

# State v. Nishant Patil<sup>i</sup>

Susan Elizabeth Reese

**Defense attorneys:** Steven J. Sherlag, Alexandria M. Hanna

**Defense paralegal:** Stacey Bridges

**Defense investigators:** Peter De Muniz and Kristine San Filippo

**Defense experts:** Robert Malaer [testified as to SANE protocols and effects of strangulation] Joel Brillhart

**Judge:** The Hon. Andrew Erwin, Washington County Circuit Court Judge

**Prosecutor:** Sean Kallery, Washington County Deputy District Attorney

**Trial:** January 9-12; 1/19-1/23; 1/26, 2024

**Charges:**

Rape in the First Degree: seven counts

Sexual Abuse in the First Degree: eleven counts

Sodomy in the First Degree: six counts

Coercion, Strangulation and Attempted Extortion: one count each

**Verdict:** Counts 3, 4 and 18 dismissed at MJOA

Jury verdict of not guilty on the remaining 24 counts.

Nishant Patil and Kalpana Borkar, both citizens of India, were married in a civil ceremony in Mumbai, India in the middle of the Covid lockdown. Theirs was an arranged marriage. At 30, Nishant was six years older than Kalpana, and the match was a troubled one. Both were immature: he tended to be taciturn and avoidant; she was anxious and clinging.

Some years before, Nishant had obtained his Ph.D. at Colorado School of the Mines. He then moved to Oregon and climbed the ranks at Intel. He was successful and productive; shortly before he was charged in this case, he held a managerial position and had received a promotion.

When Nishant's parents arranged the marriage with Kalpana's family, she was living in Mumbai. Soon after their civil ceremony, Kalpana moved to Oregon to be with Nishant. Kalpana had been employed in Mumbai; she was an actress with roles in regional theatre, television and movies, but had difficulty adjusting to her new life in America. She resented Nishant's long work days, struggled to make new friends, and was frustrated by delays getting work permits.

In autumn of 2021, Kalpana returned to India as she pondered the future of her marriage. Pressured by her family to make the union work, she returned to Nishant in Oregon. The couple decided to celebrate in a traditional ceremony with family while in India. Their touching and beautiful wedding in February, 2022 exuded beauty and hope. Their memories were preserved in a video evoking a Bollywood-

style wedding, but it belied their unhappy union.

Kalpana on an earlier occasion had caught Nishant "sexting" with another woman. He claimed this was simply an escape from the stress of their marriage, but Kalpana could not get past her jealousy. Three months before her accusations, Kalpana started therapy to address her obsession with the "sexting." In counseling, she described her husband (apart from that incident) in glowing terms, denying any abuse or violence.

Nishant's father added to the stress in the relationship. He had traveled from India with Kalpana to support the marriage, but he was not an easy man. During his extended visit, he was insensitive toward his daughter-in-law. At the same time, Kalpana was so focused on her career that she refused to help around the house. She felt Nishant was insufficiently supportive of her wishes, so she moved in and out of the house. She stayed with friends and complained about the marriage and Nishant's father, but she expressed no worry about abuse or violence.

Eventually, Kalpana sought a restraining order, hoping to remove Nishant and keep their home. She called 911 and complained about her father-in-law and emotional abuse. Police responded, taking the first of two recorded statements. The initial interview seemed like a marital counseling session; Kalpana explained they engaged in rough sex, but denied any non-consensual sexual contact. When asked if Nishant ever forced her to have sex or insisted on acts she didn't want, she repeatedly replied, "No." The officer was sympathetic but explained law enforcement could do nothing about Kalpana's emotionally stressful marriage and referred her to a victim's advocate.

Police then contacted Nishant at his home. He freely spoke of the difficulties in their marriage and admitted engaging in consensual rough sex with Kalpana. He explained she wanted it "rougher" than he did and denied committing any form of abuse against his wife.

A disappointed Kalpana called her brother in the Midwest later that night. They concocted a plan to send Nishant to jail. After her call with her brother, Kalpana called police again and said that she had more to share. In this second interview, she said she "wanted to discuss things that she was not comfortable talking about before." She then claimed the rough sex went too far and that therapy helped her to see that it was non-consensual. Kalpana spun an elaborate, detailed story of rape, sodomy and sexual abuse which she claimed had begun almost a year before. She said she had to wear high-necked sweaters to conceal bruises from Nishant's hands and

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that he had repeatedly forced himself upon her. She described striking and choking to the point of unconsciousness and lack of bladder control.

During this second interview, Kalpana made a “pretext call” with officers’ help. She spoke with Nishant and his father. Nishant denied any abusive behavior with her. When she complained about “rough sex,” he admitted to some acts but noted, “You wanted it more than I did.”

The case went to the district attorney, and on July 22, 2022, a grand jury indicted Nishant. The 27 felony charges included seven counts of rape in the first degree, six counts of sodomy in the first degree, eleven counts of first degree sexual abuse and one count each of strangulation as domestic violence, coercion and attempted extortion. The charges were wide ranging and devastating. The coercion count alleged that Nishant had hurt Kalpana out of “fear that he would cause physical injury to an animal,” a charge, he eventually learned, which referred to their dog.

