

**IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

Criminal Case No. 328 of 2017

REGINA

V

JEFFERY WALEMAE



Trial dates: May 9, 14, June 26 and July 5th, 2018
Judgment: July 10, 2018
Sentencing submissions: July 26, 2018
Sentence: August 1, 2018

Mr. R. P. Abe for the prosecution
Mr. B. Alasia for the defence

SENTENCE

1. The defendant, Jeffery Walemae, was convicted after trial of arson, contrary to section 319 (a) of the *Penal Code*. He was found guilty for burning a semi-permanent house he and his sister inlaw, Ms. Sidonia Danny, jointly owned. That occurred on the 2nd of April 2017 at Papaho area, in the Central Honiara.

Brief facts

2. The defendant is the brother inlaw of the complainant, Sidonia Danny. They lived together at Papaho area, Central Honiara before the incident took place. They built a semi-permanent house at Papaho in which he jointly owned with the complainant. The complainant purchased the flooring, louvre glasses, iron roofing and window frames. All cost about \$2,500 while the rest was the defendant.
3. On the 2nd of April 2017, the defendant was angry with the complainant for not reimbursing his money. Having overborne with anger, he went straight to the house and set fire to it. As a result, it was completely burnt to the

ground. The total costs of the house before it was burnt was estimated at \$10,500.00

4. The complainant lost one tafuliae¹ and a bag containing her personal clothes. They were destroyed in the fire.
5. After the incident, the defendant reconciled with her by paying one tafuliae and \$200.00

Comparative sentences

6. Sentences decided by the Court² for convictions following a trial ranged from 2 ½ - 5 years imprisonment. This depends on the nature of the case and circumstances of the offending; the culpability of the offender; the number and the types of building destroyed as a result of the offending.
7. The range of the sentence was demonstrated in a number of cases, but for brevity, some of these cases are these. In the case of *Randy v R*,³ the accused, a member of the Guadalcanal Liberation Front, was convicted after trial for burning two dwelling houses at Marasa village in the Guadalcanal Province. He was armed and joined a group of militants when he committed the offence. Upon conviction, the trial Magistrate transferred the case to the High Court for sentence. He was sentenced to **5 years** concurrent sentence for the arson charges. This sentence was upheld by the Court of Appeal following his unsuccessful appeal against the sentence.
8. In another High Court case of *Kaieti v R*,⁴ the accused was charged with one count of arson and other charges. He was convicted after trial and sentenced to 4 years imprisonment. It appears that the offending was executed when the occupant was not present or chased out of the house. On appeal, the High Court reduced the sentence to **2 ½ years** due to the delay of 5 years and 10 months from the date the offence was committed to the time of sentencing.
9. In the case of *R v Ome*,⁵ the accused persons, John Ome and David Suii were convicted after trial for one count of arson of buildings and structures besides other criminal offences. They took advantage of the Malaita Eagle Force (MEF) and carried out a broad-day light torching of the buildings and structures at Abuna'ai village in the Malaita Province. This occurred after

¹ This is also known as 'red money' or 'traditional money' used for bride price payment in most areas in Malaita Province

² The Magistrates' Court, the High Court and the Court of Appeal

³ [2006] SBCA 3; CA-CRAC 020 of 2005

⁴ [2007] SBHC 93; HCSI-CRC 358 of 2006

⁵ [2011] SBHC 109; HCSI-CRC 265 of 2006

the occupants were attacked with firearms due to disagreement over land issues with the complainant's family. They were sentenced to **4 years** imprisonment.

10. In *R v Benjamin Viki*,⁶ the accused was convicted after trial at the Central Magistrate's Court for burning of a dwelling house made of thatched materials at Goni settlement in the Central Islands Province. The accused was drunk and in the company of others when he burned the house. All the personal belongings and valuable properties of the complainant and his family were destroyed and only the cloths they wore were the ones remained. He was sentenced to **5 years** imprisonment.
11. In the recent case of *R v Rere*,⁷ the accused was sentenced to **4 years** imprisonment after trial for aiding and abetting the group of men to burn four houses at the Windridge Settlement in the Guadalcanal Province.
12. These cases involved burning of the house of different persons but not a case where the house was co-owned by the offender.

