(2010) 12 Supreme Court Cases 91

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

BIPIN KUMAR MONDAL .. Appellant;

Versus

STATE OF WEST BENGAL .. Respondent.

Criminal Appeal No. 1247 of 2008†, decided on July 26, 2010

A. **Criminal Trial — Motive — Relevance and significance — Held, motive is of no consequence and pales into insignificance when direct evidence establishes crime — Motive is primarily known to accused and it may not be possible for prosecution to explain it — Ocular testimony of witnesses, if reliable, cannot be discarded only by reason of absence of motive — In cases of circumstantial evidence, motive is significant — Evidence about motive forms chain of event in circumstantial evidence — Even if motive is strong accused cannot be convicted if evidence is not convincing — Likewise accused can be convicted if evidence is reliable and trustworthy and absence of motive is insignificant — Criminal Trial — Circumstantial evidence — Motive (Paras 22 to 26)**

Shivji Genu Mohite v. *State of Maharashtra*, (1973) 3 SCC 219 : 1973 SCC (Cri) 214; *State of U.P.* v. *Kishanpal*, (2008) 16 SCC 73; *Hari Shanker* v. *State of U.P.*, (1996) 9 SCC 40 : 1996 SCC (Cri) 913; *Bikau Pandey* v. *State of Bihar*, (2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535; *Abu Thakir* v. *State of T.N.*, (2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258; *Ujjagar Singh* v. *State of Punjab*, (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272, *relied on*

B. **Penal Code, 1860 — Ss. 302 and 323 — Conviction confirmed — Appellant attacking his wife and two sons with knife — Wife and one son *A* died on spot — Other son, PW 1 received injuries — Appellant running away when PW 1 raised hue and cry and neighbours and relatives arrived there — Appellant remained absconding — Held, PW 1 lodged complaint giving full details and naming his father as accused — Complaint was written by PW 10 an independent witness from neighbouring village — Conduct of PW 1 is natural, probable and convincing — Cross-examination not shaking credibility of PW 1 — Denial by PW 1 that he named his father under suspicion — PWs 2, 3, 4, 6, 7 and 8 stating that they rushed to spot on hearing hue and cry and stating that they were informed by PW 1 that his father attacked with knife — PW 4 stating that *A* telling him before his death that appellant attacked him — PW 4 could be first person to have visited spot — IO submitting charge-sheet showing appellant as absconder — Ocular evidence supported by medical evidence — No material to show that appellant was falsely implicated or that appellant's neighbours and relatives deposing falsely against him — Motive is irrelevant when direct evidence is available — Criminal Trial — Conduct of accused, complainant, witnesses, etc. — Conduct/Reaction/Behaviour of witness — Conduct of**

† From the Judgment and Order dated 13-7-2005 of the High Court at Calcutta in CRA No. 352 of 2001

minor son on murder of his mother and brother by his father — Witnesses — Child/Young witness (Paras 13 to 18, 20 and 21)

C. **Criminal Trial — Abscondence — Inference from, as to guilt — Held, mere abscondence does not lead to a firm conclusion of guilty mind — An innocent man may abscond to evade arrest — It is natural conduct of accused — Abscondence is relevant evidence, but its value depends upon circumstances — Courts normally treat abscondence as a minor item in evidence for sustaining conviction (Paras 27 and 28)**

Matru v. *State of U.P.*, (1971) 2 SCC 75 : 1971 SCC (Cri) 391; *Rahman* v. *State of U.P.*, (1972) 4 SCC (N) 6; *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674, *relied on*

D. **Criminal Trial — Witnesses — Sole/Solitary witness — Reliance on, for conviction — Held, court can act solely on evidence of reliable single witness to record conviction — If evidence of single witness is doubtful, then same has to be corroborated by other evidence — It is not quantity, but quality of evidence that is material — On the other hand, if testimony of several witnesses is not reliable, then accused may be acquitted — Evidence Act, 1872 — S. 134 — Penal Code, 1860 — S. 302 — Solitary witness (Paras 31 to 33)**

Sunil Kumar v. *State (Govt. of NCT of Delhi)*, (2003) 11 SCC 367 : 2004 SCC (Cri) 1055, *followed*

