

**Nilkanth Vs. State of Maharashtra**

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**SooperKanoon Citation :** [sooperkanoon.com/369863](http://sooperkanoon.com/369863)

**Court :** Mumbai

**Decided On :** Sep-24-2002

**Reported in :** 2003BomCR(Cri)752; II(2003)DMC539

**Judge :** R.K. Batta and ;P.S. Brahme, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Criminal Appeal No. 86 of 1998

**Appellant :** Nilkanth

**Respondent :** State of Maharashtra

**Advocate for Def. :** A.G. Mujumdar, Additional Public Prosecutor

**Advocate for Pet/Ap. :** M.R. Daga, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**P.S. Brahme, J.**

1. This is an appeal by original accused Nilkanth Doma Madavi in Sessions Trial No. 97/1996 challenging the judgment and order dated 29th November, 1997 passed by the Additional Sessions Judge, Bhandara (Shri S.S. Sawargaonkar)

convicting the appellant of the offence Under Section 302 of the Indian Penal Code for committing murder of his-wife Anusayabai and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer further R.L for nine months.

2. The incident which gives rise to the prosecution against the appellant took place on 3rd May of 1996 at Chirchali (Mokshi), Talka Sadak Arjuni, District Bhandara which comes within the jurisdiction of Police Station Duggipar. The appellant and his wife deceased Anusayabai were residing in the house. Witness Shivdayal Pande (P.W. 3) who is resident of village of the accused, on 3rd May, 1996 came to know from Atmaram Gaidhane and Shanker Meshram that the victim Anusayabai was murdered. He, therefore, went to the house of the accused and saw dead body of Anusayabai lying in the inner room of the house having injury on her head. He also saw one axe lying near the dead body. He, therefore, went to the Police Station, Duggipar and gave information about the occurrence of the murder of Anusayabai. His oral report was reduced into writing by the Police Station Officer vide Exh. 17 and on the basis of that the offence was registered as Crime No. 59/1996. On the basis of the F.I.R. (Exh. 18) was drawn on the strength of the oral report (Exh. 17). After the report was received and offence was registered, P.S.I., Gajanan Bhatlawande (P.W. 9) on 4th May, 1996 visited the place of occurrence and prepared the Panchnama of the scene of offence (Exh. 10) He also made inquest Panchnama (Exh. 11) when he saw the dead body of deceased Anusayabai lying in the room. He also seized the axe (Art. 1) which was lying near the dead body. The dead body was sent to Rural Hospital, Deori for post-mortem.

3. Dr. Deepak Dhumankhede (P.W. 10) who was Medical Officer, Rural Hospital, Deori, on receiving the dead body on 4th May 1996, conducted post-mortem and prepared Post-mortem Report (Exh. 29). He noticed external injuries as described in column No. 17 of the Post mortem Report including the lacerated wound with fracture behind left ear and lacerated wound with fracture on occipital region. He also found cerebral haemorrhage. In his opinion the cause of death was due to traumatic shock due to severe injury to brain and bones. He has also opined that the injury was possible with the axe i.e. Article No. 1. He has also opined that the

injury which was caused by an axe was sufficient in ordinary course to cause death.

4. During the course of investigation, the P.S.I. (P.W. 9) has stated that when the accused was arrested under Arrest Panchnama (Exh. 12) seized his clothes namely Baniyan and Full Pant and also collected his blood. The clothes of the deceased were also seized under Panchnama (Exh. 15). The properties seized were sent to the Chemical Analyser for analysis along with the forwarding letter. The report of the Chemical Analyser (Exh. 26) disclosed that the blood group of the blood of the deceased was 'B'. It was also revealed from the report that human blood was found on the clothes of the accused. It is also very pertinent to note that blood was found on the Axe (Art. 1) and it was also human blood. After completing the investigation, the charge-sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Sakoli, in turn, committed the case to the Court of Session, Bhandara.

5. Learned Additional Sessions Judge framed the charge vide Exh. 4. The accused pleaded not guilty to the charge and claimed to be tried. It is very pertinent to note that the defence of the accused is of total denial, This has significance while appreciating the evidence led by the prosecution which particularly gives emphasis on the presence of the accused in the house and in the background of the fact that the dead body of the deceased was found very much inside the house.

