

CHAPTER V

EXTENT, NATURE AND CONSEQUENCES OF DETENTION PENDING TRIAL AND SENTENCE

When a person has been arrested on suspicion that he has committed an offence, he may be released on police bail where the police decides that his presence in the lock-up can be dispensed with.

If investigations by the police cannot be completed within 24 hours, the police will have to seek an order for a further period of detention under s.117 of the Criminal Procedure Code.

Table 5.1 shows the extent to which detention under s.117 is used.

Table 5.1
The Extent Of Detention
Under S.117

<u>No. of Days in Detention</u>	<u>No. of persons Detained</u>	<u>Percentage of persons detained</u>
1	532	30
2	151	8
3	68	4
4	69	4
5	83	5
6	139	8
7	212	12
8 - 10	285	16
11 - 12	54	3
13 - 15	150	8
Above 15	44	2
Total :	<u>1794</u>	<u>100</u>

Two hundred and eighty two persons were released on police bail pending the first Court appearance and 51 persons were charged in Court within 24 hours. It will be observed that almost 41 per cent of the accused persons were detained under s.117 for one week and more. Another point that emerges from Table 5.1 is that almost 2.1 per cent of the accused persons who were detained for some time under s.117 were illegally detained over the permissible 15 days.

Friedland¹²⁶ has found in his study of cases tried at the Magistrates' Courts of Toronto that there is a relationship between detention in custody prior to the first Court appearance and guilty pleas. It was found that custody defendants were more likely to plead guilty at the first Court appearance than those who were bailed or who had been summoned.

Table 5.2 sets out the findings of the writer on this relationship in the Subordinate Courts in Kuala Lumpur.

Table 5.2

Relationship Between Custody Prior
To The First Court Appearance And
Guilty Pleas

<u>Released on Police Bail And Charged Within 24 Hours</u>	<u>Custody</u>
58%	61%

¹²⁶Friedland; loc cit p. 61

Contrary to the findings by Friedland, Table 5.2 does not show any significant difference in the number of guilty pleas between those who were detained under s.117 prior to the first Court appearance and those who were released on police bail or were charged within 24 hours of their arrest.

Table 5.3

The Length Of Time In Remand
For Those Who Pleaded Guilty

<u>No. of days</u>	<u>No. of persons</u>	<u>% in remand</u>
Below 7	21	3.3
1 week	145	22.8
8 - 13	54	8.5
2 weeks	162	25.5
15 - 20	64	10
3 weeks	46	7.2
22 - 27	23	3.6
4 weeks	21	3.3
29 - 34	32	5
5 weeks	4	0.6
Above 35	64	10

For accused persons who pleaded guilty at their first Court appearance, the length of time that they have to spend in custody from the first Court appearance to the termination of proceedings is dependant on the availability

of the facts of the case, finger prints report, or probation reports in the case of youthful offenders. It will be observed from Table 5.3 that the Magistrate or President is more likely to remand in weeks than for any other number of days. The median time in custody between the first Court appearance and the date on which sentence is passed is two weeks. Since a remand cannot exceed 8 days¹²⁷ at any one time this will mean that at the expiry of this 8 days, the accused will have to be produced in Court for a further period of remand if the Court is not yet ready to pass sentence.

Table 5.4 shows the length of time spent in custody awaiting trial by an accused who had pleaded not guilty at the first Court appearance but was unable to find a surety of the required amount.

Tables 5.3 and 5.4 merely indicate the extent to which busy court calendars are reflected in the time needed for the disposal of a case. The median time in custody between the first court appearance and the termination of proceedings for an accused who had claimed trial is 76 - 90 days.

¹²⁷see S.259 of the Criminal Procedure Code

Relationship between custody and the outcome of the trial

The result of this study revealed that a disturbing relationship exists between custody pending trial or sentence and the outcome of the case, with respect to both the determination of guilt or innocence and the type of sentence imposed.

In respect of accused persons who had pleaded guilty to the offence of theft and were able to provide a surety, it showed that a greater percentage of them were given a non-custodial sentence as compared to accused persons who were remanded.

