

UGANDA / JUDGMENT

# Rex v Sheshaho (Ct. App. No. 105 of 1938.) [1938] EACA 110 (1 January 1938)

## [1938] EACA 110

## COURT

East African Court of Appeal

## BEFORE

Hayden J, Lane, Ag. J, Sheridan CJ

## CASE / FILE NUMBER

Ct. App. No. 105 of 1938.

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**COURT OF APPEAL FOR EASTERN AFRICA****Before Sir Joseph Sheridan, C. J.; HAYDEN, J.; and LANE, Ag. J. (all of Kenya).****REX. Respondent (Original Prosecutor)****FARASISIKO SHESHAHO, Appellant (Original Accused) Cr. App. No. 105 of 1938.****Appeal from conviction by H. M. High Court of Uganda****Criminal law—Rape—Defilement—Conviction of rape altered to one of defilement.**

The accused appealed from a conviction of rape. He had been tried on two charges \$(a)\$ with rape, and \$(b)\$ with defilement. The Court of Appeal was of opinion that on the facts the question of consent must be in doubt.

Held (18-7-38).—That as the trial was on two counts one of defilement and the other of rape, it was competent for this Court to substantiate a conviction of defilement for the conviction of rape. (R. v Yonasani (4 E. A. C. A. 29) distinguished.)

Appellant, absent, unrepresented.

Dennison, Crown Counsel (Kenya), for the Crown.

JUDGMENT (delivered by Sir Joseph Sheridan, C. J.).—From the facts of this case, we are of the opinion that the offence committed by the appellant was defilement and not rape. The girl's evidence that she was promised cents by the appellant and the position in which they were found more than strongly point to such conclusion. The fact that the girl cried out in the course of the act does not necessarily negative consent on her part. She probably cried out owing to the pain

she was suffering at the moment. Putting it at the lowest the question of consent on the facts must be in doubt. Consequently the proper finding, we consider is defilement. Reading the case of Rex v. Yonasani (4 E. A. C. A. 29), it seems clear that this Court found itself unable to substitute a finding of defilement for rape for the reason that the accused had not been charged with defilement and that it was not competent to find defilement on a charge of rape. Here the appellant was charged on two counts \$(a)\$ with rape, and \$(b)\$ with defilement and we substitute a conviction for that offence and set aside the conviction for rape. The sentence, we consider is not excessive and will stand. With this variation in the conviction the appeal will stand dismissed.

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