



STING OPERATION

In October 2007 when news broke about *Tehelka's* sting 'Operation Kalank', the secretary of Citizens for Justice and Peace (CJP), Teesta Setalvad, moved the Gujarat high court seeking orders for authentication of the *Tehelka* tapes. When the high court declined, CJP moved the Supreme Court for similar orders, concerned that such valuable evidence must be protected. However, the Supreme Court also declined to pass orders in the matter. This was while a petition praying for the transfer of investigation in major carnage cases to the Central Bureau of Investigation (CBI), filed in May 2002, was lying before the Supreme Court.

Concerned that a delay would actually ensure that such valuable evidence could be lost, Setalvad moved the National Human Rights Commission. The NHRC, then headed by Shri Rajendra Babu, took note and on March 5, 2008 passed a full bench order and, invoking its powers under the Protection of Human Rights Act, handed over the *Tehelka* tapes to be authenticated by the CBI. (The NHRC's orders can be read at: <http://www.cjponline.org/modiscorder/080305%20NHRCORDERSTehelka.pdf>.) But for this timely action by the NHRC, the valuable corroborative evidence provided by Ashish Khetan of *Tehelka* would have disappeared.

If we had waited for the Supreme Court-appointed SIT to do its job, this valuable evidence would have been lost. In the case of the telephone call records on CDs provided by Gujarat police officer Rahul Sharma, for the SIT to fairly investigate the ownership of phones, etc, Judge Jyotsna Yagnik has had to ignore valuable evidence that may have been available because of the failure of the SIT to rigorously investigate ownership of phones and other technical details.

We reproduce below her findings on the *Tehelka* sting operation.

– Editors

In this case, 15 DVDs and five CDs have been produced on record, which were recorded by PW-322 while taking interviews of different persons, including three accused in this case, in the sting operation shot by him.

1) Appreciation of DVDs and CDs

Fifteen DVDs were shot, from which five CDs were prepared, selecting certain parts to be telecast on the Aaj Tak news channel under the name 'Operation Kalank'. The DVDs were shot in a sting operation by *Tehelka*.

A DVD or CD, to a certain extent, is on a par with a document but, for its capacity to store even visual images apart from sound, it can for certain purposes be treated as real evidence and can have more evidentiary value than a mere document. When treated as real evidence, it can be a strong piece of evidence, by viewing of which the court can form its own opinion on the facts in issue or on the relevant facts.

a) In the case, the CDs or DVDs have been properly and satisfactorily proved. PW-322, who had recorded the interviews and done the shooting in question, was examined as a prosecution witness.

b) The prosecuting agency had obtained a certificate from the FSL about its genuineness. The scientist from the FSL, Jaipur, PW-323, was examined for the purpose. No reasonable doubt is created about the genuineness of the CDs and the DVDs and hence the same have been proved to be beyond reasonable doubt and is admissible evidence.

c) There is no challenge to the evidence that what the CDs and DVDs contained is what was shot at the place of

the interviews. It is only challenged with respect to the claim that the same was done under some inducement and in the alternative, accused No. 18, whose interview had been recorded, was merely reading a script given to him; and that too this defence was only raised vis-à-vis A-18, and the other two accused, viz A-21 and A-22, who are seen and heard being interviewed on the DVDs and CDs, were not defended on any grounds.

d) For A-21 and A-22, the evidence of the CDs and DVDs remained unchallenged and uncontroverted.

e) It may be observed here that though it is an admitted position that a certain part was taken by Aaj Tak on the CDs made from DVDs, merely that would not create any doubt about the admissibility and relevancy of the CDs or DVDs, as the evidence is what is seen and heard when it is played.

f) The DVDs of the interviews recorded by PW-322 were viewed by this court, as one of the CDs was certified to have become corrupted at this stage and in search of truth and to examine the genuineness of the defence raised, it was necessary to view the concerned DVDs to note the gestures of A-18. It was essential to ascertain whether A-18 was reading a script or was interviewed and was he under any inducement or not?

g) The judgement at Sr. No. 79, produced by the defence, is of the Punjab and Haryana high court. This judgement is relied upon to submit that the extrajudicial confession is a weak piece of evidence and should not be believed. In the facts of the case, page 6, which has been highlighted, reflects the facts of the cited case where the person whose extrajudicial confession was on record was under the influence of liquor and the same was an outcome of the con-

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sumption of liquor; but in the case on hand, the defence has neither submitted nor is it the case of the defence that during the sting operation any of the accused was under the influence of liquor.

h) In the very same judgement, all the sentences which have been highlighted by the defence are indeed based on the facts of the case and there is discussion that the extrajudicial confession did not find corroboration in any other evidence. But in the instant case, corroboration is available from the oral evidence of PW-322 Mr Khetan, PW-323 and the evidences of other prosecution witnesses and even documentary evidence on record.

In another highlighted paragraph, the discussion of the extrajudicial confession is related to the facts of another case, which do not exist in the case on hand. Hence this judgement would not be applicable to the case on hand, the facts being different.

i) Section 17 of the Indian Evidence Act provides that an admission means a statement, which may be contained in electronic form, which suggests any inference as to any fact in issue or relevant fact.

j) Section 22A helps the PWs, as it is provided that: Oral admissions as to the contents of electronic records are relevant if the genuineness of the electronic record is proved. Here, by a certificate of the FSL, genuineness has been proved.

2) Relevant Citations

It is a propounded principle that if the extrajudicial confession passes the test of credibility, it can be a basis for conviction also. The judgements discussed hereinbelow highlight the principle.

i) *SK Yusuf vs State of West Bengal* (AIR 2011 Supreme Court 2283): It is held that to act upon an extrajudicial confession, it must be established to be true and made voluntarily and in a fit state of mind – The words of the witness to whom the extrajudicial confession was made must be clear, unambiguous and clearly convey that the accused is the perpetrator of the crime – The extrajudicial confession can be the basis for a conviction if it passes the test of credibility.

ii) *Kulvinder Singh vs State of Haryana* (AIR 2011 Supreme Court 1777): ...The accused had gone to the ex-sarpanch of the village and disclosed that they had committed the murder of the deceased and he should take them to the police – The ex-sarpanch took them to the police who arrested them on the same date – It is not the defence's version that they had been arrested earlier – Neither accused have challenged the deposition of the ex-sarpanch, that he did not produce them before the police, nor was it their case that they had been arrested from somewhere else – The ex-sarpanch faced gruelling cross-examination but the defence could not elicit anything to discredit him – The deposition of the ex-sarpanch in respect of the extrajudicial confession made to him by the accused is a trustworthy piece of evidence (para 9).

