

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.177 of 2014

STATE

v

SHEIK MOHAMMED FIROZ

For the Prosecution : **CPL Monish**

For the Accused : **Mr Kohli. A**

Judgment : **16 February 2018**

JUDGMENT

1. The accused, *Sheik Mohammed Firoz*, is charge for one count of *Indecent Assault*, and one count of *Indecently Insulting or Annoying Any Person* contrary to *section 212(2)* and *213(1)(b)* of the *Crimes Decree 2009*, respectively.
2. The name of the victim is suppressed to protect her privacy and interest and will be referred to as BX in this judgment.
3. The particulars of the offences are;-

Count 1

Sheik Mohammed Firoz sometimes in October, at Labasa, in the Northern Division, indecently assaulted BX by touching her hip.

Count 2

Sheik Mohammed Firoz sometimes in March 2014, at Labasa, in the Northern Division, with intent to insult the modesty of BX by pinching underneath her breast.

4. The Accused pleaded not guilty to both the counts on 19 May 2014. The case proceeded to trial on 30 May 2016.
5. At the trial, the Prosecution called BX as his only witness. The Accused is the only witness for the defence.
6. For the first count, *section 212(2) of the Crimes Decree 2009*, state;-

"It is no defence to a charge for an indecent assault on a boy or a girl under the age of 16 years to prove that he or she consented to the act of indecency."

7. There is no offence under *section 212(2) of the Crime Decree 2009*. The charge is indecent assault and the correct provision of the law is *section 212(1) of the Crimes Decree 2009*. The particulars of the charge clearly stated that the accused indecently assaulted BX by touching her hip. There is clear information to the accused on the charge to prepare his defence and he will not be prejudiced by this technical mistake. I hold that it was a typing error and the relevant provision for count 1 is *section 212(1) of the Crimes Decree 2009*, which state;-

"A person commits a summary offence if he or she unlawfully and indecently assaults any other person."

8. *Section 213(1)(b) of the Crimes Decree 2009*, state;-

"(1) A person commits a summary offence if he or she, intending to insult the modesty of any person -

(b) intrudes upon the privacy of another person by doing an act of a nature likely to offend his or her modesty".

9. The elements of the offences that the prosecution must prove beyond reasonable doubts are;-

Count 1

- a. *the accused,*
- b. *indecently assault,*
- c. *the victim.*

Count 2

- a. *the accused,*
- b. *did an act that intrudes on the privacy of the victim,*
- c. *with intent to insult the modesty of the victim.*

10. The burden of prove is on the prosecution to prove his case beyond reasonable doubt.

11. At the trial the Accused deny both the allegation. It was the defence case that the allegation was framed by the parents on their effort to remove the accused away from Vunimoli Islamia Primary school.

12. The witnesses in this case are the victim and the accused. With the denial of the Accused, the issue now is which of the witness the court will accept his or her evidence. That will be determined on the finding of witness credibility.

13. Before moving to the evidence analysis, there is a need to consider the first count. The year of the offence was not stated in the particulars of the offence. That has been clarified by BX in her cross-examination where she stated that the first count was in October 2013 and the second count was in March 2014.

14. I now move into analysis of the evidence. The evidence of BX that are relevant to count 1 is where she stated that Mr Firoz called her in class and

told her that her tight is too long and he touched her hip and told her where her tight should be. For the second count, BX stated that in the classroom, the accused told her that her tight is too long and it should be short and the accused pinched near and underneath the side of her breast. She went away because she did not like what the accused did to her. She identified the accused in court as he was his class teacher.

15. For the first count, the indecent act stated in the particulars of the offence is the touching of BX hip. It was the prosecution case when the Prosecutor cross-examined the accused that the accused touched the hip of BX when she was scrubbing the toilet. This case theory contradicts with BX evidence where she stated that the accused touched her hip in the classroom when the accused showed her where her tight should be as it is too long. I accept the version of BX as that is the evidence offered for the prosecution in court.
16. In assessment of the evidence, if BX tight is too long than where the tight should be is somewhere on her middle or upper thigh and not the hip. The touching of the hip in the circumstances would be unjustifiable. BX also stated in her evidence that in October 2013, when she was cleaning the toilet, the accused pulled her and held her hand and holded on to her stomach near her waist and in class the accused always after her that her tight is too long. BX also stated that in the classroom the accused used to pull the bra straps of the female students including her.
17. For the second count, BX stated that in the classroom the accused told her that her tight is too long and he pinched near the side of her breast. She did not like it and walk away.
18. The case of the defence that the allegation was framed by the parents and the victim has been used to further the interest and move of the parents to remove the accused from the school. This case theory was put to BX where she denied that she has been used by the parents in this case. BX stated that the accused did to her those act stated in the charge. BX evidence on

the alleged act is consistent and with her determination to go through the whole ordeal of this proceeding including trial shows that her complaint is genuine.

19. With the advantage of observing the demeanour of BX and the Accused, I find BX is telling the truth and is an honest and credible witness. I find the Accused is not a credible witness and his evidence was offered to protect and save himself from the wrong he had done. His evidence is more into his own character and the move by the committee to transfer him out of the school which I do not see any relevance of that to BX complaint. In this assessment, I reminded myself that the Accused is under no obligation to prove his innocent as the burden is on the prosecution.
20. As a trier of facts, and for the above reason, I accept BX evidence. In assessing the evidence, I find that the Prosecution has proven his case beyond reasonable doubt for both the offences.
21. In my judgment, I find the Accused guilty as charged for both the counts and I convicted the Accused accordingly for both the counts.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE