

(1968) 01 AHC CK 0030

In the Allahabad High Court

Case No : Criminal Appeal No's. 471 and 944 of 1966

Dr. A.N. Mukerji

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-01-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 221, 222, 223, 227, 233
Evidence Act, 1872 — Section 33
Indian Medical Council Act, 1956 — Section 24
Penal Code, 1860 (IPC) — Section 120B, 376, 417, 493

Citation : AIR 1969 All 489 : (1969) CriLJ 1203

Hon'ble Judges : J.S. Trivedi, J;H.C.P. Tripathi, J

Bench : Division Bench

Advocate : P.C. Chaturvedi and L.N. Bose, for the Appellant; S.N. Mulla, B.P. Gupta, Krishna Kapoor and Banarasi Das, for the Respondent

Final Decision : Allowed

Judgement

Tripathi, J.—Criminal Appeal No. 471 of 1966 by Dr. Amar Nath Mukerji against his conviction and sentence of one year's rigorous imprisonment and a fine of Rs. 75,000/- u/s 417 I. P. C. and Criminal Appeal No. 944 of 1966 by Smt. Harbans Kaur the prosecutrix, against his acquittal of charges under Sections 493 and 376 I. P. C., arise out of the same judgment of the learned Sessions Judge, Varanasi and they are being disposed of together.

2. On 11th of August 1958. Smt. Harbans Kaur filed her petition of complaint against Dr. Mukerji in the court of a Magistrate First Class at Calcutta praying that he be tried for offences under Sections 493, 496 and 417 of the Indian Penal Code. After undergoing many vicissitudes her complaint resulted in the commitment of Dr. Mukerji to the court of sessions at Calcutta to stand his trial u/s 493 I. P. C. On an application by the prosecutrix the case was, however, transferred from West Bengal to the Court of the Sessions Judge, Varanasi, for trial. The learned Sessions Judge, Varanasi, amended the charge u/s 493 I. P. C. and added charges under Sections 376 and 417 I. P. C. and the trial proceeded

against the accused in respect of those charges, He was acquitted on the first two counts but was convicted u/s 417 I. P. C. The trial Judge has ordered "that out of the fine realised two-third (Rs. 50,000/-) shall be paid" to the complainant as compensation.

3. On the 5th of August, 1957, Smt. Harbans Kaur had instituted suit No. 1381 of 1957 (Exhibit Ka 390) against Dr. A. N. Mukerji for recovery of a sum of Rs. 7,59,469/- and another suit (Exhibit Kha 65) on the 12th day of September, 1957, for the recovery of a sum of Rs. 2,00,000/- as damages by reason of the wrongful breach of his promise to marry her. Km. Sureila Mukerji alias Neena, ? daughter of the prosecutrix, had also instituted suit No. 1163 of 1957 (Exhibit Kha 68) of July, 1957, through her mother against Dr. Mukerji claiming a sum of Rs. 18,000/- as arrears of maintenance and future maintenance @ Rs. 600/- per month. In May, 1958. Dr. Mukerji had also instituted suit No. 778 of 1958 (Exhibit Kha 66) for the recovery of Rs. 48,988.37 P. from the prosecutrix. on account of loan advanced to her from time to time. These civil suits between the parties are pending disposal on the original side of the Calcutta High Court.

4. The story unfolded by the prosecutrix may be summarised as follows:--

5. Smt. Harbans Kaur (prosecutrix) was born in a Sikh family at Sialkot. Her father late Sardar Khazan Singh was once the President of the Regency Council of Maharaja of Faridkot and later on the Deputy Commissioner of Lyallpur. In the year 1921 at the age of 11 or 12 years she was married to Sujan Singh (P. W. 4) a Sikh by faith in the Anand form which is an approved form of marriage amongst the Sikhs. About an year after Sujan Singh went abroad for higher studies and returned to India by the end of 1925 after having qualified himself as a Bachelor of Science in Engineering from the University of London. He was appointed as an Assistant Engineer in the Assam Bengal Railway in 1926 and retired in 1959 as Deputy Chief Engineer on a salary of Rs. 2000/- per month.

6. In 1927 after his first appointment Sujan Singh brought his wife who was a shy and innocent girl observing Pardah to live with him. During the period 1927 to 1939 Sujan Singh was posted at various stations in Assam where the husband and wife lived happily and had four children. In 1939 Smt. Harbans Kaur started getting pain in her abdomen and on the suggestion of a lady friend she went to Calcutta to get treatment from the accused who had recently returned from England after obtaining double F. R. C. S. from two British Universities. Sujan Singh could not accompany her. She met the accused who treated her and when her pain had subsided she came back to Mymensingh where her husband was posted and told him that the doctor had advised her to come to Calcutta for further treatment. Sujan Singh accordingly took six month's leave and went with his wife and children to Calcutta in the first week of December, 1939, and stayed there at 3 Store Road. On their arrival their daughter Sheela got typhoid and was treated by the accused. When Sheela was better he started the treatment of the complainant.

During the period between December 1939 and February 1940 the accused became very friendly with Sujan Singh and "his wife. He used to come not only for professional visits but also for friendly and social contacts and often took his lunch, tea and dinner with them. The complainant and her husband began to repose confidence in him. Sometimes he used to take the complainant and her husband to various aristocratic clubs and hotels in Calcutta which were frequented by the high echelons of the Calcutta society and were attended by dinners and dancing parties. The frequent visits to such social gatherings in hotels and clubs had a tremendous effect on the unsophisticated mind of the prosecutrix who began to take a wide interest in them. The accused evinced unusual interest in the complainant and started admiring her on frequent occasions and thus became friendly with her. One day in January 1940 when the accused went to give her injections he found the loosened hairs of the complainant lying on the dressing table and put them in his purse despite her objections. After this incident the complainant also developed a liking for the accused who expressed to her on some occasions that he was madly in love with her. In fact the accused started taking liberties with her but she did not allow him to go beyond certain limits.

7. About the second fortnight of February, 1940, on the Poornamashi night Sujan Singh left for Jamshedpur. The accused took him and the complainant in his car to Howrah Rly. Station. When the train had left with Sujan Singh at about 9 p. m. the accused and the complainant returned. She was sitting by the side "of the accused who was himself driving the car. In the car the accused told her that he wanted to marry her. She took it as a joke and asked as to how he could marry her when she was already married. The accused narrated to her the stories of Draupadi and Shakuntala from the Hindu epics and told her that a Hindu woman can marry more than one husband. He explained to her that he wanted to marry her in the Gandharva form as King Dushyant had married Shakuntala. The complainant believed the representations of the accused and agreed to such marriage without understanding its significance. The accused then drove to Dhakuria Lakes in South Calcutta and after parking the car both of them came out and faced the moon. The accused recited some Sanskrit Shlokas which she could not understand, embraced her and exclaimed "Moon you are my witness. I am marrying Harbans and she is my wife and I am her husband." He added further "God who is everywhere is also our witness". Both of them bowed to the moon.

