

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 201 of 2018

BETWEEN : THE STATE

AND : SITIVENI NAUCUSOU

Counsel : Ms. Luisa Latu for the State
Ms Vinaina Diroiroi for the Accused

Date of plea : 23 January 2019

Date of Sentence : 20 May 2019

SENTENCE

1. Sitiveni Naucusou, you are to be sentenced upon freely and voluntarily pleading guilty to the second count of arson contrary to section 362(a) of the Crimes Act 2009. You pleaded not guilty to the first count.

2. The Court is satisfied that your plea is unequivocal and upon your admission of summary of facts, you are convicted for the offence of arson.
3. The complainant is your wife. On 28 October 2018 you came home after consuming alcohol. You got angry about your son, Bale who was away in Nadi. You started talking harshly to the complainant. She got scared and told you not to yell. You started striking the louver blades. The complainant ran to the neighbour's house. You poured kerosene in the sitting room and set the complainant's house on fire. On 29 October 2018 at about 12.30 am you were arrested by the police while you were drinking grog at a house in another settlement. You admitted to the offence in your caution interview. The house was completely damaged. The total value of the damages to property was \$ 13,034.
4. As per section 2 of the Domestic Violence Act 2009, (amended by Act No 31 of 2016) a property damage offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship is also a domestic violence offence.
5. Further section 3(2)(c) of the Domestic Violence Act 2009 stipulates that damage to the property of the victim is one of the forms of domestic violence.
6. Arson is considered a very serious offence and it is graver when it is committed in the domestic context. It was submitted that you set fire to the house out of frustration for the things you have done for the betterment of the children. However, it should be noted that violence cannot arise out of love and care and it is not an excuse to say that one has unleashed violence because of the of love and care for the other person.
7. There is no tolerance for domestic violence in our society anymore. Instead of providing protection and care for your children and spouse you have set fire to their house. This is a clear case of violation of the trust and security that exist between the parties in a domestic relationship. Although the previous approach

of the courts was that offences in domestic context should be seen as no less serious than others, now the UK Sentencing guidelines emphasize that domestic context of offending makes it more serious as it represents a violation of trust and security that normally exist between people in an intimate relationship or family relationship.

8. The damage you caused to the complainant's property is substantial. Before setting fire to the house you damaged the louver blades. You verbally abused the complainant and she had to run to the neighbour's house for her safety. You were under the influence of liquor. You committed a domestic violence offence. I consider those as aggravating factors in this case.
9. In the mitigation submissions filed on your behalf it is stated that you committed this offence out of frustration as your son was not at home to prepare for exams. It is also submitted that you have purchased building material to build a new concrete house. You are 53 years old and you have three children. Two of them are minors.
10. You pleaded guilty at the first available opportunity and demonstrated remorse for your actions. You have maintained clean records for more than two decades. It was also submitted that you have reconciled with the complainant soon after the matter was reported. A letter written by the complainant to withdraw the case was also tendered.
11. Reconciliation after unleashing violence at home does not bear much significance in sentencing a perpetrator of a domestic violence offence. The courts have always looked at forgiveness and reconciliation in domestic violence offences with skepticism. The latest UK sentencing guidelines on domestic abuse observe the following in respect of the wishes of the victim in sentencing (para 10 of "Overarching Principles: Domestic Abuse 2018");

"A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by any

expressed wishes of the victim. There are a number of reasons why it may be particularly important that this principle is observed within this context:

- a) The court is sentencing on behalf of the wider public.
- b) No victim is responsible for the sentence imposed.
- c) There is a risk that a plea for mercy made by a victim will be induced by threats made by, or by fear of, the offender.
- d) The risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim."

12. However, the court has to strike a balance between possible effects on the children if the relationship is disrupted and possible effects of violence on children or of any further incidents of violence, in sentencing an offender in a domestic violence case. Justice Goundar in State v Vakalaca [2018] FJHC 455; HAC 027.2018 (31 May 2018) stated that;

"While this Court is mindful that the victim has expressed a wish to remain in a relationship with you, the paramount consideration is the protection of the victim and the prevention of violence. The courts have a duty to protect women and children from gender based violence. Deterrence, both special and general, and denunciation are primary purposes of punishment for domestic violence. Rehabilitation is only significant if the offender takes genuine effort to reform".

13. The court has to give credit for your early plea. You have saved the court's time by pleading guilty to the offence. The weight that should be attached to an early plea was observed as follows by Justice Goundar in Mataunitoga v The State [2015] FJCA 70; AAU125 of 2013 (28 May 2015);

"In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effects of the plea on the accused by taking into account all the relevant matters such as

remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

14. However, the courts no longer have to give 1/3 discount for early plea irrespective of the gravity of the case. Chief Justice Gates (as he then was) while endorsing the approach adopted by Justice Goundar in Mataunitoga [supra] observed the following in Aitcheson V The State [2018] FJSC 29;CAV0012.2018 (2 November 2018);

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

15. Given the circumstances of the present case I am of the view that your plea does not entitle you to one third discount. However, I am inclined to give you a lesser credit for saving the court’s time and for the expression of remorse by your early plea.

16. The maximum punishment for arson is imprisonment for life.

17. In Nakato v State [2018] FJCA 129;AAU74.2014 (24 August 2018) the Court of Appeal revisited the previous tariff of 2 - 4 years and set a new tariff for arson. Accordingly, now the tariff for arson is 5 - 12 years imprisonment.

18. Having considered the objective seriousness of the offence you committed, I pick a starting point of 6 years. For the aggravating factors I add 2 years. For the mitigating factors, previous good character and for your early plea I give you a discount of 3 years.

19. Accordingly, I impose a sentence of 5 years imprisonment on you for the offence of arson.

20. You have been in remand custody from 31 October 2018 till 06 December 2018. To reflect the time that you have been in custody I decide to grant you a discount of two months.

21. Accordingly, I order that you should serve a term of four (4) years and ten (10) months imprisonment. You are eligible to be released on parole after 2 years.

22. An interim domestic violence restraining order for non-molestation and for non-contact has been issued on 06 December 2018 for the safety of the complainant. I make it a final order and accordingly a permanent domestic violence order is issued for non-molestation and for non-contact.

30 days to appeal.



A handwritten signature in blue ink, consisting of several overlapping loops and lines.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission