

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

CRIMINAL APPEAL NO.AAU 108 of 2017
[High Court Suva Criminal Case No. HAC 327 of 2015S]

BETWEEN : **JONE RABUNO COKANAUTO**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. J. Karunaratne for the Appellant**
: **Mr. R. Kumar for the Respondent**

Date of Hearing : **25 January 2023**

Date of Ruling : **31 January 2023**

RULING

[1] The appellant had been charged in the High Court of Lautoka on 04 counts of rape under the Penal Code, one count of rape under the Crimes Act, 2009, one count of attempted rape under the Penal Code and 04 counts of indecent assault under the Penal Code.


[2] After full trial, on 23 June 2017 the assessors had returned with mixed opinions. The learned trial judge in his judgment dated 26 June 2016 had found the appellant guilty as charged on all counts, and convicted him accordingly. He was sentenced on 27 June 2017 to 20 years of imprisonment with a non-parole period of 19 years.

- [3] Timely notice of appeal against conviction and sentence had been filed on 26 July 2017. Leave to appeal against conviction was allowed by the single judge upon a matter of law on the first ground of appeal while leave to appeal against sentence and bail pending appeal were refused on 09 June 2020.
- [4] When the matter was mentioned on 04 October 2020 to check the progress of preparation of appeal records, the appellant was absent and unrepresented. It was found that no steps had been taken towards preparation of records by his counsel on record. Thereafter, on 19 September 2022 this court was informed by the state counsel that the appellant is said to have passed away but there was no appearance for him to confirm it. The appeal was mentioned thereafter on 22 December 2022, 06 January 2022 and 25 January 2022 where Mr. Karunaratne appeared on all three days on behalf of the appellant and confirmed to this court that the appellant had indeed expired while serving the sentence on 16 April 2022. This court directed Mr. Karunaratne to submit a copy of the death certificate. However, he had not been provided a copy of the death certificate by the family of the deceased except the Medical Cause of Death Certificate issued by CWM Hospital on 19 April 2022. The Medical Cause of Death Certificate tendered to the Court of Appeal Registry by Mr. Karunaratne confirms the death of the appellant on 16 April 2022. In the meantime, Deputy Registrar General had informed the Director of Public Prosecutions by the letter dated 03 January 2023 that the death of the appellant had not yet been registered.
- [5] Taking into account all the material aforesaid, I am satisfied of the death of the appellant on 16 April 2022.
- [6] There is no provision of law known to me or at least no such provision had been submitted to me by either party that a criminal appeal can survive the death of the appellant. No party can step into the shoes of the deceased appellant, for the impugned verdict of guilty, if affirmed in appeal, carry with it serious penal consequences. Accordingly, the appeal has to be abated.

Order of the Court:

1. Appeal is abated.




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Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL