

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.57 of 2025
[Confirmation Case No.10 of 2024]

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Appellant	Muhammad Israr @ Kochi son of Fida Muhammad through Mr. Qamar Abbas Abbasi, Advocate.
Respondent	The State through Ms. Rubina Qadir, Deputy Prosecutor General [Sindh]. <><><>
Date of hearing	<u>17.08.2026</u>
Date of Judgment	<u>20.08.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Through captioned appeal, Muhammad Israr @ Kochi son of Fida Muhammad, appellant, has challenged the validity of the judgment dated 31.08.2024, penned down by the learned Additional Sessions Judge-V/ Model Criminal Trial Court, Karachi (East) in Sessions Case No.1506 of 2021 (FIR No.585 of 2020) registered at Police Station Gulistan-e-Jauhar, District East, Karachi, through which he was convicted under Section 302(b), PPC for committing qatl-i-amd of Meer Muhammad Khan son of Musharraf Khan and sentenced him to death by hanging by the neck until death subject to confirmation by this Court with direction to pay a sum of Rs.500,000/- as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C., in default whereof to undergo simple imprisonment for a further period of six months.

2. FIR in this case has been lodged on 10.08.2020 at 3:30 am whereas the incident is shown to have taken place on 09.08.2020 at 9:00 pm. Complainant Saleem Khan son of Musharraf Khan has stated that on the fateful day he was present at his shop situated near Qadri Masjid. It was about 6:15 pm he received a phone call from his brother Meer Muhammad

Khan, who informed him that while passing through Main Bazar, Pehlwan Goth, near Soneri Apartment, he had been intercepted and beaten by Israr. Upon receiving such information, the complainant immediately proceeded towards the pointed place, however, before his reaching there, Israr fled from the spot. The complainant informed Madadgar-15 about the incident and returned to his shop while his brother proceeded towards his house. It is further alleged that on the same day at about 9:00 pm the complainant was present in front of Soneri Apartment, Pehlwan Goth, when he noticed a gathering of people so he went there and Israr assaulting his brother and inflicting blows with scissor. He raised an alarm whereupon Israr fled from the place of occurrence on a motorcycle. The complainant found his brother lying injured on the road and noticed bleeding injuries on the left side of his chest, left arm and waist. With the assistance of his relatives, Ashraf and Gul Wazeer, the complainant shifted his brother to Dar-ul-Sehat Hospital where doctor declared him dead. Thereafter, he shifted the dead body to Jinnah Hospital where police arrived and completed the requisite legal formalities and got conducted the post-mortem and upon completion thereof handed over the dead body to complainant, who entrusted it to his relatives and directed proceeded to the Police Station and lodged FIR under Section 302,PPC.

3. Pursuant to the registration of FIR, the investigation was followed. Initially, the challan was submitted under Section 302, PPC read with Section 512, Cr.P.C. as the accused absconded immediately after the occurrence and deliberately went underground to evade arrest and despite efforts made by the police, the accused could not be apprehended and, therefore, the challan was submitted showing accused as absconder under Section 512, Cr.P.C. Subsequently, on 30.10.2020 the accused was arrested in Crime No.793 of 2020 under Sindh Arms Act and during interrogation he confessed the commission of the present crime and on the basis of his disclosure, the police arrested him in the present crime. Pursuant to the alleged disclosure and on the pointation of the accused, the police recovered the crime weapon viz scissor from bushes situated in a nullah at Bhattaiabad, Gulistan-e-Jauhar, Karachi. After completing the requisite investigation and other legal formalities, the investigating officer submitted challan before the competent Court whereby the appellant was sent up to face the trial under the above referred Section.

4. A charge in respect of offence under Section 302, PPC was framed against appellant to which he pleaded not guilty and claimed trial. At trial, the prosecution has examined as many as ten (10) witnesses namely, Saleem Khan (complainant) as PW.1 at Exh.3, Sadiq Masih (eye-witness) as PW.2 at Exh.4, Dilshad as PW.3 at Exh.5, Gul Rehman (eye-witness) as PW.4 Exh.5, SIP Mehmood Afzal as PW.5 Exh.7, Inspector Muhammad Siddique as PW.6 Exh.8, HC Ali Dino as PW.7 Exh.9, Dr. Rajindar Kumar as PW.8 Exh.10, PC Khalid Mehmood as PW.9 Exh.22 and SIP Abdul Rehman (Investigating Officer) as PW.10 Ex.12. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.13. The appellant in his statement under Section 342, Cr.P.C. has denied the allegations imputed upon him by the prosecution, professed his innocence and stated his false implication at the hands of complainant party contending that they are associated with land grabbers and involved in narcotics related activities and that in connection with such alleged illegal activities, the complainant's father has previously been murdered and the deceased has also been murdered by someone else whereas he has been falsely implicated due to malafide intention and ulterior motives. The appellant, however, did not opt to appear on oath under Section 340(2), Cr.P.C. nor did he produce or examine any witness in his defence.

5. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case with malafide intention and ulterior motives as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that the impugned judgment is contrary to the evidence on record and that the learned trial Court has convicted the appellant by placing reliance upon testimony which suffers from material contradictions, improvements and omissions. It is also submitted that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and that the appellant is

entitled to acquittal. Learned counsel particularly emphasized that the prosecution has produced three eye-witnesses, namely Saleem Khan, Sadiq Masih and Gul Rehman, yet their presence and credibility require careful scrutiny. It is submitted that the complainant is admittedly the brother of the deceased and, therefore, an interested witness whereas the other alleged eye-witnesses are introduced by the prosecution to lend artificial corroboration to an otherwise doubtful ocular account. According to learned counsel, their statements do not inspire confidence and contain material discrepancies regarding the manner of occurrence, the role attributed to the appellant and the circumstances in which they allegedly witnessed the incident. The prosecution alleges that the appellant took the scissor from Dilshad's shop and thereafter committed the murder, yet the evidence regarding the alleged taking of the weapon, the exact circumstances in which it was obtained and the subsequent recovery is not free from doubt. Learned counsel submits that the alleged recovery of weapon from the bushes situated in a nullah is also of doubtful evidentiary value particularly as the place of recovery was an open and accessible location. Moreover, the recovered scissor was not blood stained and the prosecution has failed to establish an unbroken and unimpeachable chain of evidence connecting the recovered weapon with the commission of murder. Learned counsel further submitted that the medical evidence does not identify the assailant and can only establish the factum of death and the nature of injuries. Therefore, the medical evidence cannot independently be used to connect the appellant with the commission of the offence. It is contended that the prosecution case is also rendered doubtful by the delay in registration of the FIR. The occurrence allegedly took place at about 9:00 pm on 09.08.2020 whereas the FIR is registered at 3:30 am on 10.08.2020 after more than six hours of the incident, which afforded sufficient opportunity for consultation, deliberation, fabrication and nomination of the appellant in the FIR. It is argued that the prosecution has failed to produce the independent witnesses who could naturally have been available at the place of occurrence despite the alleged murder having taken place in a populated area in front of Soneri Apartment. The failure to associate or produce such witnesses casts serious doubt upon the prosecution version. Learned counsel has contended that the alleged disclosure/ confession attributed to the appellant during police interrogation has no legal value as substantive evidence. It is lastly

submitted that the defence plea taken by the appellant cannot be rejected merely because the appellant did not enter the witness box or produce defence evidence. The burden always remained upon the prosecution to prove its own case and weaknesses in the defence cannot be used to fill gaps in the prosecution evidence. Learned counsel has concluded that the prosecution evidence when examined as a whole leaves reasonable doubt regarding the appellant's participation in the occurrence. The impugned judgment is, therefore, liable to be reversed and the appellant is entitled to acquittal on the principle of benefit of doubt and prayed accordingly.

7. Conversely, the learned Deputy Prosecutor General has opposed the appeal and supported the impugned judgment contending that the prosecution has produced direct, corroborative and circumstantial evidence which when read as a whole establishes the appellant's guilt beyond reasonable doubt. It is next submitted that the prosecution has not relied upon the testimony of a single witness alone rather the ocular account is furnished by three witnesses i.e. Saleem Khan (complainant), Sadiq Masih and Gul Rehman, whose evidence is mutually corroborative on the material particulars and their presence at the place of occurrence is natural and has not been successfully challenged by the defence. It is also submitted that the testimony of the complainant is supported by the evidence of Sadiq Masih and Gul Rehman and their presence at the place of occurrence is natural and their evidence provides independent corroboration to the complainant's account regarding the appellant's participation in the assault. It is argued that the evidence of PW Dilshad, the shopkeeper assumes considerable significance because he allegedly witnessed the appellant taking the scissor from his shop immediately before the murder, which establishes a direct link between the appellant, the weapon and the subsequent occurrence. The medical evidence is consistent with the ocular account and thus provides independent corroboration to the prosecution version. Regarding the delay in registration of the FIR, she has argued that the delay is adequately explained by the circumstances following the occurrence, hence cannot be termed as deliberate or fatal. She has also relied upon the recovery of the crime weapon at the pointation of appellant connecting link between the appellant and the weapon used in the commission of the offence. It is further submitted that the defence has failed to establish any specific motive for

false implication of the appellant and the bald allegation leveled by the appellant in his Section 342, Cr.P.C. statement without supporting evidence is unsafe to rely upon. Lastly submitted that the prosecution has succeeded in establishing an unbroken chain of evidence comprising the ocular account coupled with medical evidence and supported and circumstantial evidence in shape of recovery, hence prayed for dismissal of appeal and maintaining conviction awarded to the appellant.

8. We have given our anxious consideration to the submissions of both the sides and have carefully scanned the entire material available on record with their able assistance.

9. The prosecution case primarily rests upon the ocular account furnished by PW.1 complainant Saleem Khan (Ex.3), PW.2 Sadiq Masih (Ex.4) and PW.4 Gul Rehman (Ex.6), who have attributed the fatal assault to the appellant. Their evidence when examined as a whole establishes the presence of the appellant at the place of occurrence and his participation in the assault upon the deceased. Mere fact that PW.1 Saleem Khan is the brother of the deceased does not render his testimony liable to rejection. Relationship is not by itself a ground for discarding otherwise confidence inspiring evidence rather the testimony of a close relative who is a natural witness has to be assessed on the touchstone of truthfulness. The consistent and authoritative view of the Hon'ble superior Courts is that the evidence of related or interested witnesses is to be subjected to cautious judicial scrutiny and where upon such scrutiny the same is found consistent, natural, confidence inspiring and free from material infirmities, it constitutes substantive evidence and can safely be relied upon even without independent corroboration. It also cannot be lost sight of that in an offence like the present one the close relatives of the deceased are ordinarily the most natural witnesses because their presence at or near the place of occurrence is expected in the normal course of human conduct. Such witnesses would ordinarily be the last persons to allow the real culprit to escape while falsely substituting innocent person in his place especially when no motive for false implication has been suggested or established. Reference in this regard may well be made to the case of *Muhammad Aslam v The State* (2012 SCMR 593), wherein the august Supreme Court maintained

reliance upon the ocular account furnished by closely related witnesses on the ground that their testimony was confidence inspiring and consistent on material particulars. Likewise, in the case of *Mirza Zahir Ahmed v The State* (2003 SCMR 1164), it has been held by the Hon'ble Supreme Court that testimony of closely related witnesses could not be discarded merely because of their relationship with the deceased when the same stood corroborated by medical evidence and inspired confidence. Similar view is reiterated in the case of *Ijaz Ahmed v The State and others* (2022 SCMR 1577), wherein it was authoritatively held that relationship of a witness with the deceased is not by itself a ground to discard otherwise trustworthy and reliable testimony. We are thus of the view that the contention advanced by the learned counsel for the appellant that conviction cannot be based upon the statement of the eye-witness merely because he is real brother of the deceased is wholly misconceived, legally untenable and devoid of substance. The testimony of the complainant further finds support from the statements of eye-witnesses Sadiq Masih and Gul Rehman, who have supported the case of the prosecution and involved the appellant in the commission of the crime. In particular, the presence of Gul Rehman as the watchman of Soneri Apartment lends neutrality to his presence at the place of occurrence. The defence has not been able to demonstrate any convincing reason for these witnesses to falsely implicate the appellant in a capital charge while allowing the real culprit to escape.