Sentencing guideline

13. Typically, arson cases may fall into one of these categories:
 - (1) a dwelling house with people inside;
 - (2) a dwelling house without any occupants;
 - (3) public institutions such as schools, hospitals, or offices with occupants inside;
 - (4) public institutions such as schools, hospitals, or offices without occupants inside; and
 - (5) a house wind or a garden house or a run down and deteriorated or incomplete structure.
14. In sentencing the defendant, I am compel to use this guideline to decide what should be the appropriate sentence:
 - (1) the deliberate or reckless putting of lives at risk;
 - (2) the deliberate pouring of kerosene and setting fire to the roof, knowing that people were inside;
 - (3) the deliberate locking of the door, so preventing escape by the occupants;
 - (4) the deliberate cold-blooded planning of the offence;

⁶ CMC-CRC No. 1277 of 2015

⁷ CMC-CRC No. 258 of 2016

- (5) the value of the house and its contents to the occupants; and
 - (6) the complete lack of provocation offered to the defendant by the occupants and their children.
15. In the present case, I find the defendant did not do any of the following:
- (1) the deliberate or reckless putting of lives at risk;
 - (2) the deliberate pouring of kerosene and setting fire to the roof, knowing that people were inside;
 - (3) the deliberate locking of the door, so preventing escape by the occupants;
 - (4) the deliberate cold-blooded planning of the offence; and
 - (5) the complete lack of provocation offered to the defendant by the occupants and their children.
16. It is the value of the house with the contents to the occupant that I agree is applicable for the defendant herein. I don't think the failure to repay the money has been sufficiently raised in evidence to show the defendant was so provoked by the complainant resulting in the burning of the house.

Aggravating factors

17. The facts established that the value of the house was estimated at \$10,500.00. That is quite a valuable house. Its importance to the occupants cannot be overlooked.
18. I also find the defendant's action shows lack of consideration to the right of Sidonia Danny as the co-owner of the house. He wanted to deprive Sidonia Danny and her claim of right of the ownership of that house and that was why he decided to burn the house.

Mitigating factors

19. To his favour I take into account that he is a first time offender and a married person. He is also a co-owner of the house and has contributed substantially more than the complainant towards building that house. He is just another victim of his own offending.
20. I also take into account the reconciliation he had with the complainant after the incident. It was a family reconciliation as attested in a letter written by the complainant⁸ tendered to Court during the course of the defence

⁸ Dated 25/7/2018

mitigation submission. That letter in effect confirms payment of compensation of one tafuliae and \$200 to the complainant. As a result, their relationship has already been normalised and now in good terms.

21. I accept that reconciliation as contrite and genuine. I commend them for efforts in looking beyond the negatives and resolving this matter in a family way. I give credit for this and this must be reflected in the sentence for the defendant.

Decision on sentence

22. I start on the premise that the offence of arson is a very serious crime. It has a maximum penalty of life imprisonment. When it involves the burning of a dwelling house that is even more serious. Unlike other victimless offences, the lives and security of the victim(s) are always at stake and the risk of being displaced or even homeless is unavoidable. It is utterly not acceptable to burn other people's houses or properties or even one's own properties to suit an unlawful purpose. The law simply say NO to this.
23. The Court always take a tough stand on arson cases given its seriousness and the likely consequences that will follow when it comes to sentencing.
24. On the contrary view to this, it is also been said that sentencing requires a balancing exercise. It is the end product after the Court takes into account both sides of the case. It is not simply a grand expression of harsh sentences but it must entail a modest application of the human beauty of the law to the case of the offenders; to the resolution of conflict and more importantly, to the pages of the lives of people as in fairness required.
25. Against this competing views, for this case, one thing stands out. And that is, the house in question was co-owned by the defendant. As the facts overwhelmingly established, he owned most of the materials of that house. By calculation, he contributed 76% of the materials compared to the complainant. Also, he himself had lost the property and inevitably regretted and suffered his own stupidity as well.
26. The amount of compensation he paid to the complainant almost represent her ownership share of the house in question. This salient feature of this case must not be overlooked and buried. It must have a voice and must be recognised in the imposition of the sentence.
27. This is the first arson case I encountered that involves the offender who is the co-owner himself. The sentence for this case could have been stiffer if

the house is entirely owned by a different person. As I have stated, since the defendant is a co-owner, therefore, his sentence should be differentiated from other ordinary arson cases. This sentiment is not to condone the offending so as to indirectly encourage potential offenders like in the case of the defendant. But that is the reality of what will unfold in the sentence.

28. After careful consideration of all the matters alluded to, I therefore sentence Jeffery Walemae to **2 years imprisonment**. This sentence reflects the circumstance of his case, the value of the house, the nature of the building, his mitigating factors and the need for deterrence as well.
29. However, I order this sentence will be partially suspended on the following conditions:
 - (1) The defendant has been in custody for about 62 days or so. Hence, he is to be released forthwith from custody at the rising of the Court and the balance of his term be suspended for 2 years on the strict condition that he must not commit any offence during this operational period.
 - (2) Consequent to the imposition of the suspended sentence, if within the period of 2 years he commits another offence punishable by imprisonment, he will be called up by the Court to serve the suspended sentence or any other penalty the Court may wish to impose on him.
30. In addition to the above sentence, I order pursuant to section 27 of the *Penal Code* for the defendant to pay compensation of \$500 to the complainant, Sidonia Danny, within 7 days upon receipt of the refund of his cash bail. This will be levied against his properties. In default of this compensation order, he will be called upon for further proceedings.
31. 14 days right of appeal applies to any aggrieved party.



Augustine Aulanga – Principal Magistrate