

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 383 OF 2016S

STATE

Vs

1. **WAME BALEIMAKOGAI**
2. **NAPOLIONI LEILOMA**
3. **LUKE SOROVAKATINI**
4. **SANJAY LAL**

Counsels : Mr. T. Tuenuku for State
Ms. L. Manulevu and Me. K. Prasad for Accused No. 1
Ms. L. David for Accused No. 2
Ms. L. Ratidara for Accused No. 3
Mr. J. Reddy for Accused No. 4

Hearings : 25, 26, 27 and 28 June, 2, 4, 5, 6, 9, 10, 11 and 12 July, 2018

Summing Up : 13 July, 2018

Judgment : 16 July, 2018

Sentence : 20 July, 2018

SENTENCE

1. On 16 July 2018, the court found all of you Accuseds guilty as charged on the following counts, in the following information, and convicted you on the same:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

WAME BALEIMAKOGAI, NAPOLIONI LEILOMA and LUKE SOROVAKATINI between the 9th day of October, 2016 and the 10th day of October, 2016, at Waimaro, Tailevu in the Eastern Division, had carnal knowledge of **R.N.H.** without her consent.

COUNT TWO

Statement of Offence

RAPE: Contrary to Section 207(1) and (2)(c) of the Crimes Act 2009.

Particulars of Offence

NAPOLIONI LEILOMA between the 9th day of October, 2016 and 10th day of October, 2016 at Waimaro, Tailevu in the Eastern Division, penetrated the mouth of **R.N.H.** with his penis without her consent.

COUNT THREE

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2)(c) of the Crimes Act 2009.

Particulars of Offence

NAPOLIONI LEILOMA between the 9th day of October, 2016 and the 10th day of October, 2016 at Waimaro, Tailevu in the Eastern Division, penetrated the mouth of **O.R.** with his penis without her consent.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

WAME BALEIMAKOGAI, NAPOLIONI LEILOMA and SANJAY LAL between the 9th day of October, 2016 and the 10th day of October, 2016 at Waimaro, Tailevu in the Eastern Division, had carnal knowledge of **O. R.** without her consent.

COUNT FIVE

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to Section 209 of the Crimes Act, 2009.

Particulars of Offence

SANJAY LAL between the 9th day of October, 2016 and the 10th day of October, 2016 at Waimaro, Tailevu in the Eastern Division, assaulted **O. R.** by punching her mouth with intent to commit rape.

2. The brief facts of the case were as follow. On 9 October 2016, the four of you were travelling in a rental car registration number IQ 893, driven by Accused no. 4, around Nausori Town. You

met the two complainants (PW1 and PW2) in front of Deoji shop at about 9 pm, and invited them into the car. All of you then went for a joy ride around Nausori Town, then to Waidalice, then to Korovou Town, and to the secluded spot at Waimaro, Tailevu. Accused no. 4 was driving the car. Accused no. 1 was the front seat passenger. Accused no. 2 was sitting behind the driver in the back seat, while Accused no. 3 was sitting behind the front seat passenger, and PW1 and PW2 were sitting between Accused no. 2 and Accused 3, in the back seat.

3. When the six of you reached the secluded spot at Waimaro Tailevu, you all got out of the car and surrounded PW1 and PW2, who were still in the car. Accused No. 2, you then went to PW2 and forcefully dragged her out of the car. PW2 then yelled at the top of her voice to raise the alarm. Accused no. 4, you then punched her on the mouth to stop her yelling and to intimidate her. PW1 saw the above and it made her scared. Then you all took turns on the two complainants by inserting your penis into their vaginas, without their consents, and all of you well knew they were not consenting to the same at the time. Accused no. 2, you further inserted your penis into the complainants' mouths, without their consent, and you well knew, they were not consenting to the same, at the time.
4. **"Rape"**, as a criminal offence, had always been viewed seriously by the lawmakers of this country. It is a serious violation of a person's dignity. It demeans a person and is the worst form of sexual assault. Consequently, it carries a maximum sentence of life imprisonment. Previous case laws has set the tariff for the rape of an adult a sentence between 7 to 15 years imprisonment: see Mohammed Kasim v State, Criminal Appeal Case No. 14 of 1993, Fiji Court of Appeal; State v Marawa, Criminal Case HAC 016 of 2003, High Court and State v Lepani Veimusu, Criminal Case No. HAC 257 of 2010, High Court. The actual sentence will depend on the aggravating and mitigating factors.
5. In this case, the aggravating factors, were as follows:
 - (i) **Trickery and Personal Deceit.** The whole of you invited the two complainants into your rental car on 9 October 2016 after 9 pm. You all agreed to have a joy ride around Nausori Town, then to Waidalice, then to Korovou Town and then to the secluded spot at Waimaro Tailevu. You were all enjoying each other's company by yarning and listening to the car music and consuming liquor. There was nothing wrong with that, but for drunk driving. I suppose that is what young people do these days. However,

