

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 087 OF 2014S

**STATE**

**vs**

**SHAMMI KAPOOR**

Counsels : Mr. S. Vodokisolomone and Mr. S. Seruvatu for State  
Mr. S. Nandan for Accused  
Hearings : 18 and 19 April, 2016  
Sentence : 27 May, 2016

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## **SENTENCE**

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1. On 18 April 2016, in the presence of his counsel, the accused pleaded guilty to the following counts in the following information:

### COUNT 1

#### *Statement of Offence*

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

#### *Particulars of Offence*

**SHAMMI KAPOOR** on the 16<sup>th</sup> day of February 2014 at Suva in the Central Division wilfully and unlawfully set fire to the house or structure belonging to **SHALESH KUMAR** of Wailea Settlement.

**COUNT 2**

***Statement of Offence***

**DAMAGING PROPERTY:** Contrary to Section 369 (1) of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**SHAMMI KAPOOR** on the 16<sup>th</sup> day of February 2014 at Suva in the Central Division wilfully and unlawfully damaged a vehicle with registration number EM 011, the property of **SHALES KUMAR**.

**COUNT 3**

***Statement of Offence***

**MANSLAUGHTER:** Contrary to Section 239 of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**SHAMMI KAPOOR** on the 16<sup>th</sup> day of February 2014 at Suva in the Central Division set fire to the house or structure belonging to **SHALES KUMAR** of Wailea Settlement, which resulted in the death of **SHANESH SHIVNEL KUMAR**, and at the time of setting fire, **SHAMMI KAPOOR** was reckless as to a risk that it will cause serious harm to **SHANESH SHIVNEL KUMAR**.

2. The prosecution then presented their summary of facts. They were as follows:

“...On the 16<sup>th</sup> day of February 2014 between 3.30 am to 4.00 am in the morning the complainant Shalesh Kumar was attending to a religious sitting at his neighbours place namely Diwarkar Prasad of Wailea Settlement in Vatuwaqa when they smelt something like burnt plastic and also heard a loud sound coming from the area. The complainant and his neighbour went to investigate when they saw the front porch of the house of the complainant engulfed with flames. The fire had completely destroyed the residential home of Shalesh Kumar including his private motor vehicle which was parked at his garage registration number EM 011 and also his son Shanesh Shivnel Kumar a 17 years old died of third degree burns as the result of fire.

Post mortem was conducted by Dr Praneel the Pathologist where he confirmed that the cause of death was found to be "100 per cent third degree burns".

Upon information received the accused Shammi Kappor was arrested and interviewed under caution by Police where he admitted to have visited the house of the complainant between 3.30 am and 4.00 am early on the morning of the 16<sup>th</sup> of February 2014 to buy kava. He confessed in his caution interview statement that he threw a lighted match stick on the tarpaulin which was on the front of the house and it was burning, he stated that he saw the flames about 3 inches above the tarpaulin and he to put it off by using a piece of wood however, he still saw smoke coming out of the tarpaulin. He further admitted in his caution interview that it was his reckless act that had resulted into the fire destroying the house of the complainant, damaged the complainant's car and also caused the death of the complainant's son Shanesh Shivnel Kumar who died of 100 per cent third degree burns. The estimated value of the dwelling house and the items perished in it was about \$23,000.00. The value of the complainant's vehicle damaged in the fire was \$11,000.00

The accused was charged for one count of Arson pursuant to section 362 of the Crimes Decree 2009, one count of Damaging Property pursuant to section 369 of the Crimes Decree 2009 and one count of Manslaughter pursuant to section 239 of the Crimes Decree No. 44 of 2009..."

3. The court then checked with defence counsel to see that the accused was admitting all the elements of the offences. On the first count (arson), the accused, through his counsel, admitted the particulars of the offence, that is, he wilfully and unlawfully set fire to the complainant's house, on 16 February 2014. On the second count (damaging property), the accused, through his counsel, admitted wilfully and unlawfully damaging the complainant's vehicle on 16 February 2014, by setting fire to the same. On the third count (manslaughter), the accused, through his counsel, admitted the particulars of offence, that is, on 16 February 2014, he recklessly burn down the complainant's house and caused the death of his son, who was fast asleep in the same, and thereby burnt to death in the same. As a result of the above admissions, the court found the accused guilty as charged on all counts, and convicted him accordingly on those counts.

