

## **Saravanabhavan And Govindaswamy vs State Of Madras on 16 December, 1965**

**Equivalent citations: AIR1966SC1273, 1966CRILJ949, AIR 1966 SUPREME COURT 1273, (1966) 1 SCWR 840 (1966) SCD 561, (1966) SCD 561**

**Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami, P. Satya Narayana Raju**

### **JUDGMENT**

M. Hidayatullah, J. (On behalf of himself, Gajendragadkar, C.J. and Satyanarayana Raju, J.)

1. This is an appeal by special leave against the judgment of the High Court of Madras dated February 10, 1965 in Criminal Appeals Nos. 699--701 of 1964. The appellants are two condemned prisoners under sentence of death passed on them by the Sessions Judge, Coimbatore and confirmed by the High Court. They have been convicted under Sections 302/84 and 449 of the Indian Penal Code on being found guilty of the murders of one Peramia Goundar, his concubine Swarnam and Swarnam's mother Meenakshi Ammal at Kullaipalayam on the night of January 11, 1964.

2. The scene of the offence was the residential house of Peramia Goundar on the Dharmapuram-Kangeyam Road. Peeramia Goundar was aged 65 years at the time of his death. He lost his wife 15 years ago after she had borne him four daughters. All the daughters had been married and three were living at the time of Peramia's death. The daughter, who died earlier, was married to one Marimuthu Goundar and a daughter Govendammal was born of that union. Govindammal was married to Sarvanabhavan (accused-1). Peramia Goundar was the youngest of three brothers. They had separated and divided the properties between them. The eldest brother was Krishnaswami Goundar and next was Padathi Goundar. Krishnaswami's son was one Govindaswamy who had three sons, the eldest being the appellant Saravanabhavan. Padathi Goundar has three sons and his youngest son is one Sennimalai Goundar.

3. Peramia Goundar was a rich man and was in possession of lands and cash. Four or five years before his death, he kept Swarnam as his concubine. Swarnam was living in his house and had brought her mother Meenakshi Ammal to live with her. Swarnam had a brother, Balasubramaniam (P. W. 20). Peramia Goundar had taken a great interest in Balasubramaniam and had put him in the timber depot of his son-in-law Marimuthu to learn the trade and had given Marimuthu a loan of Rs. 5,000. Peramia Goundar had executed a will on March 26, 1947 (Ex. P-8) by which he had bequeathed his properties in favour of his three daughters and Sennimalai Goundar. He had gifted already 40 acres of land to Sennimalai Goundar. Peramia revoked the first will and executed another registered will Ex P-9 on September 19, 1960. Under this will, the legatees were the three daughters, Swarnam, Saravanabhavan (appellant) and his wife Govindamal. Peramia took back the lands he had given to Sennimalai Goundar and recovered the loan from Marimuthu. He then began

arranging for a timber depot for Swarnam's brother. Swarnam tried to arrange a marriage of her brother with Govindammal's younger sister but could not bring it off as Saravanabhavan was against this marriage. After this, Swarnam induced Peramia to send away Saravanabhavan and his wife from his house. Swarnam next arranged a match with the daughter of one Muthu Goundar but Saravanabhavan told Muthu Goundar that Balasubramaniam was a spend-thrift and came from a bad family. This broke off the match and Muthu Goundar told Peramia what Saravanabhavan had told him. When this match was broken off, Peramia was angry and he began to say that he would revoke the will in which Saravanabhavan and Govindammal were legatees. There is evidence to show that on the date of the occurrence Peramia scolded Saravanabhavan and told him that he (Peramia) would revoke the will. He went to Dharampuram and told Balasubramaniam what had taken place between him and Sarvanabhavan. Peramia's statement was, of course, provable as a transaction resulting in his death. The same night, these three murders took place.

4. On January 12, 1964, Palaniammal (P. W. 9) a domestic servant of Peramia went to his residence as usual in the morning. She found the western door of the house bolted from inside and tapped on the door; there was no answer. She then went to the northern door and found it ajar. Entering the house, she got the shock of her life when she discovered the three inmates butchered and lying in their blood. She ran away and informed Kangaya Goundar (P. W. 10) about it. The murders being thus discovered, the usual reports and other proceedings followed. The police arrested accused 1 (Saravanabhavan), accused 3 (Govindaswamy), accused 2 (Krishnaswamy since acquitted) and P. W. 2 (Sukran alias Sankara Kudumbanna) one after the other and in that order. Sarvanabhavan made a statement, of which the admissible portion is Ex. P-24, in the presence of Dorairaj, village munsiff (P. W. 21) and Velayudhan Nair, Sub-Inspector of Police (P. W. 23). He took the police to the house of Muthuswamy (P. W. 8) and on statements made by Muthuswamy, ashes of cloth (M. O. 19) were seized, which were stated by Muthuswamy to be the Veshti and underwear of Sarvanabhavan burnt by the witness. Sarvanabhavan took the police to his house from where he produced M. Os. 9 and 10 which Muthuswami stated were loaned to Sarvanabhavan as Saravanabhavan's own clothes were stained with blood.

5. Govindaswamy accused 3 also made a statement to the police (Ex. 25) and offered to produce a veecharuval (M. O. 3) which was later dug out from a pit. It may be mentioned here that at the house of Peramia was found a chimney (M. O. 5) which bore some finger prints and they were identified by Ramakrishnan Finger-print Expert (P. W. 13) to be those of Govindaswamy. Govindaswamy was wearing at the lime of his arrest an under-wear and veshti which were seized under Seizure memo P-26 from him. They were item 20 in the Chemical Examiner's report and the aruval was item No. 21. The clothes were subsequently found to be stained with human blood but the blood on the aruval was disintegrated and the source could not be detected.

6. As there was no eye-witness to the offence, pardon was tendered to Sukran (P. W. 2) and he was examined as an approver in the case. The High Court and the Sessions Judge accepted his testimony and found corroboration for it generally and in respect of each of the two convicted accused with whom we are concerned. The conviction and the sentence passed on each of the accused have thus been reached concurrently. In this appeal, we were invited to reverse the finding on the ground that the approver's testimony was not per se credible and that there was neither general corroboration of

his testimony nor corroboration in respect of either of the appellants.

7. This is an appeal under Article 136 of the Constitution and we shall first state what this Court will ordinarily consider in such an appeal. It is not to be forgotten that this Court's ordinary appellate jurisdiction in criminal cases is to the extent laid down in Article 134 of the Constitution. Some of the appeals in that article are available as of right and others lie at a special certificate is granted by the High Court. This appeal belongs to neither class. It is not as of right and no special certificate has been granted by the High Court. There is in our jurisdiction no "sacred right of appeal" as the French Canadian law assumes (See *Mayor etc. of Montreal v. Brown*, 1876) 2 AC 168 (184)). Once a decision is given by the High Court, that is final unless an appeal is allowed by special leave of this Court. No doubt this Court has granted special leave to the appellants but the question is one of the principles which this Court will ordinarily follow in such an appeal. It has been ruled in many cases before that this Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as, that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. We have, in approaching this case, borne these principles in mind. They are the principles for the exercise of jurisdiction in criminal cases, which this Court brings before itself by a grant of special leave.

8. Mr. Mohan Kumaramangalam in dealing with the appeal attacks the evidence of the approver and we shall now deal briefly with his criticisms on the strength of which he seeks to get the evidence of the approver excluded from consideration. It is true that if he succeeds in this, the case against the two appellants must fail, because there is nothing in the rest of the evidence to connect them with the murder except the discoveries against them. Mr. Mohan Kumaramangalam contends that the approver is a disreputable person here, "K. D." (known desperado) and his evidence must not be received implicitly. This aspect of the case was considered by the Sessions Judge but not the High Court. As the Sessions Judge rightly remarked, only such a character would be used as a hired assassin but being an approver, his testimony in any event requires corroboration before it can be accepted. The antecedents of the approver do not really make him either better or worse. His evidence can only be accepted on its own merits and with sufficient corroboration. We have been taken through his evidence and we are satisfied that the High Court was right in believing it, and there is nothing to show that it can be excluded from consideration. A few points were made about his testimony and we will briefly advert to them although they have been considered already, either in the judgment under appeal or in the judgment of the Sessions Judge. The first is the discrepancy between his evidence and that of P. W. 21--the village munsiff on the subject of the lights in the house of Peramia. The approver in his deposition stated that electrical light was burning in the room where the murders took place and he switched off the light. The village Munsiff stated in cross-examination that there was no electricity in the village Kullapalayam. Mr. Mohan Kumaramangalam contends that this demonstrates that the approver was imagining things and that

he was in fact not present in the house or at the scene of murder. There is no doubt that this contradiction is there, although it is not quite clear whether the house was connected to electric energy or not. The learned Sessions Judge or the High Court could have easily cleared the doubt by taking some more evidence, and they have held that this was a mistake. We have considerable doubt in the matter. However, stray sentence in the deposition of the village Munsiff, even if it contradicts the approver, does not necessarily lead to the conclusion that the approver was not present. The approver's testimony has received corroboration at various points. The first and the foremost is the fact that he was arrested last of all and thus could not have put the police on a wrong scent. The police had already arrested the three accused in the case and had obtained from them statements which led to certain discoveries. The approver in naming the accused was stating something, a part of which was already known to the police. It is contended in the alternative that the approver must have been coached to support the prosecution case. This cannot be accepted, because the approver himself made statements which led to the discovery of blood-stained clothes and articles from places in which they were hidden in such manner that the hiding place could only be known to him and none else. These discoveries connect the approver with the occurrence. Further his statement that accused 3 Govindaswamy had brought the chimney (M. O. 5) after the light in the room was extinguished, is corroborated by the discovery of the finger-prints of Govindaswamy on the chimney. In his examination, Govindaswamy did not deny that they were his finger-prints and gave the explanation that he used to visit the place of Peramia and might have left his prints then on the chimney. This explanation was rejected by the High Court and the Sessions Judge and we do not see any reason to accept it. It, therefore, follows that the approver was in a position to state a fact about Govindaswamy which was corroborated and makes the probability of his presence at the scene of occurrence, into a certainty.

9. It is next contended that the approver had minimised his own part, that he was a hired assassin and should have played the leading role, but he says that he only struck one blow and that too ineffective. It is argued that he should not be believed. We accept that the approver slurred over his own share in the affair as, in fact, most of the approvers do. Approvers do not want to involve themselves too deeply in the offence even though they depose under the terms of a pardon. The question always is whether on the statements they would be held guilty or not. The approver admits his participation in the guilt sufficient for his conviction. It is obvious that his statement was not self-exculpatory. As his statement must be received with caution, the High Court and the Sessions Judge, being alive to the need of caution, looked for adequate corroboration before accepting his testimony. They have critically examined his evidence before holding that his version is credible. They committed no error either of law or of fact in accepting the testimony of the approver and in view of the principles to which we have already adverted earlier, we do not feel called upon to reject the testimony of the approver.

10. The evidence corroborating the presence of each of the two appellants is ample. In regard to Sarvanabhavan, there is the evidence of motive which is strong and could not have been a concoction. The two wills executed by Peramia were produced in the case and were proved by P. W. 11 the scribe. They clearly show that Sarvanabhavan and his wife were to benefit under the second will. There is ample proof that Peramia was greatly influenced by Swarnam and that he was trying to set up her brother in business. It is also amply proved that Swarnam's brother Balasubramaniam

was about to be married to Muthu Goundar's daughter but the match was spoiled by Saravanabhavan. There is evidence to show that Peramia took considerable offence and he threatened to revoke the will under which Sarvanabhavan and his wife were beneficiaries. This establishes a very strong motive on the part of Saravanabhavan to do away with Peramia before the latter could revoke the will. Indeed, Mr. Mohan Kumaramangalam did not deny the existence of this motive. Many murders, in the history of crime, have been committed by beneficiaries under wills who have so acted because of an apprehension that the will in question might be revoked. This is just another case of that kind. Saravanabhavan thus had a motive to commit the murder. Then there is the evidence of P. W. 6 Muthuswamy whose veshti and under-wear Saravanabhavan had borrowed so that he could get rid of his bloodstained clothes. It is contended that P. W. 6 must be regarded as an accomplice because he burnt the blood-stained veshti and underwear of Saravanabhavan and thus caused disappearance of the evidence of his guilt. P. W. 6 was not an accomplice in the act of murder, at best, he can be described in the words of English law as an accessory after the fact. He was, if he had a guilty intention, an offender or an abettor under Section 201 of the Indian Penal Code. He was young and inexperienced being only 20 years of age. His act was probably an unthinking act, and he seemed not to realise the gravity of it till his father scolded him for having done it. His statement that he burnt the clothes was corroborated by the discovery of ashes and charred pieces of cloth from the place of burning. He also stated that Sarvanabhavan made an extra-judicial confession before him and his statement that he loaned the Banian and veshti was true, because the veshti and banian were found from Saravanabhavan's house. In view of the motive, the statements and the discovery of the two items of cloth and the statement of P. W. 6, the approver's testimony in respect of Saravanabhavan becomes acceptable.

11. In respect of the other appellant, Govindaswamy, his presence is almost certified by the discovery of his admitted fingerprints upon the chimney in the house of Peramia, and the discovery of the bloodstained garments and aruval. The evidence of the approver against him is corroborated. It is obvious that these two appellants were rightly convicted.

