

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 058 OF 2016LAB

STATE

V

ETUWINI KAMEKAME

Counsels : Mr. R. Kumar for State  
Ms. C. Choy for Accused

Hearings : 22 and 23 November, 2017

Summing Up : 23 November, 2017

Judgment : 23 November, 2017

Sentence : 24 November, 2017

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## SENTENCE

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1. On 22 November 2017, before the trial proper started, you pleaded guilty and was convicted on count no. 1 of the following information. In a judgment delivered yesterday, you were found guilty and convicted on counts no. 4, 5 and 6 of the following information:

**First Count**  
**Statement of Offence**

**ASSAULT CAUSING ACTUAL BODILY HARM**: Contrary to section 275 of the Crimes Decree, No. 44 of 2009.

**Particulars of Offence**

**ETUWINI KAMEKAME**, on the 9<sup>th</sup> day of November, 2016, at Ketei Settlement, Savusavu in the Northern Division, unlawfully assaulted **MATELITA DRODRO**.

**Fourth Count**  
**Statement of Offence**

**ASSAULT CAUSING ACTUAL BODILY HARM**: Contrary to section 275 of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**ETUWINI KAMEKAME**, on the 9<sup>th</sup> day of November, 2016, at Ketei Settlement, Savusavu in the Northern Division, unlawfully assaulted **LAISA RATA**.

**Fifth Count**  
**Statement of Offence**

**ASSAULT CAUSING ACTUAL BODILY HARM**: Contrary to section 275 of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**ETUWINI KAMEKAME**, on the 9<sup>th</sup> day of November, 2016, at Ketei Settlement,



Savusavu in the Northern Division, unlawfully assaulted **MERE KAVIKA**.

***Sixth Count***  
***Statement of Offence***

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

***Particulars of Offence***

**ETUWINI KAMEKAME**, on the 9<sup>th</sup> day of November, 2016, at Ketei Settlement,  
Savusavu in the Northern Division, unlawfully and indecently assaulted **MERE KAVIKA**.

2. The brief facts were as follows. On 8 November 2016, you and others attended a church gathering at Ketei Settlement at Savusavu in the Northern Division. There were approximately 30 men and 10 ladies in the gathering. Matelita Drodro, Lusiana Yanuyanu, Laisa Rata and Mere Kavika were also present at the gathering. Lusiana Yanuyanu was your wife. The group had prayer sessions throughout the day and into the evening.
3. Late in the evening the men were accommodated at another building, while the ladies were told to sleep and rest at the "Vakatawa's" house. The "Vakatawa" and his wife slept in their bedroom while you and the ladies mentioned above slept in the "Vakatawa's" house sitting room. You woke up early on 9 November 2016 at about 2am and then assaulted Matelita Drodro by pulling her hair and nose. She felt extreme pain, but was not physically injured. You then turned your attention on Laisa Rata, who was sleeping nearby. You stepped on her stomach. She said, it was painful because she previously had an operation on the same. You later bit her on the shoulders. She said, it was painful and she suffered bite marks.
4. You then threw three hard punches at Laisa's right side of her head. She said, it was painful. Then you turned your attention on Mere Kavika. You threw two punches at her left neck. She said,



it was painful. You later pulled her hair. Then you pulled her to you in your attempt to kiss her. She resisted. You pulled her earrings and ring off her. Then you touched her thighs and tried to touch her vagina, but she resisted you. You then fondled her breast.

5. Out of the above offences, the most serious is "sexual assault" (count no. 6). It carried a maximum sentence of 10 years imprisonment (section 210 (1) of the Crimes Act 2009). The tariff is a sentence between 2 to 8 years imprisonment. The final sentence will depend on the aggravating and mitigating factors. However, I adopt Mr. Justice Paul Madigan's Statement in **The State v Epeli Ratabacaca Laca**; Criminal Case No. HAC 252 of 2011S, High Court, Suva, where His Lordship said:

\*...A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

**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 or her 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 part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).



These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years..."

6. Counts no. 1, 4, and 5 involved "assault causing actual bodily harm". The maximum sentence is 5 years imprisonment (section 275 of the Crimes Act 2009). The tariff is a sentence between a conditional or absolute discharge to 12 months imprisonment: **State v Jope Cavukai**, Criminal Case No. HAC 069 of 2010, High Court, Suva. Of course, the final sentence depends on the mitigating and aggravating factors.
7. The aggravating factors in this case were as follows:
  - (i) Unprovoked Attack. This was an unprovoked attack on the female complainants by the accused and the level of violence on them was high and unacceptable;
  - (ii) By offending against the complainants, you showed no regard to their personal safety, no regard to their right as human beings, and no regard to their right to a peaceful and happy life;
  - (iii) The complainants suffered pains and injuries to their bodies.
8. The mitigating factors were:
  - (i) You pleaded guilty to count no. 1.
  - (ii) You had been remanded in custody for 16 days.
9. On count no. 6 (sexual assault), I start with a sentence of 2 years imprisonment. I will add nothing for the aggravating factors, because I consider the sexual assault in this case, at the lower category. I deduct 6 months for the mitigating factors, leaving a final sentence of 18 months imprisonment.
10. On the count no. 4 (assault), I sentence the accused to 12 months imprisonment,
11. I repeat the above sentence for counts no. 1 and 5.
12. The summary of your sentences are as follows:

- |       |             |   |                                       |   |                        |
|-------|-------------|---|---------------------------------------|---|------------------------|
| (i)   | Count no. 1 | : | Assault Causing Actual<br>Bodily Harm | : | 12 months imprisonment |
| (ii)  | Count no. 4 | : | Assault Causing Actual<br>Bodily Harm | : | 12 months imprisonment |
| (iii) | Count no. 5 | : | Assault Causing Actual<br>Bodily Harm | : | 12 months imprisonment |
| (iv)  | Count no. 6 | : | Sexual Assault                        | : | 18 months imprisonment |

13. Because of the totality principle of justice, I direct that the above sentences be made concurrent to each other, that is, a final sentence of 18 months imprisonment.

14. Mr. Etuwini Kamekame, for your offence in counts no. 1, 4, 5 and 6, I sentence you to 18 months imprisonment. I will not impose a non-parole period.

15. You have 30 days to appeal to the Court of Appeal.

  
**Salesi Temo**  
JUDGE



<b>Solicitor for the State</b>	:	<b>Office of the Director of Public Prosecution, Labasa</b>
<b>Solicitor for the Accused</b>	:	<b>Office of the Legal Aid Commission, Labasa</b>