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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**DECIDED ON : JANUARY 29, 2018**

+ **CRL.L.P. 24/2015**

STATE ( GOVT OF NCT OF DELHI) ..... Petitioner

Through : Mr.Tarang Srivastava, APP.

versus

VIJAY SINGH & ANR ..... Respondents

Through : None.

**CORAM:**  
**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (ORAL)**

1. Present petition seeking leave to file appeal has been preferred by the State.
2. I have heard the learned Additional Public Prosecutor for the State and have examined the Trial Court record.
3. The respondents were charge-sheeted in case FIR No.43/2012 under Sections 379/328/34 IPC registered at Police Station Alipur. The FIR was lodged on the complaint of the complainant Krishan @ Mukesh for the theft of Truck No.HR-37A-1899. He and his brother Kaptan Singh were the driver and conductor respectively on the truck. It was informed that on 03.02.2012 the truck was loaded from Zirakhpur with 753 boxes of company goods including toothpaste, Dabur honey

and odonil etc. and it was to be unloaded at the godown of Dabur company situated in village Hamidpur. When the truck reached there at 6.00 p.m., the bills and bilties were handed over to the godown officials but it could not be unloaded that day. The truck was parked in the parking area near the godown. When the complainant and his brother were sleeping in the cabin of the truck, three boys came around 10/11 p.m.; they all consumed liquor. Thereafter, the complainant and his brother started feeling intoxicated and the three assailants took the truck loaded with the goods and they were thrown near a tubewell in unconscious state. In the morning, tubewell owner informed the PCR and they were taken to hospital.

4. Upon completion of investigation, a charge-sheet was filed against both the respondents in the court. The prosecution in order to prove its case examined 17 witnesses. The respondents denied their involvement in the crime and pleaded false implication. The trial court by the impugned judgment dated 05.09.2014 acquitted both the respondents as the evidence led by the prosecution was insufficient. Aggrieved by the said orders, the present leave petition has been preferred by the State.

5. On perusal of the impugned judgment it reveals that the trial court has discussed all the relevant aspects. The trial court noted that there were major discrepancies and contradictions in the statements of both PW-5 (Krishan @ Mukesh) and PW-10 (Kaptan Singh). It was also noted that the material prosecution witnesses PW-5 and PW-10 have made vital improvements in their deposition before the court. Their statements were entirely inconsistent and conflicting to the facts

disclosed to the police at first instance. No injuries were found on the body of the victims though allegedly the assailants had given beatings to them. There were serious discrepancies regarding the identification of the accused persons. It was observed that the accused persons were apprehended in some other case vide FIR No.96/2012 registered at Police Station Shahbad Dairy. They were arrested in this case after a considerable delay. Statements of the witnesses were recorded after inordinate delay without any plausible reason. The prosecution was unable to recover any stolen article from the possession of the accused persons or at their instance. The story presented by the complainant does not appeal to mind. They had no occasion to have consumed liquor with the strangers in the truck cabin. In the MLC nothing was found if the victims had consumed liquor, as urged.

6. Since there are material contradictions and discrepancies in the prosecution witnesses, the trial court did not commit any error to give benefit of doubt to the accused persons. The judgment based upon fair appreciation of evidences does not deserve any intervention to grant leave to the State to file appeal.

7. The leave petition is dismissed.

8. Trial court record along with the copy of the order shall be sent back forthwith.

**S.P.GARG  
(JUDGE)**

**JANUARY 29, 2018/sa**