

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 121 of 2022

STATE

V

SHAFIL ALI

Counsel: Mr. Muhammed Rafiq with Ms. Sheenal Swastika for the State
Accused in Person

Dates of Trial: 4-5, 8-10, 12 and 15-19 April 2024

Judgment: 9 October 2024

Sentence Hearing: 10 April 2025

Sentence: 25 April 2025

SENTENCE

[1] Shafil Ali, as per the Further Amended Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

COUNT 1

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence

SHAFIL ALI, on the 25th day of July 2022, at Lautoka, in the Western Division, murdered **SUMAN LATA**.

COUNT 2

Statement of Offence

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

Particulars of Offence

SHAFIL ALI, on the 25th day of July 2022, at Lautoka, in the Western Division, wilfully and unlawfully set fire to the dwelling house of **SUMAN LATA**.

COUNT 3

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act 2009.

Particulars of Offence

SHAFIL ALI, on the 25th day of July 2022, at Lautoka, in the Western Division, without lawful excuse threatened **KRITESH NAND** with a cane knife and with words intended to cause alarm to the said **KRITESH NAND**.

- [2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 11 days.
- [3] The prosecution in support of their case, called 19 witnesses. The prosecution also tendered to Court several production items as prosecution exhibits [PE1 to PE18].
- [4] You testified on your own behalf.
- [5] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of the charges of Murder, Arson and Criminal Intimidation.
- [6] It was proved during the trial that on 25 July 2022, at Lautoka, you engaged in a conduct, and the said conduct caused the death of Suman Lata (the deceased), and you intended to cause the death of the deceased or you were reckless as to causing the death of the deceased by your conduct.
- [7] It was also proved during the trial that on 25 July 2022, at Lautoka, you wilfully and unlawfully, set fire to the dwelling house of the deceased Suman Lata.
- [8] It was further proved during the trial that on 25 July 2022, at Lautoka, without lawful excuse, you threatened Kritesh Nand with injury to his person (by the use of a cane knife and with words) with the intention to cause alarm to the said Kritesh Nand.

- [9] The deceased was a person who provided shelter to your wife Premila Devi, after Premila Devi separated from you and left your home in Nadi. The deceased's mother was your neighbour in Nadi. You and your wife are said to have built your house just besides the deceased's mother's house. Therefore, you know the deceased ever since her mother became your neighbour in Nadi.
- [10] In terms of the Victim Impact Statement filed in Court by the daughter of the deceased, Rakshita Shivanjali Dayal who was the only child of the deceased (24 years at the time of the incident), it is recorded that she has been emotionally and psychologically traumatized by this incident. It is clear that the impact of your actions are continuing, as she remains emotionally and psychologically traumatized by the incident.
- [11] The deceased's daughter has stated as follows:

"My mother was divorced from my dad when I was 16 years of age. Since then my mum was my only support. She did all in her might to provide for my everything, from my education to my day to day needs. Getting a call one day and to hear the house that I reside in, my pet (female dog named Hope) and my beloved mother were no more. My world turned upside down. There was no one to turn to, no place to reside in. I lost everything.

Till date I am not able to accept the fact that my mother is no more. I feel like she's away and someday I might hear her call my name. I can't even imagine how horrific my mother's murder would have been. Every time my mind is sound I feel like I hear my mother's cry. She must have shouted for help. She must have pleaded the offender to spare her (life). My mom was even afraid of getting an injection. How much pain she would have bared before she perished. Sometimes I wish I was in that house at least I could do something to save my mum.

My mother was a very decent, simple lady. She gave a room of the house we resided in on rent to the offender's wife. Other than that, my mother never ever wished anything bad for the offender or his wife.

After this incident I have become over protective. On every little matter I overreact. I am a High School Teacher. I sometimes go through a lot of stress, but I cannot share that with my mum. I had become very forgetful because majority of the time I go on thinking

how much my mother had suffered. After the incident I am not able to sleep. I started smoking and drinking.”

- [12]** Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

- [13]** Shafil Ali, I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

- [14]** Section 4(2) of the Sentencing and Penalties Act provides that a Court must also consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender’s culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[15] Shafil Ali, I have duly considered the above factors as well in determining the sentence to be imposed on you.

[16] In terms of the provisions of Section 237 of the Crimes Act No. 44 of 2009 ("Crimes Act") the penalty for the offence of Murder is a mandatory sentence of imprisonment for life, with a judicial discretion to set a minimum term to be served before pardon may be considered.