Namdeo v. *State of Maharashtra*, (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773; *Kunju* v. *State of T.N.*, (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331; *Jagdish Prasad* v. *State of M.P.*, 1995 SCC (Cri) 160; *Vadivelu Thevar* v. *State of Madras*, AIR 1957 SC 614 : 1957 Cri LJ 1000, *relied on*

Appeal dismissed G-D/A/46537/SR

Advocates who appeared in this case :
Seeraj Bagga (Amicus Curiae), Advocate, for the Appellant;
Avijit Bhattacharjee and Ms Ananya Kar, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258, *Abu Thakir* v. *State of T.N.* 97*g*
2. (2008) 16 SCC 73, *State of U.P.* v. *Kishanpal* 98*a*
3. (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331, *Kunju* v. *State of T.N.* 100*a*
4. (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773, *Namdeo* v. *State of Maharashtra* 99*f-g*
5. (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272, *Ujjagar Singh* v. *State of Punjab* 98*a*
6. (2005) 3 SCC 169 : 2005 SCC (Cri) 674, *State of M.P.* v. *Paltan Mallah* 99*a*
7. (2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535, *Bikau Pandey* v. *State of Bihar* 97*g*
8. (2003) 11 SCC 367 : 2004 SCC (Cri) 1055, *Sunil Kumar* v. *State (Govt. of NCT of Delhi)* 99*d*
9. (1996) 9 SCC 40 : 1996 SCC (Cri) 913, *Hari Shanker* v. *State of U.P.* 97*f-g*
10. 1995 SCC (Cri) 160, *Jagdish Prasad* v. *State of M.P.* 100*a*
11. (1973) 3 SCC 219 : 1973 SCC (Cri) 214, *Shivji Genu Mohite* v. *State of Maharashtra* 97*c-d*
12. (1972) 4 SCC (N) 6, *Rahman* v. *State of U.P.* 99*a*
13. (1971) 2 SCC 75 : 1971 SCC (Cri) 391, *Matru* v. *State of U.P.* 98*c-d*
14. AIR 1957 SC 614 : 1957 Cri LJ 1000, *Vadivelu Thevar* v. *State of Madras* 100*a*

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.— This appeal has been preferred against the judgment and order dated 13-7-2005, passed in Criminal Appeal No. 352 of 2001 by the High Court of Calcutta, by which the High Court dismissed the application filed by the appellant and upheld the conviction and sentence passed by the trial court in Sessions Trial No. 4 of 2001 (*State* v. *Bipin Kumar Mondal*) under Sections 302 and 307 of the Penal Code, 1860 (hereinafter called as "IPC").

Factual matrix

2. Facts and circumstances giving rise to this appeal are that one Sujit Mondal, PW 1, lodged an ejahar with Raninagar Police Station on 6-12-1999 stating that his father, Bipin Kumar Mondal, the appellant herein, came to their house at about midnight on 5-12-1999 and attacked his mother, Usha Rani Mondal, with a knife and inflicted severe injuries on her person. When he went to save his mother, he was also attacked by his father. He received injuries on his head and hands and he had to escape out of fear. His younger brother, Ajit Mondal, was also severely injured with a knife by his father. On hearing the hue and cry made by Sujit Mondal, PW 1, his neighbours came and in the meantime his father ran away.

3. On the basis of the said ejahar, the police investigated the case and submitted the charge-sheet against the appellant under Sections 302/307 IPC. The appellant pleaded not guilty and hence, he was put to trial.

4. In support of its case, the prosecution examined 11 witnesses to bring home the charge against the appellant. An ejahar was lodged by the son of the appellant and other witnesses had been close neighbours and relatives residing in the same village. The trial court considered the evidence of the prosecution witnesses and came to the conclusion that petition of the complainant had been written by Saidul Islam, PW 10, on the instructions of Sujit Mondal, PW 1, and both of them supported the prosecution case in court.

5. Saidul Islam, PW 10, was a resident of another village and had gone to Raninagar Public Health Centre in connection with the treatment of his relation and there he was requested by Sujit Mondal, PW 1, to write the said ejahar (Ext. 1). Sujit Mondal, PW 1, had deposed that he had gone to the same Public Health Centre at Raninagar and was admitted for treatment for one day. The other witnesses who were close neighbours had supported the prosecution case and deposed that all of them reached the place of occurrence after hearing the shouts by Sujit Mondal and when they reached there, they were told by Sujit Mondal, PW 1, that his father had killed his mother and brother, and inflicted injuries on his person.

