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**(1998) 04 AHC CK 0148**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Appeal No. 230 of 1998

Kanhaiya Lal and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** April 28, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 446
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1999) 3 ACR 2657

**Hon'ble Judges:** Virendra Saran, J

**Bench:** Single Bench

**Advocate:** R.P. Singh, for the Appellant; G.A., for the Respondent

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### **Judgement**

Virendra Saran, J.

Heard learned Counsel for the Appellants and the learned Government Advocate.

2. Appellants Kanhalya Lal and Rohan stood sureties for accused Anil Kumar in Sessions Trial No. 391 of 1992 u/s 302, I.P.C. which was pending in the Court of Ist Additional Sessions Judge, Unnao. On 20th October 1995 accused did not appear, but he appeared on 29th February, 1996 and was taken into custody and was subsequently again admitted to bail. Accused Anil Kumar again absented on 5th May, 1997 and his bail bonds were forfeited and a separate case being Criminal Misc. Case No. 11 of 1997 was registered against the sureties who were given show-cause notice. The show-cause notices were returned to the Court with an endorsement that the sureties refused to accept notice and hence the learned 1st Additional Sessions Judge, Unnao directed realisation of the entire surety amount, i.e., Rs. 20,000 in respect of each of the Appellants.

3. Learned Counsel for the Appellants has submitted that notices were never served on them nor they ever refused to accept notice and the report that they refused to accept notice was wrong. Learned Counsel prayed that the case be sent back for

re-consideration before learned Ist Additional Sessions Judge, Unnao.

4. I am not inclined to remand the case at this stage. However, the fact remains that the accused surrendered on 15th May, 1997, as is evident from the certified copy of the order sheet dated 15th May, 1997, filed along with supplementary affidavit. Thus, it appears that the absence was for a short spell of time and accused Anil Kumar, who surrendered on 15th May, 1997, is now in jail and the trial is proceeding. Since there has been no permanent damage to the cause of justice because accused Anil Kumar has surrendered, I am of the view that a lenient view may be taken and the interest of justice will be met if each of the Appellants is directed to pay Rs. 4,000 (Rupees four thousand) as penalty amount. Learned Counsel for the Appellants has also submitted that the entire property of the Appellants including their cattle has been attached on 4th April, 1998.

5. The appeal is partly allowed. Order imposing penalty amount on the Appellants dated 27th October, 1997, passed u/s 446, Code of Criminal Procedure is affirmed, but the amount to be realised in respect of each of the Appellants is reduced to Rs. 4,000 (Rupees four thousand). The properties of the Appellants which have been attached shall be released in their favour forthwith and the Appellants shall deposit Rs. 4,000 each within two months from today failing which the penalty amount shall be again realised according to law. The rest of the penalty amount, i.e., Rs. 6,000 in respect of each of the Appellants, is remitted.