

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

CRIMINAL CASE NO. HAC 40 OF 2021

BETWEEN : STATE

AND : TARUSILA TAGIBAU

Counsel : Ms A Vavadakua for the State
Ms S Devi for the Accused

Date of Hearing : 17 November 2021

Date of Sentence : 3 December 2021

SENTENCE

- [1] The Accused has pleaded guilty to a charge of attempt to commit arson contrary to section 363(a) of the Crimes Act. The offence is regarded as domestic violence under the Domestic Violence Act.
- [2] The complainant and the Accused are relatives. She is the sister-in-law of the Accused. There is a history of animosity between the two women. They live in the same settlement at Malau, Labasa.
- [3] On 5 June 2021 at around 11 pm, the complainant lodged a report against the Accused for being drunk and causing disturbance in the neighbourhood. The police attended to the report and after giving a warning to the Accused, left the scene. At around 2 am, the Accused went and poured petrol around the complainant's house while she was asleep. A neighbour who was awake came outside and called on the Accused not to set the house on fire. The neighbour also called on the occupants of the house to come out. The complainant and her

husband came outside. When they came out of their house they could smell petrol around the walls.

[4] The matter was reported to the police. The Accused was arrested and interviewed under caution. She admitted pouring the petrol outside the house with the intention to set the house on fire, although she did not take a lighter with her.

[5] The maximum penalty prescribed for attempt to commit arson is 14 years imprisonment. In *State v Seru* [2016] FJHC 841; HAC32.2015 (21 September 2016), *Madigan J* said at [16]:

If there is an attempt to burn down a building then an appropriate sentence would start from a term of two years. If the attempt is to harm persons inside the building or is reckless as to whether there would be harm to inhabitants then the sentence should be one of at least 4 years. If the attempt is an attempt to effect large scale arson, for example on a large scale shopping area or a sensitive Government building then the sentence could be in the range to 7 to 10 years. (See *Damodar Naidu & Anor v R*. C.A. (1978) FLR93).

[6] In *State v Bolaciri - Sentence* [2019] FJHC 1184; HAC79.2019 (20 December 2019) *Hamza J* sentenced a 22-year old first time offender to 2 years imprisonment suspended for 5 years for the offence of attempt to commit arson. In that case *Hamza J* had said that the offender had taken responsibility for his conduct by pleading guilty to the offence early and that the chances of rehabilitation for the offender was high.

[7] In this case, the Accused attempted to set fire to a dwelling house knowing that the occupants were inside the house. The occupants were her family. The Accused breached their trust. The Accused may have been angry at the complainant for complaining about her to Police, but her reaction to the police complaint was disproportionate. She did not react immediately. She waited until the occupants were asleep when she poured the petrol around their house.

- [8] The Accused is a first time offender. She is 31 years old and is separated from her partner. She has 5 children aged between 2 and 14 years. Three of her children are attending primary school. She earns a living by working as a car wash attendant. She comes from a disadvantaged background. Her parents separated when she was a teenager and she grew up without a father figure.
- [9] The Accused said that the complainant had been daunting her and her mother for a while. She said that on the day of the incident the complainant swore at her mother. She said that calling on the police on her was the last straw. She could not control her emotions and made a bad decision under the influence of alcohol, which she regrets now.
- [10] I pick 4 years imprisonment as my starting point. I adjust the sentence to reflect the aggravating and mitigating factors and arrive at a term of 2 years imprisonment.
- [11] I have considered suspension and have decide to suspend the sentence. There are exceptional circumstances to suspend the sentence. The Accused is genuinely remorseful for her conduct. She is a first time offender. She is responsible for the welfare of her children who are depended on her. Nobody was physically harmed. There was no damage done to any property. She is highly likely to respond to rehabilitation if given a chance.
- [12] The Accused is convicted and sentenced to 2 years' imprisonment suspended for 3 years. [Suspended sentence explained to the Accused].




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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused