



FAILURE OF THE SIT TO SUBSTANTIATE EVIDENCE

Mobile Call Details

1) PW-318, when read with PW-327 [Shri VV Chaudhary, IO, SIT], it becomes clear that originally the mobile phone call details of the accused were obtained by PW-318: Shri PL Mal, IO of Naroda Gaon (ICR No. 98/02), as some of the accused are common to this case and the case of Naroda Gaon. According to the prosecution case, the mobile phone call details were obtained for the mobile numbers used by A-18, A-37, A-62 and A-44. It is also related to the landline numbers of A-24, A-20 and A-62, which, in the case of A-62, is for the landline number over and above his mobile number. On requisition by the investigating officer in this case i.e. PW-327, IO Shri Mal: PW-318, had sent the mobile phone call details which he had procured during his investigation by copying the CD of the phone call details through the FSL, Gujarat, which was received by the investigating officer. Thus the source of knowledge for the investigating officer in this case, about the telephone numbers as well as the phone call details, is from the IO in the Naroda Gaon case. PW-311: Shri Gedam was the then PSI who was handed the task of mobile phone call details analysis, which he did and gave to Shri Chaudhary, the investigating officer in this case.

2) In his deposition, at para 20, PW-311: Shri Gedam, the mobile phone call details analyst, had admitted that the names of persons did not appear in the phone call details, as at that point of time the name of a mobile phone holder or, say, subscriber of a particular mobile number, was not shown if the subscriber was a subscriber of Celforce whereas in the case of the CD of AT&T, such names did appear. It was specifically admitted that in the case of the mobile number of A-44, which was of the then AT&T company, since such a facility was available with AT&T, his name appeared in the CD given by the company itself whereas in the case of the other accused, which were included in the CD of Celforce, the names did not appear in the CD of call details given by Celforce. The witness had further admitted that he did a detailed analysis of the mobile call details only for the accused whose names and numbers were given to him and that he had not gone to the mobile phone companies to specifically find out which mobile phone number belonged to whom or was subscribed to by which accused.

3) While reading para 29 of the deposition of the said witness, it stands clear that except in the case of A-44, the mobile phone companies had not provided the names of any of the subscribers, connecting the subscriber (connecting the accused) with a particular telephone number. He voluntarily added that on the basis of the forwarding letter which he had received from PW-327, he wrote these names for clarification in the mobile call details analysis he did.

4) The said forwarding letter is on record at Exh-2362. This letter is by PW-327 to PW-311, requesting him to do the phone call analysis wherein the names of A-18, A-37, A-24, A-20, A-62 and A-44 have been mentioned against the telephone numbers which, according to the prosecution case, belonged to each of them.

4.1) As clarified by this witness, he did the analysis and returned the analysis report along with a forwarding letter at Exh-2192. In Exh-2362 and Exh-2192, the mobile phone number against the name of Shri Kirpalsing is written as 9825074044 but, as has been clarified at para 7 by PW-311, the number was 9825047044.

4.2) From the above admissions, it becomes clear that in the mobile phone call details, the names of the accused and the telephone numbers have been written by this witness on the basis of the information given to him in writing by the investigating officer in this case and not on the basis of any other source.

5) In the cross-examination of PW-327, at para 261 of his testimony, the investigating officer in this case stated that he had investigated about the names of the subscribers of the telephone numbers mentioned in the letter: Exh-2192. At para 262, the witness clarified that his successor investigating officer had perhaps investigated about the subscribers of the two landlines mentioned in his letter at Exh-2362, viz, according to the prosecution case, the residence phone lines of A-24 and A-20. He thereafter produced on record the said information collected by his successor investigating officer from BSNL, vide Exh-2342 and Exh-2343 for the residence landlines of A-24 and A-20 respectively. In para 265, the witness admitted that he himself had not investigated about the subscribers of the six numbers mentioned in Exh-2192. He did however clarify that he had sought the information from the mobile companies but the same was not made available to him while he remained investigating officer.

6) From para 266 onwards, the witness admitted that as far as the mobile number 9825020333 (the number written against the name of A-18 at Sr. No. 1 in letter: Exh-2362 by the witness) is concerned, it was revealed during his investigation that the said number was not subscribed to by A-18 but the said mobile was being used by the office of the VHP in the year 2002; the mobile phone was used by the office of the VHP, which was even used by other persons over and above A-18. In para 269, he clarified that, according to the witness, it was revealed during his investigation that on the date of the occurrence, the phone was not with any of the accused in this case.

This creates many reasonable doubts about the mobile phone having been subscribed to and used by A-18 on the date of the occurrence. Hence the benefit of the doubt is granted to A-18 qua this point only.

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7) In the testimony of the investigating officer in this case, Shri Chaudhary, in para 329, he admitted that he had not recorded the statements of the subscribers of the two landline numbers shown against the names of A-24 and A-20. It was further stated that in the case of both these landline numbers, no documents had been collected from the lady subscribers of the two landlines and no investigation had been done as to who stayed at those addresses.

