

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 170 OF 2020

BETWEEN : STATE

AND : PRANIL ALVIN SINGH

Counsel : Mr E Samisoni for the State
Mr J Reddy and Ms K Dugan for the Accused

Date of Hearing : 26, 28 & 29 April 2022

Date of Judgment : 1 June 2022

JUDGMENT

The charges

[1] The charges against the accused are as follows:

COUNT 1

Statement of Offence

ARSON: contrary to section 362 (a) of the Crimes Act 2009.

Particulars of Offence

PRANIL ALVIN SINGH on the 5th day of June, 2020, at Nadawa, Nasinu in the Central Division, wilfully and unlawfully set fire to his dwelling house.

COUNT 2

Statement of Offence

ATTEMPTED MURDER: contrary to sections 44 and 237 of the Crimes Act 2009.

Particulars of Offence

PRANIL ALVIN SINGH on the 5th day of June, 2020, at Nadawa, Nasinu in the Central Division, attempted to murder **AARAV KRISH SINGH**.

COUNT 3

Statement of Offence

ATTEMPTED MURDER: contrary to sections 44 and 237 of the Crimes Act 2009.

Particulars of Offence

PRANIL ALVIN SINGH on the 5th day of June, 2020, at Nadawa, Nasinu in the Central Division, attempted to murder **KRISHAV AAYAN SINGH**.

Burden and standard of proof

- [2] The burden is on the prosecution to prove each charge beyond reasonable doubt. Each element of the charge must be proved, but not every fact of the story. This burden never changes, never shifts to the accused. The accused chose to give evidence. However, he does not have to prove anything.

Elements explained

- [3] A person commits arson if he wilfully and unlawfully sets fire to any building or structure. An unlawful act is a conduct that is not justified by law. A wilful conduct is a deliberate and intentional act. A person has intention with respect to conduct if he means to engage in that act.
- [4] To prove arson, the prosecution must prove beyond reasonable doubt that the accused deliberately and without lawful excuse set fire to his house, and that he did so intentionally.
- [5] Section 44 (1) of the Crimes Act states that for a person to be guilty of an attempt to commit an offence, the person's conduct must be more than mere preparation to the commission of the offence. The question whether conduct is more than mere preparation to the commission of the offence is one of fact. Intention and knowledge are fault elements of the offence attempted (section 44 (3) of the Crimes Act).

- [6] Murder is committed if a person engages in conduct that causes the death of another person, with the intention to cause death or with recklessness as to causing death (section 237 of the Crimes Act).
- [7] To prove attempted murder, the prosecution must prove beyond reasonable doubt, firstly, that the accused intended to kill his two children, Aarav and Krishav, and secondly, with that intention the accused took substantial steps to execute the intention to kill.
- [8] Intention is a state of mind. It is necessarily a matter of inference whether a person had an intent to kill. There must be a logical and rational connection between the facts proven and any inference drawn. Inference of an intention to kill Aarav and Krishav must be the only reasonable inference open on the proven facts.

Admitted facts

- [9] The following facts are agreed between the prosecution and the defence under the provisions of section 135 of the Criminal Procedure Act 2009:
1. Pranil Alvin Singh has been married to Kavita Darshana Devi for more than 11 years and they have two children together Aarav Krish Singh and Krishav Aayan Singh.
 2. The identification of Pranil Alvin Singh is not in dispute.
 3. Pranil Alvin Singh attended DAV College Suva up until Form 4.
 4. The incident took place at the residence of Pranil Alvin Singh at Lot 52 Lumi Road, Nadawa.
 5. Pranil Alvin Singh's residence was burnt down on 5 June, 2020.
 6. During the incident on 5 June, 2020, Pranil Alvin Singh was at his residence together with his two sons Aarav Krish Singh and Krishav Aayan Singh.

