

REGINA *v.* RAM DULARE, CHANDAR BHAN,
PERMAL NAIDU

[Fiji Court of Appeal (Hammett, Higginson, Bagnall, J.J.) January
21st, 1956]

Assessors—duty of.

The three appellants were convicted of the offence of causing grievous harm with intent contrary to the provisions of section 245 (a) of the Penal Code by the Supreme Court sitting at Lautoka.

The assessors at the trial were of the opinion that the three accused were not guilty and tendered their opinions accordingly but were overruled by the trial Judge.

The accused appealed alleging that in these circumstances the trial was not conducted with the aid of assessors.

HELD.—The duty of assessors is to offer opinions which might help the trial judge.

Cases referred to:—

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

A. D. Patel for the three appellants.

Justin Lewis, Acting Solicitor-General, for the respondent.

HAMMETT, P. J.—Our attention has been drawn to the Criminal Procedure Code section 248 which reads as follows:—

“ Every trial before the Supreme Court in which the accused or one of them or the person against whom the crime or offence has been committed or one of them is a native or of native descent, or of Asiatic origin or descent, shall be with the aid of assessors in lieu of a jury, unless the presiding judge for special reasons to be recorded in the minutes of the court thinks fit otherwise to order, and upon every such trial the decision of the presiding judge with the aid of such assessors on all matters arising thereupon which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon.”

Learned Counsel for the appellants submits that the decision of the Court on a trial with Assessors must be, in the words of the section, “ the decision of the presiding Judge with the aid of such Assessors. ”

He asks, “ How can the Assessors be an aid to the presiding Judge if he disregards completely their opinions ? ”

He has referred us also to the Criminal Procedure Code section 308 (1) and (2) which read as follows:—

- “ 1. When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.
2. The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.”

He submits that by this section a discretion has been given the trial Judge which must be exercised judicially. In a case such as this, where he submits there is evidence which, if accepted, supports the opinion of the assessors and other evidence which, if accepted, supports the contrary opinion of the trial Judge, the trial Judge should follow the decision of the assessors and should not substitute his own view of the evidence for theirs.

If this procedure were to be adopted, the assessors would become saddled with almost the same duties and liabilities as a jury. Trial with assessors would in effect become, in such cases as this, almost the same as trial with a jury. If the Legislature had intended such a result it could, and undoubtedly would, have said so.

It is clear that the Legislature has given a trial Judge the widest powers to accept or reject the opinions of assessors sitting with him. These powers are discretionary. From the terms of the judgment, the learned trial Judge made it quite clear why he came to his decision in this case and why it was that he was unable to accept the opinion of the assessors.

There were discrepancies, as there frequently are in the evidence of the witnesses in this case. These were considered by the learned trial Judge in his careful summing up. We have again considered them in the light of the arguments of learned Counsel for the appellants before us on the hearing of this appeal. There was evidence which the learned trial Judge accepted and on which he could properly arrive at his decision. In our opinion it was the correct decision. It certainly cannot be said that the decision was unreasonable nor that it could not be supported having regard to the evidence.

We observe that the learned trial Judge adjourned after hearing the assessors' opinions and referred to them in the course of his subsequent judgment.

In our opinion learned Counsel for the appellants is confusing the functions of the assessors with those of a jury in a trial. In the case of the *King v. Joseph* 1948, *Appeal Cases*, 215, the Privy Council pointed out that the assessors have no power to try or to convict and their duty is to offer opinions which might help the trial Judge. The responsibility for arriving at a decision and of giving judgment in a trial by the Supreme Court sitting with assessors is that of the trial Judge and the trial Judge alone and in the terms of the Criminal Procedure Code section 308 he is not bound to follow the opinion of the assessors.

This appeal is dismissed.