8) From para 332, it becomes crystal clear that this investigating officer had written the names of the accused in Exh-2362 against the mobile numbers on the basis of the information he had received from Shri Mal: PW-318, the IO in the Naroda Gaon case. This clarifies that to connect the telephone numbers with the accused, this witness had only depended on PW-318. It was admitted that no crossmatching and confirmation had been done by this investigating officer.

9) If para 784 is perused then it becomes clear that the information about the four mobile phone numbers sought by him had been received. The information sent by Vodafone is at Exh-2389. Upon perusal of this documentary evidence, it is clarified that the mobile phone number which had been mentioned by this witness in his letter at Exh-2362 against the name of A-18, was in the name of one Sunil Sevani and not A-18. The number shown against the name of A-37 was subscribed to by the BJP and not by A-37 personally. The number of Kirpalsing, which, according to Vodafone, is 9825047044, was subscribed to by A-62. No further investigation was done to find out, as to the mobile number in the name of the BJP, who it was in fact used by. Hence in the absence of any evidence, it can be held that A-37 was using it on the date of the occurrence. Thus out of the four mobile numbers, the mobile numbers shown against A-18 and A-37 do not stand proved beyond reasonable doubt to have been subscribed to by the two accused in the year 2002 and were used by the accused on the date of the occurrence.

10) Exh-2390 is the letter from Idea Cellular wherein the mobile number 9824085556 is shown to have been subscribed to and hence can be inferred to have been used by A-44 on the date of the occurrence. Thus out of the four mobile numbers mentioned at Exh-2362, only two of the mobile numbers, of A-62 and A-44, stand proved to be of the accused against whose names the mobile numbers have been shown.

11) No substance is found in the defence raised by A-24 and A-20 by way of cross-examination and oral submission about the landlines having not been proved to have been used by them. Exh-2342 is the record of BSNL for the landline number shown against the name of a family member of A-

24. If this documentary evidence is seen, the address where the telephone number was working and the address of A-24, which can be traced from the record of the court of the learned metropolitan magistrate when A-24 was arrested, is the same. Meaning thereby that the address where A-24 is shown to be residing is the address where the landline was working. In the same way, if Exh-2343 is seen, and more particularly internal pages 48 and 49 are seen, it is clear that the address mentioned in the record of BSNL is the address of A-20 on record when A-20 was arrested, which can also be confirmed from the record of the court of the learned metropolitan magistrate.

12) Now therefore, it is clear on the record that as far as the telephone numbers of A-20, A-24, A-44 and A-62 are concerned, the same are proved to be respectively the mobile numbers or the landline numbers, as the case may be, subscribed to or used by or found to be installed at the residences of the respective accused and it stands proved beyond all reasonable doubt that in the year 2002 the telephone numbers as mentioned in the letter of PW-327 at Exh-2362 were used or subscribed to by the respective accused as shown against their names.

13) It is true that these four accused were using or had subscribed to the mobile numbers or the landlines. But upon perusal of the phone call details, it seems that:

a) Exh-2195 is the phone call details of A-24 wherein the analysis is related to the mobile numbers of A-18 and A-37, both of whom have been granted the benefit of the doubt.

b) Exh-2196 is the phone call details of A-20 wherein the analysis is related to A-37 only.

c) Exh-2197 is of A-62 wherein also the analysis is related to the mobile number of A-37 only.

d) Exh-2198 is of A-44 wherein no analysis is made hence nothing stands proved.

Considering the above situation, the mobile and landline phone call analyses do not prove anything to help the prosecution.

14) As has been submitted by the learned advocate Mr Kikani for A-37, at Exh-2194, which is the mobile phone call details of telephone number 9825006729, there are discrepancies and apparent contents which create reasonable doubts about the genuineness of the document. He invited the attention of the court to internal page 5 wherein, after the time of 16:14, the times of 16:09, 16:11 and 16:13, etc have been written. This court is in agreement with the learned advocate Mr Kikani that in a computerised document, it is not probable that the time would not be reflected in proper order, as the time of 16:14 hours can never be before 16:09, 16:11 or 16:13 hours on the said date.

This creates a reasonable doubt about the genuineness of the document and this reasonable doubt is sufficient not to attach any value to the said documentary evidence. Hence benefit is granted to A-37 only on this count as far as the mentioned mobile number is concerned.

15) It is true that as a matter of fact, while appreciating the evidences put up before the court, that of the phone call details, no aid is available to the prosecution, as, on scrutiny, no incriminating material or probability stands revealed of hatching a conspiracy as far as communicating through the mentioned telephone numbers is concerned. Hence technically, A-37, A-18, A-44, A-62, A-24 and A-20 are able to secure the benefit of the doubt as far as these

phone call details are concerned. But it is notable that in the year 2002 the mobile phone was quite popular and was freely used as a mode of communication. A-37, A-18, A-62, A-44, etc have been alleged to have been in contact through mobile phones. None of them have stated that they did not have a mobile in 2002 and that they had no telephonic contact with the co-accused. This fact is a circumstance which can certainly be considered when the hatching of a criminal conspiracy stands proved against the accused. Their agreement to do illegal acts cannot be without any communication hence it is inferred that they had communicated with one another, since they belong to the same group, the same organisation working for 'Hindutva'...