7. On 5 June, 2020 as the residence of Pranil Alvin Singh was burning down, Semisi Nakavulevu and Sairusi Tavakaturaga managed to rescue Pranil Alvin Singh and his two sons Aarav Krish Singh and Krishav Aayan Singh from the burning house.
8. PC 5583 Waisake arrested Pranil Alvin Singh on 6 June, 2020 at Robertson Road, Suva and escorted him to Valelevu Police Station.
9. Pranil Alvin Singh was interviewed under caution on 6 June 2020 in the English Language at the Valelevu Police Station by DC 5165 Koshal Dutt and witnessed by DC 4900 Amrit Lal.
10. Pranil Alvin Singh was formally charged by the police with one count of arson and two counts of Attempted Murder on 7 June, 2020 in the English Language by PC 5926 Himanshu Sharma and was witnessed by PC 6149 Steveniel Anthony at Valelevu Police Station.
11. On 8 June, 2020 the Nasinu Magistrates' Court had issued an Interim Domestic Violence Restraining Order, number 1060/20, for the protection of Aarav Krish Singh and Krishav Aayan Singh against any form of domestic violence by Pranil Alvin Singh.
12. The contents of the following documents are not in dispute and may be tendered by consent:
 - (i) The National Fire Authority (NFA) Fire Investigation Report dated 6 June, 2020.
 - (ii) Interim DVRO No. 1060/20.

The prosecution case

- [10] The prosecution led evidence from six witnesses.
- [11] The first prosecution witness was Kavita Devi, wife of the accused. Her evidence is that she is married to the accused and together they have two children – Aarav and Krishav. Krishav is the younger child. He is now 3 years old.

- [12] She can recall Friday, 5 June 2020. She had moved back to live with the accused after about three months separation. At the time, the accused was renting a property at Lot 52 Lumi Road, Nadawa. The size of their flat was small. The flat had two bedrooms, a sitting room and a small kitchen area at the back. Since the kitchen area was small they used the second bedroom at the back as their kitchen. They placed a gas stove on a table and the gas cylinder under the table in the bedroom for cooking. They had two 12 kg cylinders but she did not say whether both cylinders were filled with cooking gas.
- [13] On 5 June 2020, she left her home in the morning for work. At the time she was working as a cashier in a supermarket in Suva city. She said that at around 3.30 pm the accused came to her workplace and told her that he was in need of money and that he wanted to borrow \$100.00 from her. She did not give him the money as she had not received her wages at the time. He left her workplace.
- [14] Later in the afternoon, her brother came and collected her from work saying that there was an emergency at home. She came to know that her house had burnt down. Before she could go to her home, she got a call from the accused that they were at the Valelevu Health Centre. She went straight to the health centre and met the accused. He was crying and told her that their gas stove exploded during cooking and that he was burnt. She saw his hand was burnt. She described the accused as a very good husband and a good father too.
- [15] In cross examination she was asked whether the front and back entrance doors were secured with nails from inside. She said that the three days she had been in the flat she had not seen any nails on the doors but if nails were placed after she left for work on Friday 5 June 2020, she would not have known.
- [16] The second prosecution witness was Aarav Singh, the eldest child of the accused and Kavita Devi. Aarav's evidence is that on 5 June 2020 he was at home with his father and younger brother after his mother had left for work. After lunch he accompanied his father to his mother's workplace on a taxi. From there they went to his uncle's car wash at Walu Bay. He saw his father receiving \$50.00 while they were waiting in the office. From Walu Bay they returned home

in a different taxi. He said that by the time they returned home it was a little bit dark but the street lights outside their house were not on.

- [17] Aarav said that his younger brother had fallen asleep in the taxi. His father brought him to the room and put him on the bed. He was in the room with his brother when he heard his father speaking with a taxi driver in the sitting room. He said that after the taxi driver left their house, his father spoke to his mother in the USA about money. His father then ended the telephone call and threw his mobile phone on the floor. He said that he was in the sitting room watching TV.
- [18] His father then gave him a hammer and told him to break the TV. When he refused to break the TV his father threatened him with the hammer. Aarav said that he then broke the TV.
- [19] Aarav said that his father then nailed the front door and the back door. He hammered three nails on the front door and one nail on the back door. He said by that time his younger brother had woken up and had come to him in the sitting room.
- [20] Aarav said that he saw his father go to the kitchen and open the gas cylinder not connected to the cooking stove and then the cylinder connected to the stove. He said that his father then ignited the stove and that is when he heard a sound and saw flames coming from the stove. His father then came to where he was sitting with his younger brother. His father held his younger brother with one hand and held him with the other hand. His younger brother was crying. His father held him tightly for some time when he bit his father's hand and got off his grip. He saw the fire explode and spread towards them. He tried to go towards the window but his father held him back by grabbing his leg. He fell down. That is when he picked his younger brother's small wooden chair (sofa) and hit his father on the head. His father went unconscious. He went to the window and called out for help. He was rescued by some *iTaukei* men and then they rescued his father and younger brother from the burning house. They were taken to a safe ground and when his father regained his consciousness his father threatened him not to tell anyone or else he will kill him.

