

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO. AAU 35 OF 2011
(High Court HAM 27 of 2011)

BETWEEN : **SAULA LALAGAVESI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Calanchini P**
Waidyaratne JA
De Silva JA

Counsel : **Mr. M. Yunus for the Appellant**
Mr. M. Korovou for the State

Date of Hearing : **14 November 2014**

Date of Judgment : **5 December 2014**

JUDGMENT

Calanchini P

[1] I agree that the appellant's application to abandon his appeal against sentence should be granted and the appeal dismissed.

Waidyaratne JA

- [1] This is an application filed out of time to appeal against sentence.
- [2] The Appellant was initially charged with one Navitalai Tui in the Magistrates Court of Lautoka of committing robbery of a bunch of keys and Samsung branded camera phone valued at \$850.00 and in the course of committing the above said offence the Appellant did use physical violence on the complainant Nalin Kumar contrary to Section 293(1)(b) of the Penal Code, Cap. 17.
- [3] On 25 March 2010 Navitalai Tui, the co-accused pleaded guilty to the charge and was sentenced to 4 years with a non parole period of 2 years.
- [4] On 19 October 2010 the Appellant at the conclusion of his trial was convicted and sentenced for a period of 6 years and 3 months with a non parole period of 5 years.
- [5] The Appellant appealed against the said conviction in case HAM 927 of 2000.
- [6] On 17 March 2011 the High Court dismissed the appeal against the conviction. The Appellant did not appeal against his sentence.
- [7] On 20th October 2011 a Single Judge of the Court of Appeal granted leave to appeal against the conviction but refused leave to appeal against the sentence.
- [8] On 8th March 2012, the Court of Appeal dismissed his appeal against the conviction for lack of jurisdiction.

- [9] On 28th October 2014 the Legal Aid Commission on behalf of the Appellant filed a Notice of Motion for Leave to Appeal against sentence out of time with an affidavit dated 28 October 2014 of the Appellant, in support of the Notice of Motion certifying the above and several other averments.
- [10] During the course of the hearing the Appellant made an application to the Court to withdraw his appeal against sentence and for the abandonment of the same orally and in writing.
- [11] This Court also observed that the Appellant in person had applied for leave to appeal against sentence filed out of time in Criminal Miscellaneous Case No. 413 of 2013 in the High Court at Lautoka. On 5 December 2013 the High Court (Hon. Justice S. De Silva) after due determination had dismissed the above leave to appeal application.
- [12] At the hearing before this Court the Appellant admitted making an application mentioned in the above paragraph.
- [13] In view of the application mentioned in the above paragraph, which is admitted by the Appellant, the Court observed that Hon. S. De Silva should not be a member of this Court to determine this appeal.
- [14] However, that for the purpose of hearing and determining the present application, this Court is duly constituted in accordance to Rule 6(2) of the Court of Appeal Act and Rules (Cap. 12).
- [15] Hence, this Court, having explained the consequences of the withdrawal to the Appellant, is satisfied that the decision to abandon the Appeal by the Appellant was made freely, without mistake and with the complete understanding of the consequences of abandoning the appeal.
- [16] Therefore, we grant the leave to abandon the Appeal. The Appeal is dismissed.

Orders

1. Application granted.
2. Appeal dismissed.



W. Calanchini

**Hon. Mr Justice Calanchini
PRESIDENT, COURT OF APPEAL**

W. Waldyaratne

**Hon. Mr Justice Waldyaratne
JUSTICE OF APPEAL**