

UGANDA / JUDGMENT

Rex v Vajaria (Cridinal Appeal No. 20 of 1943) [1943] EACA 56 (1 January 1943)

[1943] EACA 56**COURT**

East African Court of Appeal

BEFORE

Lucie-Smith, J. (Kenya), Sheridan CJ

CASE / FILE NUMBER

Cridinal Appeal No. 20 of 1943

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APPELLATE CRIMINAL

BEFORE SIR JOSEPH SHERIDAN, C. J., AND LUCIE-SMITH, J.

REX. Respondent $\mathbf{v}$.**JAMNADAS P. VAJARIA, Appellant**

i

Criminal Appeal No. 20 of 1943

Defence Regulations—Question of fact—Duty of Appellate Court.

Note.—Only the material part of the Judgment is reported.Figgis, K. C., for the appellant. $\cdot$

Stacey, Crown Counsel, for the Crown.

JUDGMENT (22-4-43).—This is an appeal on a question of fact, but even so we cannot as an appellate tribunal abdicate our duty to review the learned Magistrate's decision and reverse it, if we deem it to be wrong. In *Caldeira v. Gray* (1936 I All England Law Reports 540 at 541 and 542 the Lords of the Privy Council in referring to the case of **Powell and Wife v. Streatham Manor** Nursing Home (1935) A. C. 243 said: "Where the judge at the trial has come to a conclusion upon the question which of the witnesses, whom he has seen and heard, are trustworthy and which are not, he is normally in a better position to judge of this matter than the appellate tribunal can be; and the appellate tribunal will generally defer to the conclusion which the trial judge has formed", and again quoting from the speech of Lord Wright at p. 265: "Two principles are beyond controversy. First, it is clear that, in an appeal of this character, that is from

the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, the Court of Appeal 'must, in order to reverse, not merely entertain doubts whether the decision below is right but be convinced. that it is wrong'".

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