

Rishi Pal Vs. State

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Court : Delhi

Decided On : Apr-22-1993

Reported in : 1994CriLJ1343; 52(1993)DLT351

Judge : Mahinder Narain and; Jaspal Singh, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal Nos. 4, 14 and 92 of 1988

Appellant : Rishi Pal;chhotu;gian Chand

Respondent : State;state;state

Advocate for Pet/Ap. : I.U. Khan,; Javed Hashmi,; N.K. Handa,;

Judgement :

Mahinder Narain, J.

(1) These three appeals are directed against an order dated 5.12.1987, of Shri S.C. Jain, Additional Sessions Judge, Delhi (as his lordship then was), whereby he held the appellants Chhotu, Rishi Pal and Gian Chand guilty of having committed murder of Chhotey Lal. By the order of sentence dated 8.12.1987, the appellants were sentenced to undergo imprisonment for life under Section 302 read with Section 34 I.P.C. The appellants were also sentenced to undergo rigorous imprisonment under Section 394/34 read with Section 397 Indian Penal Code

They were also sentenced to undergo rigorous imprisonment for five years under Section 436/34 I.P.C. They were also ordered to pay a fine of Rs. 500.00, each, and in default of payment of fine, to further undergo rigorous imprisonment of one month each. With reference to the offence under Section 302/34 I.P.C., the appellants were also ordered to pay a fine of Rs. 500.00 each, and in default of payment of fine, to undergo rigorous imprisonment for one month each. It was directed that all the sentences shall run concurrently. It was also ordered that the appellants are entitled to the benefit of Section 428 Cr. P.C.

(2) The case of the prosecution was that on 19.10.1984, at about 8.50 p.m. the appellants, in furtherance of their common intention, had voluntarily caused hurt of Shri Pal, committed robbery of Rs. 5.500.00 from the cash box of Chhotey Lal and his sons. While committing robbery, they used deadly weapons, consisting of knives and hockey sticks and caused injuries to Shri Pal, and further that they Caused wrongful loss or damage to the property of Chhotey Lal his sons of more than Rs. 50.00, committed mischief by fire, intending to cause or knowing it to be likely that they would thereby cause destruction of the tea stall/dhaba which was ordinarily used as a place for the custody of property by Chhotey Lal and his sons, and they caused death of Chhotey Lal.

(3) The story of the prosecution further is that the accused Gian Chand, Rishi Pal, Raj Singh and Chhotu used to come to Chhotey Lal's shop/tea stall for taking meals and tea etc. The accused Gian Chand and Rishi Pal did not pay for the meal and tea several times earlier and threatened Chhotey Lal when he made demand for the money.

(4) It is the prosecution story that on 19.10.1984 at about 8.50 p.m. Chhotey Lal deceased was at his tea stall/dhaba, where his son Sunder Lal (P.W. 4), Shri Pal (P.W. 5), Davinder (P.W. 6) and grandson Ravinder (P.W. K) were also present. It is further the prosecution story that Chhotey Lal was taking his meals at the dhaba. The four accused persons had come to the dhaba/tea stall from the side of railway line. Rishi Pal and Gian Chand were armed with open knives, whereas Chhotu and Raj Singh were armed with hockey sticks. Rishi Pal accused caught hold of Chhotey Lal by his neck and put his knife on the abdomen of Chhotey Lal,

and Gian Chand accused tried to open the cash box which was lying on the chair and when he could not open he demanded the key of the same from Chhotey Lal. When Chhotey Lal did not hand over the key to him Gian Chand accused threatened him with open knife and demanded key, whereupon Chhotey Lal pointed out where the keys were lying, and Gian Chand accused thereafter opened the cash box with the help of the keys, and removed the cash amounting to Rs. 5,500.00, which was lying in the cash box at that time. When Chhotey Lal tried to intervene, Chhotu accused who was sitting behind Chhotey Lal, deceased, struck him with the hockey on his head which he was holding, and the front portion of the hockey broke down and fell on the ground. Gian Chand tried to attack Chhotey Lal with knife and Chhotey Lal ran towards village Nangali Rajapur and Gian Chand accused chased him with open knife in his hand. Rishi Pal accused over-turned the 'Karahi' which was on the 'Bhatti' and he also followed Chhotey Lal with the knife which he was having. Chhotu accused also gave beatings to Shri Pal with the hockey. When Chhotey Lal reached in front of the shop of Daya Ram. (halwai). Rishi Pal and Gian Chand accused caught hold of him and stabbed him on his stomach and back. Chhotey Lal raised alarm 'bachao bachao', and fell down on the ground bleeding profusely. After that the accused persons set on fire the dhaba/tea stall of Chhotey deceased and then they ran away towards the railway line. Chhotey Lal succumbed to his injuries on the spot.

(5) It is further story of the prosecution that the police control room received information at about 9.15 that there was a right with respect to the above incident. This information is recorded in Daily Diary No. 15-A.

(6) The above incident had taken place in village Nangali Rajapur, near Nizamuddin railway station.

(7) According to the prosecution, the eye-witnesses to the incident are the family members of Chhotey Lal deceased. They are Shri Pal (P.W. 5), son of Chhotey Lal, who was aged about 17 years at the date of incident ; Devinder (P.W. 6), son of Chhotey Lal, who was aged about 13 years at the date of incident : Sunder Lal (P.W. 4), son of Chhotey Lal, who was aged about 22 years at the date of incident, and Ravinder (P.W. 8) grandson of Chhotey Lal, who was a minor at the date of

incident. About this witness, the Court observed that he is a minor, and he even does not know his age. He is not a competent witness to depose on oath and cannot be examined on oath. The Court discharged this witness.

(8) The sketch map of the place where the incident has taken place, has also been filed, which is Ex. Public Witness 2/A and Ex. Public Witness 2/B. According to the sketch map, Chhotey Lal had two establishments, one was a tea stall; and another at a distance there from separated by a passage, was a dhoba. It is the case of the prosecution, and also indicated on the sketch map, that Chhotey Lal on being attacked, ran from the place where he was taking his meals and was attacked by knives again in front of a halwai shop at a distance of 150 yards from the tea stall and dhaba, and it is at this place where Chhotey Lal had died.

