

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

Criminal Appeal No: AAU 0011 of 2015
(High Court Case No: HAC 072 of 2014)

BETWEEN : **SHASHI MAHEN CHAND**

Appellant

AND : **THE STATE**

Respondent

Coram : Basnayake JA
A. Fernando JA
Jayamne JA

Counsel : Appellant in person
Mr. L.J. Burney for the Respondent

Date of Hearing : 11 February 2016

Date of Judgment : 26 February 2016

JUDGMENT

Basnayake JA

[1] The appellant seeks leave of Court to abandon his appeal.

- [2] The appellant in this case was convicted and sentenced on 14 October 2014 to a term of 9 years and 1 month imprisonment with a non parole period of 7 years for raping a girl of 5 years of age by penetrating her vagina with the fingers of the appellant. On 30 December 2014 the appellant filed a notice of enlargement of time for leave to appeal and an application to appeal against the conviction. On 15 May 2015 the appellant sent a memorandum seeking to withdraw his appeal.
- [3] When this case was taken up for inquiry, the appellant was present in court, being produced by the prisons. He had no representation. He could not speak English. He was assisted by the Officiating Registrar who did the interpretation. He denied that he ever filed an application to withdraw his appeal. When the court asked whether he wished to withdraw his appeal he said “no”. He further stated that he wants to proceed with the case. He admitted to having placed his signature to a document dated 15 May 2015. He said he never gave instructions to withdraw his appeal.
- [4] Considering the length of time that the appellant has to serve in prison and his intention to proceed with his leave application for enlargement of time and leave to appeal against the conviction I am of the view that this application for withdrawal should be disallowed. The appellant had clearly shown his intention to proceed with the appeal. The learned counsel for the respondent too moved that this case be listed in due course.
- [5] The Registrar is therefore directed that this leave to appeal application be listed for hearing in due course.

A. Fernando JA

- [6] I agree.

Jayamanne JA

[7] I agree.

The Orders of the Court are:

1. *Application to withdraw the appeal is disallowed.*
2. *The leave and enlargement application to be listed in due course.*



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Hon. Mr. Justice E. Basnayake
JUSTICE OF APPEAL



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Hon. Mr. Justice A. Fernando
JUSTICE OF APPEAL



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Hon. Mr. Justice S. Jayamanne
JUSTICE OF APPEAL