



### **Count 1**

#### *Statement of Offence*

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

#### *Particulars of Offence*

**PAULIASI BALEIWAKAYA** on the 22nd day of March 2019, at Suva in the Central Division, penetrated the vagina of LC with his tongue without her consent.

### **Count 3**

#### *Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) of the Crimes Decree No. 44 of 2009.

#### *Particulars of Offence*

**PAULIASI BALEIWAKAYA** on the 22nd day of March 2019 at Suva in the Central Division, unlawfully and indecently assaulted LC by touching her vagina, kissing her mouth and touching her breasts.

2. The assessors unanimously found you guilty on both counts. The Court accepted the opinion of assessors and found you guilty on both counts. You were convicted accordingly.
3. You now come before this Court for sentence.
4. The facts in brief are that the complainant was a security guard in a Security Company. You were a supervisor in the same company. As a supervisor, you were in a position of authority *vis-a-vis* the complainant. On the day in question, the complainant was assigned to a four storied fashion

shop as a stand-by lone security guard for a night shift. The complainant was new to this job and it was the first time that she was assigned to this four storied building as a security guard.

5. When you made the first visit to this building with your colleague at around 8 pm, you came to know that the complainant was assigned alone to this building. You went back to the Suva office and you alone returned for a second visit at around 2 a.m. You found that the complainant was sleeping and the main gate was not properly locked. You warned the complainant that these security lapses could lead to a suspension or even termination of her service. The complainant under these circumstances was frightened and in a vulnerable situation.
6. You told the complainant to go and check around the building. You also went with her by lift to check all the four levels. When you were still on the lift, you started touching her breast, on top of her company shirt. She was shocked. She told you not to do it.
7. You then told the complainant to go and check one Chinese shop in the building. When she returned, you pushed the complainant to the passage towards the toilet and seized her. She told him not to do it because you are a married man. You pulled her into the toilet and made her lie down forcefully. You forced her to remove her clothes. The complainant was scared and was in a state of shock. You started playing with her vagina with your hand. Then you put your tongue inside her vagina and started licking inside of her vagina. The complainant was scared. She tried to flee away but she couldn't because you were holding her tightly. She did not agree to what you were doing. She expressed her disagreement. But you continued to do so until her telephone started ringing. She reported this to the police at the first available opportunity.
8. The maximum penalty for Rape is life imprisonment.

9. The tariff for Rape of an adult is well settled in Fiji. The starting point is seven years' imprisonment [Kasim v The State (Crim App. No. AAU0021j of 1993S)] and the range is set between 7 and 15 years' imprisonment.
10. The maximum penalty for Sexual Assault is 10 years' imprisonment. In State v Epeli Ratabacaca Laca (HAC 252 of 2011). Madigan J set the tariff for this offence between 2 and 8 years' imprisonment, the higher tariff being set for serious sexual assaults. In Laca (supra), Madigan J identified three (3) categories of sexual assaults:

**Category 1** (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

**Category 2**

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;
- (ii) Contact with the genitalia of the victim by the offender using part of his body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

**Category 3**

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

11. Touching of a vagina with hand falls into category 2(ii) above.
12. Rape is a serious crime. By prescribing life imprisonment for this offence, the law makers expect courts to impose harsher punishment on rape offenders. This heinous crime is prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Not only the offender but potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women.
13. Bearing in mind Section 11(1) of the Constitution, Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
14. You committed these two offences in the same transaction. Therefore, in terms of Section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence having based the final sentence on the Rape count which is the most serious.
15. In selecting a starting point, the courts must have regard to the objective seriousness of the offence. I have considered the culpability and the harm factors of your offending. Evidence led in trial shows that a degree of pre-planning was involved in your offending. However you have not used violence or caused physical injuries to the complainant. According to the Victim Impact Statement, your action has caused considerable and long lasting psychological harm to the complainant. Having considered the gravity and objective seriousness of the offence, I pick 8 years' imprisonment as the starting point for the Rape count.
16. I have identified the following aggravating circumstances of your offending.



1. The complainant is known to you and she trusted you as her immediate supervisor. The offence was committed at the work place. You breached the trust and abused your authority as a supervisor.
  2. The complainant was in an extremely vulnerable situation. She was assigned to a four storied building to do a night shift. She was new to her job and to that building. You pointed out some lapses in her duty and warned her that she will lose her job. You exploited her vulnerability to satisfy your lustful demands.
17. The complainant had to leave her job as a result of your offending.
18. I have considered following mitigating circumstances that your Counsel has submitted to this Court.
- i. Your personal circumstances are that you are 43 years of age, married with three children. Two of your children are still schooling and the youngest daughter is only one year old. Currently you are employed as a truck driver earning FJD 350 fortnightly. You are the sole breadwinner of your family.
  - ii. You have no previous conviction and maintained a clean record over the past 43 years.
19. I add 2 years to the starting point for the above mentioned aggravating factors bringing the interim sentence to 10 years' imprisonment. I deduct 1 year for the mitigating factors to bring the sentence down to one of 9 years' imprisonment.

20. According to the submission filed by the State, you had been in remand for approximately 2 months. I deduct further 2 months to reflect your remand period. Now your final aggregate sentence for both counts is 8 years and 10 months' imprisonment.

21. In light of the submissions filed in court, I have considered the suitability of imposing and the length of a non-parole period. As a first offender your rehabilitation potential is somewhat high. At the same time, your early release will not be tolerated by the society and it can put the community protection at a risk. Considering Section 18 (1) of the Sentencing and Penalties Act and the principles enunciated in Tora v State [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 6 years.

#### Summary

22. You are sentenced to a imprisonment term of 8 years and 10 months. You are eligible for parole after you have served 6 years in the corrections facility.

23. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Suva

31 January 2020

Counsel:

- Office of the Director of Public Prosecution for State

- Legal Aid Commission for Defence