

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 177 of 2014

STATE

v

SHEIK MOHAMMED FIROZ

Counsels : **PC Lal** for Prosecution
Mr Kohli. A for the Accused

Sentence : **15 June 2018**

SENTENCE

1. Sheik Mohammed Firoz, the Accused, today is for sentencing.
2. After the trial, the court on its judgment of 16 February 2018, found you guilty as charged for one count of *Indecent Assault* and one count of *Indecently Insulting or Annoying Any Person*. You were found to contravene section 212(1) and 213(1)(b) of the *Crimes Decree 2009*, respectively.
3. The name of the victim is suppressed to protect her privacy and interest and will be referred to as the victim in this sentence.
4. The Court's finding was that in 2013 and 2014, the victim was a student at Vunimoli Islamiya Primary School in Labasa. The Accused was a teacher in the same school. In October 2013, the accused touched the victim's hip in the classroom. In March 2014, the accused pinched the victim near the side of her breast.

5. The Accused was convicted as charged for both the counts. The mitigation submission was filed on 20 February 2018.
6. The maximum penalty for *Indecent Assault* is 5 years imprisonment. The tariff is 12 months to 4 years imprisonment, depending on the nature of the assault. The maximum penalty for *Indecently Insulting or Annoying Any Person* is 12 months imprisonment. The tariff is from 3 to 6 months imprisonment.
7. The aggravating factors are ;-
 - a. *The victim was your student who was in class 8 at the time of the offence.*
 - b. *This is a teacher and student relationship and you breached that trust.*
 - c. *The victim was under your care and protection when you committed the offences.*
 - d. *You have no respect for the victim.*
 - e. *You took advantage on the vulnerability of the victim at the time of the offence and exploit her with your evil intention.*
8. The compelling mitigating factors are ; -
 - a. *First offender with 40 years of good character,*
 - b. *Seek the court's forgiveness,*
 - c. *Promise not to re-offend.*
9. For your sentence, I will start with the offence of *Indecent Assault*. I pick 2 years as the starting point. I add 1 year for the aggravating factors and that increase your sentence to 3 years imprisonment. I reduce your sentence by 8 months for your mitigation and that reduce your sentence to 2 years and 4 months imprisonment.
10. You were found guilty after trial and you are not entitle for any plea concession. There was no information from the Prosecution nor the

Counsel for the defence on the remand period. In perusing the court record, there is no evidence that you were in remand.

11. Your final sentence for *Indecent Assault* is 2 years and 4 months imprisonment and that is far above the tariff for *Indecently Insulting or Annoying Any Person*. Therefore, I pick 5 months as your sentence for *Indecently Insulting or Annoying Any Person*.
12. I have considered *section 4* of the *Sentence and Penalties Act*. This is a case of exploitation and breach of trust at the upper category. Considering the principle of rehabilitation and deterrent, I find that deterrent sentence both specific and general need to be imposed to denounce such conduct and as a warning to the people especially when there is a fiduciary relationship.
13. *Sheik Mohammed Firoz*, I now sentence you as follows;-
 - a. Count 1 - *Indecent Assault* - 2 years and 4 months imprisonment.
 - b. Count 2 - *Indecently Insulting or Annoying Any Person* - 5 months imprisonment.
 - c. Sentence for both the counts to be served concurrently with immediate effects and to be served concurrently with your sentence in Criminal Case No. 158 of 2014.
 - d. Non- parole period of 18 months.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE