

**Mangal Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-27-1984

**Reported in :** 1985CriLJ602; 1984()WLN187

**Judge :** D.L. Mehta and; S.S. Byas, JJ.

**Appellant :** Mangal Singh

**Respondent :** State of Rajasthan

**Judgement :**

**S.S. Byas, J.**

1. Since these two appeals arise out of one and the same judgment of the learned Sessions Judge, Pali, D/- Jan. 10, 1980, they were heard together and are disposed of by a common judgment. By the said judgment, accused Mangal Singh was convicted under Sections 302 and 307, I.P.C. and was sentenced to imprisonment for life with a fine of Rs. 500/-, in default of the payment of fine to further undergo one month's simple imprisonment on the first and three years' rigorous imprisonment with a fine of Rs. 100/-, in default of the payment of fine to further undergo seven days simple imprisonment on the second count. Substantive sentences were directed to run concurrently. The accused has come up in appeal to challenge his conviction and sentence while the State in its appeal has prayed for the enhancement of the sentence. The charge against the accused is of committing the murder of his wife and four minor children. The story put

forward by the prosecution is grim, sad, tragic and pathetic. Briefly stated, it runs as under.

2. The accused is a resident of Jodhpur and joined the Defence Services as a Jawan in 1956-57. Due to his illness, he was discharged from there. In 1962 he got a commission in the army and became a Major. In 1969 he was again discharged. Since then he was living at Jodhpur. Nearly 26 or 27 years before (from 1975) he was married to Smt. Bhanwari daughter of P.W. 13 Shri Kishan Ram. She was a simple and illiterate woman. From him she gave birth to seven children, out of whom two died in their infancy. Those who remained alive were three daughters and two sons. P.W. 6 Ku. Kamla, who is a surviving victim is their third daughter. The accused could not adjust himself happily with Smt. Bhanwari. It is alleged that he wanted to have a second marriage and to start the life afresh. But his wife and five children were standing as obstacles in the fulfilment of his desire. He wanted to finish them all to have a new venture in his life.

3. On July 10, 1973, the accused took his wife and the five children namely Ku. Kamla, Ku. Parvati, Ku. Vimla, Harish and Dinesh in his car to Ajmer. It was a four doors vehicle. The accused wrapped a rope around the dickey and the two back doors on the pretext that the doors may not open suddenly and the occupants on the rear seat may not be thrown out accidentally. At Ajmer, he stayed with his family in a Dharmshala. He also took the family to Pushkar from there. On July 12, 1973 he alone went to Jaipur and returned in the night of July 13, 1973. At about 8.00 p.m. on July 14, 1973 he left Ajmer with his wife and children in his car. The dickey and the back doors were again wrapped with the rope. The accused also took two tins of petrol and a bucket with him. The party reached Beawer. at about 11.00 p.m. There they stayed for sometime. The accused took the pretext that as there was heavy rush of trucks on the road, it would be better to leave Beawer after sometime. A few hours later, the accused drove the car and proceeded further. When the car was nearly two miles away from village Bar. the accused stopped it on the road-side where there was a deep Khud nearby. He raised the bonnet of the car to show that it was out of working-order and required some repairs. His wife and children came out but he asked them to remain inside the car. Whenever the vehicles passed on the road, the accused made a show to look towards the

engine. Some of the drivers of the vehicles offered their help to the accused but he refused to be obliged by them for the simple reason that there was nothing wrong with the car. The accused poured petrol in the bucket, thereafter he lit a match-stick and threw it in the bucket. The accused was then standing with his one foot in car and the other on the road. The driver's door was open. As soon as the petrol caught the fire, the accused moved the steering-wheel towards the khud and gave a push to the car. The car was in flames and rolled down towards the khud. P.W. 6 Ku. Kamla and Ku. Parvati, who were on the rear seat came out of the rolling car by tilting the driver's seat. The car fell-down in the Khud and continued to burn. Ku. Kamla and Ku. Parvati when came up to the road, the accused caught hold of Ku. Parvati and threw her down in the Khud where the car was burning. Ku. Kamala (P.W 6), aged about 13 years at the time of incident escaped the notice of the accused. Apprehending danger to her life she ran for safety towards village Bar. Nearly a kilometre away, she found Karim Khan (P.W. 24) coming on a bicycle from the opposite direction. She narrated the incident to him and requested him to take her to police Station or village Bar. Karim Khan (P.W. 24) took pity on her and took her on his bicycle towards village Bar. Meanwhile it so happened that the R.S.R.T.C. bus on its way from Kota to Jodhpur reached the place of occurrence where the car was burning. The bus was stopped there by P.W. 47 Bheeksingh, who had stopped his truck there. Bheeksingh informed the Conductor and Driver of the bus and the passengers travelling therein that a girl had run towards village Bar. The driver, the conductor and the passengers got down from the bus, Ku. Parvati was raising screams. Some of the passengers got down in the Khud and took out Ku. Parvati who, told them that her father had set the fire to kill her and her mother and others. The accused was also found lying down nearly 15 yards away from the road. He was also lifted and put in the bus. Ku. Parvati too was put in the bus. The bus proceeded further and nearly at a distance of two miles, found Ku. Kamla going on a bicycle with Karim Khan (P.W. 24). The bus was stopped and Ku. Kamla was also lodged in the bus. Ku. Kamla was extremely fear-sticken and seeing her father (accused) in the bus became highly alarmed. The conductor, the driver and some of the occupants of the bus assured her of no more harm. She then narrated the whole incident to them as to how her father (accused) had set fire to the car to kill her, her mother, sisters and brothers. The bus proceeded