The accused asked the complainant to touch his feet as a Hindu wife does to her husband and she obeyed. Both of them then went back to the rear seat of the car and remained there for about half an hour and the complainant did not object to cohabitation as she was induced to believe that it was a valid marriage and the accused, who had become her husband, had every right on her. Thereafter the accused dropped the complainant at her residence at 3 Store Road and went away. After a few days the accused took the complainant to his house at 77 Hazra Road and introduced her to his mother, sister, brother and other family

members.

8. In March 1940 Sujan Singh was recalled to duty in Assam. The children, also went back to Shillong where they were prosecuting their studies. The complainant, however, remained at Calcutta with servants and a governess. During this period the accused tried to be all the time with her. The complainant did not disclose her marriage to her husband Sujan Singh as the accused had taken a promise from her that she would not do so as one day he himself would inform Sujan. Singh. In May, 1940, the complainant went back to Sujan Singh who was then, posted at Haflong but used to come almost every month to Calcutta on the pretext of shopping and treatment but actually to meet the accused. The complainant frequently stayed for considerable periods in Calcutta at various places between February 1940 and 1955 and the accused from time to time lived and cohabited with her as her husband. During the aforesaid, period the complainant's former husband used to remain most of the time outside on duty and even when the complainant went and lived with him or he came and lived with her at Calcutta she used to have a separate bed and did not allow him to have marital relations with her.

9. Since his marriage in 1940 the accused was insisting that the complainant should bear a child through him. After some hesitation she agreed and underwent a special medical treatment including a surgical operation in 1947. By the end of April or beginning of May, 1948, she conceived from the accused. In order to cover up the pregnancy, she called Sujan Singh from Assam in June, 1948, on the advice of the accused and cohabited with him in the night although they had not been on good terms and had shunned each other during the last several years.

10. Whenever the complainant entertained any doubts about the validity of her moon marriage either because of the culpable intimacy of the accused with other women or his subsequent cold behaviour towards her he always represented to her that she was his lawfully wedded wife by citing examples of Gandharva marriages from Hindu epics and by observing various performances meant for a husband. He also wrote numerous letters to the complainant on various occasions showing that he treated her as his wife.

11. In June. 1948, the accused in order to assure the complainant that he was her husband took her to the kali temple at kalighat and underwent there a form of marriage with her which he represented to be an approved form of marriage amongst the Hindus. Garlands were exchanged in front of the deity and the accused put Tilak on the forehead of the complainant and walked seven steps with her to satisfy the requirements of a valid marriage. On the next day a similar performance was again gone through by them before Guru Granth Sahib in the house of the complainant. In this way the accused inspired complete confidence in the mind of the complainant that she was his legally wedded wife and thus succeeded in cohabiting with her as her husband during the period. On the 19th January, 1949, a daughter was born to the complainant as a result of

her conception by the accused.

12. According to the prosecutrix she was possessed of considerable amount of cash and precious jewellery which she had received from her parents and the accused by various false pretences of love cheated her of her money and jewellery. He used to look after her household affairs inasmuch as he arranged for her residence and conveyance, looked after her bank accounts, deposited and withdrew money from the banks on her behalf and cashed her cheques. As the complainant reposed implicit confidence in the accused whom she took as her husband she deposited a large amount of money on his advice with the Calcutta Commercial Bank Ltd., and with M/s. H. Datta & Sons Ltd., who were the managing agents of the aforesaid Bank. The accused had assured her when the money was given to H. Datta & Sons Ltd. for deposit, that he was responsible for the safety of the money. With the failure of Calcutta Commercial Bank Ltd., in September, 1948, and the collapse of its managing agents H. Datta & Sons Ltd. soon thereafter, the complainant lost a sum of about Rs. 7,00,000/- which she had kept with them. Even after that, the accused kept on promising the complainant that he would get back her money. On various occasions, the accused, on one pretext or the other, took away the jewellery of the complainant and returned only a part of it after several demands and reminders. Having deprived the complainant of her riches the accused began to show indifference to her since 1950. Between 1950 and 1955 the accused treated the complainant with cruelty and occasionally tortured her. But whenever she went out of Calcutta to Mussoorie and other stations he entreated her to return. But on her return, she was subjected to the same cycle of ill-treatment and then cajolery.

13. In 1955 when the complainant was completely disgusted with the behaviour of the accused she addressed a letter dated 3-5-1955 (Exhibit Ka 37) from Lucknow to her daughter Sheela who was in Calcutta disclosing to her the incidents of her past life and her alleged marriage with the accused. This letter fell into the hands of Sujan Singh who then came to know that his wife was living in adultery with the accused since 1940.

14. Sujan Singh filed a petition in the High Court of Calcutta for the dissolution of his marriage with the complainant (Suit No. 2244 of 1956) and obtained an ex parte decree against her on the ground of her adultery with the accused. After the dissolution of her marriage with Sujan Singh the accused refused, to marry her and cut off his connections completely in 1956. When the complainant received a copy of the written statement (Exhibit Ka 391) of the accused in her suit for the recovery of the money she became convinced that the accused knowing well that the alleged marriage performed with her were bogus and invalid in the eye of law deceitfully caused her to believe that she was his legally married wife and induced her to cohabit with him and after the dissolution of her marriage with her former husband instead of marrying her in an approved form left and forsook her. Accordingly she filed the present complaint. According to the

complainant she would never have parted with her money and jewellery but for the deception practised on her by the accused.

15. The accused pleaded not guilty and denied the charges. He admitted to have been on terms of intimacy with Sujan Singh and the members of his family for a long time but denied to have gone through any form of marriage with the complainant anywhere as alleged or to have had sexual relations with her at any place. He also denied the paternity of the girl Sureila alias Neena. According to him the complainant has taken advantage of his long and intimate association with her and her husband to allege sexual relationship with him. He denied to have caused her to believe that she was his lawfully married wife or to have cheated her of her money and jewellery. He asserted that he had been paid some amounts from time to time by the complainant for her husband on account of the medical services rendered by him and short term loans which had been taken from him from time to time.

