RODRICK MADUSISE

versus

THE STATE

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 17 August and 21 August

**BAIL PENDING APPEAL**

 ZHOU J: This is an application for bail pending determination of the applicant’s appeal against both conviction and sentence. The applicant made an application for bail pending appeal before the trial Magistrate after his conviction and sentence. The application was dismissed.

 I do not find any fault in the reasoning of the trial Magistrate. In my view the appeal has no prospects of success. The applicant attacks the judgment of the Learned Magistrate for applying “ the wrong test” by admitting the evidence of Shylet and Mrs Ndokanga. There is no rule of evidence which renders the evidence of the two witnesses inadmissible. This ground of appeal is therefore not sound at law.

 The court *a quo* considered and accepted the explanation by the complainant as to why she did not tell Siphatisiwe Nkomo about the rape on the same day that it was committed. In my view the court *a quo* correctly rejected the applicant’s version of events as inherently false. He does not explain why the complainant would all of a sudden make an allegation of being raped by a man whom she had sat with in a bedroom and allowed him to kiss and fondle her. If the complainant wanted to lie she could have simply developed the applicant’s story to its logical conclusion instead of telling a different story of her encounter with the applicant.

 The fact that the hymen was found to be intact by the medical doctor was adequately addressed by the Learned Magistrate. See Record p. 12.

 Accordingly, I come to the conclusion that the appeal against conviction has no prospects of success. An effective sentence of two years imprisonment is not excessive for the offence of rape. The appeal against sentence is, therefore, equally without prospects of success.

 The application is accordingly dismissed.

*Muzenda & Partners*, Accused’s defence counsel