

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 280 of 2018

BETWEEN: STATE

PROSECUTION

A N D: WAISEA GONEVOU

ACCUSED PERSON

Counsel : Ms. S, Lodhia for the State

: Ms. L. David for Accused

Date of Sentence : 31st October 2018

SENTENCE

1. Mr. Waisea Gonevou, you have been charged with one count of Arson, contrary to Section 362 (a) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offence are that:

Statement of Offence

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

Particulars of Offence

WAISEA GONEVOU on the 26th day of December 2016 at Suva in the Central Division, willfully and unlawfully set fire to a dwelling house located at Tamavua village belonging to **PENI NAMARUA**.

2. You pleaded guilty for this offence on the 18th of October 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you to this offence.
3. According to the summary of fact, which you admitted in open court, you had threatened the complainant that the house of his uncle will be burnt down on the 26th of December 2016. The complainant was living in his uncle, Peni Namarua's house since his uncle was serving in prison. At about 12.08 p.m. on the same day, the complainant received news that the house of his uncle was burnt down. The house has completely burnt down. Sometimes in May 2017, you had admitted in committing this crime to one of your relatives. The matter was then reported and you were then charged with this offence.
4. Arson is a serious offence, which carries a maximum penalty of life imprisonment. Burning down of any dwelling house could adversely affect the occupants or the owner of such 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 Lagi 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 -[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."*

9. Justice Madigan in **State v Seru [2016] FJHC 841; HAC32.2015 (21 September 2016)** found that:

“There is no predetermined tariff for the crime of attempted arson but the accepted sentences for arson itself range from 2 years to 10 years. Two years has been held to be appropriate where there is no danger to human life and 4 years where there is such a danger. These are sentences passed for a crime with the maximum penalty of life imprisonment, and there is no reason why a tariff for attempted arson should be more.”

10. The Fiji Court of Appeal in **Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018)** found that the applicable tariff for a conviction after the trial is 5 to 12 years. Perera JA held that:

“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.”

11. Estimated cost of damage to the house is \$1,000. Apart from that, the summary of fact does not disclose any other aggravating factors.

12. You are not a first offender as you have been recorded with nine previous convictions. Therefore, I do not find that you are entitled for any discount for your previous character pursuant to Section 4 (2) (i) of the Sentencing and Penalties Act.
13. You pleaded guilty for this offence at the first available opportunity, which demonstrate your remorse and repent in committing this crime. Hence, I give you a substantive discount for your early plea of guilty and remorse.
14. Having taken into consideration the above discussed factors, I sentence you to a period of three (3) years imprisonment for this offence as charged.
15. In view of the seriousness of this offence, I do not find any appropriate reasons to suspend your sentence.
16. Having considered your age, family circumstances and opportunities for rehabilitation, I find a non-parole period of one (1) year would serve the purpose of this sentence.
17. Accordingly, I sentence you to a period of three (3) years imprisonment for this offence of Arson, contrary to Section 362 (a) of the Crimes Act. You are not eligible for any parole for a period of one (1) year pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of Sentence of Mr. Waisea Gonevou

18. You have been in remand custody for this case for a period of twenty five (25) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one month (1) month as the period of imprisonment that have already been served by you.
19. Accordingly, your actual sentencing period is **two (2) years and eleven (11) months** of imprisonment with eleven (11) months of non-parole period.

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




R.D.R.T. Rajasinghe
Judge

At Suva
31st October 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.