

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 350 OF 2013S

STATE

VS

EMORI NAQARASE

Counsels : Mr. Y. Prasad and Ms. V. Prasad for State
Mr. T. Tawake for Accused
Hearings : 26, 27 and 30 March, 2015
Summing Up : 30 March, 2015
Judgment : 30 March, 2015
Sentence : 22 May, 2015

SENTENCE

1. In a judgment delivered on 30 March 2015, the court found you guilty of the charges in the following information, and also convicted you of the same:

COUNT ONE

Statement of Offence

ARSON: Contrary to section 362 (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

EMORI NAQARASE on the 8th day of December 2012, at Nakorovatu Village, Naitasiri, in the Central Division wilfully and unlawfully set fire to the dwelling house of KINIJOJI RANATORA.

COUNT TWO

Statement of Offence

ESCAPE FROM LAWFUL CUSTODY: Contrary to section 196 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

EMORI NAQARASE on the 12th day of December, 2012 at Vunidawa Police Station, in the Central Division, being in lawful custody of Special Constable 520 **TANIELA SAUTURAGA**, escaped from lawful custody.

2. The brief facts were as follows. On 8 December 2012, the complainant was 51 years old, married with three children aged 12 years, 8 years and 9 months. The family had a two bedroom house, and the same was furnished, with belongings in the same. Total cost of the house and the properties therein were \$21,000. The accused was aged 34 years old at the time. It was alleged that some of the complainant's extended family were not happy with the way he dealt with their Mataqali land.
3. The accused heard about the grumblings, and he took it upon himself to burn the complainant's house, although he was not part of the complainant's extended family. On 8 December 2013, after 8pm, he put a tin of diesel mixed with cloth under the complainant's house door, and lit the same with a lighted cigarette butt. The house quickly caught fire, and burn to the ground. The accused was later arrested and charged by police. He escaped from the Vunidawa Police Station on 12 December 2012, when the matter was still under police investigation.
4. Our lawmakers consider "arson" to be a serious offence, and had prescribed it a maximum sentence of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment: see **Kelemedi Lagi and Others v The State**, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in **Niko Lesu and Sunia Vosataki v The State**, Criminal Appeal No. AAU 058 of 2011. However, in an earlier case of **Damodar Naidu & Another v Reginam**, Fiji Law Report, Volume 24, 1978, pages 93 to 106, the Fiji Court of Appeal approved a sentence of 7 years imprisonment for accused no. 1 and 10 years for accused no. 2, for burning down a number of shops in Rakiraki Town in May 1977.

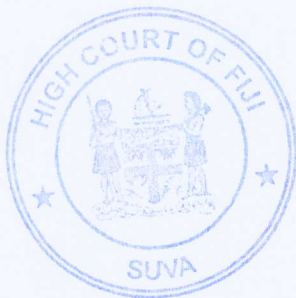
5. "Escaping from lawful custody" carried a maximum sentence of 2 years imprisonment. The tariff is a sentence between 6 to 12 months imprisonment: see Sakiusa Basa v The State, Criminal Appeal No. HAA 12 of 2007, High Court, Suva. The actual sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factors, were as follows:
 - (i) By burning the complainant's house down, the accused showed utter disregard to the complainant's property rights. The complainant, as a villager, lost \$21,000 worth of property. By Fiji's standard, the complainant worked hard to build and furnish his house for his family of 3 young children and a wife. Because of the disappearance of the house as a result of the fire, the complainant's family was thrown into turmoil. His wife has left him as a result;
 - (ii) By offending against the complainant, the accused had ruined the quality of life for this family. You put further stress into the family, resulting in its breakup;
 - (iii) You have made no reparation whatsoever for what you have done, and you must not complain when your liberty is taken away to pay for your crime;
 - (iv) Also by escaping from the police, you showed your willingness to live outside the law, and put more strain on State's resources to catch you.
7. The mitigating factors were as follows:
 - (i) I only find one mitigating factor for you, that is, you've been remanded in custody from 11 October 2013, when you first appeared in the High Court. That was 1 year 7 months 10 days ago.
8. On count no. 1, I start with a sentence of 4 years imprisonment. I add 1 year 8 months for the aggravating factors, making a total sentence of 5 years 8 months. For the time spent in remand while awaiting trial, I deduct 1 year 8 months, leaving a balance of 4 years imprisonment.
9. On count no. 2, I start with 6 months imprisonment. I add 3 months for the aggravating factors, making a total of 9 months imprisonment. I deduct nothing, as I've deducted time spent on remand in count no. 1.

10. In summary, your sentences are as follows:

- (i) Count no. 1 : Arson : 4 years imprisonment.
- (ii) Count no. 2 : Escaping from : 9 months imprisonment
Lawful custody

11. The above sentences are concurrent to each other, making a total of 4 years imprisonment.

12. Mr. Emori Naqarase, for burning down the complainant's house and escaping from lawful custody, I sentence you to 4 years imprisonment, with a non-parole period of 3 years, effective forthwith.



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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**