

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 048 OF 2015LAB

STATE

VS

EPELI LEALEAVONO

Counsels : Mr. R. Kumar for State  
Accused in Person, but trial in absentia

Hearings : 11 December, 2017

Summing Up : 12 December, 2017

Judgment : 12 December, 2017

Sentence : 13 December, 2017

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## SENTENCE

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1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following information:

### FIRST COUNT

#### Statement of Offence

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to  
section 318 of the Crimes Act 2009.

### Particulars of Offence

**EPELI LEALEAVONO**, on the 29<sup>th</sup> day of September, 2015 at Naqara, Taveuni in the Northern Division, dishonestly obtained \$500.00 from **S.D** by deceiving the said **S.D**.

### SECOND COUNT

#### Statement of Offence

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

### Particulars of Offence

**EPELI LEALEAVONO**, on the 30<sup>th</sup> day of September, 2015 at Mua, Taveuni in the Northern Division, penetrated the vagina of **S.D** with his penis, without her consent.

2. The brief facts of the case were as follows. Prior to 29 September 2015, you and the complainant (PW1) knew each other. She was a businesswoman running a shop in Taveuni, and she was buying and selling grog to customers. You sold yaqona to her, which she later sold to others. This commercial relationship had been in existence for months, prior to the offending. On 29 September 2015, you asked for a \$500 cash advance, in exchange for supplying grog to PW1 on the same day.
3. PW1 advanced you \$500 cash on 29 September 2015, but you failed to provide her with the grog that day. On 30 September 2015, PW1 again asked you to provide her with her \$500 worth of grog. You told her the grog was still been processed in the bush. You later invited her to the bush to see her grog. You later took her to a secluded spot in the bush, near a tin house. You later threatened to kill her if she didn't do what you wanted. You later forced yourself on her by penetrating her vagina with your penis, without her consent. You knew she was not consenting to sex at the time.
4. In State v Eroni Tavatavanawai, Criminal Case HAC 056 of 2013S, I said the following, "...  
"Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a



person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment. For the rape of a child, the tariff is between 10 to 15 years imprisonment: Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993, Viliame Tamani v The State, Criminal Appeal No. AAU 0025 of 2003, Mark Mutch v The State, Criminal Appeal No. AAU 0060 of 1990; Anand Abhay Raj v The State, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and State v Savenaca Turagakece, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors”.

5. In this case, the aggravating factors, were as follows:

- (i) Serious Breach of Trust. You and the complainant (PW1) had established a commercial relationship by trading in yaqona (kava) in Taveuni for months. You brought her grog and she purchased the same from you. As a result of this business relationship, she trusted you. You asked her for a \$500 cash advance on 29 September 2015, in exchange for some grog, you will deliver her later that day. But you breached her trust by lying to her. On 30 September 2015, she again asked you for her grog. You invited her to the bush to see her grog, which you said was being processed. Unbeknown to her, you were planning to rape her. She trusted you and went with you in your vehicle to see her grog. Deep into the bush in a secluded spot, you threatened to kill her if she didn't submit to you. You then raped her for 5 minutes. By doing so, you had seriously breached the trust she had in you. You should not complain when your liberty is taken away to atone for your crimes.
- (ii) By offending against the complainant, you showed no regard to her right as a human being, showed no regard to her right not to be harmed and showed no regard to her right for a happy and peaceful life.
- (iii) By offending against the complainant, you have brought her and her family heart ache and sadness.

6. The mitigating factor was as follows:

- (i) I can only find one mitigating factor in your case and that was you were remanded in custody for approximately 4 months 9 days.

7. I will start with count no. 2 (rape). I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factors, making a total of 15 years imprisonment. I deduct 1 year to



account for 4 months 9 days in custody while on remand, leaving a balance of 14 years imprisonment.

8. On count no. 1, I sentence you to 12 months imprisonment.

9. The summary of your sentence are as follows:

- |      |             |   |  |   |                        |
|------|-------------|---|--|---|------------------------|
| (i)  | Count no. 1 | : | Obtaining a Financial Advantage by Deception | : | 12 months imprisonment |
| (ii) | Count no. 2 | : | Rape   | : | 14 years imprisonment  |

10. Because of the principle of totality in sentencing, I direct that the above sentences be made concurrent to each other, making a final total sentence of 14 years imprisonment.

11. Mr. Epeli Lealeavono, for "obtaining \$500 from the complainant by deception" on 29 September 2015 (count no. 1), and for "raping" her on 30 September 2015 (count no. 2), at Taveuni in the Northern Division, I sentence you to 14 years imprisonment, with a non-parole period of 13 years imprisonment, effective from the date you are arrested by police.

12. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner which is just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant on 29 and 30 September 2015.

13. The name of the complainant is permanently suppressed to protect her privacy.

14. You have 30 days to appeal to the Court of Appeal, starting from today.

Salesi Temo  
JUDGE



Solicitor for the State	:	Office of the Director of Public Prosecution, Labasa.
Solicitor for the Accused	:	Accused in Person