

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 339 OF 2015S

STATE

vs

BINESH PRASAD

Counsels : Mr. S. Vodokisolomone and Mr. S. Shah for State
Ms. S. Ratu for Accused
Hearings : 31 January and 1 February, 2017
Sentence : 15 February, 2017

SENTENCE

1. On 31 January 2017, in the presence of your counsel, the following counts in the following information were put to you:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division wilfully and unlawfully set fire to the dwelling house of **HANS WATI**.

SECOND COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division, murdered **JEI NARAYAN**.

THIRD COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division, murdered **PRISIKA DEVI**.

FOURTH COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division, murdered **ULESHNI IREN LATA**.

FIFTH COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division, murdered **IMRAN ERSHAD ALI**.

SIXTH COUNT

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division, murdered **FARIA FARNAAZ ALI**.

SEVENTH COUNT

Statement of Offence

ATTEMPTED MURDER: Contrary to section 44 (1) and 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division attempted to murder **JOTISHMA NEELAM**.

EIGHTH COUNT

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BINESH PRASAD on the 15th day of October 2015 at Nasinu in the Central Division wilfully and unlawfully damaged the taxi registration number LT 2786 valued at \$18,500.00, the property of **MOHAMMED KHALIL**.

2. You then pleaded guilty to all the counts. The matter was then adjourned to 1 February 2017 to enable the prosecution to prepare their summary of facts in court.

3. On 1 February 2017, the prosecutor presented their summary of facts in court. Briefly, they were as follows. On 15 October 2015, the accused was 33 years old. In 2004, he married Uleshni Iren Lata, the deceased in count no. 4. At the time of her death, Ms. Lata was 29 years old. The couple had a 10 year old daughter, Prisika Devi, the deceased in count no. 3. The accused, his wife and daughter normally resided with his wife's family prior to the incident. They resided at Lot 59, Navosai Road, Narere. The house was divided into 3 flats. The main flat (ie Flat No. 2) were occupied by the accused, his wife, daughter and in-laws. The house belonged to his mother-in-law, Hans Wati (PW1). Another flat was occupied by Imran Ershad Ali, the deceased in count no. 5. He was 30 years old, at the time. Living with him was his wife, Faria Farnaaz Ali, who was the deceased in count no. 6. She was 22 years old at the time.

4. The problem in this case started as a result of the disagreements between the accused and his wife. It reached a stage where the wife and her family obtained a "Domestic Violence Restraining Order" against the accused. The order forbade the accused to stay with his wife and daughter at Lot 59 Navosai Road, Narere. He was not to contact his family and in-laws. This made the accused upset and angry. This was the catalyst to what occurred on 15 October 2015. On the early morning of 15 October 2015, the accused with another was driving in a rental car from Tavua, Rakiraki, Korovou, Nausori and to Narere. On the way, the accused got three 20 liters plastic containers from Rakiraki. In Korovou he filled the containers with unleaded fuel from a Mobile Service Station. He drove down to Nausori and Narere. At about 11.30 pm on 15 October 2015, he approached his in-laws' house. He poured unleaded fuel around the house. He called his wife. She appeared and open the door. The accused threw the fuel on her and set her on fire.
5. The fire spread rapidly in the house, and burnt his wife, daughter and father-in-law to death. Mr and Mrs Ali were also burnt to death in their flat. Jotishma Neelam was also burnt, but survived the incident. Mohammed Khalil's taxi was a write-off, as a result of the damage by fire.
6. The court checked with the accused's counsel to see that he was admitting to all the elements of the offences from count no. 1 to 8. Through his counsel, the accused admitted the particulars of offences in count no. 1 to 8, and admitted the prosecution's summary of facts. The accused also admitted all the elements of the offences from count no. 1 to 8. As a result of the above, the court found him guilty as charged on all counts, and convicted him accordingly on those counts.
7. You had been convicted of five murder charges (ie. count no. 2, 3, 4, 5 and 6), one charge of "attempted murder" (count no. 7), one charge of "arson" (count no. 1) and one charge of "damaging property" (count no. 8). I will start sentencing you on the murder charges, because they are the most serious of all the offences.
8. There is only one sentence for murder, and that is a mandatory life imprisonment (section 237 of the Crimes Decree 2009). However, the Court has the power to fix a minimum term to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji (section 119 of the 2013 Constitution of the Republic of Fiji).

