

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 25 OF 2020**

**STATE**

**vs.**

**1. SAMIMU DEAN**

**2. ZUHAIR FARHAAD DEAN**

Counsel: Ms. L. Latu with Ms. M.Lomolomo for Prosecution  
Mr. A. Sen for 1<sup>st</sup> Offender  
Mr. J. Rabuku with Ms. B. Navunicagi for 2<sup>nd</sup> Offender

Dates of Hearing: 11 October 2022 to 25 October 2022  
Date of Judgment: 28 October 2022  
Date of Sentencing Hearing: 07 November 2022  
Date of Sentence: 11 November 2022

**SENTENCE**

1. Mr. Samimu Dean and Mr. Zuhair Farhaad Dean (offenders) were jointly charged on the following information filed by the Director of Public Prosecution:

**COUNT 1**

Statement of Offence

ARSON: Contrary to section 364 (a) of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, willfully and unlawfully set fire to the dwelling house of BAL KRISHNA.

COUNT 2

Statement of Offence

ATTEMPTED MURDER: Contrary to section 44 (1) and 237 of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, attempted to murder BAL KRISHNA.

COUNT 3

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, murdered NAGAMMA.

COUNT 3

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, murdered DHARMI.

COUNT 5

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, murdered SUBHADRA.

COUNT 6

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SAMIMU DEAN AND ZUHAIR FARHAAD DEAN on 30 April 2020, at Benau, Labasa, in the Northern Division, murdered ZAMINDAN HUSSEIN.

2. Both offenders were convicted on each count after a lengthy trial that lasted for three weeks. Samimu and Zuhair are related to each other as uncle and nephew and they shared a big family house in Benau, Labasa. Bal Krishna and his mother Nagamma had been their neighbours.
3. On 30 April 2020, at around 1 a.m., Bal Krishna was woken up to a big sound. His mother and three ladies were sleeping in a separate room. When Bal Krishna ran outside the house, he saw a fire. It had already spread. The house made up of timber and tin was soon engulfed in the fire. When the National Fire Authority arrived after 40 minutes, his mother and her three friends were already engulfed in the fire in which they all perished. The total cost of damage to the house is \$178,000 including all the items destroyed. At the trial it was proved that the fire was not accidental but wilfully caused by the accused in a joint enterprise.
4. An animosity between the offenders and Bal Krishna had developed over number of disputes. That animosity motivated the offenders to get revenge on Bal Krishna and commit these offences. Samimu, in preparation, had used one of his friends to buy benzene in a gallon 10 days prior to the fire. It was proved on the strength of circumstantial evidence that on 30 April 2020, both accused participated in the act of setting fire to Bal Krishna's house by using accelerant bought by Samimu. Upon being pointed out by Zuhair, the gallon that was used to cause the fire was uplifted by police officers when it was hidden underneath the deck of the house they both shared. The bucket hat admittedly belonged to Zuhair was uplifted near the crime scene soon after the fire. The DNA extracted from the hat matched the DNA of Zuhair. The Court accepted the truthfulness of the confessions made by Zuhair to two people to find the accused guilty.
5. The offences the offenders convicted of are serious offences. For Arson, Attempted Murder and Murder, the maximum sentence prescribed by the Crimes Act 2009 is life imprisonment. The sentencing tariff established for Arson ranges from 5 years to 12 years' imprisonment for an offender convicted after trial. [Isikeli Nakato & another Criminal Appeal AAU 74 of 2014]. For Murder, although life imprisonment is mandatory, the sentencer has a judicial discretion to set a minimum period to be served before a pardon may be considered. The discretion to set a minimum period has to be exercised judiciously having due regard to the gravity and culpability of the offending, loss /harm caused to the victims, aggravating and mitigating circumstances. It is not mandatory for a sentencing judge to fix a minimum period in every case

[Hicks v State FJCA 87; AAU02.2017 (23 June 2020) Aziz v The State FJCA 91; AAU 112 of 2011 (13 July 2015). There is no set sentencing tariff for attempted Murder. The decided cases indicate that the imprisonment term for Attempted Murder ranges from 8-11 years' imprisonment [The State v Sharma HAC 045of 2008s].

6. All the offences took place in a single transaction based on the same facts. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has a discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for all the offences under Section 17 of the Sentencing and Penalties Act.
7. Having taken into consideration the culpability, the harm/loss caused to the victims, the aggravating and mitigating factors, I proceed to exercise my discretion to set the minimum term to be served by each offender.

Mr. Samimu Dean

8. The evidence led in trial shows that Samimu Dean is the principle offender and mastermind in the whole criminal enterprise. He is a mature person and had much influence over Zuhair, his nephew, who is much younger to him. It was in evidence that Samimu Dean was involved in marijuana dealings and how he used this addictive to get the younger people to do what he wanted, stoning the houses of his enemies etc. As far as Samimu Dean is concerned, there is evidence that the offending is premeditated. The loss and harm caused to the victims are enormous. Four women perished in the fire and the damage was to the tune of \$178,000. The victim impact statement shows how the life of only survivor Bal Krishna has been affected including his relocation. Samimu Dean is 49 years of age, married and a father of three children. He is the sole breadwinner of his family and looking after his elderly parents. He is the Manager of the Muslim Soccer Tournament. He has cooperated with police in the investigation. He has one previous conviction for a minor offence.
9. Having considered all these factors, I set a minimum term of twenty (20) years for Samimu Dean to be served before a pardon may be considered. He had already been in remand for

approximately two years. That period should be deducted. Accordingly, he is eligible to apply to the Mercy Commission for a pardon only when has served 18 years in the correction facility.

Mr. Zuhair Farhaad Dean

10. Zuhair is young and a first offender. He was 20 years old when he committed the offences under bad influence. He was still attending Fiji National University pursuing tertiary studies when he was charged for these offences. He is an active member of the Babasiga Football Club. There is evidence that he was taking marijuana which his uncle traded. He has maintained a clear record thus far and his potential for rehabilitation is really high. Having considered all these factors, I would not fix a minimum period to be served before a pardon may be considered.

Summary

11. Mr. Samimu Dean is sentenced to life imprisonment. He is to serve a minimum term of 18 years before a pardon may be considered. He is eligible to apply to the Mercy Commission for a pardon when he has completed eighteen (18) years in the correction centre.
12. Mr. Zuhair Farhaad Dean is sentenced to life imprisonment. No minimum term is set before a pardon may be considered.
13. You have 30 days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read 'Aruna Aruthge'.

Aruna Aruthge  
Judge

11 November 2022

At Labasa

Counsel:

- Office of the Director of Public Prosecution for State
- A.K Singh Law for 1<sup>st</sup> Offender
- John Rabuku Lawyers for 2<sup>nd</sup> Offender.