

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 026 OF 2013S

STATE

vs

ATUNAIISA RARALEVU

Counsels : Ms. A. Vavadakua for State
Mr. J. Savou for Accused
Hearings : 28 and 29 April, 2015
Summing Up : 30 April, 2015
Judgment : 30 April, 2015
Sentence : 22 May, 2015

SENTENCE

1. On 30 April 2015, the court found you guilty and convicted you on the following information:

Statement of Offence

ARSON: Contrary to section 362 (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ATUNAIISA RARALEVU on the 8th day of December 2011 at Nasaibitu Village, Wainibuka, Tailevu in the Central Division, wilfully and unlawfully set fire to the dwelling house of **SEREIMA LAULABA**.

2. The brief facts of the case were as follows. On 8 December 2011, you were 36 years old, and your wife, the complainant, was 51 years old. You were married in 2004 and had no children. At first, you and your wife were residing in your father's house in the village. Your relationship with your wife was often volatile and in 2011, the two of you separated and lived apart. You continued to live in your father's house while your wife lived with other relatives.
3. Through her own resources, your wife built herself a small house in the village, with the help of her church members. She was a kindergarten school teacher, while you were a subsistence farmer. She turned half of her house into a canteen, where she sold food items and other household items, to make ends meet. You later moved in with her.
4. On 8 December 2011, you, your wife and your wife's nephew, aged 5 years old, were asleep in the house. You had an argument with your wife between 1am and 2am. Your wife went out to relieve herself, and you threatened her that you will burnt her house. While she was outside, you set fire to the house. The nephew who was in the house was partly burnt in the face. You burnt the house to the ground, because you wanted your wife to return to you.
5. "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.
6. The aggravating factors in this case were as follows:
 - (i) This was a domestic violence offence. You committed arson against your wife's house, to force her to return to you. This is not an acceptable method to resolve a domestic dispute. The court must act to stop people bullying their domestic partners to resolve a dispute.

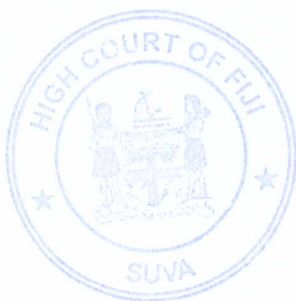
- (ii) In committing this offence, you cause serious burnt injuries to the complainant's niece, who was 5 years old at the time. He will have to carry the scar on his face for the rest of his life.
- (iii) I accepted the complainant's view that you contributed nothing to the building of the house. You have ruined the hard work your wife put in to build her house. By burning it down, you showed utter disregard to her property rights.

7. The mitigating factors were as follows:

- (i) At the age of 36 years, this is your first offence;
- (ii) You have been remanded in custody for 1 year 5 months 2 weeks.

8. I start with a sentence of 4 years imprisonment. I add 2 years for the aggravating factors, marking a total of 6 years imprisonment. For time spent in remand while awaiting trial, I deduct 1 year 7 months, leaving a balance of 4 years 5 months. For being a first offender, I deduct 5 months, leaving a balance of 4 years imprisonment.

9. Mr. Atunaisa Raralevu, for burning down your wife's house on 8 December 2011, I sentence you to 4 years imprisonment, with a non-parole period of 3 years, effective forthwith.



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JUDGE

Solicitor for the State
Solicitor for the Accused

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Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.