[17] In ***State v Masicola*** [2015] FJHC 411; HAC081.2014S (5 June 2015); His Lordship Justice Temo held:

*"The offence of "murder" (count no. 1) is often said to be at the top of the criminal calendar. To preserve human life is a fundamental objective in preserving and maintaining the wellbeing of our society. Our lawmakers had prescribed a mandatory penalty of life imprisonment for those found guilty of murder. The court is empowered "to set a minimum term to be served before a pardon may be considered" (Section 237 of the Crimes Decree 2009). A pardon may only be granted by His Excellency the President of the Republic of Fiji (Section 119 of the 2013 Fiji Constitution). Minimum terms for murder had been set between 26 to 11 years imprisonment, depending on the mitigating and aggravating factors: **Waisale Waqanivalu v The State**, Criminal Appeal No. CAV 005 of 2007, Supreme Court, Fiji; **The State v Navau Lebobu**, Criminal Case No. HAC 016 of 2002, High Court, Suva: **State v Anesh***

Ram, Criminal Case No. HAC 124 of 2008, High Court, Suva and **State v Tukana**, Criminal Case No. HAC 021 of 2009, High Court, Lautoka.”

- [18] Furthermore, some useful guidance on sentencing in cases of Murder have been provided by His Lordship Justice Calanchini in the cases of **Aziz v The State** [2015] FJCA 91; AAU112.2011 (13 July 2015); and **Balekivuya v The State** [2016] FJCA 16; AAU0081.2011 (26 February 2016).
- [19] The Fiji Court of Appeal in the case of **(Tevita) Vuniwai v State** [2024] FJCA 100; AAU176.2019 (30 May 2024); have formulated sentencing guidelines in Fiji for cases of Murder, specifically with regard to the factors Court should take into consideration in setting a minimum term to be served before pardon may be considered.
- [20] The Court of Appeal has stated that the sentencing Court may consider that the seriousness of the Murder (or the combination of Murder and one or more offences associated with it) is Extremely High, High or Low. The Court has also stated as to what factors should be considered in determining the seriousness of the Murder as Extremely High, High or Low.
- [21] Considering the facts and circumstances of this case, I am of the opinion that the Murder committed in the instance case would fall in the category of High.
- [22] This was reiterated by the Court of Appeal in the case of **(Yogesh Rohit) Lal v The State** [2024] FJCA 131; AAU140.2020 (26 July 2024).
- [23] Shafil Ali, considering all the facts and circumstances of this case, I deem that it is appropriate to fix a minimum term to be served by you before pardon may be considered. In determining the length of the minimum term I take the following factors into consideration:
- (1) You used a cane knife to strike the deceased. Thereafter you set fire to the house she resided in. The deceased perished in the fire. Nothing was left of the deceased. What was left was only the charred remains of the deceased.
 - (2) You have shown utter disregard to the deceased’s right to life and her personal liberty.

- (3) There is no doubt that this incident was pre-planned and premeditated by you. On the day of the incident, you parked your own vehicle at a Service Station and then travelled by taxi up to the deceased's house. You got off the taxi and came walking into the deceased's house, armed with a cane knife and with a bottle containing fuel.
- (4) The deceased's daughter has been emotionally and psychologically traumatized by the loss of her mother and the circumstances which led to her death. Furthermore, she has been emotionally and psychologically traumatized by the loss of her place of residence. The emotional and psychological harm is said to be continuing.
- (5) The deceased's daughter had no closure following her mother's death. She could not have a proper funeral ceremony for her mother and bid her farewell. What she had left were only some bone fragments of her mother which she had buried.
- (6) You have now been found guilty and convicted of multiple offending.
- (7) You are a first offender with no previous history of offending. This has been confirmed by the State.
- (8) As personal circumstances, you have submitted the following factors to Court:
 - (i) That you are 46 years old. Your date of birth is 9 June 1978. At the time of the offending you were 44 years.
 - (ii) You were married to Premila Devi. The two of you have 4 children together – 2 sons and 2 daughters. They are Shafikha Mehnaaz Bibi, Shafee Nawab Ali, Mukhtar Hassan Ali, and Mukhlisha Hafsa Ali.
 - (iii) You have studied up to Form 6. You are a Taxi Driver and Truck Driver by occupation. You owned your own taxi. You were working on the ground as a Utility Hand for Fiji Link Domestic Airlines. You started working in this capacity in 2007 and

worked there for nearly 15 years. However, in 2022, you had lost your job after Covid.

(iv) You have provided to Court a reference letter from Kalim Shah, Fiji Link – Team Leader.

(v) You have also provided reference letters from your wife Premila Devi and your children Shafikha Mehnaaz Bibi, Mukhtar Hassan Ali, and Mukhlisha Hafsa Ali. Your children state that you have been a good and devoted father to them.

