

IN THE MAGISTRATES' COURT OF FIJI
AT RAKIRAKI
CRIMINAL JURISDICTION

Criminal Case No: 247 - 2014

STATE

-v-

RESHMIKA LATCHMI - 1st Defendant
VILISE VULAVOU - 2nd Defendant
AMIT NILESH REDDY - 3rd Defendant

Before : RM Fotofili L.
For Prosecution : Ms. Naibe S. and Mr. Nasa J. [ODPP]
For 1st Defendant : Ms. Maram K. [LAC]
For 2nd Defendant : Mr. Niudamu J. [LAC]
For 3rd Defendant : Mr. Koya S. [S.K Lawyers]
Date of Sentence : 26th August 2022

SENTENCE

1. **RESHMIKA LATCHMI, VILISE VULAVOU and AMIT NILESH REDDY** all of you have pleaded guilty to the respective count in your name in the amended charge [amended on the 1st of August 2022] preferred by the prosecution:

Count 1

Statement of Offence

ABORTION BY WOMAN WITH CHILD: Contrary to section 173 of the Penal Code [Cap 17]

Particulars of Offence

RESHMIKA LATCHMI, on the 2nd of September 2009, at Rakiraki, in the Western Division, being pregnant with a child and with intent to procure her own miscarriage, unlawfully permitted **VILISE VULAVOU** to administer Cytotec tablets to herself (**RESHMIKA LATCHMI**) as a means to procure abortion of the said **RESHMIKA LATCHMI**.

Count 2

Statement of Offence

ATTEMPT TO PROCURE ABORTION: Contrary to section 172 of the Penal Code [Cap 17]

Particulars of Offence

VILISE VULAVOU, on the 2nd day of September 2009, at Rakiraki, in the Western Division, with intent to procure the miscarriage of **RESHMIKA LATCHMI**, who was pregnant with a child at the time, unlawfully administered Cytotec tablets to the said **RESHMIKA LATCHMI**.

Count 3

Statement of Offence

ATTEMPT TO PROCURE ABORTION: Contrary to section 172 and section 21 (c) of the Penal Code [Cap 17]

Particulars of Offence

AMIT NILESH REDDY, on the 2nd and 3rd day of September 2009, at Rakiraki, in the Western Division, with intent to procure the miscarriage of **RESHMIKA LATCHMI**, who was pregnant with a child at the time, advised the said **RESHMIKA LATCHMI** to abort her child and arranged for **VILISE VULAVOU** by paying her \$250.00 to procure the miscarriage of the said **RESHMIKA LATCHMI**.

Count 4

Statement of Offence

CONCEALING THE BIRTH OF A CHILD: Contrary to section 220 and section 47 of the Penal Code [Cap 17]

Particulars of Offence

AMIT NILESH REDDY, on the 2nd and 3rd day of September 2009, at Rakiraki, in the Western Division, endeavoured to conceal the birth of a child of one **RESHMIKA LATCHMI** by secretly burying the dead body of the said child.

2. I am satisfied that all of you understand the consequence of your plea and that all your pleas of guilty are voluntary. All of you have also made admissions in court and admitted the facts proposed by the prosecution.
3. Your sentencing today is at a time when abortion rights or 'a woman's right to choose' whether to carry to term any pregnancy is in issue. Not only in the United States of America [USA] but other countries where there have been demonstrations regarding the recent USA Supreme Court decision in Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. (2022). This decision was delivered on the 24th of June 2022.
4. Effectively, the majority Justices in the Supreme Court held that each State should decide whether to outlaw abortion and at what stage of the pregnancy was an abortion to be illegal. The decision upended previous precedents of the Supreme Court where the Court had previously held that a woman's right to choose was Constitutionally protected.
5. The dissenting opinion of the Supreme Court Justices in Dobbs is interesting. They summarised the history of past Supreme Court precedents and the balance that had to be made between a woman's autonomy and the State or government's interest in regulating any pregnancy. In other words, the right to privacy versus the right of the State or government to regulate that right.
6. At page 148 and 149 of the decision of the US Supreme Court in Dobbs, the dissenting Justices said:

For half a century, Roe v. Wade, 410 U. S. 113 (1973), and Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833 (1992), have protected the liberty and equality of women. Roe held, and Casey reaffirmed, that the Constitution safeguards a woman's right to decide for herself whether to bear a child. Roe held, and Casey reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman's body or the course of a woman's life: It could not determine what the woman's future would be. See Casey, 505 U. S., at 853; Gonzales v. Carhart, 550 U. S. 124, 171-172 (2007) (Ginsburg, J., dissenting). Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

Roe and Casey well understood the difficulty and divisiveness of the abortion issue. The Court knew that Americans hold profoundly different views about the "moral[ity]" of "terminating a pregnancy, even in its earliest stage." Casey, 505 U. S., at 850. And the Court recognized that the State has legitimate interests from the outset of the pregnancy in protecting "the "life of the fetus that may become a child." Id., at 846. So the Court struck a balance, as it often does when values and goals

compete. It held that the State could prohibit abortions after fetal viability, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways. But until the viability line was crossed, the Court held, a State could not impose a "substantial obstacle" on a woman's "right to elect the procedure" as she (not the government) thought proper, in light of all the circumstances and complexities of her own life. Ibid.

