

REGINA

v.

ISIKELI JOJI

[SUPREME COURT, 1978 (Grant C.J.), 17th April]

Revisional Jurisdiction

Criminal Law—Principles of Criminal liability—arson—whether setting fire to one's own property is unlawful—Penal Code (Cap. 11) ss. 353(a) and 354(b).

The Court held that merely setting fire to one's own property is not of itself unlawful: for an offence to be committed there must either be an unlawful purpose or a danger of the fire spreading to property of the type referred to in section 317 of the Penal Code.

Cases referred to:

R. v. Gulam Rasul & Anor. (1954) 21 E.A.C.A. Rep. 229.

R. v. Cooper (1955) 22 E.A.C.A. Rep. 466.

Order on revision of conviction entered in the Magistrate's Court.

M. Jennings for the Crown

Respondent in person.

GRANT C.J. :

On the 16th March 1978 at Sigatoka Magistrates Court the respondent was convicted on his own plea of arson contrary to section 353(a) of the Penal Code.

The facts reveal that the respondent owned a modest bamboo and iron house which he occupied with his wife and son. One Sunday evening he was castigated by his wife for drinking, whereupon he removed his wife and son from the house and then set it on fire.

The trial Magistrate sentenced the respondent to seven months' imprisonment, stating "The accused has committed a very serious offence although the house was his own property".

However it is not an offence under section 353 of the Penal Code for a person to set fire to his own property unless he does so unlawfully, that is to say in furtherance of an unlawful purpose, such as an intention thereby to injure any person or commit fraud (*R. v. Gulam Rasul & Anor.* (1954) 21 E.A.C.A. 229, *R. v. Cooper* (1955) 22 E.A.C.A. 466).

I might add, parenthetically, that if an accused was charged with setting fire to his own property contrary to section 354(b) of the Penal Code, different considerations would apply in view of its different wording. The unlawful nature of the act under the latter section is in setting fire to something so situate that one or other of the types of property enumerated in section 353 of the Penal Code is likely to catch fire from it: so that even though the thing set fire to belonged to the accused, if he intended or foresaw that by so doing the near by property of another was likely to catch fire, he could be convicted.

A It is clear from the facts of this case that the respondent had no unlawful purpose, and his conduct, while it may be considered reprehensible, is not criminal. In the exercise of the revisional jurisdiction of this Court I accordingly quash the conviction and set aside the sentence.

Conviction quashed.

B