

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

CASE NO: HAC. 173 of 2019

STATE

V

VINITA DEVI NAIR

Counsel : **Ms. B. Kantharia for State**
Ms. L. David for Accused

Date of Sentence : **29 July 2019**

SENTENCE

1. Vinita Devi Nair, you were charged on following information:

Statement of offence

Arson: Contrary to section 362(a) of the Crimes Act 2009

Particulars of offence

VINITA DEVI NAIR on the 31st day of March 2018 at Nasinu in the Central Division, willfully and unlawfully set fire to a dwelling house of **ANITA DEVI**.

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;
 - I. The accused – **VINITA DEVI NAIR** hereinafter known as ‘**A1**’ is 39 years old of Omkar Road, Narere, Domestic duties.
 - II. The complainant – **ANITA DEVI** hereinafter known as ‘**PW1**’ is 49 years old of River Road, Narere, Domestic duties.
 - III. On the 31st March, 2019 at around 9.00 pm A1 came to PW1’s house at River Road, Narere and called PW1’s name.
 - IV. Upon A1 calling PW1 and there being no response, she then lit the door mat and put it underneath the back door of PW1’s house back door.

- V. At the time of the alleged incident, A1's son – Richard Nair was inside the house and he saw his mother – A1 lit the door mat and put it underneath the back door.
- VI. Richard Nair saw the smoke and he jumped outside from the window and called the neighbours for help to put off the fire.
- VII. At the time of the alleged incident, PW1 was not home and had returned at around 11.50 pm when she saw the back door of her house burning and some Fijian men helping to put the fire out.
- VIII. PW1 then asked Richard as to what happened and he told her that his mother came around 9pm and was calling him and then she lit the door mat and went way.
- IX. PW1 reported the matter to the police and investigations were conducted and A1 was arrested.
- X. A1 was caution interviewed who admitted to the setting the house of her sister – PW1 on fire. She stated at Q24 *"I then took out my matches and light the piece of carton that was at the foot of the door"*.
- i. She further stated at Q25 – After lighting it then what happen next?
- ii. *"I left straight home to sleep."*
- XI. She was then asked at Q27 – What can you say about the allegation that is put forward to you above – response *"I was really angry at my elder sister for taking my food and that is why I set fire to her house door."*
- XII. Copy of the record of interview of A1 is annexed hereto marked 'A'.

- XIII. On 3rd June 2019, Information was filed in the High Court for the offence of Arson and A1 on 21st June 2019, voluntarily on her own freewill, pleaded guilty to the charge of Arson.
- XIV. Photographs of the alleged Arson at River Road, Narere are annexed hereto marked 'B'.
- XV. A1 has one previous conviction dated 29/3/17; copy of her previous conviction is annexed hereto marked 'C'.

- 4. On 1st May, 2019, you were interviewed under caution. You cooperated with the police and admitted that you set fire to your sister's house because you were really angry at your sister for taking your food stuff. According to the record of caution interview, you took out matches and lit the piece of carton that was at the foot of the door. You said that you were not aware that your son was sleeping inside the house at that time. You later apologized to your sister at the church and she had forgiven you.
- 5. 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.
- 6. Having considered the maximum punishment and the 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”

7. The Court further observed:

“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. It appears that the tariff ranging from 5 to 12 years is applicable only when a conviction is recorded after trial. You have pleaded guilty at the first available opportunity so your sentence will not attract the new tariff set by the Court of Appeal.
9. Until the said tariff for Arson was prescribed in *Nakato v State* (supra), the courts in Fiji applied the tariff set between 2 and 4 years imprisonment (See : *Kelemedi Lagi and Others v State (HAA 0004 Of 2004S)*, *Niko Lesu and Sunia Vosataki v State (Criminal Appeal No. AAU 058 of 2011)*). It can be assumed that the old tariff between 2-4 years imprisonment remains in force and still applicable when it comes to sentencing an offender who, as a mark of genuine remorse, has pleaded guilty at the first available opportunity.
10. The Court of Appeal has recognized the importance of giving a concession to offenders who plead guilty at the first available opportunity. However I do not think that the Court intended to give that concession to all the offenders who had plead guilty at the first available opportunity irrespective of the nature and circumstances of the offence.

11. However, your offending is deserved to be punished leniently given the circumstances of the offence and your personal circumstances.
12. 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.
13. There are aggravating features in your offence. You have set fire to your sister's house during night time. You have shown an utter disregard to the propriety rights of your sister. Your offending is motivated in taking revenge on your sister who is alleged to have taken your food stuff. You said that you were not aware that your son was inside the house when you set fire to the house. However, you have been utterly reckless in not checking whether somebody was inside the house. There is no evidence of pre-planning.
14. Considering the above aggravating factors, I would add 2 year to arrive at a sentence of 7 years imprisonment.
15. You are 39 year old mother of 8 children and the youngest of whom is only 3 months old. You are unemployed and you sell vegetables in the market to feed your family.
16. You have strong mitigating factors; in the mitigation submission, your counsel stated that you are extremely remorseful of what you have done. You have no previous convictions of similar nature. You have learnt a lesson from your mistake and you seek another chance to rehabilitate yourself. You seek forgiveness of this court. You cooperated with police investigations. You reconciled with your sister. For all these mitigating features I deduct 4 years to arrive at 3 years' imprisonment.
17. 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. 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.

18. You have spent nearly 3 months in the remand custody. The remand period is deducted separately in coming to your final sentence.
19. Now your sentence is 1 year and 9 months (21 months) imprisonment.
20. Your action must be denounced. However, I should take into consideration the fact that you are a mother of 8 children. Your youngest child is only 3 months old. A long custodial sentence would hamper the wellbeing and security of your children. The harm caused to the house was minimal. Having considered the circumstances of your offence and the strong mitigating factors, I have decided to partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. Hence, I order that you serve only 6 months in prison forthwith. The balance period of 15 months is to be suspended for a period of 3 years.

Summary

21. You are sentenced to an imprisonment term of 21 months. I order that you serve the first 6 months of your sentence forthwith and the remaining period of 15 months is suspended for 3 years.
22. 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**