- [21] The third prosecution witness was Semisi Nakavulevu. He was the accused's neighbour and lived across the road. He said that on 5 June 2020 after knocking off work he was having a grog session at his home with some of his friends when he heard a loud bang sound. He saw the accused's flat was on fire and he heard a boy screaming and calling for help. He ran to the scene and saw the gate was chained and locked. He called out to his friends to help him to push open the gate but when they couldn't they climbed over the gate and entered the compound. They tried to open the front door but it was locked. They went to the back entrance but that door was also locked. He came back and forcefully broke the burglar grill and window and brought the 10 year old boy out.
- [22] When the boy came out he alerted them that his younger brother was inside and that his father was holding him. They managed to break the front door. They had to crawl inside because the house was filled with smoke. They grabbed the accused lying motionless on the mattress in the sitting room holding onto the little boy and dragged them out. They brought the accused and the two boys to the roadside.
- [23] In cross examination Semisi said that on the day in question he saw the accused arrive at his home with his two kids. He saw them getting off the cab, locking the gate and enter his house. He said that the cab left after dropping off the accused and that the driver did not get off the vehicle. He did not see any other taxi driver going inside the accused's flat but he did hear hammering sound before the fire.
- [24] The next two prosecution witnesses, Sairusi and Ilaisa Buli were friends of Semisi. They helped Semisi to rescue the accused and his two children from the burning house by first breaking the front window and then the door. Their account of the rescue is similar to the account given by Semisi.
- [25] The final witness for the prosecution was the fire examiner, Tevita Seru. Mr Seru is a qualified fire examiner. He was employed by National Fire Authority at the time of the alleged incident but he is now retired. On 5 June 2020, he

went to Lot 52 Lumi Road, Nadawa to investigate and determine the cause of fire. After investigation he compiled a report which he tendered in evidence as PE 1. The damage done to the building structure by the fire was significant. The contents of the flat were totally destroyed. The three adjoining flats were also damaged by the fire. He said that it would have taken less than 30 minutes for the fire to spread to other flats.

[26] He ruled out electrical fault as the cause of the fire. He concluded that the area of origin was from the kitchen and the ignition source was a LPG Cooking Stove. He concluded the cause of fire was incendiary. However, I am mindful that the ultimate decision whether the fire was deliberately and intentionally lit is mine.

[27] Mr Seru said that the panel doors were completely destroyed but he saw three concrete nails on the timber panel of the front entrance door (Photo No 6 in the report).

[28] That is a summary of the prosecution case.

The defence case

[29] The accused's evidence is that after an argument, his wife had left him and went to stay at her mother's place at Robertson Road with their children. However, during the period he was separated, he kept in contact with her and convinced her to move back with him for the sake of their children. She moved back to live with him three days before the fire incident.

[30] On 5 June 2020, he stayed at home with his two children after his wife left home in the morning for work. Around 12 noon his wife called him to collect her wages from her workplace. He went to her workplace with his two sons on a taxi. He went and collected her ATM card but then found out that her wages had not been deposited. He returned her bank card and went to his cousin's car wash at Walu Bay. He got \$50.00 from his cousin and then took another taxi and went home. Both his sons had fallen asleep in the taxi. He woke his eldest son while he carried his youngest son inside the house. After placing his youngest son on the mattress he went and closed the gate. After that he changed his clothes and went to cook in the kitchen.

[31] While washing the rice in the kitchen he realised to secure the front door before his younger son woke up as he tries to go out of the house. When he went to put the tower bolt he found it to be little loose. He took a hammer and tightened the lock by tightening the three nails on the edge of the door used as security lock.

[32] After that he returned to the room that they were using as a kitchen to cook. He opened the gas cylinder and then turned on the stove. He said as soon as he ignited the gas stove, the stove blew. He said his hand got burned. He ran and covered his children who were asleep on the mattress. At that point he felt dizzy and lost consciousness. When he regained his consciousness he was outside on the road and he saw his house was engulfed in flames.

[33] He denies deliberately setting his house on fire to kill his two children. He said that the fire was an accident.

[34] That is a summary of the defence case.

Analysis

[35] If the account given by the accused is or may be true, then he must be found not guilty. But even the account given by him is entirely rejected, that would not relieve the prosecution of its burden of making sure by evidence of the accused's guilt.

