JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Appeal No.108 of 2022

Naila Bibi
Vs.
Abdul Majeed Abbasi, etc

Appellant by:	Raja Fakhar Inayat, Advocate.
Respondent No.1 by:	Mr. Asif Iqbal and Mr. Mubeen Ullah, Advocates.
Respondent No.2/State	Rana Ali Raza, State Counsel. Tanvir Hussain, ASI, P.S Banigala, Islamabad.
Date of Decision:	**29.01.2025.**

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INAAM AMEEN MINHAS, J.- This appeal has been directed against the judgment dated 01.02.2022 passed by the learned Judicial Magistrate Section 30, Islamabad, whereby respondent No.1 has been acquitted from case FIR No.365/17, dated 16.09.2017, under section 337-J PPC, registered with Police Station Bhara Kahu, Islamabad.

2. The facts, in brief, are that on the complaint Exh.PA filed by the appellant/complainant, the above mentioned FIR/Exh.PC was registered against respondent No.2/accused with the allegations that marriage between the appellant and respondent No.2 was solemnized on 11.07.2017 and after a few days of the marriage, respondent No.2 started beating, abusing and harassing the appellant, whenever she asked for money for her expenses. On 01.09.2017 at about 8:00 p.m respondent No.2 forcibly administered the acid to the appellant with

intention to kill her, which caused severe injury to the appellant and she was shifted to Polyclinic Hospital, Islamabad and respondent No.2 took her valuables, gold 5 Tola, CNIC and fled away from the spot.

3. After completion of the investigation respondent No.1 was found guilty, therefore, report u/s 173, Cr.P.C was submitted before the Trial Court against him. Trial Court after framing of charge u/s 337-J PPC on 14.11.2018 completed the trial and acquitted respondent No.1 from the case through the impugned judgment, hence, this appeal.

4. Learned counsel for the appellant contended that Trial Court while acquitting respondent No.1 did not consider statement of the appellant recorded as P.W.1, who directly nominated respondent No.1 and explained the delay in reporting of incident; that there was no malafide and there is no probability of false implication because at the time of occurrence marriage was intact and the appellant and respondent No.1 were living as husband and wife. Learned counsel further contended that Trial Court while giving findings in respect of delay of FIR did not take into account the evidence of the appellant that she was unconscious when she was brought to the hospital and after getting conscious, she recorded her statement and delay is fully explained, so findings of the Trial Court with regard to the delay in lodging the FIR is misreading and non-reading of evidence.

5. Conversely, learned counsel for respondent No.1 contended that it is a false and fabricated case against respondent No.1 and no such incident took place as alleged by the appellant and the Trial Court while appreciating the entire evidence has rightly come to the conclusion and acquitted respondent No.1.

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6. Since the State did not file an appeal against the acquittal, the learned State Counsel has half-heartedly opposed the instant appeal.

7. I have heard the arguments of learned counsel for the parties and gone through the record.

8. From perusal of the record, it transpires that the incident took place on 01.09.2017 at about 8:00 p.m. It is alleged in the FIR that respondent No.1 cruelly beaten the appellant and forcibly administered her the acid, thereafter she was taken to the Polyclinic Hospital but due to non-availability of bed she was shifted to PIMS, where she was medically examined by the Dr. Durdana Kazmi, Medico-Legal Officer/P.W.2. The appellant was admitted in hospital on 02.09.2017 and was discharged on 06.09.2017 and she was examined by the doctor at that time. It is evident that when the appellant reached the hospital she was conscious and was able to speak and she remained under treatment in hospital (for five days) but it is evident that after the discharge on 06.09.2017 thereafter she went to police station after 14 days of the occurrence and filed the complaint Exh.PA, on which no date is mentioned. It is clear that she was conscious and able to talk from 02.09.2017 till her discharge on 16.09.2017 and was free to lodge complaint and join investigation but after discharge from hospital on 06.09.2017 she remained silent till 16.09.2017. The delay of 10 days is unexplained, which creates serious doubt in the prosecution case.

9. Similarly, the prosecution submitted report u/s 173, Cr.P.C and cited three witnesses, out of which one Muhammad Imran, who had taken the appellant from place of the occurrence to the hospital and was one of the most relevant and direct witness of the occurrence was given

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up by the prosecution. This was one of the most important pieces of evidence, which was withheld by the prosecution and u/s 129(g) of Qanun-e-Shahdat Order, 1984 an adverse inference shall be drawn against the prosecution. In this regard reliance is placed upon *Mst. Zarsheda vs. Nobat Khan* (PLD 2022 SC 21), wherein it has been held that:-

> *"Adverse inference for non-production of evidence is one of the strongest presumptions known to law and the law allows it against the party who withholds the evidence."*

10. The appellant herself appeared as P.W.1 and narrated the facts as mentioned in her complaint Exh.PA. Dr. Durdana Kazmi, Medico-Legal Officer, Poly Clinic appeared as P.W.2 but she did not support the prosecution case rather during cross-examination she admitted that the injury sustained by the appellant can be occurred by taking toxic food or by taking extreme hot food or by taking unhygienic food. She also categorically stated that no sample of food was taken from the stomach for examination to ascertain the presence of any acid or chemical. The Investigating Officer appeared as P.W.3, who also admitted during cross-examination that no recovery was effected from the place of occurrence and in his examination in chief he also did not give any definite findings against respondent No.1. This is an appeal against acquittal and it is a settled principle of law that the Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of the Court acquitting the accused. The approach for reappraisal of the evidence is slightly different from that in appeal against conviction. The accused is always presumed to be

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innocent until proven guilty. Reliance is placed upon *Ghulam Sikandar and another vs. Mamaraz Khan and others* (PLD 1985 SC 11).

11. The Trial Court after recording the evidence, thoroughly scrutinized the entire record and came to the just and fair conclusion and did not disregard material evidence or misread any piece of evidence or committed an illegality in any manner. In an appeal against acquittal the view taken by the Trial Court cannot be slightly brushed aside. It is settled principle of law that reasonable doubt in the prosecution case would go in favour of the accused. In the present case, the prosecution has miserably failed to establish its case beyond any shadow of doubt. The impugned judgment of the Trial Court is well-reasoned and respondent No.1 has rightly been acquitted.

12. In view of the above discussion, the instant appeal fails, therefore, **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

R.Anjam

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