iii) The learned special PP, through a citation at Sr. No. 22, has submitted that it was held by the Supreme Court that corroboration of each and every piece of information mentioned in an extrajudicial confession is not necessary. It can and will have corroboration in general. It was held to be sufficient corroboration.

iv) As has been held at Sr. No. 23 of the list of the learned PP, the extrajudicial confession was voluntary, not out of threat, inducement or promise in terms of the provisions of Section 24 of the Indian Evidence Act. The confession was corroborated by material on record and was held to be proper.

v) The judgement at Sr. No. 24 is to the effect that: "No doubt in law the confession of a co-accused cannot be treated as substantive evidence to convict, other than the maker of it, on the evidentiary value of it alone. But it has often been reiterated that if on the basis of the consideration of other evidence on record, the court is inclined to accept the other evidence but not prepared to act on such evidence alone, the confession of a co-accused can be pressed into service to fortify its belief to act on it also."

vi) At Sr. No. 29 in para 29, it has been observed that: "No doubt the extrajudicial confession is held to be a weak type of evidence. But even an extrajudicial confession can be made a basis to convict an accused without any corroboration. This proposition of law had been laid down in the case of *State of UP vs MK Anthony* (AIR 1985, Supreme Court 48 (1985) CriLJ 493) as follows:

"There is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extrajudicial confession a weak piece of evidence... If the evidence about extrajudicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then, after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation, to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach, the same can be relied upon and a conviction can be founded thereon."

vii) As against the above submissions of the learned PP, the learned advocate for the defence has also produced a citation, at Sr. No. 62, to submit that the extrajudicial confession was not truthful and was part of a hallucination from which the prosecution and its witnesses were suffer-

ing. It needs a very special note that these are the facts of the case at Sr. No. 62 but then in the case on hand, no such case has been submitted, either by suggestions in cross-examination or by leading oral evidence or even by submitting any documentary evidence, that the witnesses or the accused were suffering from hallucination.

According to the meaning given in the Oxford Dictionary, hallucination means “delusion, illusion, figment of imagination, etc”. In the cited judgement, hallucination was held to have been suffered by the prosecution witnesses. In the instant case, that is not the case. As far as the accused are concerned, as already discussed hereinabove, a defence has been raised qua the sting operation only for A-18 and that too the defence raised is that PW-322 induced A-18 and/or A-18 was given a script and was reading the script, both of which have been dealt with in detail below. Hence repetition has been avoided. Suffice it to say here that the ground of hallucination is not applicable either to the PW or to A-18, A-21 or A-22. Moreover, A-21 and A-22 have not raised any defence at all qua the sting operation either through cross-examination or while their further statements were recorded. In the light of the above discussed facts, the judgement cited by the defence at Sr. No. 62 has no application to the facts of the case.

viii) Another judgement has been cited by the defence, at Sr. No. 73, wherein the accused had made the statement when he was under the influence of liquor, etc; it was held in the facts of that case that such statements cannot be stated to be truthful and made while completely in his senses.

In the case on hand, the situation as discussed hereinabove in the cited judgement at Sr. No. 73 is not at all applicable and it is nobody's case that the accused were under the influence of liquor or were not completely in their senses when their extrajudicial confessions were being recorded. That being the situation, even this judgement does not come to the rescue of the accused.

In General: From Facts and Opinion

3) The sting operation carried out on A-18, A-21 and A-22 has revealed that the offences were continued for the entire day and what can be inferred from the conversations of the three accused is that along with the three accused there were A-2, A-20, A-37, A-41 and A-44 as well. Though for A-2, A-20, A-37, A-41 and A-44, these conversations cannot solely be the foundation by which to bring home their guilt, they can be used as corroboration, after marshalling all the evidence against the accused, if capable of providing corroboration of any kind of evidence against the accused. In this sting operation, it is stated that A-37 had visited the site of the offence in the morning as well as in the evening of the date.

3.1) A-18 and A-22 have revealed that they hated the Muslims very much and were very much interested in doing

away with the Muslims. A-18 had collected about 23 fire-arms on the previous night in preparation for the massacre. They are absolutely unable to give any explanation as to why they came to a Muslim locality and remained there for the entire day of the occurrence.

3.2) This makes it abundantly clear that A-18 had made notable preparations for the massacre, to terrorise Muslims, to take revenge for the Godhra incident of the previous day, to do away with Muslims in more numbers than the death toll in Godhra. A-18 seemed to be very much committed and determined to carry out a horrifying massacre at Naroda Patiya.

4) The submission by A-18 is that what had been recorded on the DVDs and CDs by PW-322 was not genuinely recorded but is a created recording by PW-322, as A-18 was induced by him to read a script given by PW-322 and what is presented as recorded conversations was in fact created.

5) As mentioned above, this court has viewed the relevant part of the DVDs and CDs to test the defence raised. Almost all interviews with A-18 were recorded at his personal office where his men were around, it was his area and PW-322 had visited as a guest. During every episode of the interviews everything apparently seems to have been done voluntarily. The talks of A-18, with eye contact, would not have been possible if one was merely reading a script. A-18 talks about many things, including his social activities (according to him) of saving Hindu women from Muslim men, who were joined in wedlock. A-18 also talks about his firm convictions, and his severe dislike of and opposition to Muslims and Christians, quoting them as being his two enemies. During the interview A-18 was sitting on the main revolving chair in the room in a very relaxed posture, talking with vigour, and the entire talk seems very natural. A-18 also talks about numerous police cases having been filed against him and he draws a map of Naroda Patiya and explains to PW-322 as to how, on the date of the incident, Muslims were cordoned off, surrounded, and how race murders were committed. From his talk, it sounds as if violence was extremely common, a routine activity in his life. His association with the VHP and Bajrang Dal, according to him, was of 22 years. During the interview he attends to phone calls, he responds to a caller stating that a reporter from Delhi is sitting in front of him and even while saying this, nothing looks like he is reading any script. He does not even remotely appear to be talking under some inducement. He was absolutely free and talking voluntarily. There was no element of any compulsion in his talk. His conversation was very natural...