further and reached Nimaz where there is a Police Out Post and the Government Dispensary. The bus stopped there. Dr. Kaidar Nath (P.W. 18) gave treatment to Ku. Parvati and Ku. Kamla. He pricked the morphea injection to the accused to cool down him and to prevent his escape. Both the girls and the accused were left in the dispensary and the bus proceeded further. It stopped at Jetaran where there is a Police Station. The distance between Nimaz and Jetaran is only 7 or 8 kilometre. P.W. 4 Sajjan Lal the driver of the bus went to the Police Station and verbally lodged report Ex.P13 of the occurrence at about 6.00 A.M. on the same day (July 15, 1973), it was taken down in the Rojnamcha and F.I.R. Ex.P 75 was prepared on its basis. Since the occurrence had taken place within the local limits of the jurisdiction of Police Station, Raipur, Ex.P 75 was sent with a special messenger there. Ex.P75 was delivered by Police Constable Akbar Khan at Police Station, Raipur at about 8.30 A.M. A case under Sa. 302, 201 and 435, I.. P. C, was registered and the investigation followed. The Station House Officer Modsingh (PW 49) happened to be at Jetaran on July 15, 1973 in connection with his official duty. He was immediately contacted by the Police, Jetaran. Modsingh (PW 49) contacted the Circle Officer and the police party immediately left for Nimaz where it reached at about 7.45 A.M. Ku. Parvati, despite medical treatment could not survive and passed away in the dispensary at Nimaz before the Police party reached there. The Investigating Officer Modsingh recorded the statement of Ku. Kamala (P.W. 6). He prepared the inquest report of Ku. Parvati. The accused, who was in the dispensary was arrested. The Investigating Officer reached the place of occurrence and prepared the inquest reports of the dead bodies of four victims namely Smt. Bhanwari, Ku. Vimla, Harish and Dinesh. The medico-legal autopsy of the four victims was conducted on the spot by Dr. Deoraj (PW 33). The autopsy of Ku. Parvati's dead body was conducted by Dr. Kaidarnath (PW 18). According to doctors, the cause of death of the five victims was burns. The post mortem reports are Ex.P1, Ex.P2, Ex.P3, Ex.P4 and Ex.P5. The site was inspected and the site inspection memo as well as the site plan Ex.P7 and Ex.P15 were prepared by the Investigating Officer. The car was got examined and it was found that both its rear doors were perfectly in good condition with locks in working condition. A search of the house of the accused was taken. Some letters and photos of the girls for whom he had made matrimonial correspondence, were found. They were

seized.

4. During investigation it also transpired that the accused was making matrimonial correspondence in reply to the matrimonial advertisement and also otherwise with some people. They were examined. These people were from Gorakhpur and Delhi in North India and some from Andhra Pradesh. On the completion of investigation, the police submitted a challan against the accused in the Court of Munsif and Judicial Magistrate, Jetaran, who in his turn committed the case to the Court of Session on Jan. 29, 1974. The trials were conducted more than once due to the transfer of Sessions Judges from time to time. Ultimately on Aug. 27, 1975, the learned Sessions Judge framed charges under Sections 302 and 307, I. P.C. against the accused, to which he pleaded not guilty and faced the trial. According to him, it was a simple accident case where the car caught fire. Khetaram (P.W. 36) who is a close relative of his wife, had developed strained relations with him. It was he who converted a simple accident case into that of intentions burning with the help of police. It was also alleged by him that his relations with his wife and children were extremely sweet. He was looking after them very well.

5. In support of its case, the prosecution examined 50 witnesses and filed a number of documents. So also, in defence the accused examined ten witnesses and filed some documents. On the conclusion of trial, the learned Sessions Judge held both the charges duly proved against the accused. He found no merit or substance in the defence put forward by the accused. According to him, it was not a case of accident but of intentional burning where the accused executed his desire to finish his entire family by a well-knit plan. The accused was consequently convicted and sentenced as mentioned at the very out-set. The accused challenges his conviction. The State is not satisfied with the sentence of imprisonment for life and prays for the death sentence.

6. We have heard the learned Counsel appearing for the accused appellant and the learned Public Prosecutor for the State. We have also gone through the case file carefully.

