

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE-XII,  
AURANGABAD  
SESSION TRIAL NO. 01 /2021 [ 01/2021]  
ARISING OUT OF TANDWA P.S. CASE NO. 14/2020**

**STATE V. ROHIT KUMAR AND OTHERS**

**LD. COUNSELS:**

<b>FOR THE STATE:</b>	<b>SH. BABAN PRASAD, LD. APP</b>
<b>FOR THE ACCUSED PERSONS:</b>	<b>SH. JOGI JI, LD. ADV.</b>
	<b>SH. AWADHESH RAY, LD. ADV.</b>

**ORDER DATED 26.03.2022  
[ON PETITION OF STATE DATED 10.03.2022]**

1. State preferred a petition on 10.03.2022 stating therein that the deceased Ashutosh Kumar @ Sanni Kumar was treated at Bose-clinic, Canal Raod. Dehri and also at Ganga Sewa Sadan, Hospital, Varanasi, before death. The investigatory tests of treatment of him, the death certificate of him and also the injury report of the other injured persons namely Kamlesh Kumar Gupta, Ansh Kumar and Jaswant Kumar are obtained from the informant and the same is being filed which may be exhibited on behalf of the prosecution for the ends of the justice. The documents are the medical treatment summary of deceased Ashutosh Kumar and his death certificate, his treatment summary at Bose Clinic, Dehri and the treatment report of Jasawant Kumar, Kamlesh Kumar and Ansh Kumar who were treated at Rahat Cleanic, Hariharganj.

**1.1** Ld APP pressing the petition submits that though it is not a case of circumstantial evidence nonetheless the documents are essential to complete the chain depicting the chronology of evidents leading to death of Sanni @ Ashutosh Kumar who died of injuries sustained by the assault caused by the aggression of accused persons. The prosecution in a criminal trial is under an obligation to prove the facts of offence beyond reasonable doubt and in that sequence these documents are essential to be exhibited.

2. On behalf of accused, Deepak Vishwakarma an objection is filed to the petition of the prosecution on 25.03.2022. It is stated that medical papers are filed belatedly and the papers do not bear the seal of the hospital or the doctor. The papers are duplicates and it ought to have been collected by the IO during the investigation as such the defence cannot be taken as surprise by the prosecution; and petition be dismissed.

**2.1** Ld. Counsel Sri Audhesh Kumar Roy pressing the objection submits that the move of the prosecution is foreign to the established principle of law and the criminal trial and the same cannot be given weight.

3. On behalf of other accused persons, Ld. Counsel Sri Jogi Jee submits by way of his objection dated 22.03.2022 that these documents never came during the investigation the documents are private documents and they are also irrelevant in the trial and hence the petition of the prosecution be rejected.

4. Heard Ld. Counsels and perused the case record. I find that in this case the allegation on the accused persons is that they assaulted the deceased who succumbed to the injuries at Varanasi during the treatment, and enroute he was also treated at Dehari. The perusal of written report shows that the assault was only upon the deceased and not on others. When the case proceeded for evidence in the evidence it has come that others also sustained injury in the occurrence. This portion of evidence is beyond what is stated in the written report. This could be taken as exaggeration or this could also be taken as link of chain constituting the offence. The justice is not dependent upon the investigation or potential of a court. However, none of the papers could be admitted into evidence if it found to be irrelevant. No straight jacket mathematical formula is laid even in Indian Evidence Act . Going through the chapter of relevancy- a fact which is so probably connected to another fact which shows something on fact in issue is a relevant fact. Then there is mischief of section 114(g) of Indian Evidence Act, that if an evidence to a fact which has come at the stage of inception of crime or during the trial is not adduced or produced there may be a adverse presumption against a party who asserts a fact. This is subject to the well established principle that no evidence could be adduced which is not pleaded. This principle is strict in adjudication of civil litigation but this is not so strict in the field of criminal adjudication because there is a deviation in application of the principle depending upon facts of each case. Any of the party whether prosecution or defence cannot be restricted to produce the best evidence either to establish guilt or to establish innocence.

**4.1** It be also mentioned that what is stated in a written report or in a Fardbeyan is no a pleading as in a plaint or a written statement. So, the principle 'evidence beyond pleading', is again not strictly applicable in the criminal adjudication. In order to adduce the best evidence prosecution may also adduce evidence to come out from the mischief of section 114(g) of Indian Evidence Act; and such evidences are sometimes permissible in the specific circumstances of the case.

**4.2** I find that the documents are private which are asserted to be exhibited, as such, the petition stands disposed off with the direction that prosecution may get these documents exhibited after proving the same as per law.

5. Put up this case again on 05.04.2022 for evidence of the prosecution.