

her with an object. He felled her down. She lost consciousness and did not know what happened thereafter. She regained consciousness later and found herself naked with her inner clothes besides her. She was unkempt. Good Samaritans took her to Kapenguria district Hospital where she was treated and discharged.

A vegetable vendor, **Sophia Abdalla Chemaswa (PW2)**, was asleep at home at the material time when she heard screams and groans. She enquired and found the complainant screaming and a man on top of her. The man rose up and took off on seeing her (PW2). She (PW2) and others went to fetch the relatives of the complainant and later returned to the scene. They found the accused approaching the complainant who was screaming and frightened of him. He took off and could not be apprehended by those who pursued him. He was traced later and arrested.

A clinical officer, **Jeremiah Kisang (PW3)** examined the complainant and confirmed that she had been raped.

Cpl. Peter Terer (PW4), received the rape report and proceeded to Makutano police station. He found the complainant and the appellant. The appellant had already been arrested. He (PW4) obtained necessary statements and charged the accused accordingly. In his defence, the appellant said that he was an artist. He confirmed that he drank with the complainant at Keringet club. She left him and he went home to sleep. On the following day, he went to his place of work and was confronted by some youths who assaulted him. He was later charged.

From all the foregoing facts, it was established without any particular dispute that the complainant (PW1) was indeed raped on the material night. Indeed, she never consented to any sexual intercourse with any person. She encountered a vicious ordeal. It was apparent that she was intoxicated was put into that condition either voluntarily or deliberately. Whichever the case, she “blacked out” and was not in a position to tell what was happening to her. All she knew was that she regained her senses and found herself naked and in a sorry state. Her inner wear had been removed and kept beside her. She was taken to hospital and found to have been raped. She clearly could not say who had raped her. However, she implied that it was the appellant.

The only person who appeared at the scene after alarm had been raised by complainant was Sophia (PW2). She saw a man on top of the complainant, but she was not in a position to state with certainty that the person was the appellant. Her suspicion that the appellant may have been involved in offending the complainant was raised when he appeared at the scene causing the complainant to scream more and shout his name.

As it were, with regard to the crucial fact of the identification of the appellant as the offender, the complainant's evidence stood on its own and was essentially circumstantial on the basis that the last person she was with prior to the incident was the appellant. She alleged that the appellant assaulted and felled her down before she lost consciousness. The appellant did not deny having been with the complainant on that material night. He, however, indicated that they parted company at the Keringet club and he thereafter went home to sleep.

The prosecution did not call evidence to appraise the court as to the exact time the appellant and the complainant parted ways.

Nonetheless, the failure to call such witnesses did not prejudice the prosecution case. In any case, in sexual offences, the sole evidence of the victim may be relied upon to convict a suspect if such evidence is believable. Herein, it was apparent that the trial court found that the complainant spoke the truth and went ahead to convict the appellant. The belief, in the opinion of this court, was not only extendable to the fact of rape but also to the identification of the rapist. The evidence that the appellant was responsible for putting the complainant in a state of intoxication and later felling her down on the ground thereby blackening her out was sufficient circumstantial evidence of his involvement in the offence either on his own or with others. Indeed, the complainant could not tell whether she was raped by one person or many persons. She however remembered that the appellant was the last person with her before she blacked

out. He could not escape responsibly for whatever happened to the complainant. If indeed he was innocent, the complainant could not have been found in the state she was in when Sophia (PW2) arrived at the scene of the incident.

In sum, this court must hold that the appellant's conviction by the trial court was safe.

Consequently, this appeal is dismissed on both conviction and sentence.

[Delivered & signed this 20th day of February, 2013.]

**J.R. KARANJA.
JUDGE.**