6) In the opinion of this court, an extrajudicial confession in this case possesses a high probative value, as it emanates from a person who has committed a crime, which is free from every doubt. PW-322, before whom confessions were given by A-18, A-21 and A-22, is an independent and disinterested witness who bore no enmity against any of

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the accused. This extrajudicial confession, in the case of all the three accused, is relevant and admissible in law under Section 24 of the Indian Evidence Act. Law does not require that the evidence of an extrajudicial confession should in all cases be corroborated. In the instant case, PW-322 is not a person in governmental authority or in any manner an authority. There is no ambiguity in the version given. As emerges on record, more particularly from the oral evidence of PW-322, he had developed a cordial relationship with the accused. Not only that but he had also established a link with the accused; creating the basis of an institutional organisation, he had projected himself as a dedicated worker of a Hindu organisation. The Hindutva in the three accused had been linked by PW-322 with his identity which he had assumed for the purpose of recording the sting operation. It is this identity and cordial relationship that created a tremendously high level of faith and confidence in the minds of the accused, where they felt that PW-322 was their own person and their interest was the same. The extrajudicial confessions of all the three accused do not lack plausibility and they inspire the confidence of the court. This court is therefore of the opinion that though an extrajudicial confession is in the very nature of things a weak piece of evidence, in the instant case, in the very peculiar facts and circumstances, these extrajudicial confessions need absolutely no corroboration. They stand proved by the substantial evidence of PW-322, the CDs, VCDs and the oral evidence of the FSL scientist, etc. Hence these extrajudicial confessions, considering the foregoing discussion on its own merits, are found very dependable, reliable, having contents full of probability and it is found absolutely safe to convict the accused on the basis of these extrajudicial confessions.

7) Summary of CDs, DVDs and from the Deposition of PW-322

a) Exh-2259 is the excerpts of the CDs and DVDs sent to the FSL, Jaipur, for scientific examination. This has been prepared by the FSL, Jaipur.

b) PW-322 is the person who interviewed, and recorded the sting operation on, the three accused, viz A-18, A-21 and A-22. PW-322 has also reproduced the gist of the conversations he had with the three – A-18, A-21 and A-22 – in his testimony...

c) Abstract of the Conversations of PW-322 with A-18, A-21, A-22, as testified by PW-322:

c-1) Paras 30-46 of the testimony of PW-322 are from the interview with A-18 by PW-322.

c-2) Para 48 of the testimony of PW-322 is from the interview with A-21 by PW-322.

c-3) Paras 49-50 of the testimony of PW-322 are from the interview with A-22 by PW-322.

c-4) Paras 51 and 53 of the testimony of PW-322 are from the combined interview with A-21 and A-22 taken by PW-322.

c-5) Paras 54-57 of the testimony of PW-322 are from the interview with A-22 (mainly) and some part of the interview with A-21 taken by PW-322.

8) To satisfy the judicial conscience, this court also thought it fit to view the *muddamal* DVDs, as one of the CDs was certified to have become corrupted. This court has also viewed the relevant DVDs and CDs, and more particularly the parts concerning the three accused. It is observed by this court that PW-322 through his testimony before this court has provided certain glimpses of the entire conversations. While the DVDs were viewed, the following points have been found worth producing on record, which is the gist and substance of the conversations, in the words of the three accused, the summary of which is as under:

9) From the interview recorded by PW-322 with A-18

[Babu Bajranji]

PW-322 has deposed that the interview with A-18 was recorded in the office of Babu Bajranji, near Galaxy Cinema. The gist of the revelations by A-18 is as under:

➤ Once we were in the VHP, now in the Shiv Sena; we (Hindus) are not feeble-minded people (*kadhi, khichdiwale nahin hai*).

➤ The abdomen of the pregnant woman was slit with a sword; a large number of people were done away with at Naroda Patiya by him. They were charged with fanaticism. They had slaughtered the Muslims, they killed them. Ravana's Lanka was destroyed. Hinduism is within them.

➤ They were equipped with swords, bombs. Petrol bombs were flung.

➤ The moment I was noticed by the police, they immediately realised that now it would all be over (meaning thereby that the police were afraid of him). Had I not been in Naroda, nobody would have dared to come out.

➤ Twenty-three revolvers were collected at night (talking about the intervening night of 27.02.2002 and 28.02.2002). I shall not stop working for Hinduism until I die. I have personal notions about Hinduism. I have no fear even if I am hanged.

➤ The Chhara tribe has long indulged in stealing. They are powerful enough to overcome the Muslims. Now there won't be any Muslims in India. The moment I saw corpses lying in Godhra, that very night I decided and challenged that: "There would be four times more slaughter in Patiya than that of Godhra".

➤ I have two enemies, the Muslims and the Christians. I had been to Godhra. I have a pretty good rapport with the police.

➤ There were 80 to 90 dead bodies lying in Naroda Patiya, which were burnt to ashes with kerosene. They killed whoever came into their hands; they attacked from all sides.

➤ I am accused of murdering many people. The Chharas were with me. We went to Godhra where at night I had

challenged, saying: "They will face the consequences tomorrow". My name is enough to confound the Muslims.

- Mayaben (A-37) arrived at the Patiya at 4:00 p.m.
- If I am hanged, my last wish is to get two days' leave to blow up all Muslims with grenades. I have so much hatred for Muslims. I would incite rioters to start ravaging their (Muslims') buildings and properties.
- Bipin Panchal (A-44) and Manoj Videowala (A-41) were there. That day it was the Haldighati battle fought vigorously.
- We had besieged them. It was decided to slash them, whosoever comes out. I killed a lot of Muslims. The Chharas had slaughtered them.
- Mayaben kept wandering throughout the day in a car. I was a leader that day. We slaughtered Muslims; Patiya is half a kilometre away from my house. I and the local public were there to do the massacre at Patiya. Anyone who had gone to Godhra would have been provoked and determined to kill all Muslims then and there. We retaliated at Patiya. In Patiya, we secured the highest death toll. Naroda village is at a distance of only half a kilometre.

➤ I would go to Juhapura and slit 500 Muslims by the evening. I would resort to shelling if Hinduism so demands. They (Muslims) started dying after we reached there. One could not withstand the sight of the Godhra massacre and might feel the urge to retaliate. One would feel like taking revenge then and there.