6. After considering the entire evidence on record and taking it into consideration along with the defence taken by the appellant, which had been only to the extent that he was innocent, the trial court held that the

prosecution had succeeded in proving its case beyond reasonable doubt. However, the injuries on the person of Sujit Mondal, PW 1, were found not to be so serious and he has failed to produce any certificate from Raninagar Public Health Centre or any other proof that he was admitted there. The appellant was convicted under Sections 302 and 323 IPC. Thus, he was awarded the sentence of life imprisonment under Section 302 IPC and 6 months' RI under Section 323 IPC, however, it was held that both the sentences would run concurrently vide judgment and order dated 12-6-2001.

7. The appellant preferred Criminal Appeal No. 352 of 2001, which has been dismissed by the High Court vide impugned judgment and order dated 13-7-2002. Hence, this appeal.

Rival submissions

8. Shri Seeraj Bagga, learned amicus curiae, has submitted that the appellant is innocent and has been falsely implicated in the crime. Sujit Mondal, PW 1, was not sure as to who had committed the offence. There was no motive for committing the crime and the weapon with which the offence had been committed has never been recovered. The depositions made by PWs 2 to 8, the so-called related persons or neighbours are merely based on hearsay as none of them had seen the commission of offence. There are material contradictions in their depositions.

9. Dilip Kumar, PW 4, had deposed that when he reached the place of occurrence, Ajit Mondal died within a short time after his arrival. However, none of the other witnesses have stated that when they reached the place of occurrence after hearing the hue and cry of Sujit Mondal, PW 1, Ajit Mondal was alive and had died after some time. All the three persons had been sleeping in the same room which was open. Therefore, it was possible for any outsider to enter into the house and the possibility that an outsider entered the house and committed the offence could not be ruled out. The appellant was an anti-social element and many persons had a grudge against him. So, any other person could have committed the crime. The evidence to the effect that at the time of commission of offence, the lamp was burning and there was sufficient light, is also not free from doubt. Therefore, the appeal deserves to be allowed.

10. On the contrary, Shri Avijit Bhattacharjee, learned counsel for the State, has opposed the appeal and vehemently submitted that Sujit Mondal, PW 1, had no doubt or suspicion in his mind that his father had committed the offence. The depositions made by PWs 2 to 8, who are close relatives and neighbours who had reached the place of occurrence immediately after commission of the offence, cannot be doubted as each of them has deposed before the trial court that Sujit Mondal, PW 1, told them that the appellant, his father, has committed the crime. The recovery of knife used in the commission of offence could not be made because the appellant remained absconding for a long time. The conduct of the appellant i.e. absconding for a long time itself establishes the guilt of the appellant.

11. All the witnesses had been put to cross-examination and nothing has been obtained to seek the credence of the evidence of any of them. The appellant just pleaded innocence and nothing else. He did not even disclose as under what circumstances he had absconded from his family home and had been living somewhere else, where he had been at the time of commission of offence and why did he not attend any ritual i.e. funeral, etc. of the victims if he was innocent. The appeal lacks merit and is liable to be dismissed.

12. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

13. Sujit Mondal, PW 1, has lodged an ejahar with Raninagar Police Station on 6-12-1999 giving full details of the commission of the offence and naming his father as the person who committed the offence. The said ejahar had been written by Saidul Islam, PW 10. On scrutiny of evidence of PW 10, it becomes evident that he is an independent witness residing in another village and could not have any grudge to support the case of the prosecution by deposing falsely. The conduct of Sujit Mondal, PW 1, remains very natural, probable and convincing. During cross-examination, nothing could be elicited from him seeking the credence of his statement. No reason came forward in the cross-examination or otherwise as to why a son would depose against his father. There is no suggestion by Sujit Mondal, PW 1, that he was not sure as to who has committed the offence, as in the cross-examination he denied such a suggestion stating that it was not a fact that he told the name of the assailant as his father by suspicion.