12. Although we have reassessed the evidence in part, we may say that the Sessions Judge and the High Court were fully alive to the law relating to approver testimony. They first examined the approver's statement to find whether it was per se credible or not. They concurrently found that the statement made by him, judged of in the light of probabilities and the corroborating evidence was credible. They next looked for general corroboration; they found it from the various discoveries which he made himself and the discoveries made by other named by him. They next considered whether there was corroboration in respect of the participation in the guilt of the appellants named by him as his co-murderers. They found this corroboration also. The evidence was scanned properly from these three points of view and on reading the evidence we find nothing on which we can say that there is any error of any of the kinds mentioned by us earlier which calls for interference. The appeal, therefore, fails and is dismissed.

Wanchoo, J. (On behalf of himself and Ramaswamy J.)

13. We regret we are unable to agree.

14. This is an appeal by Special leave against the judgment of the Madras High Court. It arises out of the murders of three persons, namely, Peramia Goundar, his concubine Swarnam and her mother Meenakshi on the night between January 11-12, 1964 at Kullaipalyam. The murders were discovered at about 7 a.m. on January 12, 1964 when a maid-servant went as usual, to the house of Peramia Goundar. She found the three persons lying dead inside the house with bleeding injuries. She reported the matter to Kangaya Goundar, who went to the spot and saw the three dead bodies. Kangaya Goundar then reported what he had seen to the village munsif at 8 a.m. the same day. In this report Kangaya Goundar said that it was not known who had committed the murders.

15. The prosecution case is that Peramia Goundar was a well-to-do man. He had four daughters all of whom had been married. His wife had died ten years before the incident. For the last four years he had been living with Swarnam who became his concubine. Swarnam's mother Meenakshi also lived with her. Peramia Goundar had made a will in 1947 by which he devised his properties in favour of three of his daughters and a nephew. Appellant Saravanabhavan (hereinafter referred to as Sarvan) was married to one of the grand-daughters of Peramia Goundar a few months before the incident. After this marriage Sarvan and his wife lived for sometime with Peramia Goundar, though at the time when the incident took place they were living separately. The prosecution case is that Sarvan and his wife resented Peramia Goundar living with his concubine and this led to misunderstandings between them it was also the prosecution case that on January 11, 1964 there was a quarrel between Peramia Goundar and Sarvan. It may be mentioned that Peramia Goundar made another will in September 1960 in place of the earlier will of 1947 and had left some property to Sarvan who was also the grandson of Peramia Goundar's brother. It is said that when the quarrel took place on January 11, 1964, Peramia Goundar threatened to change his will. Sarvan wanted to avert this change and that was the motive for the murders which took place the same night.

16. The main evidence in this case consists of the statement of Sukran, who has turned approver. The story given by him was this. In order to do away with Peramia Goundar, Sarvan had hatched a conspiracy with Krishnaswami, who was one of the accused but has been acquitted by the High Court, to murder Peramia Goundar. In that connection three days before the incident, Sarvan and Krishnaswami met Sukran and asked for his help in committing the murder and offered to give him Rs. 1,000 and six acres of land on lease. Govindaswamy appellant is also said to be a friend of Sarvan and joined the conspiracy. So the same night at about 9 p.m. Sukran met Sarvan, Krishnaswami and Govindaswamy and they left for Kullaipalyam to commit the murder. None of them had arms. After reaching Kullaipalyam, they could not find any sticks which they intended to use for committing the murders and so the plan was postponed and Sarvan said that he would collect knives and sticks and they would commit the murders two or three days later. Sarvan asked Sukran to bring a bichuwa knife and a veechu-aruvai when sent for and that he would also collect the necessary knives. Sukran was then sent for two or three days later through Thangana. He came on the night of the incident with a bichuwa knife and a veechu-aruvai. Sarvan also got two arrivals and they all came to Kullaipalyam accompanied by Thangana. After reaching Kullaipalyam, Sarvan went to purchase cigarettes and brought some. He also went to the house of Karupanna Nadar and brought two koduvals (choppers) from there. They then went to the house of Peramia Goundar. Sarvan and Krishna-swami got over the wall of the house with the assistance of Sukran and Thangana and jumped inside and then opened the door. At that stage Thangana ran away while

Sukran, Sarvan, Krishnaswami and Govindaswamy went in and bolted the door from inside. This was at about 1 a.m.