➤ I had gathered a team of 29 to 30 volunteers at night itself (the intervening night of 27.02.2002 and 28.02.2002) and collected 23 revolvers. It was a befitting response.

➤ We and the Chharas executed the Patiya carnage. Not a single shop was spared in Naroda Patiya – everything was burnt to ashes. The Muslims were slaughtered. We used the gas cylinders lying in their houses.

➤ A pig was tied over the mosque. A tanker full of diesel was smashed into Noorani, the tanker was dashed against the mosque. We could dash into the mosque and all was set afire under our leadership.

➤ At night we got free petrol from the petrol pump. Then the massacre followed and everything was set ablaze. Any Muslim who dares to speak against me can no longer remain or reside in Patiya. The firearms were secretly placed elsewhere. I even did not use my licensed revolver.

➤ The Muslims were dazed by our valour. The men, women, even the children were slit and burnt to death. Some Muslims could escape by saying *Jai Shri Ram* and *Jai Mataji*. The carnage had occurred just behind the SRP. On return from the Patiya massacre, we felt very elevated, as if we were King Pratap. There were 50-60 policemen. We got co-operation from the police."

The above are abstracts of the interview with A-18... The record of C-Summaries brought from the court of the learned metropolitan magistrate has a complaint at Exh-1776/22 that is a strong supporting circumstance for accepting the

truthfulness of the extrajudicial confession of slitting the stomach of a pregnant Muslim woman, which is noted to be truthful while appreciating the evidence. As such, the extrajudicial confession itself is sufficient and satisfactory evidence to convince this court that A-18 had slit the stomach of a pregnant woman. Nobody had heard or seen the Muslim woman mentioned in complaint Exh-1776/22, or heard that the Muslim woman had survived, till the date, which was more than seven years later. Hence there is no question of doubting the happening of the occurrence. It is therefore inferred by the court that the said pregnant Muslim woman died on that day of the riots.

In fact, in the case on hand, there is a charge of slitting the stomach of pregnant Kausarbanu, by A-18. It was forcefully submitted that the story of Kausarbanu was a development after the sting operation and was entirely fabricated. No such incident had happened. Exh-1776/22 is not a tried and proved fact but it indicates that such an occurrence was complained about right in 2002, even before the sting operation...

10) From the interview recorded by PW-322 with A-21

[Prakash Rathod]

➤ One word from Babu Bajrangi (A-18) and there would be crowds thronging. The entire Chhara Nagar would be out at his single call. Babu Bajrangi is the lion incarnate of the Hindus. Even today we would just blindly follow Babu Bajrangi.

➤ Burst many gas cylinders but the mosque was not much shaken. Firstly, they dashed into the Muslim chawl, a second time also, 12 Muslims were killed.

➤ Tiniyo Marathi (A-55) was there. Mayaben (A-37) was there where the occurrence took place. She said: "Kill, them. I am and will be with you always. You will always have my backing." Mayaben was there for 30-45 minutes. He had engaged in riotous activities. Used a baton, stick, sword and trident. Had weapons which they had used on that day of the riots.

➤ A-22 [Suresh Langdo] had all kinds of weapons except revolvers. Guddu Chhara was very bold, he also killed many Muslims. His awe was too much. Suresh (A-22), Guddu [d.], Naresh (A-1) were not tired. They did very well.

➤ I had cut off the hands and legs of many. I did not go inside (the Muslim chawl). All other Chharas went inside. I was outside and whoever came out, I beat that person and made him turn back into the chawl where other Chharas were there.

➤ Bipin Panchal (A-44) came along with his team of men to the Muslim chawl. They all went inside. Since Hindus were killed, they also needed to be taught a lesson. Suresh (A-22) has a strong enmity against the Muslims; he has kept a Muslim woman (as his mistress), in tussle with some Muslims. In fact, he was to marry the elder sister of

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this woman but only a day before that marriage, he ran away with this woman. He ate, slept, did everything with the elder sister of this woman. After this, the Muslims did not do anything because Muslims are afraid of Suresh (A-22); even certain policemen are afraid of Suresh.

➤ Mayaben assured us: "I am with you." Babu Bajrangi is our god, we will obey his orders. Mayaben said: "I will always be with you and stand by you." Babu Bajrangi would secure the release of anyone from police custody with only one phone call. Babubhai (A-18) had arranged, from within jail, for Rs 1,000 to be paid to each of their families at their doorstep.

➤ The Vishwa Hindu Parishad was known by the name of Babu Bajrangi (A-18). Tiniyo Marathi (A-55) was also there, a Nepali and another Marathi were also there. Mayaben delivered a speech there (at Patiya).

11) From the interview recorded by PW-322 with A-22

[Suresh Langdo]

➤ Manoj (A-41), Mayaben (A-37), Kishan Korani (A-20), Bhavani [d.], Babu Bajrangi (A-18), were the main leaders who were present there. Kishan (A-20) and Manoj (A-41) are close aides of Mayaben (A-37). They are the left and right hands of Mayaben.

➤ Truckloads of weapons, pouches of water and snacks were brought in. Gas cylinders were used in the occurrence. We were helped (talks with reference to fiscal help) by Babu Bajrangi (A-18) only. Pipes, batons, were taken from our homes. I had participated in the riots. I had no repentance for whatever I had done.

➤ Had Chharas not been there, then these RSS, VHP and Shiv Sena people could not have done to death the Muslims on that day. Mayaben was there at the site on the date of the occurrence for the whole day up to 8:00 p.m., in her car, making rounds, and on every round, she was telling us: "You are doing proper deeds, go ahead."

➤ After the torching started, certain Muslims were killed and were thrown inside (the Muslim chawl). Some Muslims had hidden in a gutter. They closed the lid of the gutter and put heavy bricks on it. Dead bodies were found from there. The riot continued up to 8:30 p.m.; because of stone-pelting, giving knife-blows, giving pipe-blows, etc, we were tired. I was inside (the Muslim chawl).

➤ Mayaben was making rounds in her car for the whole day. Mayaben was telling us: "Continue doing all these deeds, I am at your back". She wore a white sari and put on a saffron belt. We were doing slogan shouting and had on saffron bands. We were throwing gas cylinders. I killed a sleeping pig with a spear-blow. We tied that pig on the mosque and unfurled the saffron flag. We broke minarets of the mosque. Some eight-10 boys did all this. We even dashed a tanker against the mosque by taking it in the reverse di-

rection often. That tanker was a Muslim's. One of them brought it, taking it away from the Muslim. We could damage the mosque with this tanker. The tanker was full of kerosene or petrol. After sprinkling kerosene and petrol like the fire brigade sprinkles water, we burnt Muslim chawls. We broke the wall of the mosque by reversing the tanker often. Some were also killed there. The chawls were set ablaze using petrol.

