

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 102 of 2018**  
**[High Court of Labasa in Criminal Case No. HAC 38 of 2018]**

**BETWEEN** : **RAJESH PRASAD**

***Appellant***

**AND** : **STATE**

***Respondent***

**Coram** : **Prematilaka, RJA**  
**Morgan, JA**  
**Andrews, JA**

**Counsel** : **Mr. M. Fesaitu for the Appellant**  
: **Ms. E. Rice for the Respondent**

**Date of Hearing** : **09 November 2023**

**Date of Judgment** : **29 November 2023**

## **JUDGMENT**

### **Prematilaka, RJA**

[1] The appellant had been charged in the High Court of Labasa for having committed an offence of rape contrary to section 207(1) and (2)(a) of the Crimes Act No.44 of 2009 by penile penetration of the vagina of the victim who was 11 years old at the time the offence was committed.

[2] The assessors had expressed a unanimous opinion of not guilty on the count of rape and found him guilty of the lesser charge of sexual assault. The learned High Court judge in the judgment had agreed with the assessors and acquitted the appellant of the charge of rape but convicted him on sexual assault and sentenced him on 06 May

2019 to imprisonment of 04 years and 10 months with a non-parole period of 04 years.

- [3] The appellant appealed against conviction and sentence. However, an application to abandon the appeal against sentence in Form 3 had been tendered to court on 06 July 2020. A judge of this court allowed enlargement of time to appeal against conviction on 07 July 2020<sup>1</sup>.
- [4] In the meantime, the appellant had filed another application to abandon his appeal against both conviction and sentence in Form 3 under Rule 39 of the Court of Appeal Rules on 01 November 2023.
- [5] When the appeal was taken up for hearing before the Full Court, the appellant's counsel informed court that his client wished to withdraw his appeal *in toto*. The Court asked the appellant personally several questions on the guidelines given in **Masirewa v. State** Criminal Appeal No. CAV0014 of 2008S:17 August 2010 [2010] FJSC 5 and several other decisions of the Court of Appeal.
- [6] The appellant confirmed that he still wished to abandon his appeal against conviction and sentence, he was doing so voluntarily, received legal advice from his counsel and the reason for the abandonment was that he would be completing serving the sentence in two weeks. He said that he understood that the consequences of his abandonment would be that if his application is allowed his appeal would be dismissed by this court and he cannot once again canvass the conviction and sentence in appeal.
- [7] In the circumstances, the appellant's application to abandon his appeal should be allowed.

**Morgan, JA**

- [8] I concur with this judgment.

---

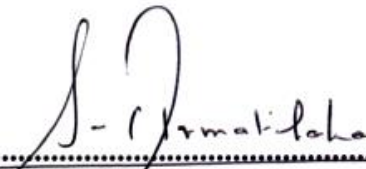
<sup>1</sup> **Prasad v State** [2020] FJCA 98; AAU102.2019 (7 July 2020)

**Andrews, JA**

[9] I agree with the judgment and proposed orders by Hon. Justice Prematilaka, RJA.


**Orders of the Court:**

1. Abandonment of the appeal is allowed.
2. Appeal against conviction and sentence stands dismissed.

  
.....  
**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**



  
.....  
**Hon. Mr. Justice W. Morgan**  
**JUSTICE OF APPEAL**

  
.....  
**Hon. Madam Justice P. Andrews**  
**JUSTICE OF APPEAL**

**Solicitors:**

Legal Aid Commission for the Appellant  
Office for the Director of Public Prosecutions for the Respondent