

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 224 OF 2020S

STATE

VS

ARVIND CHAND RAI

Counsels : Mr. M. Vosawale and Ms. S. Tivao for State
Mr. J. Reddy and Mr. R. Singh for Accused

Hearings : 29, 30 June, 1, 4, 5, 6, 7, 8 and 12 July 2022.

Judgment : 22 July, 2022.

Sentence : 05 August, 2022.

SENTENCE

1. In a judgment delivered on 22 July 2022, the court found you guilty and convicted you on the following counts in the following information:

“Count 1

Statement of Offence

MURDER: *Contrary to section 237 of the Crimes Act 2009.*

Particulars of Offence

ARVIND CHAND RAI on the 21st day of July 2020, at Lami in the Central Division, murdered FEIYAN CHEN.

Count 2

Statement of Offence

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

Particulars of Offence

ARVIND CHAND RAI *on the 21st day of July 2020, at Lami in the Central Division wilfully and unlawfully set fire to the dwelling house of FEIYAN CHEN at Lot 3, Fenton Street, Lami."*

2. The facts as found by the court were as follows. You befriended the deceased's husband, Mr. Sai Kin Yee (PW2) in 2015. At first, you used to ask him for minor financial support to pay for your food, fuel etc. Mr. Yee felt sorry for you and offered some maintenance job to you at his factory in Lami. In 2019, he gave \$2,000 to you to buy building material for his factory's maintenance, but you vanished with the same. You offered in July 2020 to repay the above by fixing their leaking roof at their residence at 3 Fenton Street, Lami. Mr. Yee and his wife accepted the above.
3. Between 17 to 21 July 2020, you had access to the couple's residence, while fixing their leaking roof. You knew the couple were successful business people and often kept a large amount of cash in their residence, to finance their business operations. You knew the couple ran "Sai Yee Foods Industries Ltd" in Lami which processed root crops and sea food and then exports them overseas. On 21 July 2020, you knew Mr. Yee was in Australia visiting his children while Ms. Feiyan Chen (deceased), was managing their business alone in Fiji.
4. On 21 July 2020, after 8.30 pm, you went to the couple's shop at Kadavu Kava Shop at 3 Fenton Street, Lami. You met Ms. Chen (the deceased) there, and you were seen having a verbal argument with her, before going up to her upstairs residence at 3 Fenton Street, Lami. You were seen strangling Ms. Chen around the neck with an arm and dragging her towards the room. You then repeatedly

assaulted Ms. Chen in the face and neck with your fists and a blunt object, causing her extensive injuries to her face and neck. You put her in a room, when she was extremely weak and injured and suffering from serious brain injuries. At the time, you intended to cause her death and was also reckless, in causing her death. You later stole their money, set her house on fire, and calmly walked out of their shop. You later fled the crime scene.

5. The shop caught fire. Firefighters later attended to the fire, and put the same out. Ms. Chen's body was discovered by the firefighters and taken to CWM Hospital. It appeared, she was already dead. You had been tried and convicted of murder and arson in the High Court after a 9 days trial.
6. On count no. 1, there is only one sentence for murder and that is a mandatory life imprisonment (section 237 of the Crimes Act 2009). The law gives the court power to fix a minimum term to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji (section 119 of the 2013 Constitution of the Republic of Fiji).
7. On count no. 2, "arson", contrary to section 362 of the Crimes Act 2009, carried a maximum penalty of life imprisonment. In **Isikeli Nakato v State**, Criminal Appeal No. AAU 74/2014 and AAU 84/2014 (24 August 2018), the tariff for arson had been set between 5 to 12 years imprisonment.
8. Mr. Rai, your criminal behaviour had caused Mr. Sai Kin Yee and his two children untold miseries. You have deprived Mr. Yee of a loving wife and their two children a loving mother. You intruded into their lives in 2015. They offered to help you by giving you casual jobs. You exploited that by stealing from them, murdering Ms. Chen and setting fire to their residence. You showed Ms. Chen no mercy by repeatedly assaulting her to death. You did this within the confines of her home. Your actions and behaviour on 21 July 2020 at 3 Fenton Street, Lami,

was the height of all evil. Obviously, you were motivated by greed, that is, the desire to steal their hard earned money, and cover your evil deeds by setting their house on fire. You will have to be punished in accordance with the law.

9. I note that you are a first offender at the age of 47 years old. You are single with no child. You are a building contractor by profession. You had been remanded in custody for 1 year 11 months 7 days.
10. On count no. 1 (murder), I sentence you to the mandatory life imprisonment. Given the matters mentioned above, I set 28 years as the minimum term to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji.
11. On count no. 2 (arson), I sentence you to 10 years imprisonment.
12. The summary of your sentences are as follows:
 - (i) Count No. 1 : Murder - Mandatory life imprisonment, with a minimum term of 28 years to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.
 - (ii) Count No. 2 : Arson - 10 years imprisonment
13. Because of the totality principle of sentencing, I direct that all the above sentences be served concurrently to each other, that is, a final sentence of mandatory life imprisonment, with a minimum term of 28 years to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.

14. Mr. Arvind Chand Rai, for the offending you committed in counts no. 1 and 2 of the information, at Lami in the Central Division, on 21 July 2020, I sentence you to the mandatory life imprisonment, with a minimum term of 28 years imprisonment to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.
15. Because of a misunderstanding of what a minimum term means, let me quote what His Lordship Mr. Justice Goundar said in **State v Yogesh Rohit Lal**, Criminal Case No. HAC 46 of 2019, High Court, Labasa (13 February 2020):

“...Let me explain to the offender the effect of fixing a minimum term. Once a minimum term is fixed the offender cannot apply for a pardon until he had served the fixed term. After serving the fixed term he may apply to the President to pardon him upon advice of the Mercy Commission, but it is not necessary that he will be granted one. In the event the offender is not granted a pardon, he remains in prison till death...”

I endorse His Lordship’s view abovementioned.

16. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is to punish you in a manner that is just in all the circumstances, to protect the community from people like you, to deter would-be offenders by passing a deterrent sentence and to signify that the court and community denounce what you did on 21 July 2020.
17. You have 30 days to appeal to the Court of Appeal.



Solicitor for State
Solicitor for Accused

: **Office of the Director of Public Prosecution, Suva**
: **Mr. J. Reddy, Barrister & Solicitor, Suva.**



Salesi Temo
JUDGE