

IN THE HIGH COURT OF FIJI AT LABASA

CASE NO: HAC. 26 of 2019

[CRIMINAL JURISDICTION]

STATE

V

GOVIND SINGH

Counsel : Ms. A. Vavadakua for the State
Mr. J. Korotini for the Accused

Sentenced on : 20 September 2019

SENTENCE

1. Govind Singh, you stand convicted of the following charges upon you pleading guilty to same;

COUNT 1

Statement of Offence

Arson: Contrary to section 362 (1) of the Crimes Act 2009.

Particulars of Offence

GOVIND SINGH, on the 18th day of April 2019, at Labasa, in the Northern Division, willfully and unlawfully set fire to the dwelling house of **JITENDRA PRASAD**.

COUNT 2

Statement of Offence

Criminal Intimidation: Contrary to section 375 (1) (a) (i) (iv) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

GOVIND SINGH, on the 18th day of April 2019, at Labasa, in the

Northern Division, without lawful excuse threatened to kill **JITENDRA PRASAD** with a cane knife, with intent to cause alarm to **JITENDRA PRASAD**.

COUNT 3

Statement of Offence

Criminal Intimidation: Contrary to section 375 (1) (a) (i) (iv) and (2) (b) of the Crimes Act 2009.

Particulars of Offence

GOVIND SINGH, on the 18th day of April 2019, at Labasa, in the Northern Division, without lawful excuse threatened to kill **SANJANA WATI** and her family with a cane knife, with intent to cause alarm to **SANJANA WATI**.

COUNT 4

Statement of Offence

Breach of Domestic Violence Restraining Order: Contrary to section 77 (1) of the Domestic Violence Act 2009.

Particulars of Offence

GOVIND SINGH, on the 18th day of April 2019, at Labasa, in the Northern Division, breached the Labasa Magistrate Court Domestic Violence Restraining Order No. 172 of 2018, dated 4th December 2018, by setting fire to the house of **JITENDRA PRASAD**, a protected person in that Order.

COUNT 5

Statement of Offence

Breach of Domestic Violence Restraining Order: Contrary to section 77 (1) of the Domestic Violence Act 2009.

Particulars of Offence

GOVIND SINGH, on the 18th day of April 2019, at Labasa, in the Northern Division, breached the Labasa Magistrate Court Domestic Violence Restraining Order No. 172 of 2018, dated 4th December 2018, by threatening **SANJANA WATI**, a protected person in that Order.

2. You have admitted the following summary of facts;

2.1 Govind Singh, 45 years, being the Accused in this case, returned from Labasa Court on Thursday of 18th of April 2019, after attending a DVRRO case that his wife, Sanjana Wati, 49 years, had lodged against him. On that date, Accused person's wife told the Court that she did not want to reside with the Accused.

2.2 *The Accused and his wife Sanjana Wati had temporary standard orders for DVRO applied for by the Accused wife and as a result of that DVRO the two were living separately since November 2018. DVRO No. 172 of 2018 was issued by the Magistrates' Court, wherein the Accused wife, Sanjana Devi and the Accused brother-in-law, Jitendra Prasad, were the protected persons. Under that DVRO the Accused was ordered not to damage or threaten to damage any properties of the protected persons or threaten or harass the protected persons, namely Sanjana Devi and Jitendra Prasad – the Accused knew that these orders were in place before the 18th of April, 2019.*

2.3 *When the Accused attended court on that 19th day of April 2019, he was expecting that his wife, Sanjana Wati, would withdraw the DVRO against him and that the two would return to live with each other – but this did not happen.*

2.4 *So later that same afternoon, Govind's wife, Sanjana Wati was inside her house in Batinikama, when she heard her husband's voice (the Accused) at her Jitendra Prasad's house. Jitendra and Sanjana Wati are siblings and they were neighbours at that time.*

2.5 *Jitendra was outside of his house trying to hang some clothes when he first heard the voice of the Accused – the Accused was shouting saying that he will burn Jitendra's house and at the same time holding a gallon and throwing the benzene from the gallon at the sides of the house and then on the verandah and he got hold of dried coconut leaves to help him spread fire to the house.*

Jitendra's 3 years old grand-daughter, his daughter and his wife were still inside the house. Jitendra was terrified and shouted to the members of his family that they should flee to his sister's house, Sanjana Wati's house – for their own safety.

