

with a P3 form.

The P3 form was completed and signed by Stephen Ekitela (PW2), a clinical officer at Lokitaung District Hospital after carrying out a medical examination on the complainant. He made observations which indicated that the complainant was indeed raped.

A police reservist, **Ewesit Lokwi**, indicated that he was near the scene of the offence on the material date and time when he was alerted that a woman was crying. He heard the woman crying and saying that she had been raped. The woman was the complainant herein and she alleged that she had been raped by the appellant.

P.C. Yusuf Shune (PW4), investigated the case and charged the appellant with the present offence. The appellant denied the charge. His case was that at the material time he was at his home with a visitor called Jimmy Ekai. Later, while leaving home he met police reservist who escorted him to Lokitaung police station where he was placed in the cells and later transferred to Lodwar police station after which he was taken to court. The present charge was a surprise to him. He acknowledged that the complainant was his sister-in-law but due to family disagreements she conspired with her sister to frame him up. He contended that the case was based on falsehood and swore that he did not commit the offence.

Jibril Ekidor Ekal (DW2), confirmed that he was with the appellant at his home at the material time. He also confirmed that he was present when the appellant was escorted to the police station by a group of police reservists. He (DW2) later learnt that the appellant had been arrested for raping a woman.

From all the foregoing evidence, it is apparent to this court that the fact that the complainant (PW1) was raped was not disputed. Indeed, the fact was duly established by the medical evidence adduced by the clinical officer (PW2).

The basic issue for determination by the trial court was whether the appellant was the person responsible for the offence.

The learned trial magistrate found that the appellant was responsible for the offence as he was clearly identified by recognition by the complainant with the help of moonlight as it was dark at the time. Although the complainant (PW1) was the only person who offered evidence of identification against the appellant in difficult circumstances, this court does not see any cogent reason to depart from the findings of the learned trial magistrate with regard to the appellant's culpability. This is because, his alibi defence was invalidated by the complainant's evidence which placed him at the scene of the offence on the material date and time. Further, the complainant and the appellant were not strangers to each other. Both acknowledged that they were in-laws. It was therefore not difficult for the complainant to see the appellant in bright moonlight and easily recognize him as the person who sexually offended her. There was indeed no reason for the complainant to frame the appellant as the indications given by appellant that family differences may have prompted the charge appeared to be afterthoughts.

It is therefore the finding of this court that the appellant's conviction by the learned trial magistrate was safe and proper. The sentence imposed on the appellant was lawful.

Consequently, this appeal is dismissed for want of merit.

[Delivered and signed this 21st day of January, 2014.]

J.R. KARANJA.

JUDGE.