(9) There are photographs on record also which indicate the state of the body and its position, and specifically they are indicative of the part from where blood came out, and how it flowed from the mouth and from the injuries sustained by Chhotey Lal, which caused his death. The other important piece of evidence is post-mortem report, which reads as under :- Department of Forensic Medicine All-India Institute of Medical Sciences, New Delhi-110029. Post Mortem Report No. 1298/84. Body identified also by : 1. Sunder Lal s/o Sh. Chote Lal, r/o Shop tea, Nangli Rajapur, New Delhi. 2. Shanker s/o Dal Chand, r/o Palajim Mehar Chand village, Sarai Kale Khan, New Delhi. Alleged to have stabbed on 10.10.1984 at about 9.00 p.m. and died on the spot. Date & Hour of Receipt of Body : 20.10.84 at 12.10 p.m. Date & Hour of Receipt of Inquest Papers : -do- Date & Hour of Starting Autopsy : 20.10.1984 at 12.15 p.m. Date & Hour of concluding Autopsy : 20.10.84 at 1.15 p.m. Body brought & identified by : P.C. Randhir Singh No. 964/SD P.C. Sri Bhagwan No. 2102/SD Time since death : About 15 hours. 'SCHEDULE Of OBSERVATION' A-GENERAL 1. Name : Chhotey Lal, s/o Sh. Lal Singh 2. Address : Village Arthala, P.S. Mohan Nagar, U.P. 3. Height : 156 cms. Weight : about 70 kgs. Physiques Good 4. Nutrition: Good 5. Special identifying features : Identified body. Post-mortem changes present Rigor mortis present in all the four (extent of rigor mortis, post limbs. P.M. staining present on the mortem lividity and putrefactive back of chest and abdomen. No signs; stained blood vessels, greenish, signs of decomposition seen. Mouth discoloration, odour softening

closed, eyes closed, pupil dilated, of eye balls, exudation cornea vazy. from nose & mouth, ova of flies, moving naggots, blebs over body, peeling of cuticle loosening of hair thorax and abdomen burst, sorption of sutures of skull, eye change adipocerous mummification External appearance condition of limbs, eyes, ears, mouth, anus, vagina & urethra. Injuries briefly but accurately describe all (state whether injuries are antemortem with reasons).

1. Spindle shaped stab wound with sharp regular clean cut margins placed 10 cms. below and left to sternal angle and 5 cms right to the left nipple in 4th inter costal space of size 3.5 cm. x 0.5 cm. X 6.5 cm. directing downwards medially and backwards cuttings deep fascia interposal muscles, pleura and then the left ventricle of the heart. The stab wound of the heart was of the size of 3 cms. X.2 cm. into heart cavity deep. Haemoid pericardium umbilicus present about 250 cc of partly clotted blood was present.
2. Oblique spindle shaped stab wound with clear cut margin placed over anterior abdomen and right to umbilicus 23 cms below and left to right nipple going towards left side horizontal within the abdominal wall. Size 2 cm. x .8 cm. x 10.5 cm.
3. Incised wound of size 2.0 X 0.8 X 10.5 cms. present on the right side of black 21 cms. from posterior axillary downwards and 30 cms. from umbilicus.
4. Incised wound on back on right side of size 1 X 0.3 x 3.5 cms., six cms. below nape of back and 22 cms. from post auxiliary placed obliquely.
5. Incised wound of size 2x 0.8x 0.7 cms. adjacent to the auricle left ear 1.8 cm above the tarsus of left ear and 8 cms, from outer angle of left eye.
6. Incised wound of size 2.4 x 0.7 X 1.5 cms exterior surface of left forearm 12 cms below and left colcannon and 16 cms above the right wrist joint.
7. Incised wound of size 2.5x1x2.5 cms. placed over left wrist joint on extensor surface.

2. Orbital, Nasal and aural cavities (examined if special indications present: N.A.D. 3. Mouth, tongue and pharynx. N.A.D. 4. Neck, larynx, thyroid and other neck structures: N.A.D. C-CHEST (THORAX) 1. Ribs and chest wall as mentioned 2. Diaphragm N.A.D. 3. Mediastinum and thymus N.A.D. 4. Oesophagus N.A.D. 5. Traces and bronchi N.A.D. 6. Pleural cavities Lt. pleural cavity is filled with blood about 2000 cc of blood is present in clotted and liquid form. 7. Lungs-Right 400 gms. pale Left 360 gms. pale 8. Heart and pericardial sac 9. Large blood vessels : N.A.D. D-ABDOMEN 1. Abdominal wall as mentioned 2. Peritoneal cavity N.A.D. 3. Stomach and contents: Wt. 1600 gms., mucosa N.A.D. 4. Small intestine N.A.D. 5.

Large intestine, vermiform appendix and mesentery N.A.D. 6. Liver, gall bladder, biliary passages Wt. 1480 gms., N.A.D. 7. Pancreas N.A.D. 8. Spleen Wt. 100 gms., N.A.D. 9. Kidney, renal pelvis, ureters Wt. -200 gms., pale 10. Adrenals N.A.D. 11. Pelvic Walls N.A.D. 12. Urinary bladder and urethra N.A.D. 13. Genital organs N.A.D. E-SPINAL Column 1. Spinal column and spinal cord (the spinal cord need only be opened and the cord examined if special indications are present) : Not opened Cloths preserved and sealed -one lungi -one shirt and handed over to the concerned police. F-MUCOS Bones As mentioned. G-ADDITIONAL Remarks Nil 1. Post mortem report, inquest papers and dead body handed over to Police Constable. 2. Viscera, clothes and articles, if any Name: Randhir Singh No. 964/S.D. P.S. Nizamuddin on 20.10.84 at 2.00 p.m. H. Specimens removed for Chemical analysis. Sl. Nature of specimen 1. Stomach with contents -- 2. Small intestine and contents -- - 3. Sample of liver -- 4. Kidney (one) (half of each) - 5. Spleen 6. Sample of blood-Preserved and duly sealed along with sample of seal and handed over to the concerned police. 7. Other viscera - - 8. Preservative used -- K. Opinion as to the cause of death (a) Approximate time of death ; About 15 hours ago (b) Reserved pending report of (c) The cause of death, to the best of my knowledge and belief: is shock as a result of internal haemorrhage due to stab injury of heart i.e. (injury No. 1) which is antemortem in nature, and caused by a sharp edged weapon and sufficient to cause death in ordinary course of nature. Sd- (Dr. S.K. Verma) Deptt. of Forensic Medicine All India Institute of Medical Sciences, Ansari Nagar, New Delhi 110029.

