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## STATE OF PUNJAB

v.

## BHAJAN SINGH &amp; OTHERS.

August 16, 1974

(H. R. KHANNA AND Y. V. CHANDRACHUD JJ.)

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*Criminal law—Accused charged with murder—Omission by prosecution to establish that death was homicidal—Suspicion against accused—Effect—Extra judicial confession—Weight of—Evidence of association of accused and deceased—Weight of.*

*Practice and Procedure—Acquittal by High Court—Interference by Supreme Court.*

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The four respondents were charged with the murder of three persons. The evidence in the case was circumstantial. The trial Court found them guilty relying on the facts : (a) that the accused wanted to grab the shares of the deceased in a property hence had a motive to commit the murder; (b) that three of the accused made extra judicial confessions confessing to the murders; (c) that two dead bodies were recovered as a result of a statement of the fourth accused from a place in front of his house where they were buried and (d) that there was evidence of association of one of the accused and the third person alleged to have been murdered.

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On appeal, the High Court acquitted all the accused, on the grounds that the identity of the dead bodies was not established, that it was not established that the death was homicidal, that the extra judicial confessions did not inspire confidence, and that the evidence of association was not acceptable.

Dismissing the appeal to this Court,

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HELD : In an appeal to this Court, against acquittal by the High Court, this Court does not interfere with the appraisal of the evidence by the High Court unless that appraisal is vitiated by some glaring infirmity. No such infirmity has been established in the present case. The circumstantial evidence adduced is far from satisfactory and suffers from a number of infirmities. [752 B—C]

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(a) There was no evidence to show that the two dead bodies were those of two of the deceased and that the death was homicidal. The medical evidence shows that the features were unrecognizable, and that the cause of their death could not be found out. May be the doctor who performed the post mortem should have sent the dead bodies to an anatomy expert who might have been able to give an opinion as to the cause of death and thus established that it was a case of homicide, but it would be contrary to all accepted principles of criminal jurisprudence to give the benefit of that omission to the prosecution. [750F—751 B]

(b) An extra judicial confession, in the very nature of things, is a weak piece of evidence. In the present case, the evidence adduced regarding the making of the confession also lacks plausibility and does not inspire confidence. [751 F]

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(c) The date on which the witness stated to the police as having seen one of the accused and the third deceased together was about 15 days thereafter. On the evidence on record, it is not possible to fix the date of the association and consequently, the prosecution cannot derive much benefit from such evidence.

[751G—H]

(d) Even if it be assumed that the dead bodies were those of two of the deceased and that the death was homicidal, it is difficult to say whether the crime was the act of one or more culprits. In any case, it is difficult to fix the identity of the culprits.

[752A—B]

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(e) The circumstances of the case undoubtedly create suspicion against the accused, but suspicion by itself, however strong, is not sufficient to take the place of proof of guilt. [751 H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 75 of 1974.

Appeal by special leave from the Judgment & Order dated the 13th August, 1973 of the Punjab & Haryana High Court in Criminal Appeal No. 291 of 1973.

*O. P. Sharma*, for the appellant.

*Nuruddin Ahmad* and *U. P. Singh*, for the respondents.

The Judgment of the Court was delivered by

KHANNA, J. Bhajan Singh (60), his wife Charan Kaur (40), their son Surjit Singh (20) and daughter Jito (16) were convicted by the learned Sessions Judge Amritsar for offences under section 302 and section 302 read with section 34 Indian Penal Code on charges on triple murder of Harbans Singh (50), Bachan Singh (40) and Ishar Singh (12). Bhajan Singh and Surjit Singh were sentenced to death while Charan Kaur and Jito were sentenced to undergo imprisonment for life. Conviction was also recorded against the four accused under section 201 Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for a period of one year on that count. On appeal and reference, the Punjab and Haryana High Court acquitted all the four accused. The State of Punjab thereafter came up in appeal to this Court by special leave.

Harbans Singh and Bachan Singh deceased were brothers of Bhajan Singh accused. Ishar Singh deceased was the son of Hari Singh, a third brother of Bhajan Singh. Hari Singh died a few years before the present occurrence in Bihar. Harbans Singh and Bachan Singh were issueless. Bhajan Singh and his three brothers, Harbans Singh, Bachan Singh and Hari Singh owned about 14½ acres of land in the village of Dhulka in Amritsar district. The case of the prosecution is that Harbans Singh, Bachan Singh and Ishar Singh were killed by the accused so that they might also get the share in the aforesaid land of the three deceased persons.