17. The story as to what happened inside the house is also given by Sukran. He said that an old woman, presumably Meenakshi, raised an alarm. Thereupon Sarvan and Krishnaswami ran to where Peramia Goundar was sleeping. Sarvan struck on the neck of Peramia Goundar with the veechu-aruvai and Peramia Goundar fell down from the cot. Swarnam was also in the same room and raised an alarm. Sukran approached her and struck her on the neck with the bichuwa knife asking her not to shout. Swarnam moved out of the way and the blow did not injure her seriously. She continued crying on which Krishnaswami hit her with the koduval on the neck. She fell down and died. In the meantime Govindaswamy struck the old woman who was shouting a number of times with the koduval. She also fell down and began to gasp for her life. At that stage they heard a sound as though somebody was tapping at the door from outside. On hearing the sound of tapping, Sarvan switched off the electric light which had been burning when they had entered the house. As it became dark, Sukran picked up a torch which was lying on the cot and flashed it. There was also a kerosene bed room light burning in the acharam and Govindaswamy brought that light from there. Thereafter they opened the door towards the north side and ran away.

18. Sukran then gave evidence as to what he had done after the incident was over. He said that in the morning he found spots of blood on his shirt. So he burnt that shirt. He washed his dhoti and towel. There were spots of blood on them as well. He buried the bichuwa knife underground at a distance of half a furlong from his village. Next day he came to know that the police was bringing a dog to trace the culprits. So he went in hiding for seven or eight days. He was, however, arrested as he was about to board a bus to go to his sister's place. After his arrest he told the police the whole story and got the bichuwa knife recovered from the place where he had buried it. He also showed the place where he had burnt the shirt and from there some ashes and buttons were recovered. Later he made a confession and was thereafter made an approver.

19. This in brief was the prosecution case. It may be noticed that the main evidence against the accused was the statement of the approver. Under Section 133 of the Evidence Act, an accomplice is a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, under Section 114 of the Evidence Act it is provided that a Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. So ordinarily a Court seeks for corroboration of the evidence of an approver before convicting an accused person on that evidence. Generally speaking this corroboration is of two kinds. Firstly, the Court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime; secondly, after the Court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the Court seeks corroboration of the approver's evidence with respect to the part of other accused persons in the crime, and this evidence has to be of such a nature as to connect the other accused with the crime.

20. This Court had occasion to consider the question of an approver's evidence in *Sarwan Singh v. State of Punjab*, . After pointing out that an approver was a competent witness but that his evidence requires corroboration in material particulars, this Court observed at p. 959 (of SCR) "But it must never be forgotten that before Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

This is not to say that the evidence of an approver has to be dealt with in two watertight compartments; it must be considered as a whole along with other evidence. Even so, the Court has to consider whether the approver's evidence is credible in itself and in doing so it may refer to such corroborative pieces of evidence as may be available. But there may be cases where the evidence of the approver is so thoroughly discrepant and so inherently incredible that the Court might consider him wholly unreliable; see *E. G. Barsay v. State of Bombay*, . Bearing these principles in mind we proceed to consider how the Sessions Judge and the High Court have dealt with the evidence of the approver.

21. The Sessions Judge was not prepared to act on the uncorroborated testimony of the approver and, therefore, looked for corroboration of his evidence connecting him with the crime as well as connecting the other accused persons with the crime. The corroboration on which the Sessions Judge relied related to the motive of Sarvan appellant to kill Peramia Goundar, the evidence of Thangana, the evidence of Karuppanna Nadar from whom Sarvan was said to have brought two koduvals that night, the evidence of Karuppana Goundar with respect to the purchase of packet of cigarettes from him by Sarvan, the evidence of Muthuswamy Goundar (P. W 6) to whom Sarvan is said to have gone soon after the incident, the discovery of the thumb-impression of Govindaswamy on the chimney of the bedroom lamp in the house of Peramia Goundar and the recovery of blood stained clothes from his person and of an aruval at his instance which had blood stains. The Sessions Judge accepted the story of Sukran and basing himself on this corroboration convicted Sarvan, Krishnaswami and Govindaswamy.

22. The High Court scrutinised the evidence in order to satisfy itself whether there was corroboration of the evidence of the approver. It first looked into the evidence as to motive: of Sarvan There were four witnesses in this connection, namely, Karuppanna Goundar (P. W. 1), Kangaya Goundar (P W. 10). Nachimuthu Goundar (P. W. 12) and Balasubramaniam (P. W. 20). Karuppanna Goundar was produced to prove that on the morning of January 11, 1964, peramia Goundar had abused Sarvan and had threatened to change his will. But in Court he did not give this evidence and was treated as hostile. Further the High Court was apparently not impressed by the evidence of the other three witnesses, for it pointed out that there was evidence to show that Sarvan and his wife left Peramia Goundar's house not because of any quarrel but because of the custom



prevalent in the community according to which a newly married couple is kept in the bride's house for some time and then goes away. The High Court also referred to the fact that after the newly married couple went away from Peramia Goundar's house, Sarvan used to visit him often. So the High Court confined the motive of the appellant to the broad fact that the relative of Peramia Goundar would naturally be dissatisfied with him for keeping a concubine. Finally the conclusion of the High Court was that it was not prepared to dissent from the conclusion of the Sessions Judge that Sarvan had some motive against Peramia Goundar.