7. Before proceedings further, we may point out that the cause of death of the five victims was not challenged before us by the learned Counsel for the appellant nor

was he in a position to do so. It is an admitted position between the parties that the five victims died due to burning of the car in which they were sitting. They got burns as a result of car burning. We need not reproduce the burn injuries noticed by the doctors on the victims' dead bodies. We have carefully gone through the statements of doctors P.W. 18 Kaidarnath and PW 33 Deoraj. We find no good and cogent reasons to distrust their opinion relating to the cause of victims' death. The death of the victims was thus not natural but homicidal.

8. We shall first take the appeal of the accused whose grievance is that he was wrongly convicted. His conviction is bad and unsustainable.

9. In assailing the conviction, the principal contention raised by Mr. Bhansali is that a case of simple accident has been converted into that of intentional burning. In building this argument, various contentions were taken which we propose to take up at seriatim.

9A. The first contention raised by the learned Counsel is that no report of the occurrence was immediately lodged at Nimaz where there is a Police Out Post. It was deliberately lodged at Jataran to gain time to make it a case of intentional burning. There is a police out-post at Nimaz where the R.S.R.T.C. bus stopped and the victims Ku. Parvati and Ku. Kamla were lodged for treatment in the Government Dispensary. It is true that the F.I.R. Ex.P75 was lodged not at Police Out Post, Nirmaz but at Police Station, Jetaran. But there is nothing wrong in it and the accused gets no benefit from this fact, Section 154, Cr.P.C. in very explicit term lays down that every information relating to the commission of a cognizable offence shall be given to an Officer In charge of the Police Station. Officers In charge of Police Out posts are not officers In charge of Police Station within the meaning of Section 154, Cr.P.C. and the Police Officers at such Out Posts are not, therefore, empowered to record First Information Reports. Since there was no police Station at Nimaz, the proper course was only to lodge a report at the nearest police Station which is at Jetaran. Mr. Bhansali could not bring any decision to our notice in support of his contention. We, therefore, find no force in his contention.

10. It was next contended that the F.I.R. Ex.P13, which has been entered in the Rojnamcha of Police Station, Jetaran is not an innocent document. It was later on fabricated by the police to convert a case of accident into that of intentional burning. It was argued that Ex.P. 13 is a long document. The facts recited therein are said to have been communicated to P.W. 4 Sajjan Lal by eye witness Ku. Kamla (P.W. 6). The bus had covered the distance from the place where Ku. Kamla was picked up to Nimaz within 20 minutes or so. Ku. Kamla could not have disclosed all those facts enumerated in Ex.P. 13 within such a short time. It was suggested by Mr. Bhansali that in these circumstances suspicion arises as to the genuineness and authenticity of Ex, P13. We have given our anxious consideration to the contention and we are unable to accept it. P.W. 4 Sajjan Lal was the driver in the Roadways bus who lodged Ex.P 13 at Police Station, Jetaran. He stated that the facts recited in Ex.P. 13 were those which he heard from Ku. Kamla (P.W. 6), P.W. 6 Ku. Kamla who is the sole eye witness of the occurrence deposed that when she was picked up in the bus from the road, side, she narrated the whole incident to the conductor driver and some other passengers of the bus. P.W. 45 Ghanshyam, who was a conductor in the bus, stated that Ku, Kamla narrated the incident while she was being taken in the bus. Though the witness was declared hostile but when he was confronted with his' previous statement Ex.P92 (recorded also during the trial) he had the goodness to admit that what he stated in Ex.P 92 is correct. In Ex.P. 92 the witness stated that Ku. Kamla (P.W. 6), has narrated the whole incident and stated that her father had burnt her mother, brothers and sisters. P.W. 17 Ram Swaroop Sharma is an Advocate of long standing at Kota. He was travelling in the bus. He stated that Ku. Kamla narrated the incident and stated that the accused had set fire to the car in which she, her mother, brothers and sisters were sitting and gave a push to it. It was, thus, pushed down in the Khud. P.W. 31 Bihari Lal is again an Advocate of long standing in Bundi. He too was travelling in the bus. He also stated that Ku. Kamla narrated the whole incident in the bus as to how her father (the accused) set fire to the car and pushed it down in which she, her mother, sisters and brothers were sitting. She narrated how she escaped and the others were burnt by the accused. All those witnesses were cross-examined at length on this essential point but nothing could be elicited from them which may make their testimony

unworthy of belief or credence. None of these witnesses knew the accused before hand and, therefore, we are unable to conceive that they would falsely depose against him for no apparent reasons.

11. We may point out that Ex.P. 13 was entered into the Rojnamcha of Police Station. Jetaran. The formal F.I.R. Ex.P.75 was prepared on its basis. Since the crime was committed within the local limits of Police Station, Raipur, Ex.P.75 was sent with the special messenger Police Constable Akbar Khan (P.W. 7). He presented it at Police Station, Raipur at about 8. 30 P.M. on the same day. The time of presentation has been endorsed on Ex.P. 75. Ex.P. 76 was prepared at Police Station, Raipur on the basis of Ex.P.75. Ex.P.76 is the formal F.I.R., on the basis of which the investigation was taken up. It mentions that it was drawn up at 8.30 A.M. on July 15, 1973 itself. It was received in the Court of Munsif and Judicial Magistrate, Jetaran on July 16, 1973. This promptness on the part of Police Officers impel us to reject the contention of the learned Counsel that the F.I.R. is a fabricated document what was brought into existence later on by the police to suit their purpose.

