

**In Re: Muthiah thevan**

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**SooperKanoon Citation :** [sooperkanoon.com/773656](http://sooperkanoon.com/773656)

**Court :** Chennai

**Decided On :** Nov-30-1948

**Reported in :** AIR1950Mad10

**Judge :** Horwill and ;Govinda Menon, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307 and 324

**Appeal No. :** Referred Trial No. 105 and Cri. App. No. 594 of 1948

**Appellant :** In Re: Muthiah thevan

**Advocate for Pet/Ap. :** V.T. Rangaswami Aiyangar, Adv.;Public Prosecutor

**Judgement :**

**Govinda Menon, J.**

1. This case, again illustrates, the inconvenience and difficulties experienced especially by a Court of appeal when the doctor who speaks to the post mortem examination of the body is examined as the very first witness for the prosecution. We feel that if the doctor had been examined after the eye-witnesses' testimony had been recorded, the learned Sessions Judge would have been in a much better position to have an overall idea of the entire prosecution case so that he would have been in a better situation to put proper questions to the doctor to elucidate fully the nature of the injuries.

2. The appellants were accused 2 and 3 respectively in the Court below. Appellant 1 has been sentenced to death for the murder of Veeranna by cutting him at about 6 A. M. on 29th March 1948. Appellant 2 was also charged along with the first for the same offence; but the learned Sessions Judge found him not guilty of having any common intention with Appellant 1 to commit the murder, and therefore he was convicted only of an offence under Section 324, Penal Code and sentenced to rigorous imprisonment for two years.

3. The prosecution case is very simple. P. W. 4 according to his testimony, had gone a few days prior to the date of murder to the house of accused 2 for the purpose of borrowing a vel stick for boar hunting. At that time accused 2 was not in the house, the time of the visit being night time. Accused 2 probably thought that P. W. 4 went there as he was friendly with accused 2's wife. This is alleged to be the motive for attacking P. W. 4. Shortly stated, what happened on the day of occurrence was this. At about dawn, P. W. 4 had gone to answer the calls of nature and was returning homewards, when accused 2 met him and attempted to cut P. W. 4 with the aruval which accused 2 was having with him. On seeing this P. W. 4 ran raising an alarm. Accused 3 who had also been armed with a vel stick chased him and both of them ran after P. W. 4; but fortunately he outstripped them and hence could not be injured; but the father of P. W. 4 on hearing this noise and the cry of P. W. 4 came running and wanted to intercede. Accused 2 then, according to the prosecution case now, cut the deceased, the father of P. W. 4, on the right side of the neck. The accused 3 stabbed him on the left shoulder with a vel stick. P. W. 4 pelted a stone at accused 3 which foiled him down. P. W. 6 came running from the north and tried to separate but accused 2 could not be pacified at all. He again cut the deceased on the neck and on the head. Afterwards the accused ran away when the deceased fell down. The deceased was taken to the house of the village munsif P. W. 9, at about 6-30 A. M. that is nearly within half an hour of the occurrence, and a statement was recorded at the house of the village munsif which was written by a teacher, P. W. 8; Ex. P 4. In that statement the deceased stated that when he was returning home accused 2 came from the Mandaiamman temple and cut him with a vettaruval on the neck. After he fell down, accused 2 cut the deceased again twice on the left shoulder. Accused 3 stabbed the deceased above the left elbow with a spear and cut him on the head

above the right eye with a spear. Therefore according to this statement of the deceased, which is a dying declaration, the injury on the head above the right eye was given with a spear by accused 3 and the other serious injuries were given by accused 2. After this statement was recorded, the deceased was sent to the hospital at Uthamalapalayam where he was admitted as an inpatient. By the time he reached the hospital, the deceased was unconscious and so no further statement could be taken from him. In spite of the best medical aid that could be given the deceased died on 15th April 1948. It is unnecessary to state at any length about the various other stages in the investigation, for though three persons were charge-sheeted the learned Sessions Judge acquitted accused 1 before him.

4. According to the post-mortem certificate, Ex. P.2, there were six injuries on the body of the deceased of which injuries 1, 2 and 5 were grievous and the doctor was of opinion that death was due to the injury on the brain which was a necessarily fatal one. He also testified that at the post mortem all the injuries excepting injury No. 1 were almost healed up. Though the doctor does not say that, from the general tenor of the evidence we are led to conclude that the healing up was only superficial because internally it is seen that the brain matter had become softened and putrid and there was pus on the right side of the brain. The spinous process of the third cervical vertebra was slightly broken. The cerebro spinal fluid was turbid and blood stained and contained pus. The postmortem certificate also shows that as a result of second injury a portion of the occipital bone had been sliced off. In spite of all these injuries the doctor was of opinion that death was due to the injury in the brain and that the rest of the injuries were grievous.

5. The question, then for decision is whether if we are to accept the dying declaration of the deceased, accused 2 can be held guilty of murder. The doctor gave as his view that it is not unlikely that the man was conscious, The man was conscious and able to make a statement for some time after the receipt of the injuries, and from the evidence of the village munsif, P. W. 9, we are satisfied that he was in a conscious and fit state of mind to give the dying declaration. Therefore the dying declaration cannot be brushed aside as being made by a person who was not in his proper senses. And if the dying declaration is read along with the

evidence of the doctor, the result necessarily follows that none of the injuries caused by accused 2 resulted in the death of the deceased. But P. Ws. 4 and 6 depose as if all the serious injuries were given by accused 2, and they attribute one stab to accused 3 on the left shoulder with a vel stick. When we come to the evidence of P. Ws. 6 and 7 it is seen that no part is attributed in the infliction of these injuries to accused 3 at all, because by the time he pointed the vel stick at the deceased, according to P. Ws. 6 and 7, P. W. 4 pelted accused 3 with a stone and accused 3 fell down as a result of the hit by the stone. In this state of conflicting evidence we find it difficult to hold that the injury which caused the death of the deceased was dealt by accused 2.

6. So far as accused 3 is concerned the learned Sessions Judge has held that he is guilty only of an offence under Section 324, Penal Code as he had no common intention to commit murder along with accused 2. We are in agreement with the learned Judge that accused 3 did not entertain any common intention with accused 2 to commit murder. But there are no grounds to differ from the lower Court that accused 3 caused hurt to the deceased with a dangerous weapon; for which he has been properly convicted under Section 324, Penal Code. His conviction and sentence are confirmed.

7. As regards accused 2 we have already stated that the injuries caused by him were serious and grievous; but if we accept the evidence of the doctor it cannot be said that any of these injuries caused the death of the deceased. In these circumstances we can convict accused 2 only of an offence under Section 307, Penal Code. He no doubt intended to murder the deceased, but we cannot be sure that death resulted out of the injuries inflicted by him. The conviction and sentence on accused 2 for the offence under Section 302 are therefore set aside, and he is convicted of an offence under Section 307, Penal Code. As regards the sentence we are satisfied that the injuries were certainly very serious, and we therefore sentence him to transportation for life.