(10) The post-mortem on the body of Chhotey Lal was conducted by Dr. S.K. Verma and Dr. T.D. Dogra, Department of the Forensic Medicine, All India Institute of Medical Sciences, New Delhi. The body was received on 20.10.1984 at 10.10 p.m. The autopsy was commenced within 5 minutes of the receipt of the body, i.e. at 12.15 p.m., and was completed in one hour, i.e. at 1.15 p.m. Dr. Dogra who along with Dr. S.K. Verma conducted the post-mortem, was also examined as a witness in the case as Public Witness 16, who opined that injury No. 1 was sufficient to cause death in the ordinary course of nature. Dr. Dogra was not cross-examined regarding the deposition made, or regarding the post-mortem report. The same was, therefore accepted by all concerned.

(11) It is significant that injuries Nos. 1 and 2 are both spindle shaped stab wounds. Spindle shaped wounds would occur only when the weapon of offence which caused injury, is sharp on both its edges. In other words the weapon or weapons which were used to cause injuries Nos. 1 and 2 were double edged.

(12) The spindle shaped wounds occur when double edged weapons used find mention in the Medical Jurisprudence by Jhalla & Raju at page 315, wherein it is stated as follows :- The edges of the wound have their own importance If the injury is inflicted with a single-edged weapon, the injury is wedge shaped. If the weapon is double edged, the wound is spindle shaped with clear edges. If the weapon is round like a poker, the wound would be circular. If the weapon is square, the wound would be crucial If the complete length of the weapon is thrust up to the hilt one edged becomes bruised. In such cases, if the exact depth of the wound can be assessed, the weapon of offence can be safely identified and incriminated.

(13) Another significant statement in the post-mortem report in part-D relating to abdomen. Item No. 3 thereof reads as under : '3. Stomach and contents ; Wt. 1600 gms, mucous'

(14) This indicates that the weight was found by the doctor to be 1600 gms., and that its contents were 'mucous'. Mucosa means mucous membrane, which refers to mucus-secreting membrane that lines body cavities this means that the stomach was devoid of food. What is significant about this is that the stomach did not contain any undigested food or undigested food particles, in other words, prior to his death Chhotey Lal had not ingested any food.

(15) Yet another significant part of the post-mortem report is contained in the Schedule of Observations part A-General, wherein against item No. 6 relating to post-mortem changes are mentioned. It is stated that rigor mortis present in all the four limbs. Post-mortem staining present on the back of chest and abdomen. The post-mortem staining happens on that part of the body on which the body lays after death. From the photographs Ex. Public Witness 3/B-1 to Ex. Public Witness 3/B-12 which are on record, it is apparent that Chhotey Lal was lying on his back, therefore, the presence of stain on the back of the chest.

(16) As regards the stain on the abdomen, it is unexplained. There is no photograph on record which shows Chhotey Lal was lying on his abdomen. There is no deposition that Chhotey Lal was found laying on his abdomen. There is no statement that when the body of Chhotey Lal was carried to mortuary, he was positioned in such a way that the body lay on the abdomen. therefore, staining of the abdomen has remained an unexplained circumstance in this case.

(17) As the photographs have been mentioned, it is desirable to mention another feature of the photographs. The photograph Ex. Public Witness 3/B-I I indicates that the body of Chhotey Lal was lying next to the wheel of a motor vehicle. That motor vehicle is not visible in all the photographs of the body. There is no Explanationn from any witness regarding the position of the body vis-a-vis the motor vehicle wheel next to which the body of Chhotey Lal was lying. Apparently, the motor vehicle was removed after the photographs showing the body next to the wheel of the motor vehicle, have been taken, and therefore some of the exhibited photographs do not indicate the presence of any motor vehicle.

(18) The above said matter is set out in order to detail that these are the post-mortem facts and not controverter.

(19) There is another significant factor which must be stated, i.e. regarding the so-called eye witnesses to the incident. All of the eye witnesses are members of the family of Chhotey Lal, the eldest of who was 22 years of age. He is Sunder Lal Public Witness 4. The next is Siri Pal, Public Witness 5 who was 17 years of age, and the next is Devinder, Public Witness 6, who is was 13 years of age at the time of the incident. The another witness Ravinder, Public Witness 8, being, was not examined by the Trial Court as the Court found the witness not competent to depose on oath.

(20) All these witnesses are sons of Chhotey Lal. All of them have deposed about the incident, the manner of its occurrence is more or less the same terms. All the eye witnesses being members of the family of Chhotey Lal, their testimony has to be scrutinized carefully.

(21) All the eye witnesses have stated that Chhotey Lal was having his meals at the time when he was attacked by the accused. All of them have deposed that the deceased Chhotey Lal was bit on his head by hockey sticks. Chhotey Lal was hit with hockey sticks so hard that the hockey sticks broke. All the eye witnesses deposed that the accused used to come in the 'dhaba', eating place, run by Chhotey Lal, and have their meals and after eating, refused to pay. and when the money was demanded, the accused threatened Chhotey Lal with dire consequences.

(22) All the eye witnesses have deposed that the accused have come to the place of occurrence from the side of the railway line (according to Ex. Public Witness 2/A and Ex. Public Witness 2/B, the site-plan prepared by the prosecution. There is a passage between the tea stall and the 'dhaba'); that they came with open knives; that they demanded the keys of the cash box which was lying on the chair; that the knife was used by the accused to extract the location of the keys from Chhotey Lal; that Chhotey Lal was attacked with knife and hockey sticks; that money was removed from the cash box which amounted to Rs. 5,500.00 the collection of the entire month; that on being attacked by hockey sticks and knives, Chhotey Lal started running; that despite being hit by hockey sticks and by knife, and having sustained knife, wounds, he kept on running; that he ran for 150 yards till he was caught by the accused in front of a shop of halwai, and was stabbed again. He fell and he died there.

(23) The post-mortem report which is reproduced above, does not indicate that Chhotey Lal suffered any injuries which could be attributed to the hockey sticks. The doctor in his deposition attempted to say that there was one bruise on the head of Chhotey Lal, but as such a bruise is not mentioned in the post-mortem report, it cannot be accepted. This is the aspect on which the doctor was cross-examined by the accused. It is difficult to believe that Chhotey Lal was hit on the head by the hockey sticks, as is alleged by the eye witnesses. One hard blow of hockey stick on the head is sufficient to make a person unconscious if not in a daze, and for a person who has also been inflicted some knife injuries, it would be practically impossible to run for about 150 yards, especially since the injuries which are found to be spindle shaped wounds, are deep injuries and one of the

injuries has penetrated the heart. No one including the prosecution, has suggested to the doctor that any person with stab injury in the heart can run for 150 yards. In case of stab injuries to the heart, which the doctor has said in his post-mortem, will be sufficient in the ordinary course to cause death, it is doubtful whether the person who has suffered such injuries will have the time to run. Death with the punctured stabbed heart, would be virtually instantaneous.