He admitted to have written a number of letters to the complainant during the period 1940 to 1956 which are on the record in some of which he has addressed her as "Her Highness", "Maharani" "Huzur". "Maharani Cooch Parwahni", and as "Dear" and "Dear one", "Darling", "A-1", and "My Dear", but explained that they were innocent terms of endearment which are usually addressed to denote affection to any likeable person. According to him there used to crop up differences between the complainant and her husband Sujan Singh on frequent occasions and as a friend of the family he always advised her to straighten them and live smoothly and happily with her husband. He stated that the complainant who is an imaginative and hysteric woman used to resent his such advices and got frequently irritated and in order to pacify her he used to ask her forgiveness which had a soothing effect on her.

He denied to be in any way responsible for the money which the complainant and her husband lost with H. Datta & Sons Ltd., and asserted that a sum of Rs. 55,000 was due to him from the complainant and when he refused to give further loans to her and when she and her husband could not realise the money from H. Datta and Sons Ltd., as the firm had collapsed, they brought in collusion with one another, several suits against him which are pending in the Calcutta High Court, and the present complaint to blackmail him in order to get money, if possible. He admitted the material exhibits photos 1 to 4 and 11 to 15 and also to have received some cheques from the complainant in payment of his dues. He, however, denied that the pay-in-slips of the Banks or the cheques and the counterfoils were in his writing or that he had either deposited or withdrawn money on them from the Banks. He admitted to have received one big sealed jewellery box from the complainant as security and to have returned the same subsequently to her in January, 1955. He, however, denied that jewellery in a biscuit tin was kept with him as security which he had failed to return to the complainant.

16. Nineteen witnesses were examined in support of the prosecution story. The

prosecution also brought on record 424 documents consisting mainly of letters addressed by the accused to the prosecutrix, counterfoils of her self-cheques and pay-in-slips of the Banks, money receipts issued by M/s. H. Datta & Sons Ltd. etc., some photographs, a manicure Exhibit 5, a curio Exhibit 6 and some pictures Exhibits 7 to 10. One witness, Smt. Sarat Kumari Devi, 85 years old mother of the accused, was examined u/s 540 Cr. P. C. The accused did not examine any oral evidence in defence but tendered in evidence before the committing Magistrate 70 documents (Exhibits Kha 1 to Kha 70) some of which were proved by the prosecution as their evidence at the trial.

17. Smt. Harbans Kaur, the prosecutrix (P. W. 17) has narrated in great detail almost the daily incidents of her life with the accused during the period 1940 to 1955 as to how she first came in contact with him as a patient at Calcutta and how the accused started admiring her and ultimately succeeded in inducing her to believe by the performance of repeated mock marriages that she was his legally wedded wife and thus seduced her to cohabit with him at various places and on numerous occasions. She has added that as a dutiful wife she obeyed him blindly during this period and never questioned his judgment and it was in pursuance of his desire and advice that she deposited¹ about Rs. 7,00,000/- with the Calcutta Commercial Bank and H. Datta & Sons Ltd. Which were never returned to her.

18. Sujan Singh (P. W. 4) the former husband of the prosecutrix has testified in corroboration of all the material parts of her story.

19. Surjit Singh (P. W. 5) is the witness of the alleged moon marriage at the Lakes and Ganda Singh (P. W. 9) claims to have seen the complainant and the accused going round and round Guru Granth-Sahib at the complainant's house. Munshi Hari Chand (P. W. 7) has stated to have seen the complainant and the accused going round the temple at Kalighat and exchanging garlands.

20. Preetam Singh (P. W. 6) has testified to have seen the accused and the prosecutrix worshipping the photos of Guru Nanak and Shanker Bhagwan in her bed room. He also says that once he sat in the car of the accused and saw a biscuit tin lying on the seat. Out of curiosity he opened it and found it full of ornaments. On enquiry the accused told him that they belonged to his wife and he was taking them to be kept in the safe deposit with the Bank.

21. P. W. 10 Shankar Lal Sharma, P. W. 11 Ram Bali and P. W. 12 Munshi Ram are the domestic servants of the prosecutrix and have supported her story of the accused visiting her almost daily in the evening and sometimes remaining exclusively with her throughout the night at her residence.

22. Sohon Singh (P. W. 8) says to have worked as a carpenter at the residence of the prosecutrix at the instance of the accused for 10 or 12 days and to have seen the accused coming there daily in the evening, sitting with her and feeding her with his own hands. The witness took them as husband and wife.

23. Surendra Nath Datta (P. W. 14) is the partner of the dissolved firm of H. Datta & Sons Ltd., and the former Managing Director of the Calcutta Commercial Bank Ltd. which had failed in 1948.

24. Mrs. Dorothy Roy (P. W. 18) is the wife of Sheo Kumar Roy nephew of late Dr. B.C. Roy, Ex. Chief Minister of West Bengal, who was examined as a hostile witness and Sureila (P. W. 19) is the daughter of the prosecutrix.

25. The other evidence in the case is more or less of a formal character.

26. On a detailed appraisal of the oral and documentary evidence adduced by the parties, the learned trial Judge reached a conclusion that "the accused seduced the complainant who also fell in love with him and they had adulterous relations . . without any lawful marriage for 15 years from 1940 to 1955" but he was not prepared to believe that the prosecutrix had consented to such cohabitation with the accused because she had been deceitfully induced by him to believe that she was his lawfully wedded wife. Accordingly the learned Judge acquitted the accused of the charges under Sections 493 and 376 I. P.C.

27. In respect of the third charge, however, the learned Judge was of the opinion that "the accused and H. Datta & Sons were in collusion and the result of their conspiracy was that the complainant was cheated by the accused of Rs. 5,58,000 deposited with H. Datta & Sons" and she was also cheated of her jewellery worth Rs. 32,500 and other sums and the prosecution has brought the charge u/s 417 I.P.C. home to the accused. Accordingly he convicted the accused u/s 417 I.P.C. and sentenced him to one year's rigorous imprisonment and to a fine of Rs. 75,000 out of which two-third was to be paid to the prosecutrix as compensation. In default of payment of fine the accused was directed to undergo three months' further rigorous imprisonment.

28. Mr. P.C. Chaturvedi, learned counsel for Dr. Mukerji, has vehemently urged that the trial Judge has not kept in view the salutary principles of Law of Evidence and Criminal Procedure while holding the trial; that he was not justified in bringing on record irrelevant and inadmissible evidence; and that he should not have allowed the prosecutrix to make scurrilous allegations on the basis of hearsay against important persons in the public life of Bengal. Mr. Chaturvedi contended that although the complaint instituted by the prosecutrix envisaged an offence u/s 417 I.P.C. also, as the enquiry had proceeded only in respect of the offences relating to sex and not to property, and as the commitment of the accused was only in respect of an offence u/s 493 I.P.C. it was not open to the trial Judge to add a charge u/s 417 I.P.C. and then to try and convict the accused on that charge.