According to the prosecution case, for about 10 or 12 days before May 7, 1972, the three deceased persons were found to be missing. The three deceased persons used to live in a house in the fields at a distance of about 1½ miles from the village abadi. Close to their house was the house of the accused. There was no other house nearby. When the three deceased persons were found missing for a number of days, Hari Singh (PW 1) who is a cousin of Bhajan Singh accused and Harbans Singh and Bachan Singh deceased, made a report at police station Jandiala on the morning of May 7, 1972. It was mentioned in the report that the three deceased persons had been missing and the informant apprehended that the accused might have done away with the deceased persons with a view to grab their share in the joint land. A case was thereupon registered under section 364 Indian Penal Code by Sub Inspector Partap Singh (PW 8).

After the registration of the case, it is stated, Sub Inspector Partap Singh went to the village of the parties and found Bhajan Singh harvesting the wheat crop in the field. The Sub Inspector then interrogated Bhajan Singh. Bhajan Singh disclosed that he had buried the dead bodies of his brothers Bachan Singh and Harbans Singh in

A front of his house and could get the same recovered. Memo Ex. P-2  
with regard to the disclosure statement of Bhajan Singh was prepared.  
Bhajan Singh then led the police party to a place in front of his house.  
That place was dug open and two dead bodies were recovered there-  
B from. One of the dead bodies, which was alleged to be that of Ba-  
chan Singh, was in a naked state. The other dead body, which was  
alleged to be that of Harbans Singh, had a kachha (underwear) and a  
phatui (waist coat) on it. A piece of cloth was found tied around  
the neck of the dead body alleged to be that of Harbans Singh. The  
two dead bodies were then sent to mortuary where post mortem exa-  
mination was performed by Dr. Saluja on the afternoon of May 8,  
1972. The doctor found the two dead bodies to be in a decomposed  
C state. The features also could not be recognized. The doctor did  
not find any ligature marks and could otherwise also not find out  
the cause of death.

It is further the case of the prosecution that on May 9, 1972 Surjit  
Singh accused went to the house of Jabarjang Singh (PW 5) and re-  
quested him to produce Surjit Singh before the police. Surjit Singh  
also made an extra judicial confession before Jabarjang Singh. Ac-  
D cording to that confession, Charan Kaur had called Bachan Singh  
deceased to the house of the accused. Bachan Singh was then killed  
by the four accused in that house. The four accused thereafter went  
to the house of Harbans Singh deceased and strangled him to  
death. The dead bodies of Bachan Singh and Harbans Singh were  
thereafter buried in front of the house of the accused. Surjit Singh  
is further stated to have told Jabarjang Singh that Jito had called  
E Ishar Singh. Surjit Singh then took Ishar Singh and threw his dead  
body in the river Beas.

Charan Kaur and Jito, according to the prosecution case, went to  
the house of Gurmej Singh (PW 3) on the morning of May 10, 1972  
and requested him to produce them before the police. Charan Kaur  
and Jito also made extra judicial confession about their having along  
F with the other two accused caused the death of Harbans Singh and  
Bachan Singh.

It is also the prosecution case that during the days of the present  
occurrence, Santokh Singh (PW 6) saw Surjit Singh taking Ishar Singh  
on a cycle near Rayya towards Beas.

G At the trial Gurmej Singh (PW 3) and Jabarjang Singh (PW 5)  
gave evidence about the extra judicial confessions of three of the  
accused. Santokh Singh (PW 6) deposed about his having seen  
Ishar Singh being taken on a cycle by Surjit Singh towards  
Beas. Sub Inspector Partap Singh (PW 8) is the investigating  
officer and deposed about the recovery of the two dead bodies at the  
instance of Bhajan Singh accused from a place in front of his house.

H The four accused in their statements under section 342 of the Code  
of Criminal Procedure denied the various prosecution allegations. No  
evidence was produced in defence.

The learned Sessions Judge in recording a finding of guilt against the accused came to the conclusion that the motive to commit the murder of the deceased had been proved against the accused. Reliance was also placed upon the evidence regarding extra judicial confessions as also that relating to the taking of Ishar Singh towards the river Beas by Surjit Singh accused on his cycle. As regards the recovery of the two dead bodies, the learned Sessions Judge held that only that part of the statement of Bhajan Singh was admissible as related to the recovery of the two dead bodies. The part of the statement that the two dead bodies were of Harbans Singh and Bachan Singh was held to be not admissible in evidence.

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On appeal and reference the learned Judges of the High Court found that there was no evidence to show that the two dead bodies which had been recovered were those of Harbans Singh and Bachan Singh. The record of the case was further held to be bereft of any material which might show that the death of the persons whose dead bodies had been recovered was homicidal. The evidence about the extra judicial confession of the accused was found to be not inspiring confidence. Likewise, the evidence of Santokh Singh about his having seen Surjit Singh taking Ishar Singh on a cycle was not accepted. In the result the accused were acquitted.

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We have heard Mr. Sharma on behalf of the appellant-State and are of the opinion that no case has been made for interference with the judgment of the High Court. There is no eye witness of the occurrence and the conviction of the accused is sought to be accured on the basis of circumstantial evidence. We, however, find that the evidence which has been adduced in this case is far from satisfactory and that it suffers from a number of infirmities. In the first instance, there is no evidence on record to show that the two dead bodies which are alleged to have been recovered in pursuance of the disclosure statement of Bhajan Singh were those of Bachan Singh and Harbans Singh deceased. The evidence of Dr. Saluja is clear on the point that the features of the persons on whose dead bodies the doctor performed post mortem were unrecognisable. Question then arises as to whether the death of the two persons whose dead bodies were recovered was homicidal. So far as this aspect is concerned, we find that Dr. Saluja has deposed that he found no marks of ligature on either of the two dead bodies. According further to the doctor, he could not find the cause of death because the two dead bodies were in a decomposed state. In the face of the above evidence of the doctor, it is not possible to hold that the death of the two persons, whose bodies were recovered, was homicidal.

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The learned Sessions Judge in the course of his judgment has observed that the doctor who performed post mortem examination was careless inasmuch as he failed to send the two dead bodies to the Professor of Anatomy who might have been in a position to express opinion after examining the hyoid bone and cervical vertebra as to whether the death of the two deceased persons was due to strangulation. Although it may be that it would have been more appropriate on the

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**A** part of the doctor to have sent the dead bodies to an anatomy expert, the fact that the doctor did not do so cannot be a ground for drawing an inference adverse to the accused. The accused cannot be made to suffer because of that omission of the doctor. It would indeed be contrary to all accepted principles to give the benefit of that omission to the prosecution. The onus in a criminal trial is upon the prosecution to prove the guilt of the accused. If there be any gap or lacuna in the prosecution evidence, the accused and not the prosecution would be entitled to get the benefit of that.

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**C** Coming to the evidence of extra judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh PWs, the confessing accused came to them and blurted out confessions. They also requested these two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused who had not been arrested till the morning of May 9, 1972 should be seized almost at the same time by a mood to make confession. It is significant that Surjit Singh, Charan Kaur and Jito accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh PWs. These two witnesses were also not in such a position that the above mentioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jito wanted to surrender themselves before the police, we fail to understand as to why they should not themselves surrender before the police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect

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**F** in the present case lacks plausibility and, as observed by the High Court, it does not inspire confidence.

As regards the evidence of Santokh Singh (PW 6) who has deposed that he saw Surjit Singh taking Ishar Singh on a cycle towards Beas, we find that according to the witness he made a statement to the police about that fact about 15 days after he had seen Surjit Singh and Ishar Singh going on a cycle. The date on which Santokh Singh made statement to the police is not on the record and as such it is not possible to fix the approximate date on which Santokh Singh had seen Surjit Singh and Ishar Singh going on a cycle. The prosecution consequently cannot derive much benefit from the statement of Surjit Singh.

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**H** The circumstances of this case undoubtedly create suspicion against the accused. Suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused. Another weakness of the prosecution case is that as

many as four persons have been involved in this case. Even if it may be assumed that the dead bodies which were recovered from the place in front of the house of the accused were those of Harbans Singh and Bachan Singh deceased and that their death was homicidal, it is difficult to say whether the dastardly crime was the act of one or two culprits or of a larger number of them. In any case it is difficult to fix their identity.

In an appeal against the judgment of the High Court recording a finding of acquittal, this Court does not interfere with the appraisalment of the evidence by the High Court unless that appraisalment be vitiated by some glaring infirmity. No such infirmity has been brought to our notice. There is, in our opinion, no merit in this appeal. It accordingly fails and is dismissed.

*Appeal dismissed*

V. P. S.