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JOE KANHAILAL MAHARAJ

v.

REGINAM

[COURT OF APPEAL, 1962 (Marsack P., Trainor J. A., Knox-Mawer
B J. A.), 5th, 23rd February]

Criminal Jurisdiction

Criminal law — assessors — reasons of judge for differing from their opinion — reason not approved by Court of Appeal — duty of Court of Appeal to examine whole of evidence — reasons for differing from assessors must be reflected in
C *the evidence — Penal Code (Cap. 8) s.242 — Criminal Procdure Code (Cap. 9) s.306(2).*

Criminal law—evidence—weight of expert evidence— relative competence of judge and assessors to assess.

Appeal—criminal appeal—reasons of judge for not accepting opinion of assessors —position of Court of Appeal.

D The appellant was tried in the Supreme Court on two charges of causing the receipt of a written threat to murder. The assessors were of the unanimous opinion that he was not guilty upon either count. In his judgment the trial judge said that he regarded the expert evidence (relating to finger-prints) as conclusive, but would reluctantly have deferred to the opinion of the assessors had he not found supporting evidence in relation to the typing of a document by the
E appellant at the police station at the request of a police officer. Having regard to the whole of the evidence he convicted the appellant.

Held: 1. The trial judge was not justified in drawing the inference he did in relation to the typed document above-mentioned.

F 2. In the circumstances the Court of Appeal not only had the power but was under a duty to examine the whole of the evidence.

3. The evidence of the finger-prints read in conjunction with the other circumstantial evidence was conclusive and consistent with no hypothesis other than that of the guilt of the appellant.

G 4. Though the court did not accept the opinion of the trial judge as to the evidential value of the typed document abovementioned the trial judge had ample reasons, reflected in the evidence, for differing from the opinion of the assessors and it was the duty of the court to uphold the judgment of the Supreme Court even though it differed from the reasons given for that judgment.

H Observation as to the relative competence of a judge and of assessors to assess the value to be attached to expert evidence.

Cases referred to: *Ram Lal v. R.* (Criminal Appeal No. 3 of 1958—unreported): *Ram Bali v. R.* (1960) 7 F.L.R. 80: *Bharat v. R.* [1959] A.C. 533; [1959] 3 All E.R. 292: *Yuill v. Yuill* [1945] P. 15; [1945] 1 A11 E.R. 183.

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Appeal against convictions by the Supreme Court.

[Editorial note: The judgment in this case appears to have been prepared as the judgment of the Court of Appeal and is so printed below. Knox-Mawer J. has, however, written before his signature "I agree that this appeal should be dismissed", which may be thought to imply concurrence in the final conclusion and order only.]

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K. C. Ramrakha for the appellant.

H. R. J. Lewis for the respondent.

The facts are sufficiently set out in the judgment of the court.

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Judgment of the Court: [23rd February 1962]—

This is an appeal against two convictions under section 242 of the Penal Code for causing the receipt of a written threat to murder. The two threats in question consisted of letters addressed to one Raymond Henry Thomas Beaumont of Suva, which letters admittedly contained a threat to kill. On conviction the appellant was sentenced to two years' imprisonment on each charge, sentences to be concurrent. This present appeal is against conviction and not against sentence.

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The facts are, briefly, that on the 27th July, 1960, Mr. Beaumont, the Commissioner of Police, received two letters, each of which contained a threat to kill him. The letters were typewritten. The letters and the envelopes in which they were contained were subjected to very detailed expert examination and the results of this examination were given in evidence before the Court. The evidence against the appellant may be summarised briefly. He was at material times a student at the Nausori Tutorial College. Supplies of paper and envelopes, similar to those used in the letters to Mr. Beaumont, were kept at the College, and the appellant had access to them. At the College also there was a typewriter which appellant was accustomed to use, and upon which in fact he had admittedly typed certain documents which were produced in Court.

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Mr. Smith, a finger-print expert, gave evidence before the Court to the effect that both letters and both envelopes bore the left thumb-print of the appellant, and that these prints were in fact the only clearly defined prints thereon. Mr. Stuckey, an expert on the subject of typewriting, gave evidence that the letters were typed upon the particular machine, belonging to Nausori Tutorial College, which appellant had been accustomed to use. Mr. Stuckey also found by comparison between a specimen of typing admittedly done by the appellant, and the threatening letters, a number of peculiarities which were common to both and thus consistent with the contention of the prosecution that the threatening letters had been typed by the appellant. Mr. Stuckey found no peculiarities inconsistent with such a conclusion.