23. As to the other evidence with respect to corroboration, the High Court did not accept the evidence of Thangana. The evidence of Sukran was that Thangana had come upto the house of Peramia Goundar and helped Sarvan and Krishnaswami in jumping over the wall and then he had disappeared. Thangana said that he had gone upto the house with these people out of fear and then had run away when Sarvan had jumped into the house. So the corroboration available from Thangana on which the Sessions Judge had relied disappeared. The High Court then dealt with the evidence relating to the purchase of cigarettes by Sarvan and the bringing of koduvals at about midnight. The High Court did not rely on the evidence of Ramaswamy Goundar (P. W. 7) and Karuppanna Goundar (P. W. 8). Therefore the corroboration arising out of the evidence of Ramaswamy and Karuppanna Goundar on which the Sessions Judge had relied also failed.

24. The High Court, however, accepted the evidence of Muthuswamy (P. W. 6) as to the visit of Sarvan to him soon after the incident and that was practically the sole corroboration of the evidence of the approver with respect to Sarvan besides of course the general motive to which we have already referred. As to Govindaswamy the High Court relied on the fact that his thumb impression was found on the chimney of the lamp in the house of Peramia Goundar and also on the recovery of blood stained clothes from his person at the time of his arrest and the discovery of the aruval at his instance. As for the third accused Krishnaswami the High Court found that there was no corroboration worth the name against him and therefore, ordered his acquittal.

25. Though, therefore, the High Court did not accept a large part of the evidence as to corroboration on which the Sessions Judge had relied, it came to the conclusion that the approver's evidence was corroborated in material particulars with respect to the two appellants and to that extent the findings of the Sessions Judge and the High Court are concurrent. Ordinarily, this Court does not go into the evidence when dealing with appeals under Article 136 of the Constitution particularly when there are concurrent findings. This does not mean that this Court will in no case interfere with a concurrent finding of fact in a criminal appeal; it only means that this Court will not so interfere in the absence of special circumstances. One such circumstance is where there is an error of law vitiating the finding as, for example, where the conviction is based on the testimony of an accomplice without first considering the question whether the accomplice is a reliable witness. Another circumstance is where the conclusion reached by the Courts below is so patently opposed to well established principles of judicial approach, that it can be characterised as wholly unjustified or perverse: (see Sawaran Singh's case, ).

26. In the present case the High Court does not seem to have addressed itself first to the question whether the evidence of the approver is credible in itself and can be relied upon. For that purpose,

the approver's evidence is to be scrutinised as a whole along with other evidence and this the High Court does not seem to have done. It is true that the High Court has said that the evidence of the approver can be safely accepted and that his presence at the spot is corroborated by certain circumstances. But the High Court does not seem to have considered the evidence of the approver as a whole taking into account the infirmities which the High Court has also found in some part of his evidence. We have, therefore, come to the conclusion that this is a case where we must scrutinise the evidence of the approver ourselves to find out whether his evidence is credible in itself and he can be said to be a reliable witness.

27. The story of the approver appears to us to be incredible in itself and there is hardly any evidence to connect the approver with the crime, besides of course his own statement. This conclusion is enforced by the fact that the High Court itself has not accepted the major part of the evidence given to corroborate the approver's story. To begin with, we may refer to the statement of the approver that three days before January 11, he had gone with Sarvan and others to commit the murder. But we are told that though these people went to commit a planned murder, they did not take any weapon with which to commit the murder. The approver stated that on that occasion they had to come back because they could not get any weapon with which to commit the murder. Such a story in connection with a planned murder appears to us to be inherently incredible. It is urged that it was not necessary for the approver to introduce this story if it was not true. We are not impressed with this. It may be that the approver said this to bring himself into the picture before the actual date of the murder, i.e., January 11. Further as to what happened on the night of January 11 itself we find it incredible that Sarvan should have gone to Ramaswamy Goundar and Karuppanna Goundar to purchase cigarettes and to bring koduvals and thus proclaim their presence near the house of Peramia Goundar at about the time when the murders were committed. The High Court has disbelieved the evidence of Ramaswamy Goundar and Karuppanna Goundar but has failed to notice that the result of this disbelief makes the story of the approver completely incredible. Further the High Court has disbelieved the part played by Thangana and that again shows that the story of the approver with respect to him is also false. Then there is the circumstance deposed to by the approver that there was electric light in the house of Peramia Goundar which was switched off when somebody knocked at the door from outside. The High Court has held that the statement of the approver that there was electric light in the house of Peramia Goundar was false. But the High Court failed to notice that if that statement was false it shows that the whole story given by the approver is incredible. It is impossible to believe that if the approver had really gone to take part in the crime and there was no electric light in the house, he could say that there was electric light, which was switched off when somebody knocked at the door from outside. Here again though the High Court holds that the story of the approver as to electric light being in the house is false, it has not drawn the obvious conclusion following from this falsehood, namely, that such a falsehood could not have been spoken if the approver had really gone into the house and taken part in the crime. Further the prosecution case is that the murders were discovered in the morning at 7 a.m. when the maid-servant went to the house of Peramia Goundar as usual; but the evidence of the approver is that in the night while these people were still in the house, somebody knocked from outside and that alarm had been raised both by Swarnam as well as her mother Meenakshi. Now if it is true that somebody had knocked at the door in the night while the murders were being committed, it is impossible to believe that that person should not have investigated further, when according to the

