

**In Re: Oomayan**

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**SooperKanoon Citation :** [sooperkanoon.com/804320](http://sooperkanoon.com/804320)

**Court :** Chennai

**Decided On :** May-01-1959

**Reported in :** 1960CriLJ91

**Judge :** Somasundaram, J.

**Appellant :** In Re: Oomayan

**Judgement :**

ORDER

**Somasundaram, J.**

1. This is a reference under Sections 41 of the Code of Criminal Procedure. The accused is charged under Section 201 read with Section 302 I.P.C. The Magistrate has committed the accused to sessions. In paragraph 2 of his letter of reference the Magistrate states:

Oomayan alias Baluswami accused in this case is completely deaf and dumb and unable to understand the proceedings. Therefore, Sri Williams, the Headmaster, Municipal Deaf and Dumb School, Karaikudi, was engaged and the proceedings of the court were explained to the accused by signs as required Under Section 361 CrI. P. C. and the accused understood the proceedings.

To begin with, Section 361 cannot apply to this case, because under that Section, whenever any evidence is given in a language not understood by the accused, it

should be interpreted to him in open court in a language understood by him.

A deaf and dumb man can understand by signs and gestures. Signs and gestures do not form a language, though loosely it may be called the language of the deaf and dumb. But that is not meant by Sec. 361. Section 361 therefore does not apply.

2. In the earlier portion of paragraph 2 of his letter the Magistrate finds that the accused is completely deaf and dumb unable to understand the proceedings. Subsequently, in the same paragraph he says that the accused understood the proceedings. Section 341 says

If the accused, though not instant:, cannot be made to understand the proceedings, the court may proceed with the enquiry ....

But in this case the Magistrate himself finds that the accused understood the proceedings. I am unable to see how this reference lies to this Court. The reference is therefore returned, It is for the Sessions Judge to whom the case has been committed to consider whether this is a case for reference Under Section 341, Criminal Procedure Code.

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