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The Crown also produced in evidence a specimen of typewriting, Exhibit T, which was typed by the appellant at the Police Station on the request of the police officer after the appellant had been arrested and charged with the two offences concerned in the appeal. The typing in Exhibit T was very badly done indeed, and exhibited a great many faults of spacing and spelling as well as irregularities of finger pressure.

No evidence was called for the defence. The appellant averred in his statement to the police and in his unsworn statement from the dock that he neither typed nor sent the threatening letters. The defence maintained that the appellant's finger-prints could have come upon the documents quite innocently since he had, in the course of other work in the College office, handled similar paper and envelopes, and had folded and posted letters for the teachers.

In the course of his summing-up the learned trial Judge carefully drew the attention of the assessors to the finger-print evidence and to the inferences to be drawn from the use of the particular type of paper and envelopes and of the typewriter belonging to Nausori Tutorial College. He then went on to refer in some detail to the specimen of typing done by the appellant at the Police Station, Exhibit T. He asks the assessors to consider whether this typing had not been deliberately carried out in such a way as to conceal the normal method of typing used by the appellant. He then asked further for them to consider whether, if this was done deliberately, the appellant's action in the matter did not point to his guilt.

The assessors gave a unanimous opinion that the appellant was not guilty on both counts.

In giving judgment the learned trial Judge refers to the finger-print evidence and makes it clear that, in his opinion, the expert evidence was conclusive against the appellant: He then proceeds:

> "In spite of this opinion of mine, I am aware that different tribunals of fact are well known to be able to come to different conclusions based on the same facts. With this in mind I concede that it is possible that on this evidence alone it would also be open to a tribunal of fact properly to reach the conclusion that the sum total effect of this evidence, whilst all consistent with guilt, does not in fact amount to evidence of sufficient cogency to discharge the onus of proof which rests on the Crown in a criminal trial.
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> In these circumstances and on that evidence alone I would have hesitated to decline to accept the unanimous opinions of the assessors.
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> In other words, without expressing my agreement with that view, I am prepared to agree that on that evidence alone there are grounds for reaching the conclusion that whilst there is evidence against the accused which is entirely consistent with his guilt there is not that additional evidence which is not only consistent with guilt but is also inconsistent with any other

conclusion. But in this case there is some other evidence, excluded from the above considerations and it is that evidence that has caused me to make a reappraisal of the whole of the evidence in this case in the light of the assessors' opinions."

The learned trial Judge then proceeded to say that he could not accept the unanimous opinions of the assessors and he gave his reasons for differing from them. His main reason was based upon the inference to be drawn from Exhibit T. He concludes that the appellant has intentionally typed Exhibit T in a manner different from that of his ordinary typing, and then proceeds to say:

"The accused's conduct in these circumstances is in my view not only consistent with guilt but is not logically or reasonably consistent with any other conclusion. It is for these reasons having regard to the whole of the evidence in this case that I do not feel able to accept the opinion of the assessors."

The case for the appellant is largely based upon the contention that the inference to be properly drawn from the typing by the appellant of Exhibit T is not necessarily one of guilt; that even if the Court were justified in finding that a deliberate attempt had been made by the appellant to disguise his style of typing, that action may well have been due not to guilt, but to fear. The appellant was a young lad who had been charged with a serious offence and was actually in custody at the time. He may well have been terrified and unable to reason with the calm detachment that an innocent man might be expected to show in different circumstances. We therefore accept Counsel's submission, and conclude that the learned trial Judge was not justified in drawing the inference that the appellant's action with regard to Exhibit T pointed unequivocally to his guilt.

In our opinion, however, that does not determine the matter. The learned trial Judge states, in the course of his judgment, that the view he had formed on this point caused him to make a reappraisal of the whole of the evidence in the case in the light of the assessors' opinions. He then proceeded to give detailed reasons for reaching a different conclusion from that of the assessors.

Counsel for the Crown contended that on the appeal this Court could look to the whole of the evidence for the purpose of ascertaining if there were good reasons, reflected in the evidence, to justify the trial Judge in differing from the unanimous opinion of the assessors on questions of fact. Counsel for the Crown concedes that the inference drawn by the learned trial Judge from the typing of Exhibit T could not be supported, but submits that there was ample evidence apart from that from which no other conclusion could be drawn than that of the guilt of the accused.