It is contended that the accused was discharged by the Magistrate on 3rd May, 1962, and on a revision the Magistrate was directed by the Sessions Judge at Calcutta to hold further enquiry with respect to offences under Sections 493 and 496 I.P.C. only. The accused was again discharged on the 13th December, 1963, and the prosecutrix had come up in revision before the Sessions Judge praying

that further enquiry for offences under Sections 493 and 496 only be held and it was allowed and the Sessions Judge had directed the accused to be committed for trial u/s 493 I.P.C. and the accused was so committed on 21st November, 1964, and his trial has proceeded on that charge before the Additional Sessions Judge, Alipore, for three days whereafter the case was transferred to Varanasi. It is argued that as the group of facts required to constitute an offence u/s 417 are wholly independent of those constituting offences under Sections 493 and 496, which are of a different character it was not open to the trial Judge to change the ambit of the offence at the stage of the trial for which there has been neither any enquiry nor a commitment. It is urged that in view of the provisions of Section 193 of the Code, the Sessions Judge was not entitled to take cognizance of the offence u/s 417 I.P.C. as there had been no commitment for the same.

29. Mr. Chaturvedi has argued further that in framing the charge u/s 417 the trial Judge overlooked the provisions of the Code of Criminal Procedure and framed it in such a manner as to cover numerous transactions spread over a period of 15 years. It is urged that having framed a charge in which the ingredient of deception was that the prosecutrix was deceived into the belief of that she was the lawfully wedded wife of the accused and under that deception parted with her money and jewelleryes it was not open to the trial Judge, after giving a finding that such a deception had not been established, to convict the accused for having committed entirely different kinds of deception for which he had not been charged at all.

30. Mr. Chaturvedi also challenged the veracity of the prosecution story on merits and contended that on the evidence and circumstances appearing on the record the conviction of the appellant u/s 417 I.P.C. or under other charges is wholly unsustainable. He also placed before us Exhibit Ka 301 and Kha 22 letters alleged to have been addressed by the prosecutrix which have been put to her during her examination and commented that the prosecutrix has admitted in these letters that her husband Sujjan Singh suspected that she had "a boy friend in every town and anywhere" and that she herself had written in one of these letters that she had boy friends.

31. Mr. Mulla, learned special counsel for the State fairly conceded, that, if the deception practised on the prosecutrix is held to be different than that alleged in the charge namely that she had been induced to part with her money and jewelleryes in favour of the accused under the belief that she was his lawfully wedded wife, then the charge as it stands is no doubt defective as it envisages more than three transactions extending over a period of more than one year. Learned counsel contends that if the defect in the charge is held to have caused prejudice to the accused the case may be sent to the trial court with a direction to frame a proper charge u/s 417 and then to hold a fresh trial. It is urged that the acquittal of the accused in respect of charges under Sections 493 and 376 I.P.C. are not justified and the Sessions Judge has given contradictory findings inasmuch as he has held in respect of those charges the alleged deception not to

be established although he has convicted the accused on the third charge of which the same deception was alleged to be the necessary ingredient.

32. In order to determine the questions of law raised at the Bar, it is necessary to quote the charges as framed by the Sessions Judge and to read the relevant provisions of the Code.

33. The charges read as under:--"Firstly, that about the second fortnight of February, 1940, on full moon night, near the Dhakuria Lakes, police station Tolleygunge, Calcutta (lakes in South Calcutta), you, by deceit, caused Smt. Harbans Kaur, who was not lawfully married to you, to believe that she was lawfully married to you and, in that belief, she cohabited or had sexual intercourse with you; and that you thereby committed an offence punishable u/s 493 I.P.C. and within the cognizance of this Court.

Secondly, that in between February 1940 and the year 1955, near the Dhakuria lakes Police Station Tolleygunge, 3 Store Road, Police Station Karaya, 77 Hazra Road, Police Station, Bhawanipore, at the Grand Hotel Calcutta, 3 and 6 Belvedere Park Police Station Alipore 2-B Outram Street. Calcutta, Police Station Hastings, Karnani Mansion, Police Station Beniapukur, Railway Quarters Alipore, 12 Godfrey Mansion, Police Station Garden Reach and other places in Calcutta, you committed rape on Smt. Harbans Kaur, with her consent, knowing that you were not her husband, and that her consent was given because she believed that you were another man to whom she was or believed herself to be lawfully married, and thereby committed an offence punishable u/s 376, I.P.C. and within the cognizance of this Court.

Thirdly, that in Calcutta, in between February 1940 and the year 1955, you intentionally induced Smt. Harbans Kaur, by making false and fraudulent representations, to have sexual intercourse with you and to live and act as your lawfully married wife, knowing that she was not lawfully married to you, and she lived and acted as your wife and also gave money and jewellery to you from time to time, which acts she would not have done if she were not so deceived by you and which caused her damage or harm in body, mind, reputation and property, "and that thereby you cheated her and committed an offence punishable u/s 417 I.P.C. and within the cognizance of this Court."

34. It will be noticed that the charge u/s 417 I.P.C. envisages a period of about 15 years and the element of deception alleged therein is the same as in the first two charges namely that the accused deceived the complainant into the belief that she was his lawfully wedded wife knowing that she was not lawfully married to him and it was under that belief that she lived and acted as his wife and gave him money and jewelleries from time to time which act she would not have done if she were not so deceived by him.

35. Sections 221 and 222 of the Code inter alia, require the charge to state the offence and to contain particulars as to the time and place of the alleged offence and the person against whom it was committed.

36. Section 223 reads:

"When the nature of the case is such that the particulars mentioned in Sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."

36-a. Illustration (b) of Section 223 indicates that when a person is accused of cheating another person the charge must set out the manner in which he has cheated him.

37. Section 233 lays down the general rule that for every distinct offence of which any person is accused there shall be a separate charge.

38. Section 234(1) reads:--

"When a person is accused of more offences than one of the same kind committed within the space of 12 months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three."

39. Section 235(1) which provides an exception to the aforesaid rule reads:--

"If, in one series of act so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

40. It is, therefore, obvious that the accused could not have been charged for more than three items of cheating and for a period beyond one year unless it is held that various acts of deception alleged against him had a continuous thread of a common purpose running through them and were so connected together as to form the same transaction.

41. A "transaction" is defined by Sir James Stephen as "a group of facts so connected together as to be referred to by a single name, as a crime, a contract, a wrong or any other subject of enquiry which may be in issue."