approver the electric light was switched off on the knock being heard. The whole story of somebody having knocked at the door of the house, therefore, appears to us to be a falsehood, and this can only mean that the story put forward by the approver as to what happened in the house is untrue.

28. Then it is remarkable that though the approver was hired on promise of payment of Rs. 1,000 and leasing of six acres of land to him, he took hardly any part in the murders. All he did according to his evidence was to aim a blow at Swarnam which was ineffective. The rest of the work was all done by the other accused persons and so it seems that the approver was apparently taken merely to be a witness to the incident so that he could give evidence as approver. Further there is no independent evidence to corroborate the approver's statement that he had taken part in this crime once the evidence which the High Court has discarded is left out. The only evidence to which the High Court refers is the recovery of the bichuwa knife at the instance of the approver. This bichuwa knife has been found to have minute stains of blood. This knife, according to the approver, was used by him to hit Swarnam once; but the presence of such minute stains of blood on this bichuwa knife which apparently belonged to the approver cannot in our opinion show that the approver had gone to the scene of crime and had taken part in it. As to the recovery of ashes with some buttons, that in our opinion is no corroboration of the approver's part in the murder. Therefore, so far as the evidence of the approver is concerned, it appears to us to be incredible in itself and there is no independent corroboration to show that the approver had taken part in this crime.

29. Once we have reached the conclusion that the evidence of the approver is incredible and there is no corroboration thereof to show that the approver had taken part in this crime, there is really no necessity for further consideration of the question whether the approver's evidence has been corroborated with respect to the other accused connecting them with the crime. Even so, we propose to consider the evidence which the High Court thought was corroboration of the approver's evidence with respect to the two appellants before us. As to the third accused, the High Court was of the opinion that there was no corroboration of the evidence of the approver with respect to him, and that was why the High Court acquitted him.

30. Now the only corroborating evidence with respect to Sarvan appellant on which the High Court relied was the motive and the statement of Muthuswamy Goundar (P. W. 6). The motive found by the High Court in this case would apply not only to Sarvan but to all other relatives. What the prosecution had tried to prove was that on January 11, Peramia Goundar had in so many words told Sarvan that he would change his will. But that was apparently not accepted by the High Court which based itself only on the broad probability that in the circumstances existing at the time, relatives of Peramia Goundar would not be happy with him. That in our opinion can hardly be said to be corroboration of the approver's evidence connecting Sarvan with the crime, though it may be a circumstance to be borne in mind in case other evidence proves the connection. We may also notice that this threat of changing the will is said to have been given on January 11 while the evidence of the approver is that the murder was being planned even from before. So the planning of the murder does not appear to be due to any specific threat to Sarvan, and we are left with the general displeasure which the relatives of Peramia Goundar would be feeling against him because he had kept a concubine and was kind to her relatives.