12. There is yet another reason to reject the contention of the learned Counsel relating to the F.I.R. Since the accused was her (Ku. Kamla) own father, the police thought it proper to get her statement recorded under Section 164, Cr.P.C. Her statement Ex.D6 under Section 164, Cr.P.C. was recorded at about 11.00 A.M. on July 15, 1973 itself. Ku. Kamla (P.W. 6) in her examination-in-chief deposed that her statement Ex. D6 was recorded by the Magistrate at about 11.00 A.M. on the very day of the occurrence. Ex.D.6 is a long document narrating not only the incident but also the reasons for the crime and the other details. A statement under Section 164, Cr.P.C. is recorded only when a case is registered and the investigation is in process. Since Ex. D.6 was recorded at 11.00 A.M. on the very day of occurrence, it completely excludes the possibility of the F.I.R. Ex.P. 13 being a false, fictitious or forged document, as argued by the learned Counsel. We, therefore, find the contention barren of force.

13. It was next argued that the relations of the accused with his wife weighed much with the learned Sessions Judge in appreciating the testimony of Ku. Kamla

(P.W. 6) and in arriving at a conclusion of the guilt against the accused. It was argued that the finding of the learned Sessions Judge that the accused was not treating his wife and children nicely and properly is erroneous. If this finding is set-aside, the very basis of the prosecution case stands demolished. The prosecution has examined P.W. 5 Lalsingh, P.W. 6 Ku. Kamla, P.W. 13 Kishna Ram, P.W. 23 Inder Narain, P.W. 30 Surendra Singh, P.W. 36 Khetaram and P.W. 40 Damodar Lal, to show that the accused was not happy with his wife Smt. Bhanwari Devi, who was an illiterate and simple village woman. The suggestion of the prosecution as we will see herein after at the appropriate place, is that the accused wanted to bring another wife with modern living. Since Bhanwari Devi and her children were standing as big obstacles in fulfilling his desire, he thought to finish them all. We have gone through the evidence of the aforesaid witnesses. P.W. 13 Kishna Ram is the father-in-law of the accused and the unfortunate father of Smt. Bhanwari Devi P.W. 36 Khetaram is the real maternal uncle of the deceased-victim Smt. Bhanwari Devi. But their testimony cannot be straightway dismissed or disbelieved only on this ground of relationship. The other witnesses referred to above were the neighbours of the accused at Jodhpur. From what has been stated by all these witnesses it can be confidently said that the wife (Smt. Bhanwari Devi) was not being treated kindly by the accused. The reason is simple. As Smt. Bhanwari Devi was an illiterate and rustic village woman, the accused became averse to her. The relations between the accused and his wife were not as happy and sweet as they ought to have been. We, therefore, find no substance in the contention of Mr. Bhansali that the finding of the learned Sessions Judge on the relations between the accused and his wife is erroneous and perverse.

14. Mr. Bhansali next argued that the motive alleged by the prosecution does not stand proved and even if taken as proved, it is highly inadequate to push a person to completely finish his family consisting of his wife and five children. It was argued that even if the suggestion of the prosecution that the accused wanted to bring another wife, is taken as true, the accused did so long back in 1971. Thereafter the accused must be taken to have dropped the matter. There was nothing to instigate him to finish the family in 1973. It was argued that if the accused did not like his wife it was expected that he would have finished her only and not the innocent children, none of whom was above 15 or 16 years in age. In reply, (he

learned Public Prosecutor submitted that the accused entered into matrimonial correspondence with many persons but had to ultimately drop the idea perforce as he was already having a wife and five children. His wife and five children were standing as big obstacles in his way. It was not only the wife but the five children too, who were blocking his way of second marriage. We have examined the contention in the light of the evidence adduced by the parties. The witnesses examined on the point are PW 28 A. M. Gandhi, P.W. 43 K. P. Kammanna and PW 50 J. S. Kapoor. The accused met Mr. Kammanna (P.W. 43) in July or Aug. 1971 at Tirupati temple in Andhra Pradesh. He has stated as to how the accused desired to marry his daughter and the negotiation took place for that. He stated that the accused sent to him his photo Ex.P. 13 with a letter. He also sent him the reply Ex.P. 24 along with Photo Ex.P. 23 of his two daughters. P.W. 28, A. M, Gandhi stated that in response to the matrimonial advertisement of his sister, the accused sent letter Ex.P. 46 in Jan. 1971 to him. He also stated that the accused came to him at Gorakhpur in March, 1971 to see his sister to finalise the matter of marriage. But his sister was not then available. The accused introduced himself as Major and that he was working as an Automobile Engineer in Germany. P.W. 50 J. S. Kapoor is a resident of Delhi. He also published a matrimonial advertisement for his sister. The accused entered into negotiation with him as a candidate for his sister. letter Ex.P. 49 was addressed to the accused by the witness in that connection and was despatched in envelope Ex.P. 71. These photos, letters etc. were recovered in the house of the accused at Jodhpur when a search of it was taken on July 21. 1973. The seizure memo is Ex.P. 39. The search has been proved by the Investigating Officer Modsingh (P.W. 49). P.W. 3 Ramjiwan is a Motbir witness of this search. P.W. 6 Ku. Kamla was also present there at the time of the search of the accused's house.

