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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 34/2017 and CrI.M.A. No.1093/2017

STATE

..... Petitioner

Through: Ms. Radhika Kolluru, APP for the
State.

versus

RAJENDER PRASAD BHARTI & ANR.

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
20.01.2017

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The petitioner State has preferred the present leave petition to seek leave to appeal against the judgment dated 10.05.2016 passed by the learned ASJ-3/ North, Rohini Courts, Delhi in Sessions Case No.16/15 arising out of FIR No.115/10 under Section 382/ 397/ 34 IPC registered at PS – Prashant Vihar. By the impugned judgment, the respondent accused/ Rajender Prasad Bharti has been acquitted, whereas the co-accused Vijay @ Sahil has been convicted since he pleaded guilty.

The petitioner seeks condonation of 110 days delay in filing the leave petition. Since I have perused the impugned judgment and heard learned counsel for the petitioner and I am not inclined to issue notice in the leave

petition, no useful purpose would be served in issuing notice in the delay application.

A perusal of the impugned judgment shows that the case relates to an alleged theft of a car by threatening the driver PW-3/ Sunil Dubey. According to the case of the prosecution, Sunil Dubey had taken the passenger Dr. Jeewan Lal/ PW-4 at his friend's place. While he was waiting at the car, the accused came from behind. The accused took the car keys from PW-3 and fled away with the car. He also took the driving license and some money from the PW-3.

According to the prosecution, one of the accused had a knife while the other had a *Katta*. There is no eye-witness to the offence. In these circumstances, the testimony of PW-3 assumes importance. The Trial Court has analysed the said testimony and compared the different versions given by PW-3 at the stage when the FIR was registered, when he made the supplementary statement under Section 161 Cr.P.C., the statement that he made during his examination-in-chief and the statements he made during his cross-examination. The Trial Court has found serious discrepancies in the same. At one stage, PW-3 stated that he was sitting in the car when the accused approached him; while at another stage, he states that he was standing about 15-20 metres away from the car under a tree at K.N. Katju Marg; while at one stage, he states that he was shown the knife and *Katta* by the accused and that the knife was put on his neck; at another stage, he states that the knife and the *Katta* were kept by the accused in their pockets and he could see them. Pertinently, no recovery of any kind was made from the accused and no chance fingerprints were even lifted from the vehicle. The car was subsequently recovered in an abandoned condition.

The aforesaid contradictions are material and the view taken by the Trial Court is a plausible view. In these circumstances, the accused was entitled to grant of benefit of doubt.

For all the aforesaid reasons, I find no reason to interfere with the impugned judgment.

Dismissed.

VIPIN SANGHI, J

JANUARY 20, 2017

B.S. Rohella