Jitendra begged the Accused not to set fire to his house and wanted to approach the Accused, but the Accused shouted death threats at Jitendra with a cane knife in his other hand, saying that if Jitendra approached him, he would kill Jitendra. In saying this the Accused intended to cause alarm to Jitendra who was thereby helpless and fled with his family to his sister's house, after seeing the Accused throw a lit match at his house. The flames traced the places where the Accused threw benzene and the house caught fire.

Jitendra's house was 24ft x 50ft and had 2 x verandahs, 1 x kitchen, 3 x bedroom, 1 x living room, 1 x toilet, 1 x bathroom, and an outside kitchen – a substantial portion of his house was burnt as a result of the Accused actions that day.

2.5 *As Jitendra and his family were fleeing from their home, the Accused continued to chase them with the cane knife shouting to his wife that if she did not end their case, he would kill everyone. As soon as Jitendra and his family all entered his sister's house, they shut the door, leaving the Accused outside, banging the door. The Accused banged the walls of their corrugated iron house*

with the cane knife demanding that that his wife open the door or he would kill them all, intending to cause alarm to Sanjana Wati and her family.

Sanjana Wati, out of desperation and helplessness and horror tried to calm her husband down, the Accused, by telling the Accused that she would settle with him and begged him to stop. She and her family along with the children were in a state of extreme fear for their lives and those of their loved ones because of the words uttered by he Accused and by his actions.

The Accused then ran away, leaving the knife and the gallon on the verandah, when he saw members of Jitendra's community coming towards the house but before he left he told the family that he was going to drink poison. Before going to Jitendra that day, the Accused had taken with him the cane knife, 3 gallons of benzene and 1 litre of weed killer inside 2 plastics – according to his record of interview, [Q & A 97 & Q & A 99] he used 2 gallons of benzene.

Before going to Jitendra's house, the Accused knew that Jitendra had applied for a DVRO against him as well because Jitendra did not want the Accused to come to his compound [Q & A 83 – 85]. He breached the Restraining orders of the Court No. 172 of 2018 when he went to threaten Sanjana Wati and Jitendra Prasad that day.

3. Apart from the first count, rest of the counts are summary offences. However, it is plain from the summary of facts you have admitted that the offences you are charged on the Information filed against you are founded on the same facts or form. Therefore the joinder of the charges in this case complies with the provisions of section 59(1) of the Criminal Procedure Act 2009. [See *State v Lesivou* [2019] FJHC 793; HAC369.2018 (31 July 2019)]
4. In terms of section 362 of the Crimes Act 2009 (“Crimes Act”) read with section 3(4) of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), the maximum punishment for the offence of arson is imprisonment for life. The sentencing tariff for this offence is an imprisonment term of 05 years to 12 years [Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018)]
5. In *Nakato* (supra) the court said thus;
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 [when sentencing an accused upon a guilty plea] 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.

6. The final term of imprisonment following a guilty plea cannot realistically fall within a particular applicable tariff (the range) because the tariffs have been set having regard to the appropriate imprisonment term upon convictions after trial.
7. Using a separate tariff for cases where the conviction is entered upon a guilty plea would present many complications and would also create disparities in sentencing. For example, if a separate tariff is to be applied in sentencing offenders who pleads guilty on the first available opportunity, then a separate discount for the guilty plea should not be given during the process as it would amount to double counting. Further, there should be another separate tariff for offenders who do not plead guilty on the first available opportunity but at a later stage. Therefore, to maintain parity in sentencing, one sentencing tariff should be applied irrespective of whether the accused was convicted upon his/her guilty plea or after trial, but bearing in mind to give proper weight to the aggravating factors and the mitigating factors, and without deliberately attempting to bring the final sentence within the tariff or the range, artificially. For example, an offender who should receive a sentence of 05 years imprisonment on conviction after trial based on the circumstances of the offending should receive a sentence of 03 years and 04 months imprisonment upon a guilty plea (after receiving a one-third discount). In the event the offender is a young first offender, more weight could be given in view of same to grant a substantial discount in order to bring the sentence down to 03 years or below so that the said offender could be given a suspended sentence (full or partial) in terms of section 26 of the Sentencing and Penalties Act.

