a stricter sentence than a similar offence in Taiping. As Mr. Justice Chang Min Tat said:-

"..... I want to make it very clear that the courts must reflect their abhorrence of crimes of violence by imposing relatively heavier sentences ...."21

v) the circumstances of the case set against the current situation: the shade of meaning given to this factor is wider than factor iv) and includes it. This factor envisages for e.g. a hoarding of a commodity at a time of severe shortage of that particular commodity. This would call for a heavier sentence than one which would be imposed in a normal situation.

vi) the amount involved: the Deputy Public Prosecutors interviewed are agreed that the amount robbed or stolen is immaterial.

vii) the interest of the accused: set against the above factors is the interest of the accused. A proper balance should be struck between the interest of the accused and public interest. Mitigating factors like first offenders, young offenders, sound antecedents, good family background and a favourable probation report should be given due weight by the Public Prosecutor.

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21 The New Straits Times, 1 April 1976, p.5, Col. 3.

Appeals against inadequacy of sentence and success rates

The following table is computed in the same way as Table 6.1. As in appeals against acquittal, a high average of 78.88% of the respondents in appeals against inadequacy of sentence were represented at the appeal stage. Approximately an average of 90% of these respondents were also represented at the trial courts. Subject to the same caveat, this finding confirms the fact that the accused is highly concerned with "safeguarding" the sentence of the lower court.

TABLE 6.2

APPEALS AGAINST INADEQUACY OF SENTENCE AND SUCCESS RATES

YEAR	Total No. of appeals	No. of successful appeals	Success Rates
1971	12	8	66.67 %
1972	6	1	16.67 %
1973	7	5	71.43 %
1974	10	2	20.00 %

SOURCE: CRIMINAL APPEALS REGISTERS, HIGH COURT

The average success rate is 43.69%. This is slightly higher than the average success rate of appeals against acquittal. It is also slightly higher than the average success rates of appeals against sentence by accused persons represented at the appeal court only and those represented at both courts, being 25.71% and 37.5% respectively. This comparison is subject to the same three caveats mentioned earlier in connection with Table 6.1.

C. Withdrawals of appeals by the Public Prosecutor

In the course of looking through the court records, the writer noted with interest the great number of withdrawals by the Public Prosecutor. This discovery merits the setting aside of the last portion of this chapter for discussion on it. Withdrawals of appeals occur at two stages: after notice of appeal has been filed and in open court.

Withdrawals of appeals after lodging notice of appeal

The percentages of these withdrawals are shown in Table 6.3.Column (1) refers to the number of withdrawals of appeals after notice has lodged. Column (2) refers to the total number of notices of appeals lodged. The percentages of withdrawals are given in Column (3). The figures shown pertain only to Kuala Lumpur.

TABLE 6.3

WITHDRAWALS AFTER LODGING NOTICE OF APPEAL

YEAR	No. of Withdrawals (1)	No. of Notices of Appeal (2)	(1) as % of (2) (3)
1971	45	69	65.22
1972	33	43	76.74
1973	11	24	45.83
1974	20	34	58.82

SOURCE: CRIMINAL APPEALS REGISTER, HIGH COURT

The average withdrawal rate is 61.65%. Compared with the average withdrawal rate of 24.3% by the accused shown in Table 6.4 (which is

computed in the same way as Table 6.3) it is very much higher. These rates shown are truly representative of the Kuala Lumpur position since both tables are computed from all appeals and not only from available appeal records.

TABLE 6.4

WITHDRAWALS AFTER LODGING NOTICE OF APPEAL AND THE ACCUSED

YEAR	No. of withdrawals (1)	No. of Notice of Appeal (2)	(1) as % of (2) (3)
1971	10	95	10.53
1972	14	46	30.43
1973	29	70	41.43
1974	8	53	15.09

SOURCE: AS IN TABLE 6.3

Though withdrawals occur at the two stages mentioned above, the table below shows that the great majority are at this stage. Column (1) refers to the number of withdrawals at stage (i) which is after lodging the notice of appeal. Column (2) refers to the total number of withdrawals at both stages. Column (3) gives the percentage of withdrawal of appeals at stage (i) compared with the total number of withdrawals.