(24) The post-mortem report itself indicates that the haemorrhage as a result of first two injuries, was massive, the photographs on the record particularly Ex. Public Witness 3/B8 and Ex. Public Witness 3/B-9 indicate great deal of bleeding through the mouth. The blood from the mouth appears to flow in a direction which is in consonance with the position of the body, that is to say the body being on its back, blood flowing from the mouth towards the earth on which Chhotey Lal laid, as the life ebbed out of him when the punctured heart stopped beating.

(25) It has been elicited from the statement of the witnesses that between the 'dhaba' and the place where the body of Chhotey Lal was found, there is no trail of blood. Anybody who has been bit with hockey sticks, and anybody who has been stabbed and who is running for 150 yards, would leave some spots of blood of the injuries sustained, to justify the existence of a trail of blood, if the incident had happened according to the prosecution story.

(26) In a recent case reported as *Bhimappa Jinnappa Naganur v. The State of Karnataka*, : 1993 CriLJ1801 Yogeshwar Dayal, J., speaking for the Supreme Court commented upon the absence of trail of blood and disbelieved the story, as deposed to by the witnesses, and was one of the factors which was considered to be sufficient for the purposes of acquitting the accused in that case. It was observed by the Supreme Court that :- Though there were more than bleeding injuries on the head and face of the deceased yet there was no trail of blood or blood from the house of the deceased right till the gutter on the road side from where the body was found after traveling for about 400 feet.

(28) In the instant case there is no dispute that there is no trail of blood from near the 'dhaba' or near the tea stall to the shop of Daya Ram halwai, which is located at a distance of 100-150 yards from the 'dhaba'/ tea stall of Chhotey Lal.

(29) In view of the judgment of the Supreme Court mentioned above, the absence of trail of blood in the instant case, and Chhotey Lal allegedly allege having received 6-7 hockey blows, and also number of stab injuries assumes great deal of significance for the purpose of the credibility of the story of the prosecution and the testimony of the sons of Chhotey Lal who have repeated the prosecution story.

(30) In the light of the these findings of post-mortem of the deceased Chhotey Lal, the criticism about the nature of testimony given by the prosecution witnesses, particularly the eye witnesses, by Mr. I.U Khan, Counsel for the accused becomes significant. According to the Counsel for the accused, the alleged eye witnesses testimony should not be belted because of varies reasons; (,) the conduct of the eye witnesses is such that indicates that they were probably not present at the site; (ii) all the alleged eye witnesses were sons of the deceased, so it would not be expected of them to be silent spectators while the attack on Chhotey Lal by hockey sticks and open knives was on; (iii) the alleged eye witnesses have admitted that in the 'dhaba' they had an iron poker-rod, used for the purposes of stocking in coal fire. This could easily have been used as a weapon by the alleged eye witnesses to defend not only themselves, but Chhotey Lal against the attack which was only by knife and hockey sticks. None of the alleged eye witnesses stated that they used the iron poker/rod as a weapon of defense

(31) It is contended by Mr. I.U. Khan that the eye witnesses did not raise any hue and cry. It is not in dispute that the premises is closer to area where residential premises are also located hue and cry would have gathered a lot of people, and it would have made it difficult for the alleged attackers to escape without being challenged,

(32) It is a los clear from the testimony of the alleged eye witnesses that no attempt was made to apprehend the accused, which is very strange, inasmuch as the person attacked was none other than their father, them so as to tremendous thing that despite the fact that Chhotey Lal if content 362 also strange that statements were not made to the police immediately; that there was delay in registration of the case. The case was registered only at 11.00 A..M., whereas the incident had actually occurred at 8.50 p.m. 37. It is also strange circumstance that

no person who can be termed as disinterested witness, was examined by the prosecution in support of its case. This is despite the fact that according to the evidence given by the alleged eye witnesses in Court, there were a number of people having their dinner at the 'dhaba', and despite this, none of them had intervened in the incident, and none of them were examined as witness. 38. It is also strange that no passersby while the incident having taken place at 8.50 P.M., were associated with the investigation, nor anyone from nearby house associated. According to Mr. I.U. Khan, Ex. PW21/B, which the site-plan at page 343 of the record, shows that shops existed in the area, Fo did the residential houses. 39. Mr. I.U. Khan states that the police did not take the witnesses to the residence of the accused, who live quite close by, i.e. in Sarai Kaley Khan itself, regarding recovery of knife. 40. Mr. I.U. Khan also states that the photographs which have been filed in the case, do not evidence any mayhem which had allegedly taken place in the form of assault by hockey sticks and knives. 41. Mr. I.U. Khan says that the alleged eye witnesses not only contradict the statement of the police, but they are also inconsistent with each other's deposition, and the medical evidence does not conform with the eye witnesses accounts, and for all these reasons, he says that the alleged eye witnesses are not reliable. 42. Mr. I.U. Khan says that P.W.4 Sunder Lal mentions Rishi Pal accused as one of the persons who attacked Chhotey Lal with a knife. However, the police report does not state so. Only in oral deposition in Court, he says so. The only criticism leveled by Mr. I.U. Khan against the testimony of Dr. Dogra who carried the post-mortem and appeared in Court as P.W. 16, is that according to the post-mortem report there was no blunt injury on the body of Chhotey Lal, whereas in Court Dr. Dogra deposed that there was one injury. To that extent the testimony should not be accepted. Mr. I.U. Khan says that whereas according to the post-mortem the deceased had received seven knife injuries, the deposition in Court only speaks of four injuries, whereas the post-mortem report says that there are no blunt injuries on the body of the deceased, P.W.4 Sunder Lal says that Chhotey Lal had received 6-7 hockey blows. 43. As regards the weapon of offence, this is Ex. P.I. This is a fish shaped knife with a button. When the button is pressed the blade comes out and locks. It has got a metal handle and a single edged metal blade. There is a drawing of this knife on record. According to the story of the prosecution, this knife was recovered

from Raj Singh on 9-11-1984. This was recovered on the basis of an alleged disclosure statement made by Rishi Pal to the effect that the knife had been given to Raj Singh. This is on the basis of Ex.PW 21/G. However, according to Ex. PW21/F, the supplementary disclosure statement of Rishi Pal, the said knife was thrown in bushes. Mr. I.U. Khan points out that these two statements are, therefore, in conflict. 363