31. Muthuswamy stated that Sarvan came to him on the night of the murder. He saw blood on his hands and legs and asked him about it. Sarvan told him that Peramia Goundar, his concubine Swarnam and her mother, Meenakshi had been murdered. Sarvan also said that there was blood on his veshti and shirt and wanted the witness to give him a veshti and a shirt to change. The witness did so. Sarvan then washed his hands and legs and asked the witness to burn his shirt and veshti which had blood stains. Thereafter Sarvan left and the witness burnt the veshti and shirt given to him by Sarvan. His father woke up thereafter and the witness told him everything. The High Court has said that the evidence of this witness did not appear to be improbable; but it apparently did not consider why Sarvan should have gone to this witness at all in the night and thus create evidence against himself. It does not appear that there was any particular friendship between the witness and Sarvan. The case of the witness was that his father was a lessee of Sarvan's grand-father, but it appears that the land had been given up by the father of the witness before the witness came to give evidence. The suggestion on behalf of Sarvan was that there was bad blood between Sarvan's grand-father and the father of the witness, and that appears to be borne out by the fact that the father of the witness has vacated the land. Further the contention on behalf of Sarvan is that this witness is a sort of accomplice, if his evidence is to be believed, inasmuch as he burnt the bloodstained clothes which Sarvan was wearing, and as such corroboration by him of the evidence of the approver is of no value. If the evidence of the witness is true, there is no doubt that he helped in doing away with the evidence of the crime inasmuch as he burnt the blood-stained veshti and shirt of Sarvan and he could have been prosecuted under Section 201 of the Indian Penal Code, Even if the witness was not an actual accomplice in the crime itself, he certainly on his own showing helped the accused in destroying the evidence of the crime. It is also remarkable that the witness said nothing about this incident to anybody, though the murders of Peramia Goundar, Swarnam and Meenakshi must have been known all over the village the next morning. It seems to us, therefore, that the evidence of this witness is of a very doubtful character, firstly, because there was hardly any reason why Sarvan should have gone to him in the night, secondly, because he said nothing about what had happened at his cattle-shed to anybody for three days, though he must have known of the murders of Peramia Goundar, Swarnam and Meenakshi the next morning, and also because he apparently helped Sarvan on his own showing in destroying the evidence of the crime. He did say that he told his father about it in the night, but his father also never informed anybody. These circumstances do not appear to have been considered by the High Court and in the circumstances we are not prepared to rely on the evidence of this witness. Once that is so, there is no corroboration whatsoever even of the incredible story related by the approver so far as Sarvan is concerned.

32. As to Govindaswamy, the main evidence on which the High Court has relied for the purpose of corroboration is the thumb impression of Govindaswamy found on the chimney of a lamp which was said to be burning in the house of Peramia Goundar. In this connection the evidence of the approver was that Govindaswamy had brought the burning lamp from one place to another place during the time when the crime was being committed, and the suggestion is that while doing so his thumb-impression came to be on the chimney of the lamp. On the other hand, Govindaswamy's explanation was that he used to go often with Sarvan to the house of Peramia Goundar and do small jobs there. In that connection he had cleaned the chimney of the lamp a number of times. The suggestion of Govindaswamy was that that might explain his thumb-impression found on the chimney. A choice has to be made between these two explanations for the presence of the thumb

impression of Govindaswamy on the chimney. So far as the approver's evidence is concerned, there are two serious improbabilities in that connection apart from the fact that he gave out this fact at a late stage. In the first place no one bringing a lamp from one place to another would catch hold of the chimney, particularly when the lamp was burning at the time, for in doing so he might burn his fingers or thumb. In the second place, it is most improbable that anybody can carry a lamp from one place to another by holding the chimney, for in such a case the chances are that the lamp would fall down and only the chimney would remain in the hands of the person carrying it. So the story that the thumb-impression could have been caused while Govindaswamy was bringing the lamp from one place to another on that night is incredible and cannot be believed. On the other hand the explanation of Govindaswamy does not appear to be an impossible one. He is an ordinary cultivator aged 22 years and is apparently a friend of Sarvan, for otherwise he could not have been asked by Sarvan to join in such an affair. His statement that he used to go with Sarvan to Peramia Goundar's house, therefore, does not appear to be improbable; nor does it appear improbable that such a person might have cleaned the chimney on such visits to oblige the grand-father of his friend Sarvan. The presence, therefore, of Govindaswamy's thumb-impression on the chimney cannot in the circumstances corroborate the evidence of; the approver, incredible as it is by itself. As to the recovery of blood stained clothes from his person, the evidence does not show the extent of such blood stains the presence of say minute blood stains on the clothes of a villager like this accused can hardly amount to corroboration of the approver. As to the aruval, the nature of the blood stains on it has not been established. In any case, when the evidence of the approver is incredible in itself, such corroboration is of no value.

33. On a careful consideration of the evidence and the circumstances of this case we are of the opinion that the approver's evidence is incredible and his taking part in the crime has not been corroborated by any independent evidence besides his own statement. There is also in our opinion hardly any corroboration of the approver's incredible evidence in material particulars connecting the other accused with the crime. We would, therefore, allow the appeal, set aside the conviction of Sarvan and Govindaswamy and order their acquittal.

#### ORDER

34. In accordance with the opinion of the majority the appeal is dismissed.