[36] The accused's account is that on the day of the fire his wife had called him to collect money from her workplace. His wife's account is different. Her account is that the accused turned up at her workplace as he was in need of money and that he wanted to borrow money from her.

[37] The accused's account is that after seeing his wife he went to a relative's office and got \$50.00 from the relative. From there he went straight home. His account is that he changed his clothes, secured the security lock nails on the door with a hammer to prevent his younger son from going outside, washed rice and then turned on the cooking gas cylinder to ignite the stove to cook. His account is that there was an explosion as soon as his turned the ignition knob of the

cooking stove. His hand got burned and he rushed to cover his children on a mattress in the sitting room and lost consciousness.

- [38] The accused's account contradicts his son, Aarav's account. The prosecution case is substantially dependent on the truth of Aarav's evidence. If Aarav's account is true then the accused is guilty of the charges.
- [39] Aarav gave an account of the accused being in need of money. He saw the accused taking \$50.00 cash from a relative at Walu Bay before returning home. The accused had a conversation with a taxi driver in their flat. After the taxi driver left the accused spoke to his mother in the USA on phone. The accused spoke about money and he abruptly cut off the conversation by throwing his phone on the floor.
- [40] Aarav's account is that the accused engaged in an unusual behaviour. He got Aarav to damage the TV with a hammer and threatened him if he did not listen. He then took the hammer and nailed both the front and back entrance doors.
- [41] While Aarav was sitting on the mattress in the sitting room with his younger brother, the accused went and turned on the unconnected gas cylinder and then the connected gas cylinder. He turned on the stove and that is when Aarav heard the explosion sound and saw flames. The accused then came and held both Aarav and his younger brother tightly while they were on the mattress. When Aarav realised that they were being held back he fought and got off the accused's grip. He went to the window and called out for help and got rescued.
- [42] I do not believe the accused's account that the fire was lit accidentally when he ignited the gas stove. I do not believe the accused's account that he hammered existing nails on the main entrance door as a safety measure to prevent his younger child who was only a toddler at the time from going outside. I believe Ms Devi's account that the doors were not secured with nails before 5 June 2020. Ms Devi's account supports Aarav's account that the doors were nailed before the house was set on fire.

- [43] I do not believe the accused's account that he rushed to protect his children and lost consciousness after the gas explosion. He was only a few steps away from the front entrance door, yet, he made no effort to escape after the explosion. He was found on a mattress in the sitting room holding his younger son when the neighbours dragged him out of the burning house.
- [44] Although Aarav is a child, he gave a sensible and logical account of the incident. The inconsistencies highlighted in Aarav's account by the defence are not material but are peripheral. Aarav's account proves that the accused deliberately set the house on fire and then held his children back from escaping. The intention to kill can be inferred from the conduct of securing the doors with nails to prevent an escape or intervention from outside, before setting the house on fire. If the neighbours had not intervened on time by forcefully breaking the window and the front door, the accused and his two children would have died in the fire.
- [45] The accused had both opportunity and motive. At the time of the incident, his marriage was fragile. He was living in a low cost rental housing and his fruit selling business was not running well. On the day of the incident he was desperate for cash. The only logical inference from the evidence is that the accused intended to kill himself and his two children by setting his house on fire. There was no legal excuse for the accused to set fire to his house.
- [46] The prosecution has discharged its burden by proving all three charges beyond reasonable doubt.
- [47] I feel sure that the accused on 5 June 2020, wilfully and unlawfully set fire to his dwelling house.
- [48] I feel sure that the accused on 5 June 2020, intended to cause the death of his two children, Aarav and Krishav and that he took substantial steps (not mere preparation) to execute the intention to kill by locking them inside before setting the house on fire.

Verdict

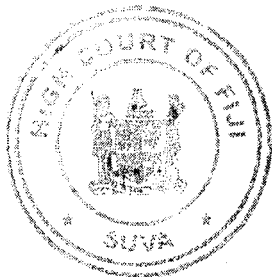
[49] The verdict of the court is:

Count 1 – Arson – Guilty – Convicted.

Count 2 – Attempted Murder – Guilty – Convicted.

Count 3 – Attempted Murder – Guilty – Convicted.

[50] The interim DVRO against the accused is made permanent.



A handwritten signature in black ink, appearing to read "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Reddy Lawyers for the Accused