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Cr1.A.No. 170 OF 2001  
ITEM NO.101

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Cr1. A. No. 170/2001

Devi Singh

Petitioner(s)

VERSUS

State of Rajasthan

Respondent(s)

(With appln. for exemption from filing O.T.)  
With Cr1.A. No. 1258/2003

Date: 08/12/2004 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE Mr. JUSTICE ARUN KUMAR

For Petitioner(s)Mr. Shiva Pujan Singh, Adv.  
Mr. Sanjeev Singh, Adv.

Mr. Doongar Singh, Adv.  
Mr. V.J. Francis, Adv.Mr. P.I. Jose, Adv.  
Mr. Jenis V. Francis,Adv.Mr. Anupam Mishra, Adv.

For Respondent(s)Ms. Madhurima Tatia, Adv.  
Mr. Aruneshwar Gupta, Adv.

Mr. Javed Mahmud Rao, Adv. (N.P.)  
Mr. Ashok K. Mahajan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard learned counsel for the parties.  
The appeals are dismissed in terms of the signed  
order.

(R.K. DHAWAN) (VEERA VERMA)  
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 170 OF 2001

Devi Singh.... Appellant.

Versus

State of Rajasthan.... Respondent.

WITH

Crl. A. No.1258/2003

O R D E R

These two appeals have been preferred against the judgment of the Division Bench of the Rajasthan High Court. These two appellants were found guilty for the offence punishable under Section 302 IPC. Appeal No.1258/03 was filed by appellant Mohan Lal and Appeal No.170/01 is filed by co-accused Devi Singh. We are told that appellant Mohan Lal passed away and Mr. Doongar Singh, counsel appearing for him submitted that he died in jail while undergoing imprisonment for life. Counsel for the State also submits that this fact is true. The appeal No.1258/2003 abates and is dismissed.

The appellant in Criminal Appeal No.170/2001 along with now deceased Mohan Lal is alleged to have caused the death of one Kesri Mal in the night of 26th June, 1976.

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Mohan Lal's sister Mohini was married to Kesri Mal. It is alleged that Kesri Mal had some extra-marital relationships and this was not liked by the appellant Mohan Lal and he with the assistance of the appellant Devi Singh caused the injury on the neck of Kesri Mal, while he was sleeping and he died on the spot. The prosecution case is that Mohan Lal and Devi Singh both went to the house of Kesri Mal during night and there was nobody else in the house except Kesri Mal and they climbed over the wall and gained entry into the house and using 'Dhariya' Devi Singh gave cut injury on the neck of Kesri Mal. His dead body was put on a cot and kept in the chowk. On the next day some villagers of the locality found the house of Kesri Mal locked and they went to the police station. Police came to the house and broke open the house and saw the dead body of Kesri Mal in the chowk. Body was sent for post-mortem examination and PW-29 conducted the investigation. On 28th July, 1976, the present appellant was arrested from his house. Based on confession made by the appellant 'Dhariya' and some blood stained clothes were recovered from his house. The appellant was in judicial custody from 31st July to 2nd August, 1976, and the police informed the Magistrate that this appellant desired to give confession before the Magistrate. On 2-8-1976, the Magistrate recorded the

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confession of the present appellant. In the confession he narrated the whole of incident and also the involvement of his co-accused Mohan Lal. Based on the confession and the recovery of 'Dhariya' and other articles the Sessions Judge convicted the appellant for the offence punishable under Section 302 IPC. The Division Bench of the High Court elaborately considered the appeal preferred by the appellant and confirmed conviction and sentence.

We heard learned counsel for the appellant and counsel for the State.

The counsel for the appellant strenuously contended before us that confession statement relied upon by the prosecution was recorded by the Magistrate without following the legal formalities and the confession was not voluntary in nature and therefore the Sessions Judge as well as the High Court should not have placed reliance on that. It is also contended that the appellant was not given sufficient time for reflection and the Magistrate straight away recorded the confession and it resulted in serious prejudice to the appellant. It was also pointed out by the appellant counsel that the accused in his statement before the Magistrate categorically stated that he was beaten up by the police for three days and this clearly

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indicated that the confession was recorded under threat and coercion. The copy of the confession was produced before us and we have gone through it. The recorded confession shows that the Magistrate followed the legal formalities in recording the confession. The Magistrate told the appellant that he was not bound to give any confession and if given it would be used against him. The Magistrate also told the appellant as to whether anybody had used any force or pressure or coercion to make the confession statement. The appellant answered in negative. The various answers given by the appellant to the queries made by the Magistrate clearly show that

hat the confession was voluntary in nature. It is true that the appellant had made a statement that he was beaten up by the police for three days and it is recorded by the Magistrate that the appellant had showed his back and fingers, but there were no injuries or marks either on the back or on fingers. So the statement made by the appellant should not have been true and the Magistrate had not believed the statement and had it been true, the Magistrate would have taken steps to see whether the confession was made under the physical threat or coercion. The appellant was produced in Court at about 12 o'clock and he put the preliminary questions and recorded the answers of the appellant. Thereafter the further confession statement

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was recorded at about 2 o'clock. The appellant had time to reflection and the appellant was during this period in judicial custody. It is also pertinent to note that the appellant had given detailed recording as to how the incident happened. It is stated that the co-accused came to him in the evening and he offered him rupees one thousand in cash and a gold chain in his consideration, in case he would do away with the brother-in-law and he further stated that he along with the co-accused went to the Khera and boarded a bus of Sadri and reached Gomti at about 4- 4.30 p.m. and thereafter stayed three hours and went to the Chhapli at about 7- 7.30.

From there they proceeded to Magri and sat behind a stone slab and hid themselves for 3-4 hours and thereafter at 1.30 a.m. night they went to the house of Kesri Mal and scaled over the wall of the house of Kesri Mal and entered the house and the Devi Singh inflicted injury on the neck of Kesri Mal and the co-accused stood nearby. Thereafter he lifted the dead body and placed it on the cot in the chowk. The dead body was recovered from the chowk. Description of the injuries, found on the dead body of Kesri Mal, in the post-mortem report is in conformity with the overtacts described in the confession statement.

This also shows that the facts stated in the confession are fully corroborated by the medical evidence adduced in this case.

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It is also to be noticed that recovery had been effected at the instance of the present appellant and the 'Dhariya' and turban allegedly worn by the appellant at the time of the incident were blood stained and they were recovered from the house of the appellant. There is satisfactory evidence to prove the case against the appellant and the Sessions Judge as well as the High Court had rightly convicted the appellant for the offence punishable under Section 302 IPC. The appeal is accordingly dismissed.

The appellant is directed to surrender the bail bonds to serve out the remaining part of the sentence.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(ARUN KUMAR)

NEW DELHI;  
DECEMBER 8, 2004.