42. The question, therefore, which arises for consideration is, whether the deception being the same, namely the inducement to believe that the prosecutrix was the legally wedded wife of the accused throughout the period, the various acts spread over that period by which she is alleged to have parted with her money and jewellery can form the same transaction so as to attract the exception provided u/s 235 to the general rule. In our opinion the answer must be in the negative.

43. In order to constitute an offence of cheating there must be (a) a deception and (b) the delivery of the property. In this case it may be that the first ingredient of the section namely the deception as alleged was the same but the second ingredient namely the delivery of the property being numerous and on different occasions had nothing in common with one another either in sequence

of time or in unity of purpose to be a series of acts forming the same transaction as envisaged u/s 235 Cr. P. C. We are, therefore, clearly of opinion, that in the absence of a charge of conspiracy, it was not open to the trial Judge to frame a composite charge involving such a length of time and so many transactions u/s 417 I. P.C.

44. In our opinion, however, the contention of Mr. Chaturvedi that the Sessions Judge was debarred in law from framing a charge u/s 417 against the accused who was committed to stand his trial for an offence u/s 493 I.P.C. only is not tenable in view of the facts and circumstances of this case. The complaint filed by the prosecutrix disclosed allegations of cheating against the accused and a prayer was made therein for his trial for that offence. If on reading the evidence adduced in the committing Magistrate's Court the Sessions Judge was of opinion that a charge of cheating was also called for he could have added a charge for that offence as is envisaged by Sections 226 and 227 of the Code. The combined effect of the aforesaid sections, in our opinion, is to invest the Court with a comprehensive power to remedy the defects in the framing or non-framing of the charge whether discovered at the inception of a trial or at any subsequent stage prior to judgment,

45. There is force in the contention of the learned counsel for the defence that the element of deception being the same in the three charges under Sections 493, 376 and 417 I.P.C. respectively it was not open to the trial Judge, after having negatived the same in respect of the first two charges, to convict the accused on the third charge by holding that he had practised different kinds of deception on the prosecutrix without amending the charge and without giving him sufficient notice of that deception.

46. The story of the prosecutrix that she came in contact with the accused as a patient and was seduced by him to develop intimacy and sexual connections with him which had continued for a period of about 15 years appears to contain a substratum of truth. It is difficult to believe that the prosecutrix who had described with precision the daily incidents of her life with the accused, extending over such a long period, could have done so on the basis of pure imagination unless the story was basically true. It is also difficult to believe that a woman of her status and intelligence having a well placed husband and four grown up children from him would have invented such a story casting serious aspersions on her own moral character and thereby endangering her relations with her kinsmen.

47. The allegation of the prosecutrix that she had stayed alone at Calcutta at different places for a considerable period during these 15 years away from her husband and children finds support from the evidence of Sujan Singh (P. W. 4) and her domestic servants Shanker Lal Sharma, Ram Ball and Munshi Ram (P. Ws. 10, 11 and 12).

48. Sujan Singh says that his wife used to come frequently to Calcutta

sometimes on the pretext of treatment and sometimes for shopping, during this long period and used to stay there alone for considerable time. There was a change in her attitude towards him since she came in contact with the accused as a patient in 1940 and the accused used to take unusual interest in her. When the prosecutrix was at Mussoorie or Simla the accused used to come and stay there with her as their guest and in the year 1942 when he came to see his wife at Calcutta he found her staying with the accused at his residence at 77 Hazra Road. The accused has admitted to have asked the prosecutrix to stay with him at his house by way of courtesy. He has also admitted that although he never passed all the time with her but whenever the prosecutrix came to Calcutta he did visit her.

49. Shanker Lal, Ram Ball and Munshi Ram (P. Ws. 10 to 12) have stated that during the stay of the prosecutrix at Calcutta the accused used to visit her almost daily usually in the night and sometimes spent the whole night with her exclusively in her room. Similar is the statement of Mrs. Lal Banu who was the Aya of the prosecutrix and Sohan Singh (P. W. 8) on this point. She was examined before the Court of the committing Magistrate. As she had died before the commencement of the trial her statement was tendered in evidence by the prosecution.

50. Thus the version of the prosecutrix in this regard finds corroboration from the testimony of the aforesaid witnesses and rings true.

51. The prosecutrix has stated that whenever she heard that the accused was fraternising with some other women she used to write to him raising a protest and the accused after repudiating the allegation tried to explain his conduct and asked her forgiveness. The accused has admitted that the prosecutrix used to make wild, imaginary and untrue allegations with regard to his association with other women. Why should the prosecutrix feel jealous of his association with the other women and make repeated allegations in that regard? If the accused was only a friend of the family why should this lady be so punctilious and persistent in watching his behaviour and conduct with other women? In our opinion it clearly points out that the relations between the accused and the prosecutrix were deeper relating to sex which alone could kindle a fire of jealousy in her heart.

52. During these years the accused has addressed legions of letters to the prosecutrix although they were living mostly in the same city. Why should a busy medical practitioner spend his precious time in writing so many and such long letters to young lady if his interest in her was only that of a family friend? These letters are deliberately couched in an equivocal language but the current of tender thoughts underlying them throws a lurid light on the nature of the relationship between the parties. The learned trial Judge has noticed the contents and significance of the letters in his judgment in great detail and we agree with the conclusions which he has arrived on their basis.

53. The accused used to address and refer the complainant in his letters as "My dear one", "May it please your Highness," "Hellow My dear Harbans", "Darling", "Maharani Cooch Parwahni", "A-1". and "Pagli" and used to close them sometimes with the words "with every love, good wishes and hopes", "Ever Yours", "Always Yours" and "Your always". No one addresses a young wife of the friend as "My Darling", "A-1" and subscribes himself to be always "hers". Such terms of endearments are not used while addressing letters to the wife of a friend. Such expressions generally find place in letters addressed by lovers to their beloved.

54. Some of these letters also indicate that the accused was a regular visitor to her house and used to take his evening meals frequently with her. He sometimes went to her even so late as 11 in the night as will appear from his letter Exhibit Ka 267. A bunch of these letters (Exhibits 117, 144, 147, 149, 154 etc.) which relate to the period from 1950 to 1955 indicates that whenever the complainant was staying in Calcutta they used to quarrel in the evening and the next morning the accused used to regret and ask for her forgiveness,

55. The evidence on the record discloses that the accused made arrangements for the residence of the prosecutrix, sent letters, issued and obtained receipts, collected mails, paid electric bills and rent on her behalf, employed servants and Darbans for her and engaged lawyers to fight out her cases. Sometimes he even collected her clothes from washer men, purchased hair oil and toilet for her and arranged for the safety of her house. In addition, he managed all other household affairs of the prosecutrix.

