

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.176 of 2014

STATE

v

SHEIK MOHAMMED FIROZ

Appearance : **CPL Monish** for the Prosecution
Mr Kohli. A for the Accused

Judgment : **10 May 2019**

JUDGMENT

1. The Accused, Sheik Mohammed Firoz, was charged for two counts of *Indecent Assault* contrary to *section 212(1)* of the *Act*.
2. The name of the victim is suppressed to protect her privacy and interest and is referred to as "the Victim" in this judgment.
3. The particulars of the offences are;-

Count 1

Sheik Mohammed Firoz between 1st and 30th day of April 2013 at Labasa, in the Northern Division, unlawfully and

indecently assaulted the Victim by touching her private part.

Count 2

Sheik Mohammed Firoz between 1st to 28th day of February 2014, at Labasa, in the Northern Division, indecently assaulted the Victim by touching her breast.

4. The Accused pleaded not guilty to both the counts on 20 September 2017. The case proceeded to trial on the same day and continued on 21 September 2017.
5. During the trial, the Prosecution called the Victim as his only witness. The Accused is the only witness for his case.

Law

6. *Section 212(1) of the Crimes Act, state;-*
"A person commits a summary offence if he or she unlawfully and indecently assaults any other person".
7. The elements of the offence are;-
 - a. *the accused,*
 - b. *has indecent contact with the victim,*
 - c. *without the victim's consent,*
8. The burden of proof is on the Prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

9. The Accused was positively identified by the Victim in court as her school teacher.
10. The Victim stated in her evidence that from 1st to 30th April 2013, she went with the Accused and other children for swim. They were playing game called "Hee" including

the Accused. It was the Accused turn. The Accused swam towards her and touch her "susu" which she demonstrated in court as her vagina. She was frightened and after that she went straight home. She further stated that from 1st to 28th of February 2014, the Accused called her to go and wash his van at his place. She stated that while she was washing the van, the Accused came and touched her breasts. When she demonstrated in court, it was on her left breast. She informed her cousin Lice and her cousin told her that she also saw what the Accused did to her.

11. In cross examination, she stated that her body was under the water swimming when the Accused swim under the water and touched her vagina from the back. She said it was not an accident because her leg is long and how can the Accused came through her leg and touched her vagina. She did not tell her mother because she was afraid that her mother might beat her. She remembered going to the Doctor in April and that will be on the first term of school. In re-examination she stated that the two incidents really happened and she is telling the truth.
12. There were some confusion by the Victim on the school term, and I view that as immaterial and not affecting the credibility of her evidence as she maintain her evidence relating to the offence for the two incidents.
13. The Accused in his evidence, stated that in 2013, he is the class teacher of the victim at Vunimoli Muslim School. He stated that in April 2013, the Victim had swim with them many times. He said the evidence of the victim is a total lie. He did not touch the victim's breast.

14. In Cross- Examination, the Accused stated that from 1st to 30th April 2013, he may be swimming with victim at any time. He swims and plays Hi with children from the school compound. Many times he is the HI and he has to touch the people. May be one time he goes underneath the water and touch the victim. He agreed that he maybe touch the victim from behind. He denied putting his hand in between the victim's leg and touches her private part. He did not touch the victim's susu. From 1st to 28th February 2014, he did ask the victim to wash his van but he denied touching the victim's breasts. In re- examination, he stated that he would never touch a breast of somebody in the presence of someone.

15. The evidence shows an agreement on the time stated in the respective charges. The Accused denied the allegation. For the first count, the Accused stated that he may be touching the Victim but he did not specify which part of the Victim's body he touched. The Victim stated that the Accused touched her susu (vagina). For the second count the Victim stated that the Accused touched her left breast. The Accused stated in his evidence in chief that he is not sure of when did the victim go with them for swimming. In his cross examination, he agreed that the Victim was swimming with them and maybe he swim under the water and touches the Victim from behind. The Accused is contradicting his evidence in that regards.

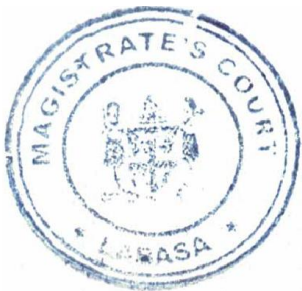
16. With the advantage of observing the demeanour of the Accused and the Victim, I find the Victim was consistent in her evidence and her evidence was not discredited during cross examination. I find the evidence of the Accused is self serving and that the reason for

inconsistency in his evidence. I find that he is not a credible witness.

17. As a trier of facts, I accept the evidence of the Victim. I find the Prosecution has proven his case beyond reasonable doubt.

18. In this 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.



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", written over a horizontal line.

C. M. Tuberi
RESIDENT MAGISTRATE