➤ Rape was committed by two-four of them. About 2,000 Chharas went inside the Muslim chawl, some drunkards or hungry men might have committed rape. If fruits (meaning girls) were lying, the hungry would eat it. In any case, she (the Muslim girl) was to be burnt hence somebody might have eaten the fruit.

➤ Two to four rapes, or maybe more, might have been committed. Who would not eat fruit? In whatever number Muslims are killed, it is still too little. I would not leave them. I have too much rancour (malice) against them (Muslims). Even I raped a girl – the daughter of a scrap man (one who is in the business of scrap) – named Nasimo, she was fat. I raped her on a roof and then threw her from there. I smashed her, cut her into pieces like achar (pickle).

➤ He speaks in the interview to explain to PW-322 what kind of pain he gave parents: "If our child was thrown into the fire by him and if we see him thereafter, our hearts would burn." Hence after the occurrence, being secure, they (Muslims) said: "here is that Langda who had thrown my child into the fire."

➤ Muslims did tilaks of blood, said *Jai Shri Ram* and saved themselves on that day but some of them were known to him (A-22); I killed them. Mayaben told the police that "do not do anything today".

➤ According to PW-322, Sajjan, the nephew of Ganpat (A-4), was sitting there with Suresh; he said that "had our tribe, Chharas, not been there to help, the success of this riot would not have been possible".

➤ No one has done as much as the Chharas have done. They (Muslims) had settled for 60 to 70 years – in Naroda Patiya. They were rescued by the SRP; in the 1969 riots.

Opinion

12) The above are abstracts of the interview with A-22. If the depositions of several eyewitnesses, like PW-158, are appreciated, if the deposition of a victim of gang rape, Zarinabanu (PW-205, and wife of PW-158), is perused, if the deposition of PW-142 is perused, and while noting the extrajudicial confession of A-22 of having raped a Muslim girl named Nasimo, it becomes doubtless that the occurrence of rape had also taken place at the site of the offence and on the date of the occurrence. The probability of outraging the modesty of Muslim women is also on record.

13) Interviews with some of the victims are also found to have been recorded on the DVD wherein also they have named some of the accused who had played lead roles.

14) The CDs and DVDs are video and audio documents wherein voices as well as gestures have been recorded. Since vide Exh-2259 the FSL report is on record, which certifies that the CDs and DVDs produced are genuine, not tampered with and not set up in any manner, this certificate makes the DVDs and CDs admissible as evidence. It is relevant, since it contains details about the incident and the interviews taken, by PW-322, with A-18, A-21, A-22 and other persons concerned with the crime.

15) The CD which was prepared from the VCDs has also been certified by the FSL for its genuineness and not having been tampered with. Hence the genuineness and even the evidentiary value of the said cassettes have not been affected.

As discussed, the cassettes and VCDs are not merely a document but are more akin to real evidence. Hence the court can take cognisance of what is seen and heard in these DVDs and VCDs.

16) It is very much on record, no new facts that did not initially form part of the case were put up by the prosecution. PW-322 had prepared transcripts of the three interviews, which were given to the defence, and those transcripts were also produced on record by PW-322. PW-322 had these transcripts in hand as he testified about some parts of them. Even a copy of the CD had been given to the defence.

a) Moreover, the 15 DVDs from which CDs were prepared were in fact on record and the certified copies prepared by the Gujarat FSL were made part of the record as *muddamal* of this case. In fact, the SIT ought to have done that. The point here is that sufficient, fair and reasonable opportunities were given to the defence and PW-322 was even extensively cross-examined by the defence. As regards the defence of A-21 and A-22, it can only be stated that in fact their conversations were not substantially challenged at all and that their conversations, placed on record by PW-322 and proved to be genuine by the scientist of the FSL, Jaipur, remained uncontroverted and unchallenged. Unsuccessful attempts were made to put forth a defence qua the conversation of A-18, which has been discussed hereinbelow.

b) Since the accused had information right from the beginning as to what they had revealed in their interviews and the accused were also given full opportunity to know the contents of the CDs and DVDs and the PW who had recorded the CDs and DVDs had also testified on the conversations and was also extensively cross-examined by the defence, no doubt whatsoever is created about the prosecution case put up through these CDs and DVDs and the oral evidence of PW-322 and other concerned witnesses...

17) PW-314, Exh-2213 to 2216

a) PW-314 was the then director of All India Radio/Akashwani, Ahmedabad. He received Exh-2213, a request by the SIT to take voice samples of A-18, A-21 and A-22.

He undertook necessary correspondence with the SIT vide Exh-2213; after receiving the sanction of the competent authority to record the voice samples, the recording was done.

Exh-2215 and 2216 are orders of the director general, Prasar Bharati, New Delhi, granting permission for voice sample recording. This witness through his staff did record voice samples of all the three and had also collected necessary documents to confirm the identity of the accused and completed necessary formalities like the certificate, sealing the CD and giving it to the SIT; a *panchnama* was drawn for it, which is at Exh-2203.

b) *Cross-examination of PW-314:* PW-314 was cross-examined on many aspects but none of the aspects is such that the revelation of it has created any doubt in the mind of the court about the official act done by PW-314 through his officers having been irregularly performed. At the cost of repetition, this, being an official act, is presumed to have been done in accordance with drawn procedure, rules and regulations. The sample voice recording of A-18, A-21 and A-22 has been proved to have been done quite properly beyond reasonable doubt.

c) *Finding on PW-314:* Hence it is held that through this PW the prosecution has proved beyond reasonable doubt that the voice samples of A-18, A-21 and A-22 had been recorded absolutely in accordance with law and proper procedure was adopted for the same. No doubt is created on the propriety of that act.