56. In the suit filed by Sujan Singh for the dissolution of his marriage, the accused was a co-respondent with the prosecutrix, but did not enter appearance to repudiate the allegation of adultery made against him.

57. All this evidence direct and circumstantial can lead to no other conclusion but that the story of the prosecutrix that the accused had sexual connections with her for such a long period is absolutely true.

58. We have not been impressed, however, by the assertion of the prosecutrix that the accused had performed mock marriages with her on three occasions and had thereby induced her to believe that she was his legally wedded wife and duty bound to cohabit with him.

59. The prosecutrix was about 30 years of age in 1940 and a mother of four children. Her husband was an officer in the Railway and she had been living with him since the last several years. She had mixed in society of Railway Officers and was able to come alone to Calcutta and make arrangements for her stay. She is educated and had stayed in first class hotels at Calcutta and other places. She along with her husband attended dancing and drinking parties in hotels frequented by the aristocratic sections of Calcutta society before she alleges to have come under the evil influence of the accused. She was not an illiterate, rustic, unsophisticated village damsel ignorant of the ways of the world. It is,

therefore, incredible that she could have been persuaded by the accused to believe that she could be the wife of another person during the subsistence of her marriage with Sujan Singh even if some mock performances were held with her.

60. There are certain inherent contradictions in her story in this regard. She has stated that after the accused had picked up her loosened hairs from the table she had started liking him and had fallen in love with him. That being so where was the question of her being induced to believe that she was his lawfully married wife? This statement of the prosecutrix indicates as to which way the wind was blowing and at least in thought she had become unfaithful to her husband.

61. The story of the prosecutrix that the accused had first married her before moon in February, 1940, and then again In June, 1948, in the Kalf temple according to Hindu rites and before Guru Granth Sahib according to Sikh faith has not been corroborated by any reliable evidence on the record. Surjit Singh (P. W. 5) who has corroborated her about the moon marriage and Genda Singh (P. W, 8) who has spoken about the marriage before Guru Granth Sahib have not been relied upon by the learned trial Judge for good reasons. The trial Judge has also held the testimony of Munshi Hari Chand (P. W. 7) about the alleged performance at Kali temple as unreliable. Ram Nath Sharma who was examined u/s 202 Cr. P. C. before the committing Magistrate in respect of the marriage alleged to have been performed at Kali temple could not have been cross-examined on behalf of the accused at that stage of the proceedings. His statement, therefore, should not have been admitted in evidence u/s 33 of the Evidence Act. It has, therefore, to be ignored. The learned trial Judge has, however, held on the basis of the evidence furnished by the prosecutrix herself that some such performances were held by the parties although they were not marriages in the legal sense of the term, but mock performances evidencing amorous relations subsisting between them. On the basis of the uncorroborated testimony of the prosecutrix alone who is in the nature of an accomplice we are unable to hold that some such performances were enacted by the parties.

62. The conduct of the prosecutrix militates against her assertion that she believed herself to be the legally wedded wife of the accused. If so why did she keep it concealed from her previous husband for such a long number of years till she got completely disillusioned by the unbecoming conduct of the accused in 1956? Draupadi whose instance is said to have been cited by the accused to convince her that a Hindu lady could be the wife of more than one person had not concealed this fact from any of her husbands. When Shakuntala was married in a Gandharva form with Dushyanta she was a virgin and not the wife of living person. The Gandharva marriage of a married woman is not only unknown to law but also to Hindu mythology. How could the prosecutrix, within less than half an hour of her bidding good-bye to her husband, be persuaded to marry the accused unless her moral and intellectual vision was completely blurred by lust? If the parties had married before the moon where was the hurry to consummate

It immediately thereafter in a clandestine manner in the rear seat of the car? If there was a marriage before the moon in 1940 where was the necessity of having it performed again and again on two subsequent occasions? If the prosecutrix believed herself to be the legally wedded wife of the accused what was the necessity of her calling Sujan Singh from Assam in June 1948 to cover her pregnancy?

63. Some of the envelopes in which letters were sent to the prosecutrix by the accused she has been described as Mrs. Sujan Singh, Exhibits Kha 44 to Kha 54 are the T. M. O. acknowledgments for the period 1952 to 1954 of the various amounts sent by the accused to the prosecutrix when she was living away from Calcutta in which the prosecutrix has signed herself as Mrs. Sujan Singh. Exhibit Kha 50 is the acknowledgment receipt of the registered insured cover for Rs. 1000 on which the sender's name is mentioned as Dr. Amar Nath and the addressee as Mrs. Sujan Singh and the same has been signed by her as such in token of receipt of the amount on 21-5-54. There are several other documents on the record which show that even after the performances of the aforesaid mock marriages the prosecutrix signed herself as Mrs. Sujan Singh. If she was the wife of the accused why did she not raise a protest to such description of her specially when she had been continuously protesting against his fraternisation with other society women?

64. Exhibit Ka 328 Is the notice dated January 17, 1957, which was sent on her behalf by her lawyer Sri B.K. Dhawan Bar-at-law, Lucknow to the accused. In this notice It has been inter alia, stated that he knew from the very beginning that Mrs. Harbans Kaur had been married to Mr. Sujan Singh who was already holding a high position in the Railway but his intimacy grew to this extent that for the most part of the year she remained in Calcutta with him away from her husband and that his relations with her had been such that he completely captivated her and won her confidence and a child was born to her by him in the year 1949. There is no allegation in this notice anywhere that the accused had performed mock marriages with the prosecutrix and had thus induced her to believe that she was his legally wedded wife. In fact there is no mention of any marriage or such inducement except that there had been sexual intimacy between them.

65. A question, therefore, arises as to why the prosecutrix had allowed her chastity to be violated by the accused and why she had clung to him for such a long period of time in spite of the various pinpricks and tortures to which she was subjected by him. There is enough indication in her lengthy statement that she was infatuated with the accused till she got completely disillusioned on account of his waning interest in her by the lapse of time.

66. We, therefore, agree with the finding of the trial Judge that the accused was the paramour and the prosecutrix his concubine and her allegation that she was induced to cohabit with him in the belief that she was lawfully married to him is wholly incredible. That being so, the first two charges which are inter-connected must fail and Criminal Appeal No. 944 of 1966 by the prosecutrix must be

dismissed.