(33) Mr. I.U. Khan also points out that it is clear from the Central Forensic Science Laboratory report that no blood was found on the knife in question. It is also in the statement of the witnesses that the alleged eye witnesses did not identify Ex.P.1 as the weapon of offence. Nor was it connected with the crime by the eye witnesses, as having been used in the commission of the offence, having caused the injuries on Chhotey Lal. Being a single edged, in view of what is stated in the post-mortem report, and in view of the statement made in the Medical Jurisprudence by Jhalla & Raju, reproduced here in above, it is not possible to believe that Ex. P.W.I was used in the commission of the crime. A single edged weapon cannot cause spindle shape injuries. A single edged weapon would only cause an injury which is usually caused by double edged weapon if a single edged weapon is inserted into the wound second time with so much accuracy and care that a second wound attributable to the second entry of the knife is not created. This is practically an impossibility in a circumstance when a person is about to be knife, and he is either attempting to ward off the blow or running away trying to escape injury being caused. For the aforesaid reasons, it is not possible to accept that Ex. P. 1 is the knife which inflicted the wounds.

(34) EX. P. 1 is the fish-shaped 'Rampuri' knife which according to the prosecution, is the weapon with which the deceased Chhotey Lal was stabbed. It was this fish shaped knife which caused the fatal injury No. 1 which penetrated the heart of the deceased Chhotey Lal which resulted in his death. This fish shaped 'Rampuri' knife is a very common knife, and so I was familiar with the fact that it has only one sharp cutting edge. It is not a double edged weapon. It is also my familiarity with the fish shaped 'Rampuri' knife. It is also my familiarity with the medico legal text like Raju & Jhalla Medical Jurisprudence, which dealt with deep injuries inflicted with double edged weapons that made the story of the prosecution

that the fish shaped 'Rampuri' knife was used as a weapon of offence, stinker and one started to scrutinise the evidence of the alleged eye witnesses who are all relations of Chhotey Lal with greater care and caution. The post-mortem report about the existence of spindle shaped injury on Chhotey Lal which caused his death, is unchallenged. The prosecution seems to be blissfully unaware of the consequence of the post-mortem report regarding the spindle shaped injuries. As stated above, spindle injuries can be caused only by double edged weapons. I venture to suggest that all doctors who have obtained their M.B.B.S., have to go through their course of surgery. All medical practitioners, therefore, and each person who is specialised in surgery thereafter, would be automatically able to identify what kind of weapon would cause what kind of injury on what part of the body, and statement to such skilled persons should be accepted unless there are some very special circumstances.

(35) The clothes of the accused are Ex. P. 16 and Ex. P. 17 in terms of recovery memo Ex. PW9/D. It is pointed out by Mr. I.U. Khan that no blood stains are found on these clothes. The fact that no blood stains are found on the clothes being worn by the alleged persons who caused the stab injuries which punctured the heart, itself shows that the alleged attackers did not in fact, attack, that the alleged accused are the persons who have not participated in the commission of the offence.

(36) As regards the place of incident, it is clear from the testimony of witnesses that the attack with knives and hockey sticks did not take place at or near the 'dhaba', or at or near the tea stall, inasmuch as no blood stains 364 were found at that place. It is, however, clear from the testimony from the police witnesses that the body of Chhotey Lal was found opposite the shop of Daya Ram halwai. Apparently it was lying on its back. Apparently, it was closed to the tyre of a matador which was not to be found in all the photographs.

(37) Counsel for the appellants also attacked the prosecution story regarding the place of incident. It is stated by Mr. I. U. Khan that the fact that despite of alleged knife attack, and an alleged hockey stick attack on three or four persons, there is no blood to be found at the 'dhaba' or in front of the tea stall, which itself is

sufficient to indicate that the incident did not happen, as it is alleged to happen near the 'dhaba' and/or the tea stall. According to [he appellants, the murder of Chhotey Lal has probably taken place at the halwai shop, and the alleged eye witnesses, sons of Chhotey Lal deceased, even if they were at the tea stall and/or 'dhaba', they could not have been the eye witnesses to the incident for the reason that the halwai shop is not visible from the tea stall or from the 'dhaba'. Besides, in view of the nature of the injuries sustained by Chhotey Lal including the stab wound which has punctured his heart, and in the absence of trail of blood from the place where the body was found nowhere else including the 'dhaba', by itself shows that Chhotey Lal did not move after being attacked. He probably died very quickly after the stab wound has punctured his heart, and the fact that the alleged eye witnesses do not have any blood on their clothes, indicates that they never attempted to touch Chhotey Lal who was bleeding; they never attempted to intervene when Chhotey Lal was being attacked, and, therefore, they are not even eye witnesses.

(38) Besides this, Mr. I.U. Khan states that the investigation in the instant case is biased, and is tainted by delay. He urges that it is apparent from the record of the case, especially from the post-mortem report, that the body was received in the All India Institute of Medical Sciences at 12.15 p.m. on the next day of the incident which happened on 19-10-1984. Had the body been sent immediately as it ought to have been, as Sarai Kaley Khan village Nangali Rajpur, is near to Nizamuddin Railway Station, which is at a distance of only about 7 or 8 kms. from the All India Institute of Medical Sciences, then the body would have been received within 20 minutes of the incident that is to say by about 9.15 or 9.30 p.m., the police having reached there at 9.30, the body would have reached by 9.45 p.m. or 10 o'clock, instead the body reached the hospital at 12.15 p.m.

(39) Besides that it is in evidence of the alleged eye witnesses that the Investigating Officer was investigating till 4.00 a.m. From the record of the case it stands established that the incident took place at about 8.50 p.m. The police reached the place of incident at about 9.30 P.M.

