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BHARAT BHUSHAN & ANR.

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 982 of 2007)

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MARCH 12, 2013.

[A.K. PATNAIK AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

C *Penal Code, 1860 – ss.304B and 498A – Prosecution*
under – Of husband and his relatives – Conviction by courts
below – Plea of accused-appellant Nos.2 and 4 that they were
living separately and hence act of cruelty cannot be attributed
to them – Appeal confined to appellant Nos.2 and 4 – Held:
D *The case of the said appellants not covered either u/s. 304B*
or u/s.498A – Act of cruelty or harassment against the
deceased not established, hence the said appellants cannot
be held guilty u/ss.304B and 498A.

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Prosecution u/ss. 304B and 498A IPC was initiated
against accused alleging demand of dowry and treating
the deceased with cruelty. Trial court convicted the
accused persons. High Court confirmed the order of
conviction holding that appellant Nos.2 and 4 though not
residing with the deceased, were responsible for
committing cruelty by keeping silent and by not coming
F to the rescue of the deceased. The present appeal is
confined only to appellant Nos.2 and 4 as the Special
Leave Petition qua the other two accused was dismissed.

Allowing the appeal, the Court

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HELD: 1. The criminal liability u/s. 304B IPC is
attracted not just by the demand of dowry but by the act
of cruelty or harassment by the husband or any relative
of her husband in connection with such demand; thus,

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unless such an act of cruelty or harassment is proved to have been caused by the accused to the deceased, soon before her death, in connection with the demand of dowry, the accused cannot be held to be liable for the offence of dowry death u/s. 304B IPC. Similarly, Section 498A IPC provides that the act of cruelty to a woman by her husband or his relative would be punishable and would be attracted only if the husband or his relative commits an act of cruelty within the meaning of clauses (a) and (b) in the Explanation to Section 498A IPC. [Para 7] [234-E-G]

2. The opinion of the High Court that by keeping silence and by not coming forward to settle the dispute with regard to the dowry, the appellant Nos. 2 and 4 were guilty of the offences u/ss. 498A and 304B IPC, is not correct. There might have been a demand of dowry by the appellants at the time of marriage and it is quite possible that the demand of dowry might have persisted even after the marriage, but unless it is established that the appellant Nos. 2 and 4 committed some act of cruelty or harassment towards a woman, they cannot be held guilty of the offences u/ss. 304B and 498A IPC. The act of remaining silent cannot be by any stretch of imagination construed to be an act of cruelty or harassment towards the deceased within the meaning of Section 304B IPC. The act of remaining silent with regard to the settlement of the dowry demand will also not amount to cruelty within the meaning of either clause (a) or clause (b) of the Explanation of Section 498A IPC. [Paras 6 and 8] [233-G-H; 234-A-C; 235-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 982 of 2007.

From the Judgment & Order dated 07.04.2006 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 1225 of 2004.

A Raghenth Basant, Goutam Khanzanchi, Senthil Jagadeesan for the Appellant.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

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A.K. PATNAIK J. 1. This is an appeal against the judgment dated 7th April, 2006 of the Madhya Pradesh High Court, Jabalpur Bench in Criminal Appeal No. 1225 of 2004 by which the High Court has maintained the judgment of the XIIIth Additional Sessions Judge (Fast Track Court), Jabalpur in
C Sessions Trial No. 671 of 2003 convicting the appellants under Sections 304B and 498A of the Indian Penal Code.

2. On 12th February, 2007, this Court dismissed the
D petition for special leave to appeal qua petitions Nos. 1 and 3 and issued notice confined to appellant nos. 2 and 4 and on 18th October, 2007, this Court had also granted bail to the said two appellants. Hence this appeal is confined to the appeal of appellant Nos. 2 and 4.

E 3. The facts very briefly are that Madhuri got married to appellant No. 1 at Jabalpur on 10th June, 2003 and she came to the house of her parents on 5th August, 2003. In the house of her parents, she committed suicide by hanging to the ceiling on 17th August, 2003. The father of the deceased lodged a
F report with the Police on 17th August, 2003, saying that he had brought his daughter to the house on 5th August, 2003 and she was not sent back to her in-laws' house on account of the illness of his wife and she committed suicide. The Police investigated the case and filed a charge sheet against the appellants under
G Section 304B and 498A of the Indian Penal Code. The trial court convicted the appellants and the High Court has maintained the conviction.