15. On the basis of the aforesaid material, it can be safely concluded that the accused wanted to bring another wife. Wherever possible, he entered into the correspondence in response to the matrimonial advertisements in the year 1971, He introduced himself as a person of status to the various witnesses referred to above. He was unable to fulfil his desire and perforce had to postpone the idea for the simple reason that his wife and five children were standing as obstacles in his way. The learned Sessions Judge thoroughly discussed the evidence this point

and rightly held that the motive behind the crime was that the accused wanted to bring a modern wife but his existing wife and children were standing as obstacles in his way. So long they were alive, he could not fulfil his dreams of having a modern wife. The only way left to him was, thus, to finish them all. It was only then and then that he could give a practical shape to his dreams.

16. It is true that the accused was treating his children properly. But the children were also standing in his way. No modern girl would come as a second wife to a person who has as many as five living children. Thus, not only the wife but the five children too were the eyesore to the accused. In these circumstances, the finishing of wife was not enough for the accused. The children had also to be wiped-off in order to carry out the fulfilment of his desire to have a modern wife. It is true that nothing happened in 1972 and the matrimonial correspondence did not take place after 1971. But that is not sufficient to exclude the motive alleged by the prosecution. The accused had lurking desire and that desire of having a modern wife had not died merely by a lapse of one year or so. In our opinion the motive suggested by the prosecution not only stands proved but is adequate to instigate and prompt the accused to finish his entire family, consisting of his wife and five children.

17. It was next argued that the learned Session Judges gave too much importance to natural circumstances and drew wrong inferences thereby against the accused. One of such circumstance is that the accused had tied the rope around the doors and dickey of the car to prevent the escape of the occupants.

It was argued that the car was being tied with the rope in this manner on previous occasions also. As such this circumstance should not have weighed with the learned Sessions Judge. We find no force in this contention. It is true that P.W. 6 Ku. Kamla admitted that on previous occasions also, the accused had tied the doors and dickey of the car with the rope. The circumstances, however, point out that he did so to give an innocent appearance to his well-designed plan. The car was mechanically inspected by PW 26 Narain Singh. The inspection memo Ex.P77 was prepared by him. Both the rear doors were found in perfect working condition and so also the locks of the doors were found in perfect working

condition. When the locks of the doors were found in perfect working condition, there was no reason for the accused to tie them and the dickey with the rope. He did so on the day of incident to prevent the escape of the occupants. As he had a well-knit plan to finish the members of his family, he tied the doors on the previous occasions also to give an innocent shape to his guilty acts so that this fact may not be taken into consideration against him. We have, therefore, no hesitation to reject the contention.

18. The next and the most formidable contention raised by the learned Counsel relates to the testimony of P.W. 6 Ku. Kamla. We may say atonce that she is the sole witness of the occurrence who miraculously survived and managed to save herself. It would be useful to briefly read her statement in order to dispose of the criticism levelled against her.

19. P.W. 6 Ku. Kamla deposed that the accused took all the members of the family in the car from Jodhpur to Ajmer. Accused went to Jaipur from there and returned in the evening of July 13, 1973. At about 8.00 P.M. on 14-7-73, the party left Ajmer on its way to Jodhpur. The accused was driving the car while the other members of the family were sitting on the rear seat. The accused also took two tins of petrol and a bucket. At about 11.00 P.M. they reached Beawer. There they stayed for a petty long time as the accused told that there was a rush of trucks on the road. When they left Beawer, the accused intentionally drove the car slowly. He was very cautious through-out. The driver's seat in the car was such that it could be tilted from behind and the occupants could come out from the driver's door. The accused drove the car and stopped it on a lone side of the road where there was a deep khud nearby. He raised the bonnet of the car and pretended that it was out of working order. One of the trucks going on the road stopped there and the driver of that truck offered his help to the accused but the accused refused to accept the ' offer simply because of the reason that it was not out of working order. When she, her mother, brothers and sisters came out of the car, the accused angrily told them to remain in the vehicle. Her mother gave a push to the car to help the accused to start it. It started and covered a few feet. The accused again asked her mother to take a seat in the car and to remain therein. Her mother obeyed the command. Thereafter the accused poured petrol from the tin in the bucket and pretended to

wash some tools of the car in it. The engine of the car was then in starting condition. The accused lit a match-stick and threw it in the bucket of the petrol. The accused was then having one of his feet in the car and the other on the road. The driver's door was open at that time. As soon as the match-stick fell in the bucket of the petrol, there was a blaze of the fire. The accused moved the steering-wheel towards the khud and gave a slight push to the car towards it. The car rolled down in the slope towards the pit. As soon as the car started rolling down towards the Khud, she and her sister Kumari Parvati tilted the driver's seat and managed to come out of the burning car. The mother, the two brothers and the third sister were weeping in the car but could not speak anything. The car rolled down and fell in the khud nearly 40 feet deep. She and Ku. Parvati, after leaving the car, went towards the road. She (witness) ran on the road but Ku. Parvati could not. The accused seeing Ku. Parvati coming upward, caught hold of her and threw her in the burning car. The accused also struck a stone on Parvati's head. The witness further continued that she ran towards the village Bar. She explained that she was running towards village Bar as she felt danger to her life that her father (accused) might not kill her also. After covering a distance of 3/4 Kilometre, she saw an old man coming on a bicycle from the opposite direction (this old man is P.W. 24 Karim Khan). She stopped him and narrated the incident to him that her father had burnt her mother, brothers and sisters by pouring petrol in the car, She begged for help and requested him to take her either to police Station or to village Bar. That old man took her on the bicycle and they started towards village Bar. After five or seven minutes, a roadways bus came from behind and stopped near her. The conductor took her in the bus. The accused was also there. Ku. Parvati was there in the bus who was groaning. She became highly frightened seeing her father in the bus. When she was assured of no harm in future, she narrated the whole incident to the conductor and some of the passengers. The bus reached Nimaz. She, her father (accused) and Ku. Parvati were taken to the hospital where First Aid Medical help was given to her. At about 8.00 A.M. on that very day, the police came there at Nimaz and recorded her statement. Her statement was also recorded at about 11.00 A.M. on the same day by a Magistrate at Jetaran.

20. While appreciating and evaluating the testimony of this witness, it should not be forgotten that she is the sole surviving victim who miraculously escaped. The accused is her real father. She has lost her mother, two sisters and two brothers. Since she had lost her mother, brothers and sisters the accused, in the normal circumstances, is her only well-wisher. As such she would not falsely depose against him and thereby lose her father. If she deposes against him, it cannot be taken as out of her malice towards him.

21. Mr. Bhansali contended that she is not a witness of truth and her statement should not be made the basis of conviction. The first criticism levelled against her testimony is that.

22. she was a child of 15 years when her statement was recorded during trial on Oct. 30, 1975. It was argued that though she was treated as a child witness and her competency to testify was tested by 'Voir dire', no record of the preliminary questions put to her was maintained. It was argued that this failure is a serious circumstance and the accused stands prejudiced thereby. We find the contention untenable. Failure to record the preliminary questions put to the child to judge his competency is per se no ground for rejecting his testimony if the child understood the question and gave the rational answers to the questions put to him. It is admissible for the reason that the recorded statement of a child witness ordinarily furnishes sufficient material to judge the competency of that witness. We may point out that the statement of this witness is a long one running into 38 fullscape typed pages. The answers she gave in lengthy and gruelling cross-examination leave no room to doubt that she is an intelligent child and was competent to testify. The first contention, therefore, fails.

22. We may also point out that Ku. Kamla (P.W. 6) was nearly 15 years in age when her aforesaid statement was recorded during trial. She was nearly 13 years in age when the incident took place. Children are generally classified in three broad categories according to their age : (1) those below seven years, (2) those from 7 to 10 years and (3) those from 11 to 13 years. Generally a child above 13 years is not taken as a child in the strict sense. She was thus a teenage girl. Her testimony will, therefore, be judged keeping her age in view.

23. It was next contended that the witness was not in a position to narrate the whole incident including the antecedents, the relations between the accused and the family within a short time of 15-20 while the bus proceeded from the place where she was picked up and reached Nimaz. Since the time was so short to narrate all these details, it should be taken that she was a tutored witness and the F.I.R. Ex.P13 was brought into existence later on by the prosecution to suit their purpose. We have already held above that F.I.R. Ex.P13 is not a fabricated or forged document. It is a genuine document which came into existence at about 6.00 A.M. on July 15, 1973 i.e. the day of the incident.

24. We are not impressed by the contention that looking to the time of 15-20 minutes which the bus took in reaching Nimaz, was so short that the incident could not be narrated by her to the conductor, driver and the passengers. The incident had taken place a few minutes earlier when she was picked-up in the bus. Her memory was fresh. By that time she has not come in contact with anybody else. She narrated the incident not only to the driver, conductor and the passengers of the bus but also to P.W. 24 Karim Khan whom she met on the road. P.W. 24 Karim Khan is an independent witness. It can be safely gathered from what he deposed that Ku. Kamla (P.W. 6) narrated the incident to him. As stated earlier. P.W. 4 Sajjan Lal is the driver who lodged the F.I.R., PW 45 Ghanshyam is the conductor of the bus while PW 17 Ramswaroop and PW 31 Bihari Lal are the passengers travelling in it. None of whom knew the accused before it. We are unable to imagine that all of them would conspire to tell a lie against the accused for no rhyme or reason and that too against that person whom they did not know before hand. Ramswaroop and Bihari Lal are advocates of long standing and the possibility that they would tell lies is out of question. The fact that Ku. Kamla (P.W. 6) narrated the incident to all of them, gives a very valuable corroboration to her statement and excludes all the probabilities that she was tutored later on as argued by the learned Counsel.