(40) It is urged by Counsel for the appellants that the appellants are residents of the same area. The facts and circumstance of the instant case that the police did not go to the houses of the appellants at night soon after the incident. Had the names of the assailants been known to the police at around 9.30 or 10.00 p.m., than there was nothing to prevent them from going to the house of the appellants immediately and if the names had been known to the police, and the police had been informed by the alleged eye witnesses, the assailants would have been caught at once. 365 52. Counsel for the appellants also states that even the Trial Court has not accepted the testimony of the eye witnesses, in so far as it relates to Raj Singh. Raj Singh was the accused who is stated to have used the hockey stick and given blows with hockey stick to Chhotey Lal. The eye witnesses account was disbelieved by the learned Trial Court. Regarding Raj Singh, the alleged eye witnesses should have been disbelieved vis-a-vis other accused. 53. It is urged by Mr. I. U. Khan that Rishi Pal is not identified with any specific injury. There is no evidence to the effect that it is Rishi Pal who inflicted fatal injury on Chhotey Lal. The post-mortem report indicates that large number of stab injuries have been sustained by Chhotey Lal. The alleged eye witnesses having identified the accused with all these injuries. 54. Mr. I.U. Khan urges that the eye witnesses have deposed falsely, inasmuch as the eye witnesses deposed that six-seven hockey blows were given on the head of Chhotey Lal, yet no blunt weapon injuries are found on his head. Mr. I. U. Khan gives an Explanationn that the reason for involving the appellants in a crime falsely, could be that they are alleged not to have paid for the meals they used to have at the 'dhaba' of Chhotey Lal. 55. Mr. 1. U. Khan also attacks the testimony of the alleged eye witnesses by asserting that there is no evidence at all that the incident having taken place at 8.30 p.m. in the month of October, 1984, by which time it is dark ; that there was enough light at or near the place of the alleged incident i.e. the 'dhaba' and/or the tea stall which light was sufficient to make identification of the accused. 56. Mr. I. U. Khan explains the presence of blood on the newspaper at the 'dhaba' of Chhotey Lal by saying that it is the case of the prosecution that the body of Chhotey Lal was brought back to 'dhaba'. placed on the table over the newspaper so the blood was found there. 57. Mr. I. U. Khan says that it is stated by the Investigating Officer that he was looking for the eye witnesses from the public, but they were not found. This is despite the

fact that the alleged eye witnesses, sons of Chottey Lal deceased, state that three-four persons were having their meals at the 'dhaba'. In any event, as the alleged eye witnesses, sons of Chhotey Lal were allegedly present, they should have been immediately examined, but they were not. 58. Ms. Gita Mittal who was appointed as amices curiae for Gian Chand appellant, asserts that according to the prosecution story, Gian Chand was armed with knife. He demanded key of the cash box, inflicted stab wound in the back of shoulder of Chhotey Lal ; ran after Chhotey Lal and stabbed him again. The incident is alleged to have taken place between 8.45 P.M. and 8.50 P.M. ; information to the police was given at 9.00 P.M. ; the police have reached the spot at about 9.30 P.M. ; ruqa was endorsed at 8,45 P.M. ; F.I.R. No, 394 of 1984 was recorded at 11.00 P.M. and a special report was recorded at 12 mid-night, which is at page 78 of the record. According to the prosecution story, Shri Pal accompanied the dead body. 59. It is in evidence that Nafey Singh Public Witness 9 Randhir Singh Public Witness 19 and Daya Nand Public Witness 1 reached the place of incident at 9.30 P.M. 366 60. According to Ms. Gita Mittal, Shri Pal reached the hospital at 3.45 A.M. The medico legal case of Shri Pal is Ex. Public Witness 17/C dated 20.10.1984, and this indicates that there are no grievous injuries on Shri Pal, and there are no broken bones. Even the M.L.C. of Shri Pal indicates that the injuries are only alleged to be injuries by hockey sticks blows. The doctor who examined Shri Pal, does not give his own opinion about the manner in which the injuries were inflicted. It is stated by Ms. Gita Mittal that if Shri Pal's medico legal report was prepared at 3.45 A.M.. he could not have accompanied the dead body at 12 mid-night, he stated. Ms. Gita Mittal also states that in the First Information Report, the column of the name of accused is blank. It is apparent that had there been any eyewitness to the incident, as suggested, the accused would have been named in the First Information Report. 61. Ms. Gita Mittal points out a strange factor in the case that where as there are seven injuries on the body of the deceased Chhotey Lal, inflicted by sharp edged weapon, there are only four tears in the shirt. This has not been explained by the prosecution. 62. Mr. N.K. Handa, appearing for the prosecution, urges that the injuries could have been caused by Ex. P. I. He says that this opinion was given by the doctor on 6.1.1985. When it was put to Mr. Handa that Ex. P. I was a single edged weapon, and not a double edged weapon, he accepts

that as a fact. When it was further put to him that a single edged weapon cannot cause spindle shaped injuries, which is clearly stated in the post-mortem report, he states that when the doctor was present in Court, the Counsel for the accused did not put to the doctor that the injury sustained was such that it could not have been sustained by single edged weapon. He refers to : 1983 CriLJ1638 (State of Uttar Pradesh v. Hari Rain and others), in which the Supreme Court in para 7 laid down that it is the requirement to put questions to the doctor concerned instead of relying upon some medico legal text. 63. The aforesaid cases did not relate to a case like the present in which the matter in issue is, whether Ex. P. I could have possibly caused a spindle shaped injury. As it is admitted that Ex. P. I the knife is a single edged weapon, it is impossible for it to cause an injury of the type which is found on the body of Chhotey Lal deceased, the injury which according to the post-mortem report, was a fatal injury. The fatal injury is injury No. 1. It is spindle shaped. It is therefore, caused by a double edged weapon. The text of Jhalla & Raju, which has been reproduced above, is only to indicate that Ex. P. I cannot possibly cause the injury which is attributed to it. It is an impossibility, and in such cases when the testimony of eye witnesses is very doubtful including their presence, it would not be right to prefer the testimony of witnesses who have not spoken the truth over the testimony of an authoritative text. Even the Taylor's Principles and Practice of Medical Jurisprudence at page 240 indicate that a deeply punctured spindle shaped injuries are caused by double edged weapon, which reads as under :- The most common stabbing instruments are kitchen knives, sheath knives or penknives. A knife blade may be double edged along its entire length, it may be double edged for a variable distance or it may have one cutting edge. The external appearance of the skin would will often depict the type of blade. If the external wound is clean cut at both ends then the knife is either double edged or the 367 part of the blade which has, entered at that point is double edged. If it is single-edged, one end of the wound will be clean cut whereas the other end may be rounded or square. Exceptions arise when the stabbed wound is not the result of a single in and out thrust but was inflicted with the cutting edge moving forwards as the knife entered the body. Here there may appear to be two cutting edges--the width of the wound, however, will be greater than the width of the knife. 69. Mr. N.K. Handa says that the reason why the

