

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CASE NO: HAC. 71 of 2018

STATE

V

ANA MARIA RADINIUNILELE

Counsel : **Ms. W. Elo for State**
 Ms. L. Manulevu for Accused

Date of Sentence : 16 May 2019

SENTENCE

1. Ana Maria Radiniunilelel, you were charged on following information:

Statement of offence

Arson: Contrary to section 362(a) of the Crimes Act, No. 44 of 2009

Particulars of offence

ANA MARIA RADINIUNILELE on the 30th day of January 2018 at Qilai Village, Namosi in the Central Division, willfully and unlawfully set fire to a dwelling house belonging to **VILISIANO NATAVA**

2. In the presence of your counsel, you pleaded guilty to the charge on your own free will. You agreed the Summary of Facts read in court by the Prosecution. You understood the charge and the Summary of Facts. I am satisfied that your guilty plea is informed and unequivocal. The Summary of Facts satisfies the elements of Arson. You are convicted as charged.

3. In sentencing you, I have taken into account the following Summary of Facts agreed by you;

The Complainant is Vilisiano Natava ("PW1") 64 years, retired of Qilai Village in Namosi. The Accused is Ana Maria Radiniunilele ("Accused") 30 years, unemployed, also of Qilai Village in Namosi. The Accused is PW1's daughter.

On the 30th of January, 2018, PW1 had gone fishing that morning and before doing so he had asked the Accused to stay at home with his other daughter namely Vikatoria Maramakula ("PW2") 23 years, domestic duties of Qilai Village, Namosi, and for both his daughters to look after his granddaughter.

Later in the day, PW2 had left home with her daughter while only the Accused was at home. Thereafter, it was when PW1 was returning from fishing that he noticed some black smoke coming from the village and he knew straight away that the house emitting this smoke was his. As he got closer, PW1 could see that it was in fact his house that was burning and that fire men were trying to put out the fire. He knew of this because the Accused

had often threatened him of burning down his house prior to the actual offending.

The fire authority had been alerted and a fire report was compiled (attached herewith). The matter was also reported to the Police and the Accused was arrested. She was later caution interviewed where she fully admitted to the same (Copy of the Caution interview is attached herewith – Q/A 30-33, 41-42, 46-49).

4. On 31st January, 2018, you were interviewed under caution. You cooperated with the police and made admissions to having set fire to your own house. According to the record of caution interview, you burnt your father's blanket and threw it to the mattress knowing that there were gallons of benzene in the sitting room. After setting fire to the house, you ran outside and checked if the fire had spread all over the house. You admitted that the damage caused to your house alone is about \$ 70,000.00. You admitted that you were not in sense since you had smoked marijuana.

5. In the mitigation, your counsel pointed out that you are extremely remorseful for what you have done. You are 29 years old and unemployed. It was submitted that your father, the complainant in this case, used to verbally abuse you and find fault with everything you did. On the day of the incident, you could not take your father's verbal abuse anymore and set fire to the house when the house is empty.

6. In terms of section 362 of the Crimes Act 2009, the maximum punishment for the offence of arson is imprisonment for life. By prescribing life imprisonment, the lawmakers have considered this offence to be a serious offence.

7. After considering the maximum punishment and decided cases, the Court of Appeal in Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018) settled the tariff for Arson between 5 and 12 years imprisonment. The Court observed:

“Having considered the views expressed by the courts in the decisions cited above and the aforementioned tariffs, it is my considered view that the tariff for the offence of arson under section 362(a) of the Crimes Decree should be an imprisonment term between 5 to 12 years. In selecting the lower end of 5 years imprisonment, I have taken into account inter alia the nature of the offence under section 362(a) which is unlawfully setting fire to a building or a structure, the natural implications of that offence and the maximum penalty which is life imprisonment. Further, this tariff should be regarded as the range of the sentence on conviction after trial. A sentencer may inevitably arrive at a final sentence which is below 5 years imprisonment in applying the two-tier approach unless the aggravating circumstances are quite substantial. If the final sentence reached is one that is below 3 years imprisonment, then it would be at the discretion of the sentencer to opt for any sentencing option as provided under the Sentencing and Penalties Act”.

8. You wilfully set fire to your own house without reasonable excuse. Considering the objective seriousness of the offence, and the harm caused to the property, I would select 5 years’ imprisonment as the starting point of your sentence.
9. There are aggravating factors in this case. You set fire to a dwelling house that belonged to your father when he went fishing leaving you at home. He trusted you that you will look after your own property. You breached that trust. The loss suffered by fire is estimated to be \$ 70000.00.


10. Considering the above aggravating factors, I would add 1 year to arrive at a sentence of 6 years imprisonment.
11. You have strong mitigating factors; You are a first offender. You are extremely remorseful and you repent on what you have done. You pleaded guilty to the charge at the first available opportunity. You have saved time and resources of this court by tendering an early guilty plea. You are young. You seek another chance to rehabilitate yourselves and forgiveness of this court. You cooperated with police investigations. At the time of the offence, you were under influence of marijuana.
12. You have spent 102 days in the remand custody. The remand period will be separately considered in coming to your final sentence.
13. In view of the above mitigating factors and the remand period, I would deduct 3 years of your sentence. Now your sentence is an imprisonment term of 3 years.
14. In view of your early guilty plea, it is appropriate to grant you a one third deduction of your sentence. Accordingly, I deduct 1 years of your sentence in view of your guilty plea to arrive at a sentence of 2 years' imprisonment.
15. Having considered all the circumstances of this case and the strong mitigating factors, I have decided to partially suspend your sentence. Hence, I order that you serve only 6 months in prison forthwith. The balance period of 18 months is to be suspended for a period of 2 years.

16. You are not eligible for parole during the custodial sentence of 6 months.

Summary

17. You are sentenced 2 years' imprisonment and 18 months of which is suspended for a period of 2 years. Accordingly, **you are to serve only 6 months in prison with effect from today.**

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



Aruna Aluthge
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for State
Legal Aid Commission for Accused**