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TABLE 6.5

PERCENTAGE OF WITHDRAWALS AT STAGE (i)

YEAR	Withdrawals at Stage (i) (1)	Withdrawals at both stages (2)	(1) as % of (2) (3)
1971	45	48	93.75
1972	33	35	94.29
1973	11	13	84.62
1974	20	25	80.00

SOURCE: CRIMINAL APPEALS REGISTERS, HIGH COURT

The reason responsible for this great number of withdrawals lies in the division of the workload between the staff at the Attorney-General's Chambers and the police personnel. Section 376 (i) of the Criminal Procedure Code provides that "the Attorney-General shall be the Public Prosecutor and shall have control and direction of all criminal prosecutions and proceedings under this Code." To assist him, the Public Prosecutor can delegate all rights and powers vested in him, except those rights and powers vested in him by Sections 68(ii), 381, 385 and 386 of the same Code, to Deputy Public Prosecutors appointed by him.[22] Section 377 of the same Code provides that every criminal prosecution for a seizable offence before a Magistrate, shall be conducted by the Public Prosecutor at the Deputy Prosecutor or a police officer not below the rank of Inspector, acting on behalf of

[22] Criminal Procedure Code (F.M.S. Cap 6) s.376(ii).

the Public Prosecutor. This provision allowing prosecution to be conducted by the police personnel is aimed at easing the workload of the Public Prosecutor and Deputy Public Prosecutors. The bulk of prosecution at the lower courts are conducted by "qualified" police personnel.

When the prosecuting officer in the lower court, who is usually a police officer above the rank of Inspector, feels that the case is worth appealing, he will submit the case together with a report by him to the officer-in-charge of courts after which the same are sent to the Public Prosecutor. Due to administrative delay, the report will either arrive late, or if it arrives early, the Public Prosecutor will be "indisposed" to give it his full attention. The logical step to take in order that the 10 days limit of lodging the notice of appeal is met, is to lodge a notice of appeal first if on the face of the record, there is a case for appeal.

The other reason for withdrawing appeals at this stage is that after reading the grounds of judgement, the Public Prosecutor changes his mind. Before lodging the notice of appeal, the Public Prosecutor relies solely on the report submitted, which contains the reasons of the judgement in brief which the Magistrate states in open court. However, on reading the grounds of judgement in which greater details are given, the Public Prosecutor may find that the picture is slightly different but sufficient to make the chances of success of the appeal less. The Magistrate would have in most cases covered his grounds well. If the chances of success is anything less than 90% in acquittal cases, the Public Prosecutor will withdraw the appeal.

Withdrawals in open court

As noted earlier, these are very few compared to withdrawals at stage (i). A more realistic comparison would be between the number of withdrawals in open court and the number of appeals coming before the High Court, the latter including the former. Table 6.6 shows the percentage of these withdrawals in appeals against acquittals and Table 6.7 shows the same of appeals against inadequacy of sentence.

TABLE 6.6

WITHDRAWALS IN OPEN COURT OF APPEALS AGAINST ACQUITTAL

YEAR	No. of Withdrawals (1)	Total No. of appeals (2)	(1) as % of (2) (3)
1971	2	12	16.67
1972	0	4	0
1973	1	6	16.67
1974	1	4	25.00

TABLE 6.7

WITHDRAWALS IN OPEN COURT OF APPEALS AGAINST SENTENCE

YEAR	No. of withdrawals (1)	Total No. of appeals (2)	(1) as % of (2) (3)
1971	1	12	8.33
1972	2	6	33.33
1973	1	7	14.29
1974	4	10	40.00

SOURCE: CRIMINAL APPEALS REGISTERS, HIGH COURT

The average withdrawal rates of appeals against acquittal and inadequacy of sentence are 14.59% and 23.99%. For the accused, only the withdrawal rates of appeals against conviction and sentence and appeals against sentence combined were available. These rates were 2.35% in 1971, 2.44% in 1973 and 0% in 1972 and 1974. The average withdrawal rate was thus 1.20%. Compared to this low rate, the withdrawal rates pertaining to the Public Prosecutor seem very high.

The reasons for withdrawal of appeals in open court are:-

i) Notice has not been served on the respondent. This is the main reason.

ii) Sometimes the court throws light on the case and the Public Prosecutor recognises that it is not worthwhile continuing with the appeal and thus withdraws.

iii) The Deputy Public Prosecutor who appears on the date of the hearing of the appeal may not be the same as the Deputy Public Prosecutor who initiated the appeal. He may not agree with the appeal and if light is thrown by the court, he will withdraw. However this is very rare.

None of the above reasons apply to the accused except perhaps the second reason. Even then, the stubborn accused will insist on going ahead with the appeal. It has been established that most appeals by the accused are legally represented. It is no wonder that after all the trouble and expense in engaging counsel, they would not withdraw the appeal in the open court.

Conclusion

The Public Prosecutor, well read in the law, stands in a very

different position from the lay accused. This accounts for the fact that the factors motivating the Public Prosecutor to appeal stem very much from the principles governing appeals. These factors differ very starkly from the more socio-economic factors influencing the accused.