67. The learned trial Judge has devoted about 20 pages of his lengthy judgment in arriving at the finding that the accused and not Sujan Singh is the father of the girl Sureila. The question of paternity of Sureila, in our opinion, is not strictly relevant for the determination of the charges levelled against the accused. Therefore, the trial Judge was not required to give a finding on this question. According to the prosecutrix herself the sexual relationship between the parties began in 1940 and the girl was born on 19-1-1949. It is also admitted that she had not obtained a divorce till then from her husband Sujan Singh and that he had been occasionally visiting her even though the relations between them were not very cordial. The question is directly in issue between the parties before the High Court at Calcutta on its civil side in Suit No. 1163 of 1957 which was instituted by the prosecutrix earlier than the present complaint and we refrain to express any opinion or give a finding on this question.

68. It will be noticed that the element of deception which formed an ingredient of all the three charges is the same namely that the prosecutrix was deceived into the belief that she was the lawfully wedded wife of the accused. In the charge u/s 417 I. P. C. It has been inter alia, mentioned that being so deceived by the accused she lived and acted as his wife and gave him from time to time money about 7 lacs and jewellery worth Rs. 50,000/- which she would not have done if she were not so deceived by him. It is, therefore, obvious that in terms of this charge the prosecutrix willingly gave the various amounts and her jewelleries to the accused because she had been induced to believe that she was his lawfully married wife. We have already held, in agreement with the trial Judge, while discussing the prosecution case in respect of the first two charges under Sections 493 and 376 I.P.C. respectively that there was no such deception on the part of the accused and that the prosecutrix never believed herself to be the lawfully married wife of him. That being so and the element of deception being common to all the three charges, the charge u/s 417 as it stands, also, must fail along with the other two charges.

69. If there was some other type of deception practised by the accused for depriving the prosecutrix of her cash and jewelleries as has been held by the trial Judge, it should have been specifically mentioned in the charge with sufficient particulars to give the accused a reasonable notice of the matter for which he was being charged and tried. The charge as it stands is devoid of the necessary particulars as to the time, place and the manner of cheating held established by the Judge. In order to meet this difficulty Mr. Mulla has argued that the case should be remanded for a fresh trial after framing a proper charge for an offence u/s 417 I.P.C. We are unable to agree with him. The case has been pending since the year 1958. The trial before the Sessions Judge was a protracted one and has continued for a period of about one year. The parties are already litigating before the Calcutta High Court for the determination of their inter se financial liabilities. In the circumstances we do not consider it expedient

in the interest of justice to remand the case for a fresh trial on this charge.

70. We are also satisfied that the evidence adduced by the prosecution in respect of this charge is too slender to form basis for a judgment of conviction and we propose to consider that evidence in the following paragraphs:

71. The learned trial Judge has held that the accused had cheated the prosecutrix of the following amounts:

(a) Rs. 10,000/- which was given by Sujan Singh on her persuasion to the accused as a loan in 1942.

(b) Rs. 5,58,000/- deposited by her with H. Datta & Sons Ltd. which could not be realised as the firm failed.

(c) Rs. 23,500/- out of the withdrawn amount of Rs. 34,935/- from the Lloyds Bank,

(d) Rs. 3000/- out of a sum of Rs. 15,000 which the prosecutrix paid to the accused for purchasing a car for her.

(e) The jewellery worth Rg. 32,500/- which she had kept with the accused in a biscuit tin which he had failed to return.

72. Sujan Singh says that his wife told him that the accused wanted a loan of Rs. 10,000. The accused also asked him for that amount and he "agreed to give him loan and gave him a cheque for Rs. 10,000on 19-12-1942" and told him that whenever he had money he could repay the loan but the amount was never paid back to him. The defence of the accused is that Sujan Singh and his wife had taken cash advances from time to time during the period 1940 to 1942 and the amount of Rs. 10,000/- was given to him by cheque in repayment of those advances. This defence may or may not be true. There is no evidence to show that when the accused took the alleged loan from Sujan Singh he intentionally deceived him into a belief that he meant to repay the same although he had no intention to do so. The statement of Sujan Singh that the loan was to be refunded at the discretion of the accused militates against the idea of any deception having been played on him.

It is in the evidence of Sujan Singh that during the period 1942 to 1954 he had taken various amounts from the accused by way of short term loans (Rs. 4000/- in September 1954, Rs. 8000/- in 1948 etc.) but had returned the same without asking for the adjustment of his dues (Exhibits Ka 14 and Ka 34). Sujan Singh did not state before the committing Magistrate that the amount of Rs. 10,000 was paid as loan to the accused. It was for the first time in July 1958 (Exhibit Ka 5) that he cared to find out from the Bank that the cheque of Rs. 10,000/- issued by him had been cashed by the accused. This conduct on his part indicates that either it was a gratuitous payment to Dr. Mukherji or in adjustment of their inter se financial accounts. In any case the money had not been obtained by Dr. Mukerji on any false representation and there is no question of any deception

involved in the transaction.

73. According to the prosecutrix the accused induced the prosecutrix to give money to him to deposit with the Calcutta Commercial Bank Ltd. and H. Datta & Sons Ltd. and she did so because she was living and acting as his wife and also because the accused had assured her that he was an intimate friend of Sudhin Datta the Managing Director of the Calcutta Commercial Bank Ltd., a business associate of their firm and shall be personally responsible for the money given by her for the deposit. It is alleged further that even after the collapse of the firm the accused went on assuring the prosecutrix that he will pay the amount if Datta & Sons failed to refund the same. This allegation has been denied by the accused.

74. Firm H. Datta & Sons were the Managing Agents of the Calcutta Commercial Bank. It is not the case of the prosecution that the amounts alleged to have been given by the prosecutrix to the accused for being deposited in the Calcutta Commercial Bank Ltd. were not so deposited in her favour. In fact the finding of the trial Judge is that the amounts were actually deposited with them. Similarly there is no allegation or finding that the accused had withdrawn any item of those deposits from the aforesaid Bank or the firm for himself. There is no evidence except that of the prosecutrix that the cheques for self were cashed by the accused. If her statement that she gave the money to the accused through the cheques drawn on the Bank is accepted to be true even then it will not amount to any deception on her because she willingly gave the amount.

75. There is no evidence to show that the accused was in any way intimately connected with the administration of the affairs of the Calcutta Commercial Bank Ltd. or with their managing agents H. Datta & Sons Ltd. when the amounts were deposited with them by the prosecutrix. The evidence, if any, is to the contrary. Sudhin Datta (P. W. 14) who had been the Managing Director of the Bank and a partner of its managing agency says that Dr. Mukherji had no connection with the Bank but he had an account with it, that he had no concern with H. Datta & Sons, that Sujan Singh and his wife Mrs. Harbans Kaur were personally known to him and they used to come to the Calcutta Commercial Bank Ltd. for deposits and withdrawals and that Sujan Singh used to deposit money with H. Datta & Sons in different names.