25. Even at the fault of repetition we may point out that the statement of Ku. Kamla (P.W. 6) was recorded under Section 164, Cr.P.C. at about 11.00 A.M. on the very day of incident before Khetaram (PW 36) could contact her. The recording to her statement under Section 164, Cr.P.C (Ex 6) at about 11.00 A.M. eliminates the

possibility of her being tutored by Khetaram (PW 36) or any other relative. This fact again furnishes a valuable corroboration to her testimony.

26. Mr. Bhansali made an attempt to show that Khetaram (P.W. 36) is the king-pin of the conspiracy who engineered a false case against the accused by converting a simple case of accident into that of intentional burning. It was urged that the relations between this witness and the accused were not cordial. Ku. Kamla (P.W. 6), after the incident was living with Khetaram (P.W. 36). As such her testimony should not be taken to be as dependable and truthful. We may point out that the accused is a close relative of P.W. 36 Khetaram. It does not transpire from what he said that there was bad blood or enmity between him and the accused. After all the accused is the husband of his sister's daughter. He would be, therefore, the last person to make out a false case against the accused.

27. The conduct of P.W. 6 Ku. Kamla after the incident also heavily speaks against the accused. If it was a case of simple accident, the first re-action to her would be to run towards her father and not to run on the lonely road towards village Bar for safety. She dared not to run for help to the accused for the simple reason that she had seen him - intentionally burning the car by pouring the petrol and setting fire to it with a match-stick. She was an innocent child of 13 years at the time of incident. Had it been a case of accidental burning she would have immediately run towards to the lap of the accused for help and shelter. The fact that she ran on the lonely road in the dead dark night and that too in the locality not known to her, strongly suggests that she had actually seen the accused pouring the petrol in the car and setting fire to it by a match stick. Her conduct speaks volumes and volumes against the accused.

28. It was also contended by Mr. Bhansali that it was a case where Ku. Kamla (P.W. 6) mis-took a case of accidental burning and got an impression that it was a case of intentional burning. It was argued that she being a person of tender age at the time of incident somehow or other got the impression that her father lit the match-stick and thus set fire. We have examined the contention and find it barren of force.

29. It is true that the children can be easily taught a story and they live in the world of make-believe. A view has been expressed in some judicial pronouncement that the children of tender age should not be regarded as trustworthy since they can easily repeat glibly a story put into their mind and do not possess the discretion to distinguish between what they have seen and what they have heard. Due to this factor the Courts generally do not put absolute faith on the evidence of a solitary child witness and look for corroboration of the same from other circumstances of the case. But this cannot be taken as a general rule. Ku. Kamla, as discussed above, is not a child witness of tender age who could be easily tutored or influenced. We may again repeat that the accused is her father and unless there are convincing reasons for her to falsely depose against him, she is not expected to tell lies to implicate him on a serious charge like that of murder. At the most what is required is that her testimony should be properly sifted with care. We have gone through her statement more than once and find nothing therein which may induce us to hold that she is not a witness of truth. There is nothing to put her testimony at a discount. She has lost the entire family and would be the last person to lose her father by fabricating a false case against him. It may be pointed out that P.W. 6 Ku. Kamla was subjected to a lengthy, weary tortuous and gruelling cross-examination but nothing could be elicited from her which may damage her testimony. She withstood the test of cross-examination nicely and acquitted herself with success. We are, therefore, unable to accept the contention of Mr. Bhansali that P.W. 6 Ku. Kamla is not witness of truth and her testimony is not sufficient to safely seal the conviction of the accused. The criticisms levelled against her are not well-founded and we have no hesitation in rejecting these criticisms.

29A. We may then examine as to whether the occurrence could at all be a case of accident. The accused stopped the car on the side of the road near a Khud. The khud was deep enough. The car even if it accidentally took fire, could not roll down towards the Knur unless it was given a push and the steering wheel was moved towards it. If the car accidentally took the fire as suggested by the learned Counsel, it would have burnt on the road itself where it was stopped. It could not have rolled down in the Khud. The site plan Ex.P 15 shows the road and Khud. The learned Sessions Judge, in para 26 of his judgment, discussed the matter in details.

Accused, as per statement of Ku. Kamla (P.W. 6) was having one foot in the car and the other on the road. If the car accidentally took the fire, the accused would have done all the attempts to open the doors and bring out the occupants. He did nothing. That suggests that it could not be a case of accidental burning. The circumstances referred to above strongly indicate that the car was pushed towards the Khud intentionally by the accused. If the car was allowed to stay where it was, it could not have rolled down in the Khud, merely because it took fire accidentally. The pouring of the petrol in the car, the lighting of the match-stick, throwing it in the bucket of the petrol, the moving of the steering wheel of the car and giving a push to it by the accused are the acts intimately connected with each other. They, therefore, leave no room for doubt that it was not a case of accident but that of intentional burning the car and pushing it down in the Khud.