18) PW-320, Exh-2258 and 2259

a) During 2002 to 2009 this witness was at the CBI, Bombay, who received the order to carry out a preliminary inquiry registered on account of the order of the National Human Rights Commission. The inquiry was to the effect that in the news channel known as Aaj Tak, 'Operation Kalank' was telecast on 25.10.2007, in which programme, CDs and DVDs were used and that by carrying out the inquiry, the genuineness or truthfulness of those CDs and DVDs was to be examined.

b) The witness did carry out the inquiry, recording necessary statements like that of the reporter from *Tehelka*, Shri Ashish Khetan (PW-322), as it was from *Tehelka* that the news channel known as Aaj Tak had purchased the CDs and DVDs.

c) According to PW-320, Shri Khetan had prepared 15 DVDs of the sting operation (done on different persons, including the three accused herein). It is from these DVDs that five CDs of the sting operation were made. The witness had also interrogated A-18, A-21 and A-22; he had also seized the camera, recorder, laptop, hard disk, etc, and had sent all the *muddamal* to the FSL, Jaipur, to scientifically decide their genuineness. The FSL had given the report that these were genuine DVDs and CDs wherein no tampering had been done.

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d) The statements of the scientific officers of the FSL were also recorded and ultimately a report was given to the NHRC by the CBI. The witness kept the DVDs and CDs from the *muddamal* and other *muddamal* was returned to *Tehelka*. The witness had then handed over those DVDs and CDs to the representative of the SIT.

e) The correspondence from the witness to the FSL, Jaipur, is Exh-2258, along with parcels. The receipt, the opinion, the script made out of the DVDs and CDs sent to the FSL, etc, from page Nos. 1-138, viz Exh-2259, were received by this witness from the FSL, Jaipur.

PW-320 wrote Exh-2258 to the FSL, Jaipur, with a request to examine the exhibit, to opine on its authenticity, opine as to whether there was any editing or tampering done in the 15 DVDs; whether shooting was done by the *muddamal* instruments; whether the five CDs were excerpts of the recording of the sting operation; and whether any addition was made in the five CDs of 'Operation Kalank'. The parcels were sealed and sent.

f) Exh-2259 is a receipt for the *muddamal* sent by the FSL, Jaipur, along with the report, admissible under Section 293 of the CrPC, from the FSL, Jaipur – results of the examination, certifying the credibility, the genuineness and authenticity of the recording, DVDs, CDs, which were found to have been without any tampering. The speech, utterances, laughter, body language, of the persons appearing in the recorded events, matched with the video signals...

g) *Cross-Examination of PW-320*: During the course of cross-examination questions related to the propriety of the procedure were raised but in the light of Section 114 (Illustration-e) of the Indian Evidence Act, it is presumed that the acts have been regularly performed, which was not rebutted by the defence. All other questions are not material, since the witness was only to decide the genuineness of the CDs and DVDs.

An important aspect becomes clear when para 31 of the testimony is read, wherein the witness has stated that the persons, including A-18, A-21 and A-22, had stated before this witness that the persons shown in the sting operation were they themselves. The fact is that the witness has admitted that A-18 had said before him that in the sting operation, he was given a script and the voice in the sting operation was his and that A-18 spoke according to the script.

h) *Finding on PW-320*: Through this witness and Exh-2258 and 2259, it is clear that this witness had obtained the opinion of the FSL about the genuineness of the DVDs and CDs, about the fact that they had not been tampered with and that the recorded voices were those of the three accused. No doubt is raised about the genuineness and propriety of the recording; the concerned recording of the voices of the three accused and the CDs and DVDs are without any tampering whatsoever.

19) PW-322, Exh-2273

a) The witness was employed at *Tehelka* in 2007, at which point of time he had an assignment for which he was in Gujarat. Thereafter, he was assigned the task to investigate about the communal riots of 2002. The witness was therefore in Ahmedabad where he met different persons from the RSS, VHP, etc. He was given a lot of information about the communal riots of 2002 and about Hindutva. He was also informed that the strongest unit of the VHP was in the Naroda area, because of which the massacre at Naroda Patiya could take place. Having learnt the telephone numbers of different persons connected with the VHP, he telephoned people; he also met many persons through inter se references.

b) The witness met A-18 on 14.06.2007 when he called in at the office of A-18. The witness introduced himself as a research scholar on the subject of Hinduism. The witness had transcripts of the conversations with all the three accused; he recorded all his meetings with the three accused with a spy camera and a diary camera which he then used to save those talks on his laptop.

c) The witness produced transcripts of the recording of the meetings and interviews with all the three accused.

The witness also reproduced, line by line, the important aspects, according to him, of the conversations he had with the three accused. The witness identified all the three accused with whom he had conversations, whom he had interviewed and on whom he did the sting operation. All the *muddamal*, including the earphone, microchip, battery, tape recorder, both the cameras used for the sting operation, were produced before the court. This court has seen all the *muddamal* produced here. The copies prepared by the FSL on DVDs and CDs have been retained in the record of this case.

d) *Cross-examination of PW-322*:

d-1) During the course of cross-examination nothing was elicited which attacked the very heart of the entire prosecution case relating to the sting operation. On the contrary, it stands confirmed that the sting operation was done by this witness, which took 50 hours or more. The appointment letter of the witness was sought during cross-examination, which was produced by the witness on a demand by the defence and is on record at Exh-2273, which confirms the case of the prosecution about the sting operation having been done by the witness while he was employed at *Tehelka*. This proves that the PW had not acted with any personal malice against the accused but had acted as a member of the press.

d-2) The witness specified and clarified that he had a duty to report the truth, which is in the public interest and in the interest of justice. He added that all that had been recorded is truth. This fact is also supported by the FSL opinion and the deposition of PW-323.

d-3) The witness was cross-examined on the fact that he had assumed a false identity by introducing himself as Shri

Piyush Agrawal and thus it was with the help of falsehood that he had done the sting operation.