alleged eye witnesses, sons of Chhotey Lal, did not report the matter to the police, was because by the time they became aware of the tragedy, the police have reached at the spot. 65. Mr. N.K. Handa also says that the sons of Chottey Lal did not raise any hue and cry because of the threats of the accused. For this he refers to the statement of Shri Pal made during his cross-examination at page 57 of the record. Had the incident happened, as deposed to by the alleged eye witnesses, and had the accused left the site after holding out threats, once they had gone away there was nothing to prevent these witnesses from raising hue and cry by rousing up the neighbours from the neighbouring houses and shops. It is not acceptable that a 15 years old boy would be so scared that he would not after the accused had disappeared from the spot, raise hue and cry, rousing the neighbours and the passers by and call for their help and assistance. One of us (Jaspal Singh, J.) asked the State to explain the following inability of the witnesses to report to the police about the happening of the incident :- (i) Why no blood stains were found on the clothes worn by the eye witnesses (ii) Why is there no evidence of burning of the roof of the tea stall and/or 'dhaba' (iii) Why is there no public witness at all (iv) What efforts were made by the Investigating Officer to locate the eye witnesses (v) Why is there no trace of blood at the 'dhaba' or the tea stall ; or why is there no trail of blood from the Tea Stall and/or 'dhaba' to the shop of Daya Ram halwai (vi) How a spindle shaped injury could be caused with a single edged weapon To my mind, none of these questions have been satisfactorily answered by the prosecution in the instant case. 66. In : AIR 1980 SC448 (Mannam Balaswamy v. The State of Andhra Pradesh) and : 1988 CriLJ936 (Nanhau Ram and Another v. State of Madhya Pradesh), the Supreme Court preferred the testimony of oral witnesses to the medical text, for the reason that the matter involved in : AIR 1980 SC448 was relatable to rigor mortis, and unless independent witness was found to have been properly confronted with the medical text, the contradictions between the statement made and the medical text was not considered to be a matter to be of such 368 a kind that the medical text would over-rule the testimony of the witness. In : 1988 CriLJ936 thereof, the Supreme Court relied upon the testimony of eye witnesses in preference to the medical opinion. That judgment would not apply to the facts of this case, for the reason that here it is very doubtful that the eye witnesses were present at the site, and it is difficult to accept that sons of

Chhotey Lal were actually eye witnesses to the incident.

(41) Mr. N.K. Handa conceded that Ex. P. I may not be the weapon of offence and asserts that the testimony of eye witnesses does not depend upon whether Ex. P. I was the weapon of offence or not. We do not agree that the testimony of the alleged eye witnesses is graphic. They have attempted to attribute specific stab wounds, as being wounds inflicted by specific accused had a place in their anxiety to bring home the prosecution case by stating the matters in such a way that their entire testimony was to be allowed.

(42) Mr. Sharma who appears for the accused Chhotu, generally criticised the statement of the alleged eyewitnesses, sons of Chotey Lal deceased. In addition, he referred to : 1992 CriLJ1510 (Biri Singh v. State of U.P. & Ors.), wherein it has been held by the Supreme Court that near relations are interested persons and their testimony by itself is unsafe to rely upon.

(43) On a consideration of all the factors mentioned hereabove. I am of the view that the entirety of the case hinges upon the testimony of the alleged eye witnesses, who are all near relations (sons of Chhotey Lal deceased). Their behavior does not appear to be the behavior of normal persons. They have, to my mind, been tutored to tell an untruthful tale by which the accused are sought to be implicated in the murder of Chhotey Lal. I disbelieve the testimony of these witnesses, and once the testimony of these witnesses is disbelieved, there seems to be nothing left in the case of the prosecution against the accused. I think the Court below was in error in accepting the testimony of the alleged eye witnesses, who are all interested persons, and the Trial Court was further in error in not Realizing the impact of the nature of fatal injuries on the deceased Chhotey Lal. The injuries which were shaped injuries, bad deeply penetrated into his body. They had been inflicted by a double edged weapon. Ex. P. I which is a single edged weapon, could not have caused these injuries. There are discrepancy in the prosecution story regarding the recovery of that weapon. All of which goes to show that the accused have not committed the crime, alleged to have been committed by the prosecution.

(44) In the circumstances, I set aside the judgment of the learned Additional Sessions Judge dated 5.12.1987, and acquit the accused persons, and also set aside the sentence imposed on the accused on 8.12.1987.

(45) All the accused persons who are in custody, be released forthwith, if they are not arrested in connection with any other case. The fine, if any, paid, shall be refunded to the persons who have paid the same. Jaspal Singh, J. I have had the benefit of going through the judgment Prepared by my learned Brother Mahinder Narain, J. With all respect I think nothing can be made out of the fact that the knife Ex. P-1 is not double edged and that consequently, the spindle shaped injuries found on the person of the deceased could not have been caused by the knife. I say so for the simple reason that it is not the case of the prosecution that the injuries on the person of the deceased were actually caused by the knife Ex. P-1. None of the alleged eye witnesses has deposed that the injuries, or for that matter even some of the injuries, were caused with the knife Ex. P-1. Thus knife Ex. P-1 is not connected with the crime. Thus being the position the said weapon loses its significance, if at all it had any. vis-a-vis the injuries leading to the death of the deceased Chhotey Lal. Even, otherwise, knife Ex. P-1 was allegedly recovered from the possession of Raj Singh. Raj Singh was acquitted by the Trial Court and thus the recovery of knife Ex. P-1 from his possession stands not proved. I do, with respect, agree with the conclusion arrived at by my learned brother. Undoubtedly, the prosecution has failed to prove its case beyond doubt. I am also firmly of the view that the evidence of the alleged eye witnesses is not above suspicion and that consequently it would be unsafe to place any reliance on them. My reasons for holding so are as follows :- 1. The alleged eye witnesses netted in one Raj Singh as one of the leading players in the murder of Chhotey Lal and even assigned a specific role to him. Raj Singh, however, was acquitted by the Trial Court by disbelieving the alleged eye witnesses and disbelieving also the police officials who had claimed recovery of knife Ex. P-1 from his possession. What does it show It shows that here are the witnesses who have scant regard for truth and that they would not shirk from roping in even an innocent person and weave a false story around him. 2. At the initial stages i.e. at the time of the recording of the First Information Report and so also at the time of the recording of the statements under Section 161 of the Code of Criminal Procedure it was the