when you reached the secluded spot at Waimaro, you each proceeded to break the law. Yes, it was arguable that the two young complainants were naive when they got into the car with you, and some people may argue they "deserved" what they got. However, the law is there to protect everyone, including the naïve. All of you wanted to have sex with the complainants. However, the law required, you each get their consent. You each failed to do the above. You each forced yourselves on them sexually. For choosing that option, you each have to pay a price by losing your liberty to pay for your crime. You must not complain, when I sentence you to a custodial sentence. This is because you each choose this consequence when each had sex with them at the time, without their consent.

- (ii) When you offended against the complainants', you showed no regard to their human rights and dignity. You had no regard to their right to safety and a happy and peaceful life.

6. The mitigating factors are as follows:

- (i) **Accused No. 1.** You are 33 years, living in a defacto relationship with a 3 year old daughter. You are an electrician and earned \$280 per week. Had been remanded in custody for 4 days.
- (ii) **Accused No. 2.** You are 32 years old, married with one son, aged 13 years old. You are a farmer and supports your family and parents. You had been remanded in custody for 4 days.
- (iii) **Accused No. 3.** You are 27 years old, single with a 4 year old son. You are a 1st offender. You had been remanded in custody for 7 months.
- (iv) **Accused No. 4.** You are 28 years old, married with 2 young children, aged 6 and 8 years old. You are a farmer and carrier driver earning about \$500 per month. You are a first offender, and support your family.

7. On count no. 1 (rape), I start with a sentence of 8 years imprisonment. I add 3 years for the aggravating facts, making a total of 11 years imprisonment. For Accused no. 1 and Accused No. 2, I deduct 2 years for the mitigating factors, leaving a balance of 9 years imprisonment. For Accused no. 3, for the total 11 years, I deduct 7 months for time already served while remanded in custody, leaving a balance of 10 years 5 months. For being a first offender, I deduct 2 years 5 months leaving a balance of 8 years imprisonment.

8. On count no. 2 (rape), for Accused no. 2, I repeat the process and sentence in count no. 1
9. On count no. 3 (rape), for Accused no. 2, I repeat the process and sentence in count no. 2.
10. On count No. 4 (rape), for Accused no 1 and Accused no. 2, I repeat the process and sentence in count no. 1. For accused no. 4, I start with 8 years imprisonment. I add 3 years for the aggravating factors, making a total of 11 years imprisonment. For being a first offender and other mitigating factors, I deduct 3 years leaving a balance of 8 years imprisonment.
11. On count no. 5, I sentence Accused no. 4 to 12 months imprisonment.

12. The summary of the sentences are as follows:

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|-------|-------------|---|--|---|---|
| (i) | Count No. 1 | : | Rape | : | Accused No. 1 – 9 years imprisonment
Accused No. 2 – 9 years imprisonment
Accused No. 3 – 8 years imprisonment |
| (ii) | Count No. 2 | : | Rape | ; | Accused No. 2 – 9 years imprisonment |
| (iii) | Count No. 3 | : | Rape | : | Accused No.2 – 9 years imprisonment |
| (iv) | Count No. 4 | : | Rape | : | Accused No. 1 – 9 years imprisonment
Accused No., 2 – 9 years imprisonment
Accused No. 4 – 8 years imprisonment |
| (v) | Count No. 5 | : | Assault with Intent to
Commit Rape: | | Accused No. 4 – 12 months imprisonment |

13. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, making a final sentence of 9 years imprisonment for Accused No. 1 and Accused No. 2; and 8 years imprisonment for Accused no. 3 and Accused no. 4.
14. Mr. Wame Baleimakogai (Accused No. 1) and Mr. Napolioni Leiloma (Accused No. 2), for offending against the two complainants on 9 and 10 October 2016, at Waimaro Tailevu in the Eastern Division, I sentence each of you to 9 years imprisonment each, with a non-parole period of 8 years, effective forthwith.

15. Mr. Luke Sorovakatini (Accused No. 3) and Mr. Sanjay Lal (Accused No. 4), for offending against the complainants on 9 and 10 October 2016, at Waimaro Tailevu in the Eastern Division, I sentence each of you to 8 years imprisonment, with a non-parole period of 7 years, effective forthwith. For accused No. 3, this sentence is concurrent to any present prison term.
16. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentences are designed to punish you in a manner which was 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 community denounce what you did to the complainants on 9 and 10 October 2016.
17. The names of the female complainants are permanently suppressed to protect their privacy.
18. You have 30 days to appeal to the Court of Appeal




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 3 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 4 : **J. Reddy, Barrister and Solicitor, Suva.**