

TANGAVELU *v.* REX

[Fiji Court of Appeal (MacDuff, Clarke, Flaxman, J.J.) October 31st, 1951]

*S. 308 of the Criminal Procedure Code—duties of assessors.*

The appellant and another were convicted on 24th May, 1951 by the Supreme Court of Fiji of the offences of wounding with intent and of assault occasioning actual bodily harm.

One ground of appeal against this verdict was that the opinions expressed by the assessors were so perverse and illogical that the decision of the trial Judge was in effect arrived at without their aid.

**HELD.**—That a failure of the assessors to do their duty may deprive the Judge of the assistance he may reasonably expect from them but it does not in itself constitute grounds for the setting aside of a judgment.

Cases referred to:—

*R. v. Joseph* (1948) A.C. 215.

*P. Rice* for the appellant.

*W. G. Bryce*, Acting Solicitor-General for the respondent.

**MACDUFF, A.P.J.**—The determination of the first ground for appeal appears to this Court to demand as a first consideration an appreciation of the duties of assessors in trials before the Supreme Court. We are invited by learned Counsel for the appellant to consider a number of cases arising from inconsistent findings by juries, but there appears to have been some lack of appreciation of the distinction between a jury trial and a trial with assessors.

In this Colony assessors are not members of the Court and have no power to appreciate the evidence in such a manner as to bind the trial Judge. They sit to assist him. Their opinions, which are individual and not collective, must no doubt have due regard paid to them, but it is the Judge who decides the case on the facts as well as the law; he is not "bound to conform to the opinions of the assessors," section 308 (2) Criminal Procedure Code. In the words of the judgment of the Privy Council in *R. v. Joseph* (Privy Council Appeal No. 93 of 1946) the assessors have "no power to try or convict", their duty is to offer "opinions which might help". A failure of the assessors to do their duty may deprive the Judge of the assistance he may reasonably expect from them but it does not in itself constitute grounds for the setting aside of a judgment.

In the course of this appeal it is urged by learned Counsel for the appellant that the assessors failed to address their minds to the issue of common intention, and that their opinions were perverse and illogical. He seeks to justify this assumption by an argument that if both accused were guilty on the first count they were necessarily both guilty on the third, whereas in the event the assessors found the appellant guilty on both charges and the co-accused guilty on the first

charge only. The Court sees no good grounds for accepting this submission. The point is by no means clearly established, and even if the learned Chief Justice did not obtain the assistance at the trial that he was entitled to receive from the assessors, or indeed if he obtained no assistance at all, there is no good reason why the appellant should succeed in this application. The decision on the questions of fact and law rested with His Lordship.

The Judge then went on to consider other grounds and dismissed the appeal.