14. The other witnesses who were close relatives and neighbours of the appellant have supported the prosecution case. Sambhu Nath, PW 2, had deposed that he reached at about midnight when Sujit Mondal, PW 1, shouted and he came out from his house and on enquiry from PW 1, he learnt that his mother and brother had been murdered by the appellant with a sharp-cutting knife. PW 1 was also injured on his head and hands. Swapan Kumar, PW 3, deposed that on reaching the place of occurrence, he interrogated Sujit Mondal, who told him that his father had killed his mother, Usha Rani and brother, Ajit Mondal and there had been an attempt by his father to kill him (Sujit Mondal) also with a sharp-cutting knife. Dilip Kumar, PW 4; Binay Mondal, PW 6; Anukul Chandra, PW 7 and Prasanna Kumar, PW 8, also deposed to the same effect. All these witnesses had been cross-examined but there is nothing on record to show that any part of their depositions could be doubted.

15. We do not find any force in the submissions made by Shri Seeraj Bagga that there were material contradictions in their depositions as the learned counsel for the appellant had pointed out that Dilip Kumar, PW 4, had deposed that when he reached the place of occurrence, Ajit Mondal was alive and he interrogated him as to who had caused the injury and he told him that his father assaulted him and left. He further deposed that Sujit Mondal

told him that Ajit Mondal and Usha Rani were also attacked by the appellant and Ajit Mondal died within a short time and Usha Rani had died before his arrival.

16. The submission made by Shri Seeraj Bagga is that none of the other witnesses had deposed that when any of them reached the place of occurrence, Ajit Mondal was alive. In fact, there is nothing on record to show as who was the person who reached first at the place of occurrence. It cannot be presumed that all of them reached the place of occurrence at the same time/simultaneously. No other question had been put to Dilip Kumar, PW 4, in his cross-examination. Therefore, it is quite possible that he was the first man to arrive at the place of occurrence and the statement made by him cannot be denied.

17. Bipin Mukherjee, PW 9, had been the investigating officer at a later stage when the first investigating officer had been transferred and he had deposed that he had submitted the charge-sheet against the accused under Sections 302/324 IPC on 13-4-2000 showing the appellant as absconder. The appellant was given opportunity to cross-examine the said IO; but the opportunity was not availed. In fact, he was the best person to explain as to why there could not be any recovery of the knife, the weapon used in the crime.

18. Saidul Islam, PW 10, an independent witness belonging to another village has successfully proved the ejahar written by him at Raninagar Public Health Centre. The ocular evidence given by Sujit Mondal, PW 1, is duly supported by the post-mortem report and by Dr. Tarun Kumar, PW 5, examined by the prosecution, who had explained that several stab injuries had been caused in the chest, neck and heart of Usha Rani Mondal. He proved the post-mortem report and opined that the cardiorespiratory failure due to shock and haemorrhage due to injuries, had been the cause of death. He also opined that injuries were caused by sharp-cutting weapon. Same remains the situation so far as the injuries on the body of Ajit Mondal are concerned.

19. For every question put to the appellant under Section 313 of the Code of Criminal Procedure, 1973, the same reply was given that he was innocent and he submitted that he would not adduce any evidence in his defence.

20. In view of the above, we reach the inescapable conclusion that there is nothing on record to show that there could be any reason for Sujit Mondal, PW 1, a son, to falsely implicate and rope his father into such a gruesome murder or the other witnesses, who had been so close relatives and neighbours of the appellant, would support the prosecution case. During the cross-examination of all of the witnesses, nothing had transpired for which their evidence may be discarded. The witnesses were natural and most probable and their presence at the place of occurrence immediately after the commission of crime is expected, being close relatives and neighbours. No reason could be given as to why such close relations of the appellant would

depose against him. Undoubtedly, there is nothing on record to show as what could be the motive behind the murder of his wife and son by the appellant. However, it can be difficult to understand the motive behind the offence.

21. The issue of motive becomes totally irrelevant when there is direct evidence of a trustworthy witness regarding the commission of the crime. In such a case, particularly when a son and other closely related persons depose against the appellant, the proof of motive by direct evidence loses its relevance. In the instant case, the ocular evidence is supported by the medical evidence. There is nothing on record to show that the appellant had received any grave or sudden provocation from the victims or that the appellant had lost his power of self-control from any action of either of the victims.

Motive

22. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.

23. In *Shivji Genu Mohite* v. *State of Maharashtra*[1] this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.

24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide *Hari Shanker* v. *State of U.P.*[2], *Bikau Pandey* v. *State of Bihar*[3] and *Abu Thakir* v. *State of T.N.*[4])

25. In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not

1 (1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55
2 (1996) 9 SCC 40 : 1996 SCC (Cri) 913
3 (2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535
4 (2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258

due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide *Ujjagar Singh* v. *State of Punjab*[5].)

