

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 124 OF 2017

BETWEEN : STATE

AND : EPELI LELEAVONO

Counsel : Mr. S. Seruvatu for State
Accused in person

Date of Hearing : 16th of May, 2019

Date of Closing Submissions : 16th of May, 2019

Date of Summing Up : 17th of May, 2019

JUDGMENT

1. The accused is being charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are that;

COUNT ONE

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (b) of the Crimes Act, 2009.

Particulars of Offence

EPELI LELEAVONO on the 25th day of May, 2017 at Nadi in the Western Division, penetrated the vagina of **ASINATE WAQA**, with his finger, without her consent.

COUNT TWO
Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (b) of the Crimes Act, 2009.

Particulars of Offence

EPELI LELEAVONO on the 25th day of May, 2017 at Nadi in the Western Division, had unlawful carnal knowledge of **ASINATE WAQA**, without her consent.

2. The trial commenced on the 16th of May 2019 and concluded on the same day. The prosecution presented the evidence of the complainant and the accused gave evidence for the defence. The learned counsel for the prosecution and the accused then made their respective closing addresses. Subsequently, I made my summing up.
3. The three assessors in their opinions unanimously found the accused not guilty to both count.
4. Having taken into consideration the evidence presented by the parties, the respective closing addresses of the prosecution and the defence, summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused had forcefully inserted his fingers into the vagina of the complainant and then forced her to sit on his penis, whereby the penis of the complainant penetrated into her vagina without her consent. The defence denies the allegation and said that the accused was on his way back from Suva during the early hours of the morning of 25th of May 2017.
6. The complainant in her evidence explained that the arrangement about her transport was that the accused would drop her after the closing of the shop. On this particular

day the complainant had remained in the shop till 2 a.m. as the accused was not turn up. The complainant had the mobile phone and she had not made any effort to contact anyone including the police when her cousin brother was not answering to her calls. Moreover, she is a married person as per her evidence and gave no explanation why she failed to contact her husband to inform this incident when she had opportunities to do such.

7. Having considered the evidence of the complainant, I find there are reasonable doubt about the reliability and credibility of her evidence. I accordingly do not find any cogent reasons to disagree with the unanimous opinion of not guilty given by the three assessors.
8. In conclusion, I find that the prosecution has failed to prove beyond reasonable doubt that the accused has committed these two offences. Therefore, I find the accused not guilty to these two counts as charged and acquit from the same accordingly.
9. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
17th of May, 2019

Solicitors : Office of the Director of Public Prosecutions