

## Fiji cont. from page 10

Ponnu Swamy Goundar. ... That she knew before the trial that Dr Goundar was prepared to wholly change his evidence on cause of death, and rule out that James Nair jumped from a moving vehicle leading to his death, and make it his evidence that James Nair had been beaten to death with blows to the head from one or more blunt instruments is quite clear.

...  
100. ... Zakariyah's prosecution evidence was that the vehicle was in motion and travelling at 50-65 m.p.h. when James Nair jumped.

...  
109. There is no evidence at all that the Ford Ranger became stationary at any point in Bau Road. If it was in motion then the five remained in the cab and could not have gone to the culvert where according to Dr Ponnu Swamy Goundar hypothesis one or more of them bashed James Nair on the head with a blunt object.

110. ... There is no evidence of any kind against any of the four accused or Zakariyah for that matter that any one of them was involved in a joint enterprise to murder James Nair.

...  
118. In this case we are looking at a system in this case that has broken down and has no integrity. There is an obvious connection between the unconscionable behaviour of the prosecutor discussed

above and the claim that the results of the autopsy were wrong. ... the prosecutor goes to see the pathologist. The pathologist then changes his factual evidence of the findings on the autopsy in very material matters. These new matters are used to support an amended charge of murder rather than manslaughter.

...  
121. Then as the prosecution case is about to end, the prosecutor mounts an ambush. The extent of the ambush is still concealed because even at this late stage the prosecutor does not serve a statement of evidence from the pathologist, who only reveals the facts allegedly justifying his change of evidence as true once he is in the witness box before the assessors.

...  
126. I conclude that the new evidence of Dr Ponnu Swamy Goundar was and is completely lacking in credibility and weight.

...  
143. But in any event the prosecutor in this case intended to mislead the Court and the defence.

...  
145. ... [The four defendant's] arrest and taking of James Nair for interrogation were lawful and the evidence is that James Nair decided at grave risk to himself to jump to escape police interrogation and other consequences ... The four accused



must have been acquitted and released and should have succeeded on costs given the prosecutor's behaviour. Instead there was a miscarriage of justice with four convictions for murder, and sentences of

life imprisonment with a recommendation of serving 11 years before being eligible to be considered for parole. By the time this judgment is delivered the four accused will have spent nearly 9 months in jail as convicted murderers. The damage to their reputation as gainfully employed persons of good character in their community and in the wider community is very substantial.

The men were released after 9 months of imprisonment for a non-existent murder. Sixty-year-old Tahir Ali told *The Fiji Times* several days after his release: "I am still trying to come to terms with whatever happened and I have to start my shattered life from scratch after whatever happened. The wrongful conviction and sentencing has put my life behind quite a bit, I have lost out financially and it will not be easy for things to bounce back."

### Source:

Four face kill charges, *The Fiji Times*, January 7, 2010. Life in jail for 4 murderers, *The Fiji Times*, July 9, 2010 *Ali v State* [2011] FJCA 28; AAU0041.2010 (1 April 2011)

'I've lost out', *The Fiji Times*, April 10, 2011

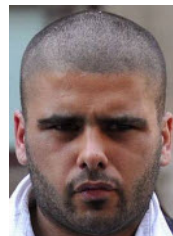


## Contempt Conviction For Blowing Bubble In Court Tossed On Appeal

A courtroom might not be the wisest place to chew gum and blow a bubble, since a judge might overreact as Mirza Zukanovic found out the hard way.

In June 2010 the 20-year-old Zukanovic was chewing gum while sitting in a magistrate's courtroom in Moorabbin -- which is about 10 miles south of Melbourne, Australia. Magistrate Rodney Crisp saw him blow a bubble and became so angry that he immediately accused Zukanovic of committing a deliberate and gross contempt in the face of the court. The magistrate then summarily convicted Zukanovic of contempt and sentenced him to 30 days in jail. Zukanovic was taken to jail from the courtroom to begin serving his sentence.

After Zukanovic's lawyer was able to have



Mirza Zukanovic (AAP -JulianSmith)

him released on bail after he was jailed for 12 hours, he filed an appeal of the contempt conviction. Zukanovic's lawyer argued in the appeal, "I think the magistrate, in the vernacular, lost it," by charging and finding Zukanovic guilty beyond a reasonable doubt without giving him the chance to consult with a lawyer, enter a plea, or present evidence in his defense.

Supreme Court Justice Jack Forrest announced the Court's decision on April 20, 2011 that Zukanovic had been denied "procedural fairness" when the magistrate summarily charged, convicted and sentenced him of contempt. Justice Forrest said, "It is fundamental to the administration of justice that where a court's authority is challenged the judicial officer can take steps, including the laying of a charge of contempt to preserve the authority of the court, firmness must be accompanied by

fairness." Since Zukanovic had been denied due process by not having the opportunity to seek legal advice on the charge, to plead guilty or not guilty, or call evidence in his own defense, his conviction was quashed.

### Sources:

Court bubble blower Mirza Zukanovic case quashed, *Herald Sun* (Melbourne, AUS), April 20, 2011



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