Aware after the police contact that he might be charged, Nishant consulted with a defense lawyer and then arranged to join his parents on a return trip to India to secure funds for his defense. On July 27, 2022, he was apprehended at the San Francisco Airport, taken into custody and subsequently extradited to Oregon. The court set bail at half a million dollars. Even if he were able to post security, the state asked the court for “preventive detention”—to hold him in custody because he was charged “with a violent felony and there was actual and continued threat of harm to the victim.” The prosecutor claimed in court filings that Nishant “consistently engaged in rough sex with [Kalpana], placing his hand on her throat and squeezing, causing her pain by clawing, and forcing her to give him oral sex.” Up to a certain point, the pleading alleged, Nishant respected her wishes when she would “tap out” to signal the pressure on her neck was too high. But over a recent four-month period, he disregarded her requests, strangling her to the point she lost control of her bladder. “He forced her to give him oral sex until he finished and left her” weeping and trying to clean herself after the abuse.

Faced with these dramatic claims, the court granted the prosecutor’s request to hold Nishant in jail. As a result, Nishant lost his job.

The case was daunting, not merely because of the number and nature of the allegations but also because of cultural and language difficulties. Kalpana’s pretext call with Nishant had been part in English and part in Marathi, a language for which the defense found just one court-certified interpreter in the country. Defense counsel had great difficulty coordinating work with this person. Interpreters in Mumbai later completed transcripts of the phone calls and one in-person conversation, material which provided crucial exculpatory evidence.

Discovery was complicated. Kalpana ostensibly provided a release for her protected medical information, but the police claimed to have lost it. Securing the information about her medical and psychological status was time-consuming and difficult. The defense subpoenaed records in advance of trial. At first, a judge denied the request but eventually agreed to review the therapist’s records and provide what she considered “relevant” to the attorneys. After her reluctant in camera examination, the hearing judge intoned that the records were very bad for Mr. Sherlag’s client and that she felt “traumatized” by their content. She suggested the defense work with the prosecutor to arrange a plea and “end the trauma.”


As preparation for trial went on, Nishant remained locked in the county jail. The state had no medical reports, records or expert testimony to substantiate Kalpana’s claims of physical injury and bruising. Only part of her medical records had been produced after Kalpana’s grand jury testimony. Nishant had taped telephone calls in the week

before her complaint, but the conversations were a mixture of English and Marathi, further complicating the process of unwinding what had occurred. Law enforcement had not searched Kalpana’s telephone for voice or text messages. Travel records showed that both Kalpana and Nishant had been out of the country—indeed, participating in their formal wedding—during some of the dates listed in the indictment.

The trial occurred over a two-week period in January, broken up by the winter storm in the Hillsboro area. The state’s evidence consisted principally of testimony from the officers and the victim’s advocate who had interviewed Kalpana. When she appeared for her day on the stand, Kalpana brought a therapy dog with her, supplied by the victim advocate as “comfort” during her testimony. She delivered her story in a histrionic fashion, exaggerating the claims of abuse she said she had suffered. Her cross-examination lasted over eight hours. Mr. Sherlag highlighted the inconsistencies and ever-increasing drama of the accounts she provided: she first told her therapist that Nishant was never abusive but later described to officers and the therapist an escalating pattern of horror. She was evasive, resistant and annoyed as defense counsel confronted her with differences in the story she told at trial from the one she had given the grand jurors.

The defense offered the video recording of the beautiful wedding just a few months before Kalpana’s vile accusations. Nishant’s father, unduly stressed by the turn of events, committed suicide while Nishant was in jail. Nonetheless Nishant’s father “testified” through surreptitious recordings that Kalpana had never seemed frightened or uncomfortable around his son. Other witnesses described Nishant’s solicitous and gentle nature with his wife. Finally, Nishant took the stand. He spoke of the most intimate parts of his relationship with his wife. He explained that she was the one who had wanted and initiated roughness in their sex acts. He always respected her limits and only agreed to things she requested.

The prosecution conceded that three counts should be dismissed at the close of the evidence. Dates had to be changed to conform to the proof, and even then the state made calendar mistakes related to the first “incident.” Finally, the jury deliberated on the 24 counts submitted for decision. After more than nine hours over three days, they returned Beautiful Words of “not guilty” on all remaining counts. Despite having no legal reason to hold Nishant any longer, the judge insisted he follow jail protocol to be freed by the sheriff. Finally, three and a half hours late—after 18 long months behind bars—he was free to pick up the pieces of his life.

As of this writing, Nishant has been unable to find employment despite his qualifications and experience. He worries that he might have to leave the country in which he has spent more than a decade building his life. His divorce from Kalpana is final. 

## Endnotes

i The accused and the complainant are both identified by pseudonyms.

ii When Nishant was arrested, Kalpana received custody of their dog although she never wanted the pet. She gave the dog away while Nishant sat in jail—the therapy dog “prop” was an entirely different animal.

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*Life member Susan Elizabeth Reese practices law in Newport. She serves on the Education Committee and was the recipient of the 2019 Ken Morrow Lifetime Achievement Award.*