

SENTENCING CRIMINALS

by

MAZNAH KAMARUDDIN

MARA INSTITUTE OF TECHNOLOGY  
SHAH ALAM  
SELANGOR

1987

## TABLE OF CONTENTS

|   | <u>Page No</u> |
|---|----------------|
| Preface .....   | iii            |
| Acknowledgement .....                                   | v              |
| List of Cases .....                                     | vii            |
| List of Statutes .....                                  | viii           |
| List of Abbreviation .....                              | ix             |
| Bibliography .....                                      | x              |
| CHAPTER   |                |
| ONE : Sentencing Policy and Practice by The Court ..... | 1              |
| General Principles in Passing Sentences .....           | 8              |
| TWO : Meaning of Punishment .....                       | 11             |
| Different Theories of Punishment .....                  | 12             |
| Purpose of Punishment .....                             | 16             |
| Punishment in Drug Cases .....                          | 18             |
| THREE : The Efficiency of the Punishment .....          | 24             |
| FOUR : Correctional Treatment (Modern Concept) .....    | 33             |
| FIVE : Conclusion .....                                 | 39             |

## CHAPTER ONE

### SENTENCING POLICY AND PRACTICE BY THE COURTS

"Sentence" as defines in The Concise Oxford Dictionary<sup>1</sup> means punishment allotted to persons condemned in a Criminal trial. Justice Abd Hamid<sup>2</sup> assumed that "sentencing" means the act of imposing punishment in such criminal trial. Sentencing, broadly defined, includes all those decisions the courts make with regard to the official handling of a person who pleads guilty or is convicted of a crime. This may include probation, without or with specified restrictions on the behaviour of the defendant, imposition of a fine, capital punishment, commitment under a special statute such as as sexual psychopath law, work assignments restitution to the victim, corporal<sup>3</sup> punishment, incarceration or a combination of forms of punishments

The main questions in discussing the sentencing policy practice by the courts is whether in passing sentences upon offenders the courts have followed consistently some definite penal philosophy? Are there particular sentences passed by the

---

<sup>1</sup> The Consise Oxford Dictionary, page 776

<sup>2</sup> Article "Sentencing in Magistrate's: MLJ Nov. 1975, p. viii

<sup>3</sup> The Oxford Companion to Law: David M. Walker

courts capable of vbeing related to some objective standards or criteria.

The question of consistency of sentencing is a consistent problems arising in any courts which comes from the levels of sentences in respect of the various different courts to avoid marked disparity between the levels of sentence imposed by different courts for particular offences in similar circumstances<sup>4</sup>. However if there is an unjustice of sentencing or differences given in two similar case which have similar fact or circumstances, there are always some reasons for the differences.

But what we are concerned here is that sometimes there is a remarkable inconsistency in the results of two similar case without an explanation from the judge who tried the particular cases whereas "the most distinguishing features of the legal process is that its decisions are reasoned and not arbitray"<sup>5</sup>.

<sup>6</sup>  
In ANWAR V.PP, the accused, Anwar was found to be in possession of an offensive weapon, a knuckle duster, an offence under Section 25(1) The Public Order (Preservation) Ordinance

---

<sup>4</sup>  
Article: "Crime and Sentencing": By the Right Honourable Lord Elwyn-Jones: Lord Chancellor, Great Britain: MLJ October 1979.

<sup>5</sup>  
Article: "Crime Control: The Case for Deterrence". MLJ Jan 1975 at p. xiii.

<sup>6</sup>  
1965: IMLJ p. 63.

7  
1958 . Anwar's submission that he was carrying the knuckle duster for the purpose of defending himself, was rejected. The magistrate convicted Anwar and sentenced him to one year imprisonment and six strokes of the cane. On Appeal to the High Court, the Chief Justice of Singapore altered the sentence of imprisonment to one of three months and affirmed the sentence of canning. In another case,<sup>8</sup> the accused, Seah Ah Poh, was also charged with having contravened S.25(1) Of The Public Order (Preservation) Ordinance 1958.<sup>9</sup> Seah was found one night in September along a back-lane off Prince Phillip Avenue, a proclaimed security area, with a motor-cycle chain equipped with handle. Seah was convicted by a District Judge who imposed a sentence of one year imprisonment and six strokes of the cane. Seah appealed to the High Court and although the Chief Justice affirmed the conviction but altered the sentence to one day imprisonment. Is this a fair judgement when Seah, the next day will walk out as a free man, whereas Anwar has to suffer three months imprisonment and four strokes of the cane? Can these different sentences be explained by the judge?

In his judgement, however the Chief Justice said that:  
"..... I accept that the Court will normally not impose a sentence of canning unless violence has been used, I do not think this is the case where the court should take into consideration whether or not violence was in

---

<sup>8</sup>  
Criminal Appeal No. 178 of 1964

<sup>9</sup>  
Ibid: F.M.O.: 46 of 1958