

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

CRIMINAL APPEAL NO: AAU 0071 OF 2016
(High Court Criminal Case No: HAC 149/ 2014 [Suva])
(Magistrate's Court at Suva, Criminal Case No: 715/2014)

BETWEEN : NITENDRA PRASAD BILASH
Appellant

AND : THE STATE
Respondent

Coram : Prematilaka JA
Fernando JA
Nawana JA

Counsel : Ms. I. Khan for the Appellant
Ms. P. Madanavosa for the Respondent

Date of Hearing : 15 February 2019

Date of Judgment : 7 March 2019

JUDGMENT

Prematilaka JA

[1] I agree.

Fernando JA

- [2] The Appellant had appealed against his conviction for the offence of rape and the sentence of 9 years, 11 months and 14 days with a non-parole period of 7 years, 11 months and 14 days imposed on his conviction.
- [3] At the commencement of the hearing of this appeal, the Court having studied the record, the grounds of appeal, the comprehensive written submissions filed by both the Appellant and the State and the particular circumstances of this case; drew the attention of the Appellant and to his Counsel to the provisions of section 23(3) of the Court of Appeal Act, as we felt it was right to do so and as prescribed in **Kumar v. The State** [2005] FJCA 54; AAU 18J of 2005, 29 July 2005.
- [4] Section 23(3) of the Court of Appeal Act states:
- “On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefore as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just.”*
- [5] Counsel for the Appellant then sought leave of the Court for a short adjournment to discuss the matter with the Appellant.
- [6] On the resumption of the proceedings, after a period of more than 15 minutes, Counsel for the Appellant informed Court that the Appellant desires to abandon his appeal both against conviction and sentence after having discussed the matter with him, and the members of the Appellant’s family who were present in Court and also having given due consideration to the appeal filed by him and in realization that it was in his best interests to do so.
- [7] Thereafter on being questioned by Court, the Appellant informed the Court that his decision to abandon the appeal had been made out of his own free will and without any form of pressure or compulsion from anyone.

- [8] The Court then informed the Appellant that if his application to abandon his appeal is allowed, the appeal would be deemed dismissed and he would not be able to prosecute the appeal before the Court of Appeal thereafter. The Appellant said that that he fully understands the consequences of abandoning his appeal and agreed to the ensuing consequences of abandonment.
- [9] I am satisfied that the Appellant's application to abandon his appeal is a considered decision upon legal advice and had been taken voluntarily, without any pressure and of his own free will. I am also satisfied that the Appellant fully understood and agreed to the consequences of the abandonment of his appeal.
- [10] The application to abandon the appeal was therefore allowed and the appeal is deemed dismissed by this Court.

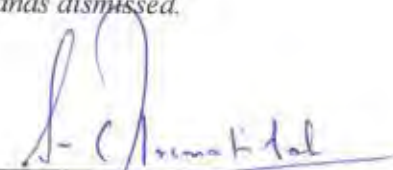
Nawana JA

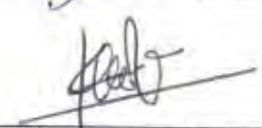
- [11] I agree.

Orders of Court:

- (i) *Application to abandon the appeal is allowed.*
- (ii) *Appeal against conviction and sentence stands dismissed.*




Hon. Mr. Justice C Prematilaka
JUSTICE OF APPEAL


Hon. Mr. Justice A Fernando
JUSTICE OF APPEAL

nawana
Hon. Mr. Justice P Nawana
JUSTICE OF APPEAL