7. There are common misnomers about abortion. For instance that a baby or a child or a person is being killed or murdered.
8. An abortion is simply the termination of a pregnancy.
9. There were no specific statutory defences to carrying out an abortion or attempted abortion under the **Penal Code**.
10. However, under common law, there are lawful exceptions such as if continuing the pregnancy will endanger the mother [**Regina v Emberson** [1976] FJLawRp 21; [1976] 22 FLR 117 (23 August 1976)].
11. Currently, under our **Crimes Act 2009** (section 234), abortions can be carried out legally but a strict criteria must be met.
12. If an abortion is carried out in good faith by a medical practitioner with reasonable care and skill and the pregnancy is a result of incest [step brother or sister and grandparent included] or result of a rape, the abortion is legal. There is no timeline for when this abortion can take place. It can be from the 1st week of fertilization even if before delivery of the child at 9 months.
13. In another situation, if the pregnancy is at 20 weeks or 5 months, an abortion can still be lawful if not performing an abortion will seriously endanger the physical or mental health of the mother or the pregnancy itself will cause serious danger to her physical or mental health.
14. These codified statutory exceptions reflect the evolving ethical, religious, medical, social and economic positions regarding abortion.
15. Social stigma for having a child with a married man or out of marriage or not having the financial means to support an expected child or children, does not necessarily fall within the statutory exception.
16. It can, if it goes towards seriously endangering the mental health of the mother if for example the expected mother is suicidal because they cannot tolerate the stigma.

17. There is nothing illegal about consenting adults whether married to each other or someone else, having coitus. Unplanned pregnancy can result because of this lawful union which is the underlying reason why all of you are to be sentenced today.
18. For many reasons such as social pressure or just plain convenience, the parties may decide to terminate the pregnancy.
19. If that is the reason for the abortion or attempted abortion, it is illegal under the **Penal Code** and **Crimes Act**.
20. Perhaps in the future, the legislature in Fiji may relax the restrictions regarding abortions even allowing a period of up to 24 weeks [viability period] within which any abortion maybe carried out as long as the woman consents. This is already in place such as in the State of Victoria and Northern Territory in Australia and some progressive states in USA such as the State of New York.
21. This is in line with the principle of equality and empowering women who should decide whether they should carry their pregnancy to term and protecting the right to privacy which is consistent with article 26 and 24(1)(c) of our **2013 Constitution** versus balancing the right of the State to regulate a pregnancy.
22. Despite the progress of the law relating to abortion, **RESHMIKA LATCHMI** , **VILISE VULAVOU** and **AMIT NILESH REDDY**, you must be punished as it is still illegal under our law.
23. There was no lawful exception for committing the offences you are charged with and this is one reason why I have found you each guilty and convicted you of the respective counts in your name as charged.
24. You will still be sentenced bearing in mind progressive values which is promoted in article 3(1) and 7(1)(a) of our **2013 Constitution**.
25. Ms. Latchmi [1st Defendant] you were 21 years old at the time. You were in a consensual sexual relationship with Mr. Reddy [3rd Defendant] who was 27 years old at the time and he was married. It was found out that Ms. Latchmi was pregnant. Both of you did not want your family to know about the pregnancy.
26. At first, you two did not want to get an abortion but after discussing the matter, both of you agreed.
27. Mr. Reddy you then arranged for Ms. Vulavou [2nd Defendant] to carry out the abortion. You paid \$150 for Cytotec tablets which Ms. Vulavou administered to Ms. Latchmi by inserting the tablets into her vagina. More tablets was given to Ms. Latchmi to administer when she was at her home.

28. Ms. Latchmi you started experiencing stomach pains and blood discharge from your vagina. You went to Ms. Vulavou's house where she and Mr. Reddy were also present. There, you pushed and delivered the foetus. The foetus was not alive. Ms. Latchmi you were at least 5 months into your pregnancy by that time.
29. Mr. Reddy you then buried the foetus behind your house. You also paid \$250 to Ms. Vulavou for her part in carrying out the abortion.
30. Somehow, police were notified and all of you were arrested and interviewed under caution. All of you confessed voluntarily to police when interviewed.