In the opinion of this court, this is the age of aggressive and investigative journalism and the pivotal point of central importance is not the fake identity assumed by the witness but it is whether the sting operation on the three accused and others was done and whether it can be termed to be voluntary, truthful and reliable or not.

d-4) As has already been discussed with regard to the gestures and place of the sting operation, the place was the residence of A-22 at Chhara Nagar for A-21 and for A-18, it was his own office near Galaxy Cinema. There does not seem to be any compulsion, mistake, misrepresentation or inducement or undue influence applied on any one of the three accused. They spoke voluntarily. It absolutely seems to be voluntary and quite truthful, reliable and dependable. No element has been noticed because of which it can be doubted that it was not voluntary. They are clear, unambiguous revelations made in a fit state of mind. They seem to have been recorded while the accused were free from any element which could create a doubt about voluntariness; complete free involvement of the three accused is too apparent. No doubt is created whatsoever about this central point of consideration for this court. There is absolutely no contradiction to be highlighted and all the omissions are not material and relevant, as nothing in them is related to the three accused in this case.

d-5) The gist of the revelations by all the three accused on the DVDs and CDs has been placed in capsule form hereinabove. The relevant part of the testimony of PW-322 involving the three accused has also been highlighted hereinabove hence the same has been not repeated here. Suffice it to say here that all the three accused gave their interviews quite voluntarily and there was no element of either inducement or any other such hindering elements.

d-6) It is also notable that a defence has been raised only qua A-18, stating that A-18 was reading a script because of the inducement offered by PW-322, but this defence is found to be a totally baseless defence when this court has viewed the 15 DVDs and the four CDs (the concerned part for this case). This court found that A-18 was fully in the mood to tell of all his horrifying deeds on the date of the riots. At the cost of repetition, it is to be noted that this court keenly observed that throughout his interview he kept eye contact with this PW and not even once was he seen to have been reading and then speaking.

d-7) As far as A-21 and A-22 are concerned, no defence by way of any suggestion has been put forth for them. Hence for them, the sting operation and the admissions made therein have remained unchallenged and uncontroverted. The sting operation on the remaining two is held to be voluntary and absolutely reliable and deemed to have been admitted during the trial.

d-8) As far as the revelations are concerned, they clearly

involve A-18, A-21 and A-22, as they themselves admit by way of the extrajudicial confessions before PW-322 their involvement in the crime of the Naroda Patiya massacre. The confessions by the three accused are found to be most dependable, clear, unambiguous, and they very clearly convey that the three accused and the co-accused are perpetrators of charged crimes. They pass with distinction the test of credibility.

d-9) Moreover, the extrajudicial confessions made by the three accused before PW-322 are absolutely clear, cogent and appear to have been made in the normal course without any pressure, inducement, etc, and seem to be absolutely voluntary and reliable. Hence the said extrajudicial confessions cannot be discarded and should be given due importance, as they can be the basis for conviction as laid down in *SK Yusuf vs State of West Bengal*. Here it needs a note that A-18, A-21 and A-22 are makers of the confessions hence they stand on a different footing than the co-accused whom they also involve.

d-10) PW-322 has no mala fides and if the DVDs and CDs are viewed, he had not prompted or induced any of the accused to confess but the accused themselves, in their natural free flow, entered into conversation with PW-322 who had not played any other role except to nod his head and utter one or two words. The confessions made by the accused were certainly not because of any threat or promise given by PW-322 and also not because of any inducement. Hence the extrajudicial confessions made by the three accused before PW-322 is most relevant evidence and needs to be considered in the right perspective, keeping in mind the facts and circumstances of the case.

d-11) By a submission of the defence, this court is called upon to just ignore the DVDs and CDs, which would be clearly impermissible.

A-18 had throughout the revelations expressed his then clear intention to damage and destroy properties of Muslims and to do away with Muslims four times more in number than the death toll in the Godhra carnage. He revealed that when he saw Hindu dead bodies at Godhra, there itself he had given a challenge on the previous day, viz 27.02.2002, that he would raise the death toll of Muslims at Naroda which would be four times more than at Godhra. He further stated on the DVDs that he had collected 23 firearms during the night. He also said that he had two enemies, Muslims and Christians. The conversation also reveals that A-37 came in the morning, even at 4:00 p.m., there were A-44, A-41, etc, and that he himself had collected a team of 29-30 persons on the previous night.

d-12) The sting operation on A-21 is also interesting wherein he reveals that A-18 was the lion of Hindus and at his call, the entire Chhara Nagar would come out. He states that A-55 was there, A-22 was there, A-18 was there, A-37 had instigated and had assured that "she is with them", A-37 waited for half an hour to 45 minutes, there was a Nepali

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and another Marathi (both are absconding accused), etc.

d-13) The interview with A-22 is also quite interesting wherein he made the confession of having committed rape on a Muslim girl named Nasimo. A-22 revealed that more than two to four rapes must have been committed on that day. He stated that he felt a sense of vengeance on seeing any Muslim. He made the revelation that there were A-16, A-4, Sajjan Didawala and A-37.

d-14) As has been held in the judgement in the matter of *Yusafalli Esmail Nagree vs State of Maharashtra* (AIR 1968 Supreme Court 147), while holding that the tape record was admissible evidence, it must be proved beyond reasonable doubt that the record was not tampered with. In the instant case, the doubt of tampering has absolutely been ruled out by obtaining the certificate of the FSL to the effect that the DVDs and CDs produced are not tampered with and are genuine.

This is the age of technology. One cannot shut one's eyes to the hard reality that use of technology is very common these days and when there is even a picture along with a voice, it becomes more reliable, as it is said that voice may be manipulated on an audiotape but it is technically nearly impossible to manipulate the picture without it being noticed. In the wake of the Information Technology Act, electronic, magnetic tape devices can be termed as valid documentary evidence and when there is no reason to disbelieve the VCDs and CDs produced on record, the same become most reliable.

e) *Effects of the extrajudicial confessions of the three accused:*

e-1) Section 30 of the Indian Evidence Act needs to be held to be in operation in this case, as its ingredients stand satisfied in the facts of the case. The basis of Section 30 is that when an accused makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. It is not likely that the maker of the confessional statement would implicate himself untruly. This is not a weak type of evidence against the maker himself. A-18, A-21 and A-22 are themselves makers of the confessions. Hence the court needs to consider the said confessions.

As and when it comes to be applied in the case of co-accused, it is essential to first of all marshal the evidence already emerging against the said accused and if the conscience of the court is satisfied of having sufficient evidence then, if the accused are tried jointly, as are being tried in this case, the confessions of the co-accused can certainly be called into aid.

e-2) The trial is being jointly held against all the 61 accused and all of them are being tried for the same offence. By way of confession, the three accused have proved the presence, involvement and participation of many other accused as mentioned hereinabove.