6. At the trial, the prosecution examined in all ten witnesses. Amongst them, include Rajaram Tilkam (P.W. 1) a Panch witness in whose presence spot Panchnama (Exh. 10), inquest Panchnama (Exh. 11) and seizure of clothes of the accused (Exh. 15) came to be made, Shivdayal Pande (P.W. 3) who happens to be the Police Patil who gave report to the Police Station and on the basis of which the offence was registered, P.W. 5 (Bhimrao), a person who is residing in the house adjoining to the house of the accused and he saw the dead body in the house and she received bleeding injury on her head, Yesodabai (PW-6), who on the date of the incident when returned to her house in the evening, saw the accused was laying in front of his house on the mattress and when her husband

came there, they saw that the house of the accused was locked and it was opened by her husband and when her husband made inquiries with the accused about his wife, the accused told that his wife had gone out; but, her husband suspected as he saw the clothes in one pot and, therefore, he snatched the key and opened the lock and then they all noticed the dead body of deceased Anusayabai lying in the pool of blood inside the house, so also the axe lying near the head of the deceased. The accused was examined Under Section 313 of Cr.P.C. It is very pertinent to note that since the defence of the accused was that of total denial, the answers which he gave as, 'I do not know', 'It is not true' and 'It is false'. To the last question, which was put to him i.e. question No. 24, the answer given by the accused is that he had gone for work along with his wife for 2-4 months. Thereafter there was quarrel with him by one Rama who threatened to kill him. After returning to his village, he stayed there for 10 to 12 days. He was maintaining his wife. He returned to his house on the date of incident at about 6.00 p.m. He washed his clothes. He went to bed and slept. In his absence according to him, he did not know what has happened inside the house.

7. Learned Additional Sessions Judge on the basis of material and evidence on record came to the conclusion that the death of deceased Anusayabai was homicidal one. It was on account of injuries caused by the axe (Art. 1).

The Trial Court appreciated the evidence more particularly the circumstantial evidence regarding the presence of the accused and his knowledge that his wife was murdered inside the house, came to the conclusion that the accused committed murder of his wife and consequently he found the accused guilty of the offence Under Section 302 and accordingly he was sentenced to suffer R.I, and fine as stated above.

8. This conviction and sentence passed by the learned Additional Sessions Judge is the subject matter of appeal.

9. We have heard Mr. Daga, learned Counsel appearing on behalf of the appellant. He has submitted that there is no evidence on record to establish that the accused was in the house at the time when the deceased came to be assaulted. There is no direct evidence to show that the appellant assaulted his

wife. So the accused has innocuously stated that he was not aware as to what happened inside the house in the evening as he, after coming home was sleeping outside the house. Learned Counsel for the appellant, therefore, contended with emphasis that the Trial Court was in error in finding the accused guilty of the offence for committing murder of his wife only on the basis of the circumstance that the accused was very much present in the house. The learned Counsel for the appellant further contended that the appellant had no motive to commit murder of his wife. The prosecution has not placed any evidence to point out the motive or the intention on the part of the appellant to commit the murder of his wife. He, therefore, contended that the appeal be allowed and the appellant be acquitted.

10. Mr. Mujumdar, learned A.P.P. controverted the submissions of the learned Counsel for the appellant. He submitted that the Trial Court has rightly appreciated the evidence and the circumstances attending the case, in particular the presence of the appellant in the house and his conduct of remaining stoic in spite of having knowledge of the fact that the dead body of his wife was lying in the house, clinchingly going to show and establish his involvement in the commission of offence.

11. The fact, that the victim Anusayabai died homicidal death as a result of assault on her with the axe inside the house on the evening of 3rd May, 1996 is not disputed. Apart from that the medical evidence clinchingly goes to show that the victim Anusayabai was done to death by assaulting her with the axe and the nature of the injuries caused when she was assaulted further goes to show that the intention was to kill her.

12. There is no dispute that the prosecution case hinges on the circumstantial evidence namely, the presence of the accused in the house and his conduct in remaining stoic and also not reporting the matter to the Police when according to him his wife was killed by assaulting her with the axe by some unknown person in his absence from the house. The Trial Court has placed reliance on the circumstances and particularly the conduct of the appellant as stated above. In our opinion, the conclusion drawn by the Trial Court about involvement of the appellant in commission of the offence based on the circumstances attending the

case, is perfectly correct and it does not warrant any interference. As Appellate Court, we independently appreciated the evidence and circumstances on which the prosecution has placed reliance. It is already stated that when witness Yesodabai (P.W. 6) visited the house of the accused on the day of incident at about 6:00 p.m., she saw the accused sleeping in front of his house on the mattress. She found that the house of the accused was locked by the accused. Her husband who was with her made inquiries with the accused about his wife and the accused told that his wife had gone outside. Then her husband snatched the keys and opened the lock. When the door of the house was opened, it was noticed that the dead body of wife of the accused was lying in the room of the house so also the axe (Art. 1) was lying by her side. Thereafter the Police Patil, namely, witness Shivdayal Pande (P.W. 3) came there as he also received information that the dead body of the wife of the accused was lying inside the house and after seeing the dead body in the house, he went to the Police Station to lodge the report.

13. It is not disputed that in the house, the accused/appellant was living with his wife Anusayabai, that is to say except the accused no stranger was knowing that the wife was inside the house. In this background, the conduct of the accused in remaining stoic when the witness Yesodabai (P.W. 6) and her husband and the Police Patil witness Shivdayal Pande (P.W. 3) came to his house. Not only that but the appellant gave distorted and false version about the whereabouts of his wife when the husband of witness Yesodabai enquired with him. This was also in the background that the appellant was lying on a mattress outside the house which was locked by him having keys with him. Then undisputed fact was that when the house was opened the dead body was found inside the house. The position remained same on the next day when PSI Gajanan Bhatlawande (P.W. 9) visited the house of the accused in the course of investigation that he made in pursuance of the registration of the offence against the accused. It is admitted that the accused was arrested by the PSI and at time the dead body of his wife was lying in the house. In the background of this, it is very difficult to accept the plea of the accused that he was not aware about homicidal death of his wife and that too, when her dead body was very much inside the house. In our opinion, in the nature of the things if the appellant was not concerned with the killing of his wife, he

would have immediately, on seeing the dead body lying inside the house on the day of incident, rushed to the Police Station and reported the matter. As against that his conduct was that he did not disclose to anyone that his wife was killed and her dead body was lying inside the house and when witness Yesodabai along with her husband came to his house on the day of incident at about 6.00 p.m. and when enquiry was made with him, disclosed that his wife had gone outside. This disclosure is false to the knowledge of the accused. This, according to us, was a clinching circumstance as a conduct on the part of the appellant showing his direct involvement in the commission of offence,

14. There is another circumstance regarding the finding of human blood on the clothes of the accused as revealed from the report of the Chemical Analyser. There is no explanation given by the accused. This, according to us, is a circumstance incriminating in nature pointing out the involvement of the accused/ appellant in commission of offence.

15. The learned Counsel for the appellant has vehemently contended that prosecution case must fail because it failed to prove the motive. The question in this regard is whether this prosecution must fail because it did not allege and prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves existence of motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be contended as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the accused.

16. Motive is not an integral part of the crime or an ingredient of it just like *metis rea* or *actus reas*. Even without any motive at all, crime could be committed. Absence of motive will not make an act which is otherwise an offence not offence, It is only an aid in the assessment of criminality. This is relevant in abundance mainly in cases depending upon circumstantial evidence. It is only ratiocinative aid in the assessment of evidence to fix up criminality. If the evidence relied upon by the prosecution is cogent and clinching as to satisfy the judicial conscience of the Court in fixing up criminality, even in the absence of any proof of motive itself,

conviction could be had.

17. It is always said that proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that Courts have to go without clear evidence thereon if other clinching evidence exists. That presence of motive only heightens the possibility of the accused to commit the crime. But in a criminal trial, motive for the crime, howsoever adequate, cannot by itself sustain criminal charge and conversely, if evidence against accused is cogent, failure on the part of prosecution to establish motive on the part of accused is of no consequence. Motive is hidden in the heart of the accused who commits the crime and it is difficult for the prosecution to give it out. In the case before hand, circumstantial evidence is so clinching that only irresistible conclusion that could be drawn is that the offence of murder of wife of accused must have been committed by the accused and accused only, in the absence of proof of motive on the part of the appellant accused.

18. We have noticed two attaining circumstances in the case beforehand, namely, (1) the accused was present in the house when his wife was done to death; (ii) he was aware of the fact that dead body of his wife was lying in the house but then he kept silence even though witnesses came to his house. Deceased was very much in the company of the appellant till she was alive. So it was within his knowledge as to her whereabouts and of the fact whether she was alive or dead. But then his conduct in not disclosing anything about her itself was incriminating a circumstance militating against his innocence and spelling out his guilt.

19. In addition to this or to crown this all, the appellant, when had opportunity gave false explanation about his wife. In his examination Under Section 313 of Cr. P.C. his answers to material questions on the factual aspects based on the evidence are evasive, inconsistent and false. He even had audacity to tell, when enquiry was made by husband of witness Yesodabai that his wife had gone outside which was found to be totally false as dead body of his wife was found lying in the house. So this false explanation or even plea of the appellant provides additional missing

link to connect the appellant.

20. This view which we have taken is reinforced by the pronouncements by the Apex Court in Joseph S/o Kooreli Poulo v. State of Kerala, reported in AIR 2000 SCW 1682 and in State of Maharashtra v. Suresh, reported in : (2000)1SCC471 , as :

'During the time of questioning Under Section 313 of Cr. P.C. the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating him, and connecting him with the crime by his adamant attitude of total denial of every thing when these circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to the Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.'

So that missing link to connect the appellant, we find in this case, provided by the blunt and outright false explanation of incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on facts proved, connect the appellant with the death and cause of death of the deceased.

21. In the result, in our view and opinion the Trial Court was absolutely right in holding appellant guilty of the offence of committing murder of his wife. There is no merit in this appeal. It deserves to be dismissed. The appeal is dismissed.

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