

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

CRIMINAL APPEAL NO: AAU150 OF 2015
(High Court Criminal Case No: HAC 21/ 2012 [Lautoka])

BETWEEN : **THE STATE** *Appellant*

AND : **KAVEKINI NALIVA** *Respondent*

Coram : Prematilaka JA
Fernando JA
Nawana JA

Counsel : Mr. S. Babitu for the Appellant
Mr. E. Navuda for the Respondent

Date of Hearing : 21 February 2019

Date of Judgment : 7 March 2019

JUDGMENT

Prematilaka JA

[1] I agree.

Fernando JA

[2] This case came up before us in view of a Notice of Appeal filed by the Director of Public Prosecutions against the sentence imposed on the respondent by the High Court. On being questioned, Counsel for the appellant indicated to Court that leave to appeal had not been sought, prior to filing of the notice of appeal in compliance with section 21(2)(c) of the Court of Appeal Act.

[3] The respondent had been convicted of the offence of manslaughter and on the 23rd of October 2015, sentenced to two years imprisonment out of which six months had to be served and the balance eighteen months suspended. According to the submissions of the respondent filed on 18 November 2018, the respondent has already been released from prison.

[4] According to the judgment, the deceased had met his death on being punched on his face by the respondent and falling on a concrete floor. The respondent in his submissions stated that he punched the deceased only once and this is reflected also in the evidence led before the Court.

[5] On 19 November 2018 the Director of Public Prosecutions had filed a Notice of Abandonment of Appeal informing Court that the State does not intend to prosecute the appeal against sentence.

- [6] On being questioned the Counsel for the appellant informed Court that the decision to abandon the appeal had been taken on a further review of the evidence in the case.
- [7] Counsel for the appellant informed Court that he is well aware of the consequences of abandoning the appeal, namely that the State cannot prosecute the matter again before the Court of Appeal.
- [8] I therefore allow the application for abandonment of appeal by the Director of Public Prosecutions.

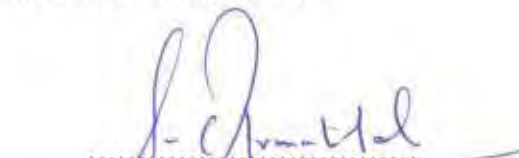
Nawana JA

- [9] I agree.

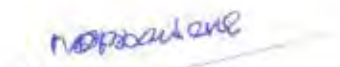
Orders of Court:

- i. Application for abandonment of appeal allowed.
- ii. Appeal filed by the State against the sentence dismissed.




.....
Hon. Justice C. Prematilaka
JUSTICE OF APPEAL


.....
Hon. Justice A. Fernando
JUSTICE OF APPEAL


.....
Hon. Justice P. Nawana
JUSTICE OF APPEAL