9. I cannot pretend but say, that what you did to your wife, daughter, father-in-law and Mr and Mrs Ali on 15 October 2015, when you burnt them to death, was the height of all evil. You have taken away the life of your wife, who was 29 years old at the time. You had taken away the life of your daughter, who was 10 years old at the time. You had taken away your father-in-law's life, and he was 55 years old at the time. Mr Ali was 30 years old at the time. Mrs Ali was 22 years old at the time. You took both their lives away. You have no right whatsoever to take away a person's life. That right only belongs to the Almighty.
10. I have taken note of your plea in mitigation. I note that you reached Class 6 education, and was a taxi driver by profession. You earned \$400 per week. I also note that you had been remanded in custody since 21 October 2015, that is, approximately 1 year 4 months ago. I also note that you are a first offender. You also pleaded guilty to the charges approximately 1 year 4 months after the first call in the High Court. By doing so, you saved the court's time.
11. A lot of murders in this country arose because of the turmoils in most families. Yes, disagreement and discontent are part and parcel of most family life in this country and the world. But people must learn to resolve their problems in a peaceful way. That is why the Family Courts are there ie. to resolve problems peacefully. This was the case in your family. A "Domestic Violence Restraining Order" was in existence against you. You should have resolved your problems through the courts, but you choose to go outside the law. You burnt your mother-in-law's house and killed five people in the same, when you burnt them to death. You should not complain about your sentence, because they are to atone for your misdeeds.
12. I start with the murder charge in count no. 2. I sentence you to the mandatory life imprisonment.
13. On the murder charges in count no. 3, 4, 5 and 6, I sentence you to the mandatory life imprisonment, for each count.
14. What minimum term shall I impose on each murder charge, that will serve the interest of justice? Both parties had referred me to the case of Waisale Waqanivalu v The State, Criminal Appeal No. CAV 0005 of 2007, Supreme Court, Fiji. In this case, the appellant was convicted and sentenced on 5 counts of murder and 1 of attempted murder. For each murder charge, he was given the mandatory life imprisonment with a minimum term of 19 years each. He was serving 10 years prison term for another offence, which was made consecutive to the sentence

in the murder charge. Total non-parole period came to 26 years. This case is somewhat similar to this case, which also involved 5 murder convictions and 1 attempted murder conviction. However, the only different between the cases was the method of killing. In the other case, he used iron bars and stones to kill his victims. In this one, he use petrol from a service station to burn a house and burnt five people to death. I would put the minimum term to be served as 28 years imprisonment on each murder count. In doing so, I've taken into account the matters mentioned above.

15. For the "attempted murder" charge (count no. 7), I sentence you to the mandatory life imprisonment, with a minimum term of 10 years to be served before a pardon by His Excellency the President of the Republic of Fiji may be considered.

16. For the "arson" charge (count no. 1), I sentence you to 10 years imprisonment.

17. For the "damaging property" charge (count no. 8), I sentence you to 1 year imprisonment.

18. The summary of your sentences are as follows:

(i)	Count No. 1	Arson	:	10 years imprisonment
(ii)	Count No. 2	Murder	:	mandatory life imprisonment with a minimum term of 28 years to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji.
(iii)	Count No. 3	Murder	:	" " "
(iv)	Count No. 4	Murder	:	" " "
(v)	Count No. 5	Murder	:	" " "
(vi)	Count No. 6	Murder	:	" " "
(vii)	Count No. 7	Attempted Murder	:	mandatory life imprisonment with a minimum term of 10 years to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji.
(viii)	Count No. 8	Damaging Property	:	1 year imprisonment

19. Because of the totality principle of sentencing, I direct that all the above sentences be served concurrently to each other, that is, a final sentence of mandatory life imprisonment, with a minimum term of 28 years to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.

20. Mr. Binesh Prasad, for the offending you committed in counts no. 1 to 8 of the information, at Nasinu in the Central Division, on 15 October 2015, I sentence you to the mandatory life imprisonment, with a minimum term of 28 years to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.
21. Pursuant to section 4(1) of the Sentencing and Penalties Decree 2009, the above sentence is to punish you in a manner that is just in all the circumstances, to protect the community from people like you, to deter would-be offenders by passing a deterrent sentence and to signify that the court and community denounce what you did on 15 October 2015.
22. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**