MITIGATION

31. Ms. Latchmi [1st defendant] you are now 33 years old. You are married and you have a 9 year old child. You do domestic duties and you are supported by your husband. You were young at the time and unmarried. You did not want to complicate the situation but the social pressure made you get an abortion. You promise not to reoffend. Your reputation has been tarnished. You seek another chance.
32. Ms. Vulavou [2nd defendant] you are 67 years old. You are a widow with your husband passing away in June 2022. You support your 3 children. You are asthmatic. You regret your mistake. You felt sorry for Ms. Latchmi and Mr. Reddy and that is why helped them although you took money. You have a reference from the Fiji Red Cross Society about your work as a volunteer. You are reliable and hardworking and have been a volunteer for 15 years.
33. Mr. Reddy [3rd defendant] you are 39 years old. You are married and you have an 11 year old child. You are the sole breadwinner. You are employed as a driver and if you are imprisoned, you are likely to lose your employment. The pregnancy put enormous stress on your marriage. You accept you are the principal offender.
34. All of you are first offenders.
35. None of you have spent any time in remand in this case.

MAXIMUM SENTENCE

36. For Count 1 – Abortion, it attracts up to 7 years imprisonment.
37. For Count 2 and Count 3 – Attempt To Procure An Abortion, it attracts up to 14 years imprisonment.
38. For Count 4 – Concealing The Birth Of A Child, it attracts up to 2 years imprisonment.

TARIFF

39. There is no established tariff locally for any of these offences.
40. The prosecution and defence counsels have referred the court to the High Court decisions in State v Vineeta Devi and Ashish Prasad HAC 286 of 2016 (Sentence on 7th August 2018 and 18th July 2019) and State v. Oteti Sivonatoto HAC 207 of 2011 (Sentence 27th March 2014).
41. These cases related to abortion under the Crimes Act 2009 specifically section 234(1) and (4) (b) which is the equivalent offences for Count 2 and 3. Under the Crimes Act, it also attracts up to 14 years imprisonment.
42. Ashish Prasad was convicted after trial. The facts in that case is similar to Mr. Reddy [3rd defendant] where Mr. Prasad who was married was in a relationship with a 22 year old female Payal. Payal got pregnant and Mr. Prasad paid Vineeta Devi \$200 to perform an abortion. Mr. Prasad had spent about 15 days in remand. He was sentenced by the High Court to a 3 year imprisonment term wholly suspended for 7 years. He was also ordered to pay \$1,500 as compensation to Payal.
43. Vineeta Devi pleaded guilty where the facts revealed that she caused the miscarriage of Payal by inserting cassava sticks into Payal's vagina. It was painful. Ms. Devi's mitigation seem to mirror Ms. Vulavou [3rd defendants] mitigation. Ms. Devi was sentenced by the High Court to 3 years imprisonment wholly suspended for 5 years.
44. Sivonatoto tried to abort a pregnancy of the female victim he had impregnated. He had her drink rum mixed with milk, strong tea and raw eggs. All attempts failed. He pleaded guilty on his trial date. He was sentenced to 2 years imprisonment to be served concurrently to his sentence for rape. Effectively, Sivonatoto did not serve any imprisonment term for abortion.

INSTINCTIVE SYNTHESIS APPROACH and AGGREGATE SENTENCE

45. I will adopt an instinctive synthesis approach when sentencing all three of you in relation to your respective counts.
46. Ms. Latchmi [1st defendant], the maximum term imposable on you is up to 7 years and the maximum imposable for the other defendants are double that, up to 14 years imprisonment for counts 2 and 3.
47. We should expect then Ms. Latchmi that your sentence should at least be less than double what your co-accused will receive.
48. Mr. Reddy [3rd defendant] you are to be sentenced for the 3rd and 4th counts.
49. The 3rd and 4th counts are founded on the same facts. Pursuant to section 17 of our **Sentencing and Penalties Act 2009**, I will impose an aggregate or combined sentence on you for the 3rd and 4th counts.
50. Since count 3 - attempting to procure an abortion is more serious than count 4 – concealing the birth of a child, I will use count 3 as the foundation for your aggregate sentence.
51. There are some factors worth highlighting before I summarise each of your final sentence.

AGGRAVATION

52. For all of you, this was planned or conspired.
53. Ms. Vulavou [2nd defendant] you received a payment of \$250.
54. Mr. Reddy [3rd defendant], I am sure without you, none of this would be possible as you had arranged for Ms. Vulavou to perform the abortion and you paid her. Since attempting to procure an abortion is the foundation of your aggregate sentence, concealing the birth of the foetus aggravates your offending.

