

Tinna and anr. Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/486373

Court : Allahabad

Decided On : Feb-15-2008

Reported in : 2008CriLJ3230

Judge : S.S. Kulshrestha and ;Vijay Kumar Verma, JJ.

Appellant : Tinna and anr.

Respondent : State of U.P.

Advocate for Pet/Ap. : Sri. Atul Kumar Tiwari

Disposition : Application allowed

Judgement :

1. Heard Sri Atul Kumar Tiwari, learned Counsel for the appellants, learned A.G.A. for the State and also perused the material on record.

2. The bail application on behalf of the accused-appellants Tinna and Harvansh convicted for the offences under Section 302/34 I.P.C. in S.T. No. 444 of 1998 vide judgment dated 24-3-2007 passed by Additional Sessions Judge, Court No. 3, Farrukhabad has been pressed on the ground that the case is totally based on circumstantial evidence. Report of the incident was lodged after twenty four days from the date of disappearance of the deceased and after thirteen days from the date of recovery of dead body. It is also said that the witnesses are not reliable. When the witnesses being in the near relation of the deceased had seen the

deceased being dragged and criminally assaulted by appellants-accused, then why no F.I.R. was lodged immediately thereafter.

3. Having regard to all the facts and circumstances of the case, without expressing any opinion on merit of the case, the accused-appellants may be released on bail.

Let the appellants Tinna and Harvansh be released on bail for the offences indicated above during the pendency of the appeal on their executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the Trial Court concerned.

4. It is worthwhile to mention that the learned Trial Court has not imposed fine, whereas it is mandatory to impose fine in addition to the substantive sentence of imprisonment for the offence punishable under Section 302, I.P.C., as the language used in Section 302, I.P.C. is, 'and shall also be liable to fine'. We have come across some other cases also, in which, fine was not imposed by the Trial Courts even for those offences where the expression used by the legislature in the sections for which conviction was recorded was 'and shall also be liable to fine'. Where such expression is used in any Section, the Court is under obligation to impose fine also in addition to the substantive sentence of imprisonment. No discretion is left to the Court to levy or not to levy fine and imposition of both imprisonment and fine is imperative in such case, as held by Hon'ble Apex Court in the case of *Zunjarrao Bhikaji Nagarkar v. Union of India and Ors.* : (2000)ILLJ728SC , in which reference has been made to the case of *Rajasthan Pharmaceuticals Laboratory, Bangalore v. State of Karnataka* : 1981 CriLJ348 .

5. Let a copy of this order be sent by Registrar General within a week to Sri Rajiv Kumar Tripathi, the then Additional Sessions Judge, Court No. 3, Farrukhabad for his future guidance.