Table 5.4

The Length Of Time In Remand
For Those Who Claimed Trial

<u>No. of days</u>	<u>No. of persons</u>	<u>% in remand</u>
50 and below	53	23
51 - 75	48	21
76 - 90	28	12
91 - 120	51	23
121 - 150	16	7
151 - 200	15	7
Above 200	15	7

Table 5.5 makes a comparison of the type of sentence that is imposed on an accused who had to spend the time pending sentence in custody and one who had been bailed.

For offences of theft, there was a trend for those appearing for sentence from custody to receive a custodial sentence and for non-custody cases to be admonished and discharged, fined or bound over to be of good behaviour. Of the custody cases, 54 per cent received jail sentences whereas only 18 per cent of the non-custody cases received jail sentences.

Table 5.5

Relationship Between Custody And
Type Of Sentence Where Accused
Had Pleaded Guilty To Theft Offences
(percentage given in parentheses)

Type Of Sentence

Status	Admonished & Discharged	Bound Over	Fined	Jailed
Custody for sentence	1 (0)	89 (31)	39 (15)	154 (54)
Non-custody for sentence	14 (5)	202 (67)	32 (10)	55 (18)

In respect of accused persons who had claimed trial in theft cases, Table 5.6A and Table 5.6B show the relationship between custody and the outcome of the trial and also of the sentence imposed.

Table 5.6A shows that the accused stood a greater chance of being convicted when he came into court in custody than when he was not in custody. From the custody cases,

71 per cent was convicted in comparison with 47 per cent of the non-custody cases. It also shows that an accused freed on bail pending his trial had a better chance of being acquitted than one who is in custody. It was found that 53 per cent of the non-custody cases were acquitted in comparison with only 29 percent of the custody cases.

Table 5.6A

Relationship Between Custody And
 Finding of Guilt or Innocence
 Where the Accused Had Claimed
 Trial To Theft
 (percentages given in parentheses)

	<u>Acquittal</u>	<u>Conviction</u>
Custody for trial	10 (29)	24 (71)
Non-custody for trial	47 (53)	41 (47)

Table 5.6B on the other hand, shows the relationship between custody and the type of sentence imposed on conviction. It will be observed that viewed from the sentences imposed upon conviction, an accused who was freed on bail stood a better chance of receiving a non-custodial sentence as compared to an accused in remand. 53 per cent of all convicted accused persons of theft from custody were given jail sentences in comparison with only 24 per cent of the non-custody cases.

Tables 5.5, 5.6A & B thus show that an accused who claimed trial to the offence of theft but who was able to find a surety stood a better chance of being acquitted and

if convicted, he was more likely to receive a non-custodial sentence. Perhaps the fact that he has been able to find a surety weighs in the mind of the sentencing Magistrate.

Table 5.6B

Relationship Between Custody And
The Type Of Sentence Where The
Accused Had Claimed Trial To Theft
(percentages in parentheses)

Status	Type Of Sentence			
	Bound Over	Fined	Jailed	Discharge Not Amounting To Acquittal
Custody for Trial	6 (19)	1 (3)	17 (53)	8 (25)
Non-custody for Trial	17 (25)	8 (12)	16 (24)	26 (39)

Tables 5.7A & B attempts to examine the relationship between custody and a finding of guilt or innocence and the type of sentence imposed where the accused had pleaded guilty for all offences.

When the relationship between custody and the finding of guilt or innocence is examined for all offences it was found that the conviction rate for accused persons in custody was higher than those who were on bail. It was found that 86 per cent of the accused persons who appeared

in custody for trial was convicted. For non-custody cases, only 35 per cent was convicted. As regards the type of sentence imposed on those who pleaded guilty, it was found that bailed accused persons were more likely to receive a non-custodial sentence than an accused who was in custody.

From Table 5.7A, it can be seen that only 20 percent of the accused persons who pleaded guilty and were on bail was given jail sentences. In comparison, 60 per cent of the custody cases were given jail sentences.