26. While dealing with a similar issue, this Court in *State of U.P.* v. *Kishanpal*[6] held as under: (SCC p. 88, para 39)

> "*39.* The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

Abscondence by the accused

27. In *Matru* v. *State of U.P.*[7] this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under: (SCC p. 84, para 19)

> "*19.* The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."

5 (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272

6 (2008) 16 SCC 73

7 (1971) 2 SCC 75 : 1971 SCC (Cri) 391 : AIR 1971 SC 1050

A similar view has been reiterated by this Court in *Rahman* v. *State of U.P.*[8] and *State of M.P.* v. *Paltan Mallah*[9].

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.

29. The defence did not even make a suggestion to Sujit Mondal, PW 1, that he was not injured by the appellant with a knife. The evidence of PW 1, therefore, cannot be ignored. However, as the prosecution failed to produce any evidence to the effect that Sujit Mondal, PW 1, remained admitted in PHC, Raninagar, that part of the evidence has been ignored by the trial court as well as by the High Court.

Testimony of sole witness

30. Shri Bagga has also submitted that there was sole testimony of Sujit Mondal, PW 1, and the rest i.e. depositions of PW 2 to PW 8, could be treated merely as hearsay. The same cannot be relied upon for conviction.

31. In *Sunil Kumar* v. *State (Govt. of NCT of Delhi)*[10] this Court repelled a similar submission observing that: (SCC p. 371, para 9)

> "9. ... as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration."

In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

32. In *Namdeo* v. *State of Maharashtra*[11] this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

8 (1972) 4 SCC (N) 6 : AIR 1972 SC 110
9 (2005) 3 SCC 169 : 2005 SCC (Cri) 674
10 (2003) 11 SCC 367 : 2004 SCC (Cri) 1055
11 (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773

33. In *Kunju* v. *State of T.N.*[12], a similar view has been reiterated placing reliance on various earlier judgments of this Court including *Jagdish Prasad* v. *State of M.P.*[13] and *Vadivelu Thevar* v. *State of Madras*[14]. a

34. Thus, in view of the above, the bald contention made by Shri Bagga that no conviction can be recorded in case of a solitary eyewitness has no force and is negatived accordingly.

35. In view of the above, we are of the considered opinion that the facts and circumstances of the case do not present special features warranting the review of the judgments/orders of the courts below. The appeal lacks merit and is accordingly dismissed. b

36. Before parting with the case, we record our appreciation, thanks and gratitude to Shri Seeraj Bagga in rendering full assistance to the Court during the course of hearing.

———— c

(2010) 12 Supreme Court Cases 100

(BEFORE MARKANDEY KATJU AND K.S.P. RADHAKRISHNAN, JJ.)

O.P. PATHROSE .. Appellant;

Versus

STATE OF KERALA AND ANOTHER .. Respondents. d

Civil Appeal No. 1256 of 2005†, decided on March 16, 2010

Arbitration Act, 1940 — Ss. 30 and 29 — Arbitral award — Interference with — Absence of specific terms of reference and reasonableness of award — Arbitrator allowed five claims, of which specific terms of reference not made for two claims — Sustainability — Held, unreasonableness of award is not a matter for court to consider unless award is per se preposterous or absurd — It is for arbitrator to appraise evidence adduced by parties — While interfering with reasoned award, held, High Court bound to give cogent reasons — In present case, arbitrator allowed two claims based on facts as admitted by respondents and not controverted by adducing of evidence and made a reasoned award — Hence, High Court was not justified in interfering with that part of reasoned award — However, arbitrator committed error in granting two other claims without there being any specific terms of reference and no material to support them — Hence, High Court rightly set aside these other two claims — Rate of interest reduced to 9% from date of request for reference till payment — Arbitration and Conciliation Act, 1996 — Ss. 34, 8 and 37 — Arbitral award — Interference with — Absence of specific terms of reference (Paras 15 to 20) e f g

12 (2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331

13 1995 SCC (Cri) 160

14 AIR 1957 SC 614 : 1957 Cri LJ 1000 h

† From the Judgment and Order dated 12-3-2003 of the High Court of Kerala at Ernakulam in MFA No. 45 of 1996