

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL AAU 11 OF 2015
(High Court HAC 72 of 2014 at Lautoka)

BETWEEN : **SHASHI MAHEN CHAND**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**
Basnayake JA

Counsel : **Mr M Fesaitu for the Appellant**
Mr L Fotofili for the Respondent

Date of Hearing : **16 November 2017**

Date of Ruling : **14 December 2017**

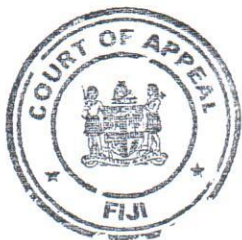
RULING


[1] The Appellant was charged with one count of rape contrary to section 207(1) and (2)(b) and (3) of the Crimes Act 2009. The particulars alleged that on 28 May 2014 at Nadi the appellant penetrated the complainant's vagina with his finger. The complainant was aged five years old at the time. He pleaded guilty and on 14 October 2014 was sentenced by the High Court at Lautoka to a term of imprisonment of 9 years and 1 month with a non-parole term of 7 years.

- [2] The Appellant subsequently filed a notice of appeal against conviction that was out of time by about 6 weeks. On 15 May 2015 the Appellant filed his first application to abandon his appeal against conviction pursuant to Rule 39 of the Court of Appeal Rules. A second written application was signed on 28 February 2017.
- [3] In accordance with the decision of the Supreme Court in Masirewa -v- The State (CAV 14 of 2008; 17 August 2010) the application to abandon the appeal was listed for hearing before the Court of Appeal. At the hearing the appellant confirmed that his decision to abandon the appeal was made voluntarily. He confirmed that he understood the consequences in the event that his applications were granted.
- [4] It must be noted that this application has been listed for hearing on two previous occasions. Rulings dated 2 October 2015 and 26 February 2016 have been delivered by the Court. On each occasion the application to abandon the appeal was refused. However with the assistance of the court officer acting as a translator the Court is satisfied that the application should be granted on this occasion.
- [5] Under the circumstances the application to abandon the appeal against conviction is granted and the appeal is dismissed.

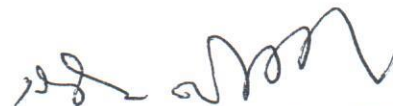
Orders:

Appeal against conviction is dismissed.





Hon Mr Justice Calanchini
PRESIDENT, COURT OF APPEAL



Hon Mr Justice Basnayake
JUSTICE OF APPEAL