

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 141 of 2018

BETWEEN:

STATE

PROSECUTION

AND:

NAVITALAI NAIVALU

ACCUSED PERSON

Counsel:

Ms. U. Tamanikaiyaroi for State
Mr D. Dinati for Accused

Sentence:

18th June 2018

S E N T E N C E

1. Mr. Navitalai Naivalu, you stand convicted for one count of Arson, contrary to Section 362 (a) of the Crimes Act, which carries a maximum sentence of life imprisonment. The particulars of the offence are that:

NAVITALAI NAIVALU is charged with the following offence:

FIRST COUNT

Statement of Offence

ARSON: *Contrary to Section 362 (a) of the Crimes Act 2009.*

Particulars of Offence

NAVITALAI NAIVALU on the 2nd day of July 2017 at Nasinu in the Central Division, unlawfully and wilfully set fire to a building belonging to LUISA RAVULA, situated at Wainunu Settlement, Wainibuku.

2. You pleaded not guilty for this offence before Justice Goundar on the 18th of May 2018. Subsequently, you changed your position and pleaded guilty before me on the 13th of June 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I convicted you for this offence of Arson as charged.
3. According to the summary of fact, which is admitted by you in open court, you had found that your house was locked and your *de-facto* partner Selina Soroca was not there. You then went to Luisa Ravula's house, looking for your *de-facto* partner. However, Luisa Ravula had lied to you, saying that your *de-facto* partner was not there. You were drunk at that time. You had then gone and forcefully entered into the house. You then had poured kerosene from the stove and set fire to your own house.
4. Arson is a serious offence, which carries a maximum penalty of life imprisonment. Burning down of any dwelling house or commercial property could adversely affect the occupants or the owners of those properties.
5. The Fiji Court of Appeal in **Damodar Naidu and Others (1978 FLR 93)**, has imposed sentences of seven (7) and ten (10) years for burning down of a number of shops.
6. Justice Shameem in **Lagi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004)** found that the tariff for the offence of arson is between 2 - 4 years, where her Ladyship held that:

"In this case the Respondent appears to have ensured that the house was empty when he lit the fire. However the fact that he accompanied a group of men who threatened the occupants, the fact that the arson was motivated by revenge and the serious consequences of the arson

on the victims who were forced to leave the village they called home, called for a sentence within the 2-4 year range. With a starting point of 3 years imprisonment, reduction for the previous good character and other mitigation, and increase for the aggravating factors I have outlined, I see nothing wrong in principle, with a 3 year term. Arson is a most serious offence with a maximum sentence of life imprisonment. A family's home and belongings were destroyed in the fire. The children of the family may never recover for the trauma of what they saw on the night of the 19th of January 1999."

7. The Fiji Court of Appeal in Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014) held that:

"Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment."

8. Justice Temo in State v Raralevu - Sentence [2015] FJHC 374; HAC026.2013S (22 May 2015) has sentenced the accused for a period of four (4) years for burning down the house of his wife, where his Lordship observed that:

"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."

9. Justice Madigan in State v Seru [2016] FJHC 841; HAC32.2015 (21 September 2016) found that:

"There is no predetermined tariff for the crime of attempted arson but the accepted sentences for arson itself range from 2 years to 10 years. Two years has been held to be appropriate where there is no danger to human life and 4 years where there is such a danger. These are sentences passed for a crime with the maximum penalty of life imprisonment, and there is no reason why a tariff for attempted arson should be more."

10. In view of the above sentencing precedents, I select two (2) years as the starting point as there was no danger to human life in this offending.
11. You had been living in this house with your partner and two daughters. Both of the daughters are schooling. Due to this crime, your partner and the two daughters lost their house and also belongings. You have breached the trust reposed in you by your partner and the two daughters. I find these are the aggravating grounds.
12. You are adversely recorded with nine (9) previous convictions. Five (5) of them are recorded within last ten years. Therefore, you are not entitled for any discount for your previous good character.
13. The learned counsel for the defence, in his mitigation submissions, submitted your personal and family background. I do not find such personal and family background has a mitigatory value as you have committed this crime against your own family.
14. You pleaded guilty at the early stage of the proceedings, expressing your remorse in committing this crime. Therefore, you are entitled for a substantive discount for your early plea of guilty and the remorsefulness.

15. In view of the above aggravating grounds, I increase two (2) years, making an interim period of imprisonment of four (4) years. In view of your early pleas of guilty, I reduce sixteen (16) months, making your final sentence a period of imprisonment of two (2) years and eight (8) months.
16. Having considered the serious nature of this offence, I do not find any appropriate reasons to suspend your sentence.
17. Moreover, I find a non-parole period of twenty (20) months would serve the purpose of this sentence.

Head Sentence

18. I accordingly, sentence you for a period of **two (2) years and eight (8) months** imprisonment for this offence of Arson, contrary to Section 362 (a) of the Crimes Act. I further order that you are not entitled for any parole for a period of **twenty (20) months** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of Sentence

19. You have been in remand custody for this case for a period of nearly seventy (70) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of three (3) month as the period of imprisonment that have already been served by you.
20. Accordingly, your actual sentencing period is **two (2) years and five (5) months** of imprisonment period, with **seventeen (17) months** of non-parole period.
21. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent domestic violence restraining order against you with standard non-molestation conditions and no contact conditions pursuant to section 24

and 28 of the Domestic Violence Act. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Act.

22. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
18th June 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
MIQ Lawyers for the Accused.