(9) You have been in remand custody for this case for a long period of time. You were arrested for this case on 25 July 2022 and remanded into custody on 28 July 2022. You have remained in custody since that day. Therefore, you have been in remand custody for this case for a period of 2 years and 9 months.

[24] Shafil Ali, the penalty for the offence of Murder is a mandatory sentence of imprisonment for life. Accordingly, I sentence you to a mandatory sentence of imprisonment for life. Taking into consideration all the facts and circumstances I have referred to above, including your personal circumstances and your previous good character, and also taking into consideration the period you have spent in remand for this case, I set a minimum term of 19 years to be served by you before pardon may be considered.

[25] Shafil Ali, the second count you have been found guilty and convicted of is the charge of Arson, contrary to Section 362 (a) of the Crimes Act. The offence carries a maximum penalty of imprisonment for life.

[26] His Lordship Justice Rajasinghe in **State v. Naivalu** [2018] FJHC 510; HAC141.2018 (18 June 2018); held as follows:

“4. Arson is a serious offence, which carries a maximum penalty of life imprisonment. Burning down of any dwelling house or commercial property could adversely affect the occupants or the owners of those properties.

*5. The Fiji Court of Appeal in **Damodar Naidu and Others (1978 FLR 93)**, has imposed sentences of seven (7) and ten (10) years for burning down of a number of shops.*

*6. Justice Shameem in **Laqi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004)** found that the tariff for the offence of arson is between 2 - 4 years, where her Ladyship held that:*

"In this case the Respondent appears to have ensured that the house was empty when he lit the fire. However the fact that he accompanied a group of men who threatened the occupants, the fact that the arson was motivated by revenge and the serious consequences of the arson on the victims who were forced to leave the village they called home, called for a sentence within the 2-4 year range. With a starting point of 3 years imprisonment, reduction for the previous good character and other mitigation, and increase for the aggravating factors I have outlined, I see nothing wrong in principle, with a 3 year term. Arson is a most serious offence with a maximum sentence of life imprisonment. A family's home and belongings were destroyed in the fire. The children of the family may never recover for the trauma of what they saw on the night of the 19th of January 1999."

7. The Fiji Court of Appeal in **Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014)** held that:

"Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment."

8. Justice Temo in **State v Raralevu - Sentence [2015] FJHC 374; HAC026.2013S (22 May 2015)** has sentenced the accused for a period of four (4) years for burning down the house of his wife, where his Lordship observed that:

*"Arson", as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see **Kelemedi Lagi & Others v State**, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in **Niko Lesu and Sunia Vosataki v State**, Criminal Appeal No. AAU 058 of 2011). However, the Fiji Court of Appeal, in **Damodar Naidu & Another v Reginam**, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors."*

- [27] However, the tariff for the offence of Arson has now been settled to be a term of between 5 to 12 years imprisonment. In **Isikeli Nakato & Another v. State [2018] FJCA 129; AAU74.2014 (24 August 2018)**; the Fiji Court of Appeal held (Per Justice Vincent Perera):

"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.”

[28] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, I impose on you a sentence of 10 years imprisonment for the second count of Arson.

[29] Shafil Ali, the third count you have been found guilty and convicted of is the charge of Criminal Intimidation, contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act. The offence carries a maximum penalty of 5 years imprisonment.

[30] His Lordship Justice Temo in ***State v. (Anasa) Baleinabodua*** [2012] FJHC 981; HAC145.2010 (21 March 2012); held that an acceptable tariff for the offence of Criminal Intimidation would be a sentence of between 12 months and 4 years imprisonment.

[31] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, I impose on you a sentence of 3 years imprisonment for the third count of Criminal Intimidation.

[32] In the circumstances, Shafil Ali, your sentences are as follows:

Count 1 – Murder contrary to Section 237 of the Crimes Act – mandatory sentence of imprisonment for life, with a minimum term of 19 years to be served by you before pardon may be considered.

Count 2- Arson contrary to Section 362 (a) of the Crimes Act – 10 years imprisonment.

Count 3 – Criminal Intimidation contrary to Section 375 (1) (a) (i) and (iv) of the Crimes Act – 3 years imprisonment.

[33] I order that all the above sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be mandatory sentence of imprisonment for life, with a minimum term of 19 years to be served by you before pardon may be considered.

[34] In the result, I sentence you to a mandatory sentence of imprisonment for life. I set a minimum term of 19 years to be served by you before pardon may be considered.

[35] You have 30 days to appeal to the Court of Appeal if you so wish.


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT LAUTOKA

Dated this 25th Day of April 2025

Solicitors for the State	:	Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the Accused	:	Accused in Person.