Table 5.7A

Relationship Between Custody And
The Type Of Sentence Where The
Accused Pleaded Guilty
(percentages in parentheses)

Status	Type Of Sentence			
	Bound Over	Admonished & Discharged	Fined	Jailed
Custody for sentence	147 (23)	6 (1)	99 (16)	379 (60)
Non-custody for sentence	439 (55)	25 (3)	174 (22)	157 (20)

Several reasons may be put forward to explain the above findings. An accused person in custody faces difficulties in consulting with his counsel. Furthermore, he would be hampered in the collection of documents for his

defence or in his attempts to persuade reluctant witnesses to attend. If he does not have sufficient funds, the possibility of retaining counsel would be that much reduced. When an accused person is released on bail, he has not had his private life disrupted and is probably able to retain his job and thus be better able to put forward a more convincing case for fine or probation. Another psychological factor is that the accused appearing from custody usually presents a poor impression as he is generally demoralized after having to spend time in custody, probably suggesting to the President or Magistrate that he is not a type to be trusted. On the other hand, an accused freed on bail, can afford to appear in Court more decently dressed, thus creating a better impression.

Another effect of remand in custody after the first Court appearance is that it induces an accused person who had claimed trial to change his plea to one of guilty. Out of 236 persons who had claimed trial at the first Court appearance but who were remanded, 51 per cent changed their plea to one of guilty. However in the case of 657 persons who had claimed trial but were bailed from custody, only 39 percent changed their plea to one of guilty. The reasons for the above effects of custody are quite obvious. Bearing in mind the length of time that a remanded accused will have to spend in custody before the disposal of his case (see

Table 5.4) the possibility would have occurred to him that if he pleaded guilty, he will not have to spend a further period in custody. Further the change in plea may be due to a desire to be released from a distasteful experience or it may be the result of suggestions by the police and fellow prisoners that it is better to plead guilty.

Table 5.7B

Relationship Between Custody And
Finding Of Guilt Or Innocence
For All Offences
(percentages in parentheses)

	<u>Acquittal</u>	<u>Conviction</u>
Custody for Trial	29 (14)	182 (86)
Non-custody for Trial	237 (65)	129 (35)

The writer was also able to discover that the effects of custody can also be manifested in the post-sentence period when the accused had been given a fine. This is that a remanded accused is less able to pay his fine when that has been imposed by the Court at the termination of the proceedings. Table 5.8 suggests this.

From Table 5.8 it becomes evident that a remanded accused was less able to pay his fine as compared to an accused on bail. Out of the 253 cases where the fine was not paid, remanded accused persons accounted for 75 per cent of them. Of the 223 persons from custody who were fined,

only 15 per cent were able to pay their fines. However, in comparison 78 per cent of the non-custody accused persons were able to pay their fines.

Table 5.8

Custody And The
Ability To Pay Fines
(percentages in parentheses)

	<u>No. of Cases Fine Imposed</u>	<u>Able To Pay</u>	<u>Unable To Pay</u>
Custody	223	34 (15)	189 (85)
Non-custody	295	231 (78)	64 (22)

From an examination of the outcome of the cases, it was also found that not all remanded accused persons (whether they have pleaded guilty or had claimed trial) were given a custodial sentence. Lord Hailsham L.C. in an address to Magistrates observed that;

"To deprive a man of liberty pending trial or even pending sentence is to deprive a certain number of persons of liberty who are going to be acquitted or upon whom no custodial sentence is going to be passed in the event."¹²⁸

In the Subordinate Courts, that "certain number of persons" not given a custodial sentence amounted to 39.4 per cent of all remanded persons. A breakdown of these

¹²⁸Law Guardian, Nov. 1971 p.87

cases according to pleas revealed that 40 per cent of the 636 persons remanded on a guilty plea were not given a custodial sentence. For those who had claimed trial, 37 per cent did not go back to prison.

Conclusion

To summarise the findings in this chapter, it can be said that custody either pending trial or sentence can have far reaching effects on the accused persons. Such a person was less likely to be acquitted of the charge than one who was on bail. On conviction, a remanded accused was more likely to get a custodial sentence. In respect of an accused who pleaded guilty, a remand had the effect of reducing his chances of a non-custodial sentence. Further, when a fine was imposed by the Court, 85 per cent of remanded accused persons were unable to pay the fine. It can therefore be said that a remanded accused suffers not only the loss of his liberty *when* bail is first refused but also from the collateral disadvantages that follow.