

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION
FOR LEAVE TO APPEAL (STATE) NO.34 OF 2017**

The State of Maharashtra ...Appellant

vs.

Shahafaizal Salauddin Kalburgi and Anr. ...Respondents

Mr. J. P. Yagnik, APP for the Appellant.

Mr. Siddiqui Mohd. Arif for the Respondent Nos.1 and 2.

**CORAM : B. P. DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.
DATE : 10/07/2019.**

P.C.:

. Heard learned APP and learned counsel for the respondents.
Perused the evidence.

2. Learned APP accordingly places reliance upon evidence of PW-5 Dr. Shirish Kumthekar who claims that the deceased lady was brought to him in an auto rickshaw. He went out of his hospital to auto rickshaw to examine the lady and found her dead. He states that ligature mark present on her neck was horizontal and therefore he suspected foul play. He therefore reported the matter to the police authorities.

3. Learned APP adds that because of other material available on record which is not supported by any witnesses, the trial Court has exonerated accused persons.

4. Learned counsel for respondent submits that death is found to be a suicide. In post mortem report compression of neck is the only reason given by Doctor who conducted post mortem. Said Doctor could not be examined by the prosecution. The Trial Court found that in first document i.e. inquest panchanama shape of ligature mark was initially recorded as “U” shape later it was overwritten to show that it was straight i.e. horizontal.

5. With the assistance of respective counsel we have perused the records. Post mortem report only points out the cause of death and does not throw light on homicidal nature thereof. Though prosecution has examined PW-5, there is no supporting documents. Inquest panchanama mentions the ligature mark to be straight i.e. horizontal. However, this has been done by correction. The earlier remark about its shape revealed that it was “U” shape. “U” shape is consistent with hanging while horizontal ligature mark or straight ligature mark show strangulation with some wire.

6. Prosecution could not bring on record any material to show that spot did not contain any evidence of hanging and when body was seen it was lying horizontally and it was never hanging.

7. The trial Court therefore has correctly appreciated the material. This finding cannot be said to be perverse. Therefore, no case is

made out. The application for leave is rejected.

(MRS. SWAPNA S. JOSHI, J.)

(B. P. DHARMADHIKARI, J.)