

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

CRIMINAL APPEAL NO. AAU 48 OF 2016  
(High Court HAC 89 of 2010 at Lautoka)

BETWEEN : EPARAMA TAMANIVAKABAUTA

*Appellant*

AND : THE STATE

*Respondent*

Coram : Calanchini P

Counsel : Ms S Ratu for the Appellant  
Mr S Babitu for the Respondent

Date of Hearing : 8 August 2019

Date of Ruling : 30 August 2019

**RULING**

[1] Following a trial in the High Court at Suva the appellant was convicted on one count of murder and one count of aggravated robbery. He was one of five accused tried on the charges of murder and aggravated robbery. Each was convicted on at least one count and

each has applied for leave to appeal against conviction and or sentence. There are five separate rulings in respect of their applications.

[2] On 1 December 2015 the appellant was sentenced for the murder conviction to imprisonment for life with a minimum term of 20 years to be served before a pardon may be considered. For the conviction on the count of aggravated robbery he was sentenced to 14 years imprisonment to be served concurrently.

[3] The appellant filed a timely notice of appeal against conviction and sentence dated 7 December 2015. On 23 August 2019 the appellant applied in writing to abandon his appeal against sentence. That application is to be listed at the same time as the appeal against conviction in the event that leave is granted or alternatively on a date to be fixed.

[4] This is the appellant's application for leave to appeal against conviction pursuant to section 21(1)(b) of the Court of Appeal Act 1949 (the Act). Section 35(1) of the Act gives to a single Judge of the Court of Appeal power to grant leave. The test for granting leave to appeal against conviction is whether the appeal is arguable before the Court of Appeal: **Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 20 November 2013.

[5] On 30 May 2017 the appellant filed an amended notice of appeal relying on the following grounds of appeal against conviction:

- “1. *THE learned Trial Judge failed to direct the assessors and himself in terms of the weight to be given to the admission contained in the caution interview.*
2. *THE learned Trial Judge's directions on circumstantial evidence and the test when relying on circumstantial evidence lacked fairness and objectively required for a fair trial.*
3. *THE learned Trial Judge caused a miscarriage of justice by convicting the Appellant solely on the confession obtained in the Caution Interview of the Appellant.*

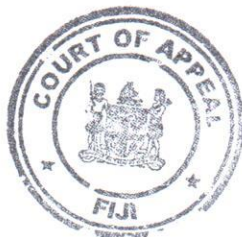
4. *THE learned Trial Judge caused a grave miscarriage of justice by to accept the prosecution's evidence of proving beyond reasonable doubt the charge of murder therefore prejudicing the Appellant.*
5. *THE Learned Trial Judge caused a miscarriage to justice in failing to fairly and objectively apply the principle of joint enterprise to convict the Appellant of murder whilst a co-accused was convicted of manslaughter."*

[6] Grounds 1 – 4 are expressed in identical terms to the grounds raised by one or other of the appellants in the group all of whom were tried in the High Court at Suva in HAC 89 of 2016. For the reasons stated in their Rulings on leave to appeal against conviction those grounds are not arguable.

[7] However ground 5 raises the issue of inconsistent verdicts and is arguable. The appellant Vakabua was found not guilty on the murder count and not guilty on the alternative manslaughter count. The appellant Lilo was convicted on the alternative manslaughter count whereas Navunicagi and Tamanivakabauta were both convicted for murder. Whether such inconsistent verdicts are unreasonable when the offence was committed while the appellants were engaged in a joint enterprise to prosecute an unlawful purpose (aggravated robbery) is arguable.

Orders:

- 1). *Leave to appeal against the conviction for aggravated robbery is refused.*
- 2). *Leave to appeal against the conviction for murder is granted on ground 5 and refused on grounds 1 – 4.*
- 3). *The application to abandon the appeal against sentence is to be listed before the Full Court at the same time as the appeal against conviction.*



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