He has admitted that at the time of the opening of an account a person has to be introduced by another constituent of the Bank and in that way Dr. Mukherji had introduced Sujan Singh and Ms wife to the Bank and its managing agents. He has categorically stated that Dr. Mukherji was never a Director of the Calcutta Commercial Bank Ltd. and he was not a business associate of H. Datta & Sons and that the various amounts with the Bank or the firm had been deposited either by Sujan Singh or by Smt. Harbans Kaur.

93. [His Lordship after discussing the evidence in paras 76 to 92 observed:] Thus the evidence on the record both direct and circumstantial, in our opinion, is too

insufficient to make out a case of conspiracy between the accused and H. Datta & Sons for depriving the prosecutrix of her money.

94. The prosecutrix has stated that she had given from time to time during the course of these long years considerable amount of money to the accused either in cash or by permitting him to encash the self-drawn cheques by her and appropriate the money (reliance is placed on the counterfoils of the cheques). The accused has denied to have encashed her self-drawn cheques or to have received any amount from her except by way of remuneration for medical services rendered or in repayment of loans advanced by him on several occasions. There is no evidence from the respective banks that the self-drawn cheques were encashed by the accused. Even if we believe the uncorroborated testimony of the prosecutrix on this point it does not amount to deception on the part of the accused. The prosecutrix has nowhere stated that she parted with those amounts in favour of the accused on the basis of fraudulent representations made by him except that she took him to be his validly married husband.

104. [His Lordship after discussing the evidence in paras 95 to 103 observed:] We are not called upon to determine the genuine or fictitious nature of these transactions nor it is within our province to determine the inter se liabilities of the parties. We must, however, observe that the evidence indicates that there have been numerous monetary transactions between the parties during these long years and they have received from and paid to one another various amounts from time to time. The dispute if any, between them in respect of those transactions is of a civil nature which is being agitated in the High Court at Calcutta. The evidence, however, falls short of bringing out any case of cheating against the accused.

105. Jewellery:-- The prosecutrix says that "when the accused gave Rs. 30,000/- to her he said that I should keep some security with him so that Mr. Singh may know that he had actually taken a loan from him. In one empty biscuit tin I gave him some of my jewellery. It was given to him in 1951." According to her another jewellery box was taken away by the accused when she was living at 2-B Out-ram Road in 1955. That box was returned to her through her nephew Jogendra. The accused has denied to have received jewellery in any biscuit tin. According to him only one jewellery box was kept with him in security against his loan which he returned through Jogendra and the return of which was acknowledged by the prosecutrix in her letter Exhibit Ka. 283. The parties are litigating on the civil side of the Calcutta High Court about this matter. We, therefore, do not consider it expedient to give any categorical finding as to whether only one box of jewellery was kept with the accused as, two.

It, however, appears very incongruous that the prosecutrix was very insistent for the return of the jewellery box which had been given to the accused in 1954-55 as is evident from her letter Exhibit Kha 61 and was repeatedly asking him to send the box through Jogendra but not about that which is said to have been

kept with him in 1951. It also seems strange that without receiving the biscuit tin jewellery box she made a statement in her letter Exhibit Ka. 283 that she had received back from him the box of jewellery. Even if the statement of the prosecutrix in this regard is implicitly believed it will not make out a case of cheating against the accused because he kept the biscuit tin jewellery box as a security for his loan and not on any false representation. If he failed to return the same, a fact about which we entertain grave doubts, it will amount to a criminal breach of trust for which he has not been charged,

106. The complainant says that in the year 1947 she paid Rs. 15,000/- to the accused for purchasing a new car for her but the accused took the new car for himself and gave her his old Cheverlet for which he again took Rs. 12,000/- from her as its price. The accused has denied this allegation. According to him he had purchased a new Oldsmobile car for himself and given his old car to the complainant for which he was paid Rs. 12,000/- and there was no payment of Rs. 15,000/- by the prosecutrix for purchasing a new car for herself. In the committing Magistrate's Court the complainant had stated that she asked the accused to order for a car for her and she gave him Rs. 15,000/- and he gave her his old Cheverlet car for Rs. 12,000/- and kept the balance with him (Exhibit Kha. 32). When confronted the complainant denied to have made such a statement.

We are not satisfied that the complainant made double payment for the car once of Rs. 15,000/- and then again of Rs. 12,000/- as has been asserted by her before the trial Judge. It may be that in view of his intimate relations with the prosecutrix and because the parties have been receiving from and giving money to one another the accused missed to refund the balance of Rs. 3000/- and the prosecutrix never made any grievance of the same for the last so many years which shows that there was no criminal Intent on the part of the accused in retaining that money.

107. It is true that this unfortunate woman, by a combination of circumstances, first lost her soul and then her riches in Calcutta. But it is also true that she herself is primarily responsible for bringing her calamity.

108. The trial Judge has observed that "much unnecessary, irrelevant, and inadmissible evidence was also taken down on record in the peculiar circumstances of this case" We must observe that whatever may have been the peculiar circumstances, the trial Judge was not justified in bringing on record such irrelevant and inadmissible evidence as it was his duty to have kept the proceedings within the bounds of law. If the prosecutrix could not be prevented from making scurrilous allegations on hearsay against men and women who were not parties to the case, the trial Judge should have at least, refrained from noticing them in his judgment and making them basis for some of his conclusions. He should not have overlooked the relevant provisions of the Code of Criminal Procedure while framing the charge against the accused for the alleged offence u/s 417 I.P.C.

109. The accused who is reputed to be an eminent surgeon came in contact with the prosecutrix in his capacity of a physician. Betraying the confidence of her husband with whom he was on intimate terms, he chartered this unfortunate woman on a long and dreary path of immorality and in the end renounced her. Whether a person of such depraved morals should be allowed to continue in the noble profession of medicine is a matter, however, for the consideration of Indian Medical Council and not by the Court. The direction of the Sessions Judge that the appellant be debarred from practice as a medical practitioner for a period of three years must, therefore, be quashed.

110. In the result Criminal Appeal No. 471 of 1966 is allowed. The conviction and sentences of appellant Dr. Amar Nath Mukerji as recorded by the trial Judge are set aside. His bail bonds are discharged and fine if paid, shall be refunded to him.

111. Criminal Appeal No. 944 of 1966 filed by Smt. Harbans Kaur u/s 417(3) of the Code of Criminal Procedure and her Misc. Applications No. 1037 of 1966 dated 20th April, 1966, and another dated 22nd December, 1967, are dismissed.