30. The learned Counsel invited our attention to the testimony of Dr. Kaidarnath (P.W. 18) and the Medico-legal Report Ex.P. 6. In Ex. P6, the doctor wrote while examining the injuries of P.W. 6 Ku. Kamla that she met an accident near village Bar. An argument was built up by Mr. Bhansaii that it was thus a case of mere accident. The doctor has explained as to why he mentioned the word 'accident' in Ex.P.6, It appears that the doctor wrote 'the word 'accident' in Ex.P.6 as synonymous for mishap, i.e. the unfortunate happening. Apart from that the mere mention of the word 'accident' in Ex.P6 does not convert the incident of intentional burning into that of accidental burning. It is also true that in the log-book of the driver of the bus, when the doctor gave a certificate for detaining the bus at Nimaz, the word 'accident' was used as the reason. In our opinion, the word accident in the log-book was also used in the same context as was used in Ex.P6 as a synonymous for mishap.

31. It would be now proper to take up the defence of the accused. The defences are (1) he was treating his wife kindly and the children with all the parental affection and (2) the car was not in perfect working condition ; it used to become hot and as such he stopped the car at the place of occurrence. We have already discussed above the motive for murder and that demolishes the first defend. Taking the second defence, the accused has examined DW 4 Mohammed Ramjan, a motor mechanic at Beawer, He deposed that in the night of July 14,

1973 he made some repairs in the car of the accused. The engine had become very hot. The petrol was leaking. The accused, after getting the car repaired, proceeded further. The suggestion coming from the accused is that he stopped the car at the place of occurrence because it has become hot and was not in a fit condition to proceed further. We do not find any merit in the testimony of this witness. If the car was not in perfect working condition, the normal conduct of the accused would have been to stay at Beawer and pass the night there. He would not have left Beawer in the mid night to cover a long distance of 160 k.m. from there to Jodhpur. He would have also not stopped the car at a place where there was a deep Khud near by. At least he would have taken the car by pushing it to a safe place where the land was plain and not at a slope. All the circumstances that the accused took the car in the mid night and stopped it at a place with a deep Khud nearby cannot be taken as innocent or mere co-incidence. The defence is clearly made up and after thought. It was rightly rejected by the learned Sessions Judge.

32. There is then the conduct of the accused speaking volumes against him. When he stopped the car at the place of occurrence, the drivers of the trucks plying on the road offered to help him to remove any defects in the car, vide the statements of Ku. Kamla (P.W. 6) and Chhogsingh (P.W. 32) but the accused did not take their help. That shows that really there was no defect in the car. The car was burning and the accused did nothing to render help to the occupants burning therein.

He stood silently as a cool bystander absolutely unconcerned with the burning car. He pretended to be in sleep when the roadways bus stopped and did not utter a single word that it was merely a case of accidental burning. In case it was a case of accidental burning, his normal conduct would have not been that which he exhibited. He would have expressed his anxiety to find out as to what had happened with his wife and children. True, he had some burns on his hands but as stated by Dr. Sharma (P.W. 18) they were superficial. The conduct of the accused, thus, speaks heavily against him.

33. The contentions raised by Mr. Bhansali to demolish the prosecution case and to show that it was a case of mere accidental burning, are barren of substance. We are unable to accept his argument that the entire case was wrongly judged by the trial Judge and the conviction is bad or unsustainable. Having examined the prosecution case thoroughly from all angles, we are of the opinion that the accused was rightly convicted under Sections 302 and 307, I.P.C. His appeal has no force and deserves to be dismissed.

34. Taking the State appeal, it was vehemently contended by the learned Public Prosecutor that the sentence of imprisonment' for life awarded to the accused is wholly inadequate. It was urged that the ends of justice do require that the capital punishment should be awarded to the accused. The prosecution case, no doubt, reveals that the accused had a well knit plan to finish his family and executed it with skill and dexterity so as to make it a case of accidental burning. Fortunately his own daughter Ku. Kamla (P.W. 6) survived to speak against him. The case reveals the depth to which the depravity, lasciviousness and libidinous can sink a person so as to instigate and prompt him to finish for ever his innocent wife and innocent children of tender age. The case will be remembered in the annals of crimes for long. Normally, in such a case the adequate sentence is that of sending the accused to the pole of hanging. But certain circumstances are there to refrain us from passing the capital sentence. The accused must have now realised the horror of his act. P.W. 6 Ku. Kamla has lost her mother, brothers and sisters. She can now look only towards her father (accused). Apart from these considerations, a long interval of more than 10 years has come in between. The offence was committed on July 15, 1973 and since then the accused is in custody except a brief interval of nearly one and half years.

35. He has, thus, been in jail for nearly nine years. He has served out a major pan of his sentence. In these circumstances it would not be advisable to send him to the hanging pole nearly after ten years of the incident. We, therefore, reluctantly refuse to accept the State appeal for enhancement of sentence.

36. In the result, both the appeals i.e. of the State and the accused, are dismissed.