Considerable argument was directed by Counsel for the appellant and for the Crown to three cases, two heard by this Court and one by the Privy Council, in which the subject of a difference of opinion between the trial Judge and the assessors on a matter of fact is given judicial consideration. These are *Ram Lal v. The Queen* (Criminal Appeal No. 3 of 1958); *Ram Bali v. The Queen* (1960) 7 F.L.R. 80; and *Bharat v. The Queen* [1959] A.C. 533. It is clear from

section 306 (2) of the Criminal Procedure Code that the trial Judge is not bound by the opinion of the assessors. In the three cases quoted, it is laid down that where the trial Judge does so differ it is proper that he should give his reasons for so doing; and that there must be very good reasons, reflected in the evidence before the Court, to justify his refusal to accept the assessors' opinion.

It is, we think, competent for an appellate tribunal to examine the evidence for the purpose of ascertaining if there has been cogent evidence justifying the trial Judge in differing from the assessors and, if that tribunal so finds, the judgment of the learned trial Judge should be upheld. It may well be, as in the instant case, that the Court hearing the appeal differs from the trial Judge as to the reasons which caused him to come to a different conclusion. When in *Bharat v. The Queen* (supra) Lord Denning says that the trial Judge can hardly reject the opinion of the assessors without saying why he did so, we do not think that it was intended by that judgment to lay it down that his judgment must necessarily be upset if he failed to give adequate reasons for rejecting the advice he received from the assessors. The test must be whether there were sufficient reasons reflected in the evidence for his taking such a course.

In the instant case the learned trial Judge makes it clear, earlier in his judgment, that he finds the expert evidence sufficient to support conviction, and it is with reluctance that he accepts the opinion of the assessors to the contrary. Later he reappraises the evidence in the light of conclusions which he drew, we consider erroneously, from the evidence concerning Exhibit T. In these circumstances, we think that we have not only the power to look at the whole of the evidence but also a duty to do so. As Lord Greene M.R. says in *Yuill v. Yuill* [1945] 1 All E.R. 183 at 187, 188 with reference to the duties of a Court of Appeal:

> "But our task is to consider the evidence as a whole . . . It can, of course, only be on the rarest occasions and in circumstances where the appellate court is convinced by the plainest considerations that it would be justified in finding that the trial judge had formed a wrong opinion. But when the court is so convinced it is, in my opinion, entitled and indeed bound to give effect to its conviction."

Lord Greene is here speaking of a finding of fact on the evidence in the Court below.

In the case before us we have formed the opinion that the evidence of the finger-prints, when read in conjunction with that referring to the stationery used, the identification of the typewriter upon which the threatening letters were typed, the admitted facts regarding the access of the appellant to the typewriter and the stationery in question, and various other pieces of circumstantial evidence which it is unnecessary to set out in detail, is conclusive and is consistent with no other hypothesis than that of the guilt of the appellant.

In deferring, though reluctantly, to the opinion of the assessors on the subject of that evidence, the learned trial Judge appears to have overlooked one factor which is of considerable importance in cases

such as this. That factor is the relative competence of the Judge and of the assessors to assess the value of expert evidence such as that given in the present case, namely, evidence by the examination of finger-prints and of the characteristics of a particular typewriter. In both *Ram Lal v. The Queen and Ram Bali v. The Queen,* (supra) the point is stressed that the great value of the assessors' opinion arises from their local knowledge. It is their understanding of the mental characteristics, and probable reactions to a given set of circumstances, of the inhabitants of the Colony, which gives their opinion its great weight. Assessors can give assistance of the greatest value to the Judge because of their intimate knowledge of their fellow men and their ways. With regard to expert evidence, however, the assessors have not the same qualification. It is the Judge who has the mental equipment fitting him most adequately to assess the value of expert evidence and to draw from it the proper conclusions. In our view, the expert evidence given in this case is conclusive against the appellant, and that also was the finding of the learned trial Judge. We feel that if the trial Judge had given full weight to what we have just said on the subject of expert evidence he might well have maintained his opinion, and would not have accepted, even with great hesitation, that of the assessors on this point.

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We accordingly conclude that the learned trial Judge had ample reasons reflected in the evidence for differing from the opinion of the assessors although, as we have already stated, we do not accept his opinion as to the evidential value of Exhibit T which caused him to make a reappraisal of the evidence as a whole; yet we find that cogent reasons for differing from the assessors did exist, and it is the duty of this Court to uphold the judgment of the Court below even though we differ as to the reasons given for that judgment. For these reasons the appeal is dismissed.

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Appeal dismissed.