4. The first count involved the offence of "arson". In State v. Atunaisa Raralevu, Criminal Case No. HAC 026 of 2013S, High Court, Suva, I said the following, "...*"Arson", as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see Kelemedi Lagi & Others v 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 State, Criminal Appeal No. AAU 058 of 2011). However, the Fiji Court of Appeal, in Damodar Naidu & Another v Reginam, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors...*"
5. The second count involved "damaging property". It carried a maximum penalty of 2 years imprisonment.
6. The third count involved the offence of "manslaughter". In State v Viliame Ratoa, Criminal Case No. HAC 173 of 2010S, High Court, Suva, I said the following: "... *"Manslaughter" is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter in Fiji is a suspended prison sentence to a sentence of 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high, and the provocation minimal. Sentences in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: Kim Nam Bae v The State, Criminal Appeal No. AAU 0015 of 1998S, Fiji Court of Appeal; The State v Francis Bulewa Kean, Criminal Case No. HAC 037 of 2007S, High Court, Suva; The State v Tomasi Kubunavanua, Criminal Case No. HAC 021 of 2008, High Court, Suva. Of course, the actual sentence will depend on the aggravating and mitigating factors...*"
7. The aggravating factors in this case were as follows:
  - (i) Through your offendings, you had caused the complainant and his family untold heart aches and countless miseries. They had lost their 17 year old son, who died in the fire. Furthermore, they lost their house, their personal belongings, household furnitures and appliances, including their family car. They had lost a total of approximately \$45,000 plus in terms of property, medical and other economic loss, as a result of your offending. You had certainly altered the quality of this family's life for the worse.
  - (ii) Your offending showed an obvious careless attitude towards fire and other people's property. As the saying goes, "fire is a good servant but a bad master". Since you were unable to buy grog from the complainant's family that early morning on 16

February 2014, you lit your cigarette with a match stick and threw the lighted match stick into the complainant's property. You saw the fire came up, but you saw no urgency in putting out the same, resulting in the fire later burning down the complainant's house.

- (iii) Your offendings showed your utter disregard to the complainant's family's right to a secure and peaceful life and their rights to enjoy their properties;
- (iv) There was no provocation from the complainant's family.

8. The mitigating factors are as follows:

- (i) At the age of 50 years, this is your first offence;
- (ii) Although you pleaded guilty on the day of the trial, you nevertheless saved the court's time;
- (iii) You had been remanded in custody for approximately 2 years 4 months.

9. On count no. 1 (arson), I start with 5 years imprisonment. For the aggravating factors, I add 4 years, making a total of 9 years imprisonment. For time already served while remanded in custody, I deduct 2 years 4 months, leaving a balance of 6 years 8 months. For pleading guilty at trial time, I deduct 8 months, leaving a balance of 6 years imprisonment. For being a first offender, I deduct 1 year, leaving a balance of 5 years imprisonment.

10. On count no. 3 (manslaughter), I repeat the above process and sentence.

11. On count no. 2 (damaging property), I sentence the accused to 1 year imprisonment.

12. In summary, your sentences are as follows:

- (i) Count No. 1 : Arson : 5 years imprisonment
- (ii) Count No. 2 : Damaging : 1 year imprisonment  
Property
- (iii) Count No. 3 : Manslaughter : 5 years imprisonment

13. Section 4(1) of the Sentencing and Penalties Decree 2009 required this court to punish the accused in a manner which was just in all the circumstances, to protect the community, to deter other would-be offenders, to rehabilitate the accused and to signify the court and community denouncing these types of offences.

14. In achieving the above, I direct that the 5 years prison sentence in count no. 1 (arson), be made partly concurrent and partly consecutive to the 5 years prison sentence for count no. 3 (manslaughter). I direct that 2 years from the 5 years from count no. 1 (arson) be made consecutive to the 5 years in count no. 3 (manslaughter), making a total sentence of 7 years imprisonment. The balance of 3 years from the 5 years for count no. 1 (arson) is made concurrent to the total sentence in count no. 3 (manslaughter), and concurrent to the 1 year prison sentence in count no. 2 (damaging property). The final total sentence for count no. 1, 2 and 3 is 7 years imprisonment.
15. Mr. Sammi Kapoor, for offending against Mr. Shalesh Kumar's family on 16 February 2014, at Suva in the Central, I sentence you to 7 years imprisonment, with a non-parole period of 6 years imprisonment, effective forthwith.
16. 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** : **Reddy Nandan, Barrister & Solicitor, Suva.**