IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Section 331(1) of the CPC read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Hasan Mohomed Irfan **ALIAS** Happy

Accused-Appellant

Vs.

C.A Appeal No: CA 276/2014

High Court Colombo

Case No: HC **4464/2008**

The Hon Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent

BEFORE : L.U Jayasuriya J.

S. Devika de L. Tennekoon J.

COUNSEL : Amila Palliyage for the Appellant.

Dilan Ratnayake DSG for the Attorney General.

ARGUED ON : 9th November, 2016

DECIDED ON : 9th December, 2016

L.U Jayasuriya J.

The accused Appellant (hereinafter sometimes referred to as the Appellant) was indicted in the High Court for the allegation of possessing a Hand Grenade punishable under section 2(1) of the Offensive Weapons Act. He was convicted and imposed a sentence of five years rigorous imprisonment and a fine amounting to a sum of Rupees 5000/- carrying a default sentence of 3 months.

The story of the prosecution is that upon receipt of some information PW1 has proceeded (with another police party) to Khettarama Stadium and has observed two persons standing near the gate of the said stadium. Subsequently PW1 has recovered a hand grenade from the Left pocket of the trouser worn by the Appellant.

The counsel of the Appellant urged two grounds at the hearing. This court will now proceed to deal with the first ground.

The Appellant's Counsel argued that there is a discrepancy in the production chain. Admittedly, an admission as to the production chain was made at the instance of both the Counsel at the lower court but the learned High Court Judge has not made a formal order with regard to the admission. By agreeing to admit a certain fact, both the counsel in effect agreed to shut out some important evidence and the courts should not allow parties to go back on said admissions.

On a perusal of the brief, it is very clear that the parties have gone on the basis that the admission made was in full force and therefore no evidence was recorded with regard to the production chain.

S.420 of the Code of Criminal Procedure Act No.15 of 1979 provides that: "it shall not be necessary in any summary prosecution or trial on indictment for either party to lead proof of any fact which is admitted by the opposite party or to prove any documents the authenticity and terms of which are not in dispute and copies of any documents may by agreement of the parties be accepted as evidence to the originals. Such admissions may be made before or during the trial. Such admissions shall be sufficient proof of the fact or facts admitted without other evidence..."

S.58 of the Evidence ordinance provides that the facts admitted need not be proven. S.146 of the Civil Procedure Code deals with admissions and issues.

It was held in **Mariammai V Pathurupillai 21NLR 200** that:

> "If a party in a case makes an admission for whatever reason, he must stand by it; it is impossible for him to argue a point on Appeal which he formally gave up in the Court below."

In the case referred to by this Court, an admission was made to the effect that the title in suit was with the judgment debtors.

Although it is a decision of a Civil Suit, the principle discussed would hold water in terms of a Criminal Case as well. In **Victor Ivan vs. the Attorney General**, His Lordship Hector Yapa J. dealt with S.420 of the Code of Criminal Procedure Act. In the Case referred to above, the admission was made by the accused himself.

In **Perera vs. Attorney General 1998 ISLR 378**, it was held that the purpose of recording admissions is to dispense with the burden of proving the fact at the trial.

The Appellant's Counsel stated that according to PW1 the production recovered by him was marked as P.R 55/2010 and the production examined by the Government Analyst was identified by the Analyst himself as PR54/2010. He strenuously argued that the defense in the Lower Court has cross examined the Analyst on the point and as the answer was in the affirmative, (i.e. PR54/2010) and therefore the production chain has been breached.

It is important to see as to why an admission is made in the recording of proceedings in a Court of Law. In a Civil Suit an admission is made to narrow down the dispute between the parties and in a Criminal Case the same is made to avoid the recording of evidence, which is required to prove a fact or a point.

Once an admission is made the party which proposes to lead evidence is required to prove a particular point is estopped from leading Evidence.

After having shut out the evidence of a particular fact adduced in a trial, one cannot be heard to say that the same point had not been proven by the party which is supposed to prove the particular fact or point.

Further, the date on which the production was sealed and the S.C.I.B Number assigned to the production tallies with that of the evidence of both the witnesses. For the foregoing reasons, this court is not inclined to agree with the first ground advanced by the Counsel for the Appellant.

The second ground advanced by the Appellant's Counsel is that the Leaned High Court Judge has not assigned reasons for rejecting the Appellant's Evidence. On a perusal of the Evidence of the Appellant, it is evident that he has admitted to the fact that he was arrested by the

Police but stated that the arrest was made on 26.10.2006 in his home but not on 29.10.2006 as testified by PW1.

It was suggested to PW1 that the Appellant was arrested one day before 28.10.2006 and further suggested that a day after "නෝම්බි" day. "නෝම්බි" or fasting is not confined to one day but lasts for a month which is observed by the Community of the Islamic faith until they celebrate Ramadan.

Therefore the above suggestion does not refer to a specific day and one cannot say that the Appellant has maintained one position throughout the trial with regard to the date of arrest. The Appellant had admitted that he pleaded guilty to the charges in the Magistrates Court that were pending against him. The learned High Court Judge had observed in the judgment that the Appellant has uttered falsehood on the basis that at one point the Appellant stated that when the Appellant was arrested, one Rizky was in a van (parked in the vicinity of the Appellant's house). When the Appellant was subjected to cross examination, he had stated that he didn't see Rizky on the day he was arrested. The learned High Court Judge had observed the demeanor and deportment of the Appellant and had reasonably observed that the Appellant was uttering falsehood.

This court is of the view that except for the typographical error about the production register number, the case for the prosecution passes the test of Probability. Hence, there is no reason to interfere with the judgment of the High Court.

For the foregoing reasons, The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon J. :

I Agree.

JUDGE OF THE COURT OF APPEAL