In the light of Section 30 of the Indian Evidence Act, since the proved confessions also affect certain co-accused, the said confessions can be taken into consideration even for the co-accused who have been referred to, as discussed above,

by the three accused who have made the confessions.

e-3) This court is conscious that the confessions of the co-accused are not substantial evidence against their co-accused but can certainly be used to fortify the prosecution case if other evidence is available on record. Therefore it is held that if any other evidence is available against A-1, A-4, A-37, A-41, A-44 and A-55 and deceased Guddu then the confessions can very well be used against the accused. As has already been discussed, there is cogent, credible and positive evidence against A-37, A-41, A-44, A-55, A-18 and A-22, of having hatched a conspiracy and of having executed it or got it executed through co-accused (for A-37), for the charged offences of race murders, etc. The evidence of extrajudicial confessions is therefore held to be corroborating the case of having hatched a criminal conspiracy, against all these co-accused...

e-4) In the light of Section 10 of the Indian Evidence Act, it is important that anything said or done by any one of the conspirators with reference to their common intention after such intention was first entertained by any one of them is a relevant fact against each of the persons believed to have conspired and also for proving the existence of a conspiracy.

e-5) The fact of A-18 having said, as a challenge at Godhra, that he would raise the death toll to four times more is obviously after the intention to take revenge on Muslims hence this is a relevant fact that was with reference to the common intention. Moreover, as has already been narrated above while noting the gist of the DVDs and CDs, his acts of making a team of many persons at night, and collecting 23 revolvers, all clearly prove the existence of a conspiracy and the hatching of a conspiracy that was thereafter executed by the accused mentioned, under the leadership of A-37.

e-6) Thus the finding of a conspiracy having been hatched, of the existence of the conspiracy at that point of time and on that day, and about the execution of the conspiracy is clearly and strongly fortified by the above points.

f) *Finding on PW-322:*

f-1) It is therefore held that A-18, A-21 and A-22 have made extrajudicial confessions before PW-322, which has been proved by PW-322 and which can be viewed on CDs and DVDs, which are most reliable and the court can safely depend on the same.

f-2) From the revelations of all the three accused, they also involve the proved presence and participation of many other accused in the crime through their extrajudicial confessions. These accused are A-37, A-4, A-16, A-55, A-41, A-44, Marathi (the exact name of Marathi is not ascertained, since in all the three lists, viz live, dead and absconding accused, there are in all four to five Marathis who are charged with the offence) and Nepali (absconding accused). If any other reliable evidence against these accused is held to be available on the record then the extrajudicial confessions of the co-accused, A-18, A-21, A-22, can be used to fortify

the prosecution case against them...

20) PW-312, Exh. 2201 to 2203

PW-312 is an unarmed Head Constable of Navrangpura Police Station, who was PSO then, who had issued the Muddamal receipt for the CD received of the sample voice recording of the three accused. The order from PW-327, which he received to carry out the task is at Exh.2201 whereas the Muddamal Pavti is at Exh.-2202. This CD of voice sample wherein the sample voice of A-18, A-21 and A-22 were recorded, was seized by drawing a Panchnama on 07/04/2010 which was sealed there. This Panchnama is on record vide Exh. 2203.

In the opinion of this court, the witness and three documents very clearly established proprietary and regularity of the official act done by PW-327 of collecting the CD containing sample voice of the three Accused.

21) PW-323, Exh-2275, 2276, 2277 (Defence)

21.1) This witness is a scientist from the FSL, Jaipur. Along with Dr Vishwas Bhardwaj and Dr Mukesh Sharma, this witness examined all the *muddamal* sent to the FSL, Jaipur, by the CBI and gave the opinion about the recording, CDs, DVDs, etc being genuine and without any tampering. Exh-2275 is a receipt for the CD of the voice samples of the three accused. Exh-2276 is the opinion of this scientist to the effect that the conversations of the three accused recorded on the CDs and DVDs are of the three accused respectively, as is confirmed upon comparison of the voices and similarity in frequency, intonation patterns, phonetics, etc, with the voice sample CD. It has been opined that the speakers, respectively A-18, A-21 and A-22, are the same whose interviews have been recorded.

21.2) The defence had sought Exh-2277, which was a letter by PW-327 to the FSL, Jaipur, with a request to give a report comparing the voices recorded in the sting operation with those recorded on the CD of voice samples.

21.3) During the course of cross-examination nothing was focused on and/or proved which can create any doubt in the mind of the court about the genuineness of the opinion given by the FSL, Jaipur...

21.5) It is also clear that Section 10 of the Indian Evidence Act is based on the principle of 'agency'; hence anything said, done or written while the conspiracy was ongoing is all receivable in evidence and in this case, what A-18,

A-21 and A-22 have talked of was before the conspiracy was executed and during the execution of the conspiracy and there is nothing brought on record by the three accused which came into existence after the conspiracy was ceased hence Section 10 is applicable. As a result, the statements made, anything said or done, etc, shall be admissible against another conspirator.

22) Final Finding on Sting Operation

While concluding this topic, the following points emerged very clearly:

a) The extrajudicial confessions of A-18, A-21 and A-22 are held to have been proved voluntary, free from every doubt, and they pass the test of credibility thoroughly. As such, no corroboration is required for extrajudicial confessions of this kind but since there are ample corroborations available from the record of the case, the same need to be recorded here as a finding of the court.

The oral evidence of PW-312, PW-314, PW-320, PW-322 and PW-323 r/w documentary evidence at Exh-2201 to 2203, 2258, 2259, 2213 to 2216, 2273, etc, further viewing it with 15 DVDs shot by PW-322 and further hearing it from five CDs of 'Operation Kalank', it is clear and confirms that the extrajudicial confessions can safely be acted upon qua the three accused, which are held to be relevant, admissible, and it is safe to convict the three accused on these confessions also.

b) In the facts of the case on hand, the extrajudicial confessions given by A-18, A-21 and A-22 have been held to be truthful, voluntary and genuine confessions which are held to be admissible and relevant, free from every doubt and safe to act upon.

That against the non-maker co-accused, who are being jointly tried with the three accused whose confessions have been held to be safe to be acted upon, they cannot be treated as evidence but if, from the evidence otherwise available against the co-accused, which can be marshalled from the record of the case, if from that the co-accused are found connected with the crime then the extrajudicial confessions have corroborative value. These co-accused are A-1, A-4, A-16, A-20, A-37, A-41, A-44, A-55 and others. At the cost of repetition, let it be noted that if the evidence on record is found to be capable enough to point to their guilt then only can the confessions of the co-accused, viz A-18, A-21 and A-22, be used to corroborate the finding of this court against the said co-accused...