8. The maximum penalty for the offence of criminal intimidation where the threat is of death is an imprisonment term of 10 years.
9. The maximum penalty for the first conviction for the offence of breach of a domestic violence restraining order is an imprisonment term of 12 months and a fine of \$1000.
10. The offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the five offences you have committed.
11. I would select 07 years imprisonment as the starting point of your aggregate sentence for the five offences. I have decided to pick this starting point by adding 02 years to the lower end of the tariff especially for the reason that you have committed the offence of arson by setting fire to victim Jitendra Prasad's dwelling house when there was a Domestic Violence Restraining Order ("DVRO") issued by the court specifically ordering you not to damage the properties of the said victim.
12. I consider the following as aggravating factors in this case;
 - a) A three year old child, and two other people were still inside the house when you threw benzene to set fire to the house. Therefore a three year old helpless child was also subjected to the extreme violence you unleashed on that day;
 - b) You committed the offences in order to force your wife to withdraw a pending court case; and
 - c) You chased the victim Jitendra Prasad and his family brandishing a cane knife and then when they went inside the house of Sanjana Wati

who is the second victim and also your wife, you banged walls of that corrugated iron house with the cane knife threatening to kill them.

13. I am mindful of the fact that threatening to kill the two victims are elements of the second and third counts. It should be noted that the manner the said threats were made is considered as the aggravating circumstance in the third factor above.
14. Further, the prosecution has submitted that I should take into account the costs the victim Jitendra Prasad will have to bear to rebuild his house. However, the summary of facts only states that a substantial portion of the house was burnt and does not sufficiently describe the loss suffered by the said victim or the extent of the damage to the house. Therefore, I am unable to consider the loss suffered by the said victim as an aggravating factor.
15. Considering the above aggravating factors, I would add 04 years. Now your sentence is a term of 11 years imprisonment.
16. I consider the following as your mitigating factors in addition to the fact that you have entered an early guilty plea;
 - a) You are a first offender;
 - b) You are remorseful; and
 - c) You have cooperated with the police.
17. Your counsel has submitted that this event was triggered by the fact that your wife went back on her agreement to withdraw the DVRO application against you. I do not see this as a mitigating factor. If at all, this would amount to an aggravating factor. Nevertheless, I am mindful of the fact that you were led to commit the offences due to your emotional disturbance and that there was no premeditation.

18. Your counsel has also submitted that you are 45 years old and you are a carpenter by profession. He submits that you have a 21 year old daughter and you are financially supporting her education. It submitted that you have financial commitments. These factors does not mitigate your offending. However, the said personal circumstances will be taken into account when the non-parole term is fixed.
19. In view of the above mitigating factors I would deduct 04 years of your sentence. Now your sentence is an imprisonment term of 07 years.
20. Given that you have entered an early guilty plea I consider it appropriate to grant you a one third reduction of your sentence. Accordingly, I deduct 02 years and 04 months of your sentence in view of your guilty plea and arrive at 04 years and 08 months.
21. I hereby sentence you to an imprisonment term of 04 years and 08 months for the five offences you have committed. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act. I have considered your personal circumstances and the nature and circumstances of your offending in fixing the said non-parole term.
22. Section 24 of the Sentencing and the Penalties Decree reads thus;

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”
23. It is submitted that you have been in custody in view of this matter from 19/04/19 until now. The period you were in custody shall be regarded as a

period of imprisonment already served by you. I hold that the period to be considered as served should be 05 months.

24. In the result, you are sentenced to an imprisonment of 04 years and 08 months with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head sentence - 04 years and 03 months

Non - parole period - 02 years and 07 months

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



Vinsent S. Perera

JUDGE

Solicitors:

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