MITIGATION

55. All of you are first offenders.
56. I accept that you all are remorseful.

57. You all have cooperated with police when interviewed.
58. This case has been pending against you Ms. Latchmi [1st defendant] and Ms. Vulavou [2nd defendant] for approximately 5 years. For you Mr. Reddy [3rd defendant], it has been pending for about 7 years.
59. For Ms. Latchmi and Mr. Reddy you both have a young family to support. Both your young children were born after you committed the offence. Mr. Reddy you have your employment to keep and you are the sole breadwinner.
60. It does not give you a lawful excuse, but it is clear that there was social pressure on both of you leading you two to commit the offence.
61. Ms. Latchmi, you endured the abortion. You experienced pain to your stomach and you delivered the foetus which in itself is both mentally and physically traumatic. Although this is self-inflicted as you were part of the conspiracy, I will consider this as part of your mitigation because of the social pressure to conform.
62. Ms Vulavou [2nd defendant] I am not convinced on the balance of probabilities that you have any serious health concern [asthma] which is worthy to be considered as mitigation. Corroboration is not necessary in all claims but in your case, I will require more evidence or information about the status of your health such as the opinion of a medical practitioner. However, you are elderly almost 70 years old. Your character reference is convincing and I accept that you are a helpful volunteer for Fiji Red Cross Society for the past 15 years.

GUILTY PLEA

63. Mr. Reddy [3rd defendant], you had initially pleaded guilty on the 8th of April 2015 but you later withdrew your guilty plea. The affidavit filed in support of vacating your guilty plea cites disclosures, factual and legal matters as the reason why your guilty plea was sought to be vacated. I cannot read much into this as the reasons provided is general.
64. When all your plea was taken on the 13th of February 2019 to the consolidated or amended charge, all of you pleaded not guilty.
65. Then on the 22nd of May 2019, Ms. Latchmi [1st defendant] and Mr. Reddy [2nd defendant] both of you pleaded guilty while Ms. Vulavou [3rd defendant] maintained her not guilty plea.

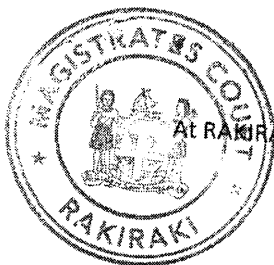
66. On the 8th of December 2021, Mr. Reddy your guilty plea to counts 3 and 4 were vacated as you did not agree with the facts proposed by the prosecution. You reaffirmed your not guilty plea status on the 18th of March 2022.
67. The 1st of August 2022 was fixed for the *voir dire* hearing regarding the admissibility of Ms. Vulavou's [2nd defendant] police caution interview. On this date, the prosecution filed an amended charge which is the charge upon which all of you are to be sentenced. All of you pleaded guilty to the amended charge.
68. Ms. Latchmi [1st defendant] and Mr. Reddy [3rd defendant] your guilty pleas to the previous charge is erratic and I cannot give you discount regarding that because of your shifting position.
69. However, you all have pleaded guilty early once the charge was amended on the 1st of August 2022.
70. I will give each of you a significant discount for your guilty plea to this latest amended charge.

OBJECTIVE IN SENTENCE


71. For your sentence, I prioritise punishing each of you to an extent and manner which is just as the primary objective. Secondly for specific deterrence that is to deter you and general deterrence, to deter others from committing the offence.
72. I have also considered the Sentencing and Penalties Act 2009 particularly section 4, 15, 16, 43 and 45 when determining your sentence.

SUMMARY

73. **1st Defendant Ms. RESMIKA LATCHMI**, you are sentenced 8 months imprisonment.
74. You are a good candidate for a wholly suspended sentence taking into account your weighty mitigation, pleading guilty and seeing that other more serious cases for abortion [cited] have received a suspended sentence or a concurrent sentence.
75. I wholly suspend your 8 month imprisonment term for 18 months [suspended term explained].
76. You are also fined \$120 payable within 42 days. If you default, I set 4 days imprisonment as your punishment.
77. **2nd Defendant Ms. VILISE VULAVOU** you are sentenced to 14 months imprisonment and I will also wholly suspend your sentence but for 2 years [suspended term explained].
78. You are fined \$180 payable within 42 days. If you default, I set 6 days imprisonment as your punishment.
79. **3rd Defendant Mr. AMIT NILESH REDDY**, you will receive an aggregate sentence for counts 3 and 4.
80. Your aggregate sentence is 17 months imprisonment and I will also wholly suspend your sentence for 2 years [suspended term explained].
81. You are fined \$210 payable within 42 days. If you default, I set 7 days imprisonment as your punishment.
82. I will discharge each of you of your bail obligations once your respective fine is paid within the prescribed time.
83. 28 days to appeal if any party is dissatisfied with the sentence.



At RAKIRAKI this 26th day of August, 2022.


Lisiate T.V. Fotofili
Resident Magistrate