4. We have heard learned counsel for the appellants and
H learned counsel for the State at length and we find that the trial

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court has held on the basis of the evidence led by the prosecution witnesses that appellant Nos. 2 and 4 along with appellant No.1 demanded colour TV, '50,000/- in cash and a Hero Honda Motor Cycle towards dowry at the time of marriage and just after one day of the marriage did not supply proper meal even to the deceased and, accordingly, held that this was an act of cruelty towards the newly married bride and the appellant Nos. 2 and 4 along with the appellant Nos. 1 and 3 were jointly and directly liable under Sections 304B and 498A IPC.

5. In the appeal before the High Court, it was contented on behalf of appellant nos. 2 and 4 that they were living separately and as such no act of cruelty or harassment towards the deceased could be attributed to them. The High Court, however, held that the deceased who was a newly wedded girl would certainly be in a mental agony when her parents were making efforts to call appellant Nos. 2 and 4 along with the other appellants to come and settle the dispute with regard to the dowry and yet the appellants refused to go and settle the matter merely on the ground that they were from the groom's side. The High Court further held that such conduct of the appellant Nos. 2 and 4 would certainly be an act of cruelty and would also result in mental distress to a newly married girl who was married just two months before committing suicide. The High Court was of the opinion that appellant Nos. 2 and 4 in keeping silence and in not coming to the rescue of the deceased committed cruelty even though they had not caused any physical cruelty to the deceased and were liable for the offences under Section 498A and 304B of the Indian Penal Code.

6. We are unable to agree with this opinion of the High Court that by keeping silence and by not coming forward to settle the dispute with regard to the dowry, the appellant Nos. 2 and 4 were are guilty of the offences under Sections 498A and 304B of the IPC. In the facts of this case, as found both by

A the trial court and by the High Court, the deceased got married to the appellant No. 1 on 10th June, 2003 and she went back to the house of the appellants on 5th August, 2003 and committed suicide on 17th August, 2003 while she was in the house of her parents. True, there may have been a demand of
B dowry by the appellants at the time of marriage and it is quite possible that the demand of dowry may have persisted even after the marriage but unless it is established that the appellant Nos. 2 and 4 committed some act of cruelty or harassment towards a woman, they cannot be held guilty of the offences
C under Sections 304B and 498A IPC.

7. Section 304B IPC provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she
D was subjected to cruelty or harassment by her husband or any relative of her husband, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death. Hence the criminal liability under Section 304B IPC is attracted
E not just by the demand of dowry but by the act of cruelty or harassment by the husband or any relative of her husband in connection with such demand; thus, unless such an act of cruelty or harassment is proved to have been caused by the accused to the deceased soon before her death in connection with the
F demand of dowry, the accused cannot be held to be liable for the offence of dowry death under Section 304B IPC. Similarly, Section 498A IPC provides that the act of cruelty to a woman by her husband or his relative would be punishable and would be attracted only if the husband or his relative commits an act
G of cruelty within the meaning of clauses (a) and (b) in the Explanation to Section 498A IPC.

8. In this case, the finding of the High Court is that the appellant Nos. 2 and 4 did not come forward to participate in
H the settlement of the dowry on the ground that they belonged

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to the groom's family and remained silent. This act of remaining silent cannot be by any stretch of imagination construed to be an act of cruelty or harassment towards the deceased within the meaning of Section 304B IPC. The act of remaining silent with regard to the settlement of the dowry demand will also not amount to cruelty within the meaning of either clause (a) or clause (b) of the Explanation of Section 498A IPC. A
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9. In the result, we allow this appeal of appellant Nos. 2 and 4 and set aside the impugned judgment of the High Court as well as the judgment of the trial court and direct that the bail bonds furnished by appellant nos. 2 and 4 will stand discharged. C

K.K.T.

Appeal allowed.