

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 158 of 2014

STATE

v

SHEIK MOHAMMED FIROZ

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

Sentence : **28 March 2018**

SENTENCE

1. Sheik Mohammed Firoz, the Accused, today is for sentencing.
2. After the trial, the Court on its judgment of 7 July 2017, found you guilty as charged for one count of *Indecently Insulting or Annoying Any Person* and one count of *Indecent Assault*. You were found to contravene section 213(1)(b) and 212(1) of the *Crimes Decree 2009* respectively.
3. The brief facts of the case was that between the 18 and 22 of November 2013, the victim was a student at Vunimoli Islamiya Primary School in Labasa. The Accused was a teacher in the same school. Between the said dates, the victim was counting the canteen money at the school canteen when the Accused closed the canteen door, pushed the victim to a corner and put his hand inside the victim's dress and started touching the victim's breast. Further, between the 25 to 29 of November 2013, the victim was in the school canteen when the Accused closed the canteen door, pull up the

victim's dress and put his hand inside the victim's panty and touched the victim's private part.

4. The Accused was convicted as charged for both the counts. The mitigation submission was filed on 28 July 2017 by the Defence Counsel.
5. The maximum penalty for *Indecently Insulting or Annoying Any Person* is 12 months imprisonment. The tariff is from 3 to 6 months imprisonment. 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.
6. 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.*
7. 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.*
8. 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.
9. You were found guilty after trial and you are not entitle for any plea concession. There was no information from the Prosecution nor the

Defence Council on the remand period. In perusing the court record, I noted that you were in remand for a period of about 1 week. I reduce your sentence by 1 week and that reduce your sentence to 2 years, 3 months, and 3 weeks imprisonment.

10. You final sentence for *Indecent Assault* is over 2 years, 3 months, and 3 weeks 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*.
11. 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.
12. *Sheik Mohammed Firoz*, I now sentence you as follows;-
 - a. Count 1 - *Indecently Insulting or Annoying Any Person* - **5 months imprisonment.**
 - b. Count 2 - *Indecent Assault* - **2 years, 3 months, and 3 weeks imprisonment.**
 - c. Sentence for both the counts to be served concurrently with immediate effects.
 - d. Non parole period of 18 months.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE