

THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 076 OF 2018LAB

STATE

V

SAIYAD ALI

**Counsels : Ms. A. Vavadakua for State
Ms. K. Boseiwaqa and Mr. J. Prasad for Accused**

Hearings : 16, 17 December, 2019

Summing Up : 18 December, 2019

Judgment : 18 December, 2019

Sentence : 23 December, 2019

SENTENCE

1. In a judgment delivered on 18 December 2019, the court found you guilty and convicted you on the following information:

Statement of Offence

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

Particulars of Offence

SAIYAD ALI on 13 October 2018, at Seaqaqa in the Northern Division, willfully and unlawfully set fire to a farm house the property of **MOHAMMED ALAM**.

2. The brief facts were as follows. The complainant (PW3) was 62 years old. He was a farmer and shop owner at Seaqaqa in the Northern Division. PW3 took in the accused (DW1), when PW3's 32 year old son threw him away from his house after a family dispute. DW1 was 20 years. The complainant looked after the accused for 3 to 4 months and made him a caretaker of his half-completed farm house, when he went to Suva in October 2018. The accused was not happy with his pay and the way the complainant looked after him. On 13 October 2018, he burnt the complainant's half-completed farm house, causing \$14,000 worth of damages.
3. Parliament viewed the offence of "arson" very seriously and had prescribed it a maximum sentence of life imprisonment (section 362 (a) of the Crimes Act 2009). The tariff for the offence of arson is a sentence between 5 to 12 years imprisonment see **Isikeli Nakato & Another v The State**, Criminal Appeal AAU 74 and 84 of 2014, Court of Appeal, delivered on 24 August 2018. The final sentence will depend on the aggravating and mitigating factors.
4. The aggravating factors in this case were as follows:
 - (i) **Breach of Trust.** The 62 year old complainant had taken you in and looked after you for 3 to 4 months, when no-one bothered to look after you. You obviously had nowhere to go and appeared unemployed. He trusted you to look after his half-completed farm house, when he decided to visit Suva with his family in October 2018. While he was away, you broke his trust by burning his half-completed farm house.
 - (ii) By burning the complainant's property, you had no regard to his property rights. In fact, you caused \$14,000 worth of damage to him.
5. The mitigating factors were as follows:
 - (i) At the age of 24 years, you are a first offender;
 - (ii) You had been remanded in custody for approximately 4 months 11 days;
 - (iii) You lost some of your belongings in the fire.

6. I start with a sentence of 5 years imprisonment. I add 1 year for the aggravating factors, making a total of 6 years imprisonment. I deducted 5 months for time already served while remanded in custody, leaving a balance of 5 years 7 months. For the lost of your belongings in the fire, I deduct 7 months, leaving a balance of 5 years imprisonment. For being a first offender, I deduct 2 years, leaving a balance of 3 years imprisonment.

7. Mr Saiyad Ali, for committing arson against the complainant's farm house on 13 October 2018, I sentence you to 3 years imprisonment, with a non-parole period of 2 years imprisonment, effective forthwith.

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




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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Office of the Legal Aid commission, Labasa**