unequivocal assertion of the alleged witnesses that stab injuries had been caused to the deceased in his stomach and waist. However, in utter disregard to that they committed a somersault while in the witness box and moulded their statements with regard to the injuries in an attempt to bring them in accord with the medical evidence which speaks of no injuries in stomach or waist. 3. It is asserted by all the alleged eye witnesses that at the time when the appellants had caught hold of the deceased he was taking his meals. There is no wavering on this aspect. They are firm and clear. However, when the post mortem was conducted, the doctor found not a morsel of food having been taken by the deceased. 4. It is claimed that before Chhotey Lal ran for his life he had been given hockey stick blows on his head and that one of such blows was given with such great force that even the hockey stick broke into two pieces. It is also claimed by the alleged eye witnesses that at the place where Chhotey Lal had fallen down and had ultimately succumbed to his injuries he was given hockey stick blows and mercilessly beaten. Significantly the post mortem report speaks of no such injuries as would lend support to this version. 5. It is also the case of the eye witnesses that Chhotey Lal deceased was stabbed while he was at the Dhaba/tea stall besides having been given hockey stick blows on his head. However, the absence of any trail of blood from that place to place where he ultimately fell down and succumbed to his injuries further casts doubt on the prosecution version. 6. It is in the First Information Report itself and so also in the evidence that the occurrence was witnessed by some persons from the public as well. The perusal of the record goes to show that no exercise worth the name was undertaken to examine them, join them in the investigation or produce them in the Court. 7. Although it is claimed that after having stabbed Chhotey Lal to death the appellants had come back to the eating place and had burn down its tarpaulin, there is no cogent evidence to substantiate this allegation. The Investigating Officer could easily have collected the burnt tarpaulin or its pieces or soot to lend support to the version. He made no such effort. 8. Although Sri Pal, PW-5 claims that he too was beaten and had sustained injuries and although it is tried to be made out that he was medically examined on the intervening night at about 3.45 a.m., no Explanation is forthcoming as to why, when the occurrence had taken place at about 8.50 p.m. and police had arrived at about 9.30 p.m., Sri Pal reported at the hospital for his

medical check up only at 3.45 a.m. I may hasten to add that an attempt has been made to cover, up the delay on the ground that Sri Pal accompanied the dead body of his father to the mortuary. There is no evidence to prove it. The constable who took the dead body to the mortuary does not say so. The Investigating Officer says nothing about it. The medical record is also silent about it. This inordinate delay does lend support to the assertion of the learned Counsel for the appellant that actually he was nowhere near the scene and was introduced later. 9. Although PW-6 Davinder claims that he was very much present at the time of the arrival of the police at the scene of occurrence, no Explanation is forthcoming as to why his statement under section 161 was not recorded immediately and why was it recorded after almost three hours of the arrival of the police :- 10. In the last paragraph of the First Information Report it is claimed by Sunder Lal that the entire occurrence had been witnessed by him and by his brothers. Significantly he nowhere alleges that the occurrence had been witnessed by his nephew Ravinder also. Even in the plan prepared by S.I. 371 Davinder Singh at the instance of Sunder Lal the presence of Ravinder Kumar is nowhere shown. 11. The entire conduct of the alleged eye witnesses is not normal. They had the means and ability to come forward to protect their father. They rather, remained silent spectators. They did not rush to his help even when he was beaten and stabbed at the Dhaba. They did nothing except remaining mute spectators. Even while he was being stabbed repeatedly at a place where he ultimately fell and lost his life, they did not pick him up. Rather they did not even go near to him. They did not cry. They did not shout. They sought no help. They had seen their father being stabbed and yet did not think of contacting any medical doctor. They did not even think of reporting the matter to the police. There was residential colony nearby. There was a taxi stand not far away. And, above all, it was a throughfare. Thus help could be made available at their elbow. They did not even make an effort. They neither murmured nor stirred. The circumstances as narrated by me above, if taken in their totality, cast grave doubts on the veracity of the prosecution version. I, therefore, as already noticed above, agree with the conclusion arrived at by my learned brother and would acquit the appellants by giving them the benefit of doubt. Petition dismissed. Delhi High Court Present : Mr. B.N. Kirpal and Mr. Arun Madan, JJ. Creative Travels PVT. LTD. & ANR.-Petitioners Versus Joginder Singh

PALTA-Respondent Cms 1317 & 1317-A/93 R.F.A. No, 167 of 1992 Decided on 27-8-1993 Civil Procedure Code, 1908-Sections 148 and 151-Extension of time - Undertaking to vacate the premises- Application for extension time- Execution deferred-On consent of parties-Arrived at after compromise was recorded-Absence of consent-Whether the Court has jurisdiction to extend the time (No). Held that we have no hesitation in coming to the conclusion that this Court has no jurisdiction to extend the time in the absence of the consent of either of the parties. it is to be borne in mind that when litigation is brought to an end by the parties agreeing to certain terms, it would be unfair and unjust for 'the Court to pass orders, subsequently and without their cor^ent which would be at variance with the terms of the agreement. {Para 13) Result-Petition dismissed. 375 money within the time stipulated. We find that the present case is squarely covered by the decision of a larger Bench of the Supreme Court in the case of Shri Hukam chand (supra), and, therefore, we have no hesitation in coming to the conclusion that this Court has no jurisdiction to extend the time in the absence of the consent of either of the parties. It is to be borne in mind that when litigation is brought to an end by the parties agreeing to certain terms, it would be unfair and unjust for the Court to pass orders, subsequently and without their consent, which would be at variance with the terms of the agreement. In Periyakka case it was observed that 'The Court would not rewrite contract between the parties.....' When there is a term in the agreement that if the premises are not vacated by 31/10/1993 the Court decree would be executed and an undertaking to this effect is furnished, in our opinion that term of agreement cannot be unilaterally altered and the undertaking not acted upon. The parties avoided judgment at the time when the compromise was arrived at. A solemn undertaking was given to this Court that the premises will be vacated by 31/10/1993. Had the time been fixed for vacating the premises without the consent of the parties, and merely by orders of the Court, there would have been no difficult for the Court in granting extension. We do feel that the facts as made out in the application give sufficient reasons for extending the time because it appears that the applicants are giving his consent to the extension of any time this Court, in view of the decision of the Supreme Court in Hukamchand's case has no jurisdiction to entertain a request for enlargement of time. For the aforesaid reasons this application is dismissed. petition dismissed.