10. The ocular account furnished by the prosecution finds clear and substantial corroboration from the medical evidence adduced by PW.8 Dr. Rajindar Kumar (Ex.10), who conducted the post-mortem examination of the deceased. His evidence conclusively establishes the homicidal nature of the death and materially corroborates the injuries attributed to the accused in the ocular account. The post-mortem findings reveal injuries caused by a sharp-edged and cutting weapon consistent with the manner of assault described by the prosecution witnesses. In particular Injury No. 1 on the chest was opined to have been caused by a sharp and cutting weapon and was of a nature sufficient to cause death. The doctor further opined that the death resulted from acute hemorrhage and shock consequent upon Injury No. 1, which led to cardio pulmonary failure and ultimately resulted in the death of the deceased. Thus, the medical evidence not only establishes the

cause and homicidal nature of death but also provides material and independent corroboration to the ocular account regarding the nature, seat and mechanism of the injuries, thereby lending further assurance and credibility to the prosecution version. It is true that medical evidence does not identify the assailant, however, its significance lies in determining whether the ocular account is consistent with the nature and manner of injuries on the body of the deceased. No material conflict has been brought to our notice between the ocular version and the medical evidence so as to render the prosecution story doubtful.

11. The evidence of PW.3 Dilshad (Ex.5) from whose shop the appellant obtained the scissor immediately before the occurrence is another circumstance which lends support to the prosecution version. His evidence provides a connecting circumstance between the appellant and the weapon used in the commission of offence. Likewise, the subsequent recovery of the alleged crime weapon at the pointation of the appellant constitutes corroborative evidence. We are conscious that recovery standing alone cannot be made the sole basis of conviction nevertheless where recovery forms part of a chain already supported by reliable ocular and medical evidence it assumes corroborative significance.

12. As regards the confession attributed to the appellant during police interrogation, we have not treated the same as substantive evidence of guilt. The conviction does not rest upon such alleged confession, however, the information furnished by the appellant leading to discovery of a relevant fact may be considered to the limited extent permissible under the law. The recovery is, therefore, considered only as a corroborative circumstance and not as a substitute for the substantive ocular evidence. Likewise, the argument regarding delay in registration of the FIR has also been carefully considered. The occurrence is alleged to have taken place at about 9:00 pm on 09.08.2020 whereas the FIR has been registered at about 3:30 am on 10.08.2020. The delay is, undoubtedly, a circumstance which requires explanation, however, delay in registration of an FIR is not invariably fatal to the prosecution case. The evidence available on record shows that immediately after the occurrence the deceased was shifted to Dar-ul-Sehat Hospital where he was declared dead and thereafter his dead body was

taken to Jinnah Hospital. The police reached the hospital, completed the requisite formalities under Section 174, Cr.P.C. and arranged the post-mortem examination before the complainant proceeded to lodge the FIR. In these circumstances, the intervening period cannot be treated as sufficient to discard the entire prosecution case particularly when the appellant is nominated in the FIR and the ocular account is otherwise found trustworthy.

13. The prosecution has also brought on record the earlier episode which occurred at approximately 6:15 pm when the deceased allegedly informed the complainant on phone call that the appellant had assaulted him near Soneri Apartment. The complainant thereupon proceeded towards the place of occurrence, however, by the time he arrived, the appellant had already left. This circumstance lends support to the prosecution case that the appellant and the deceased were well known to each other. Significantly, the appellant himself admitted that the deceased was his relative, thus, the possibility of prior hostility or ill-will between them cannot be ruled out. More importantly, the conduct of the appellant immediately after the occurrence assumes considerable evidentiary significance. According to the prosecution, following the assault the appellant fled from the place of occurrence and thereafter went underground to evade arrest and the due process of law. His subsequent arrest on 30.10.2020 in connection with another case under the Arms Act followed by his arrest in the present case constitutes a further circumstance lending corroboration to the prosecution version. Although such subsequent conduct by itself cannot be treated as substantive proof of guilt, it is nevertheless a relevant corroborative circumstance which when considered cumulatively with the direct ocular evidence and the recovery effected in the case materially strengthens and lends further assurance to the prosecution case.

14. The plea taken by the appellant in his statement under Section 342, Cr.P.C. is essentially one of denial, false implication and an assertion that the deceased had been murdered by someone else. The appellant alleged that the complainant party was associated with land grabbers and involved in narcotics related activities and owing to such motives had falsely implicated him in the present case, however, these allegations remained wholly unsubstantiated by any independent evidence, documentary material or

convincing circumstance. Likewise, no material has been brought on record to establish the involvement of any other person in the murder. It is well settled that the statement of an accused under Section 342, Cr.P.C. must be considered in the light of the entire evidence on record. The accused is not required to prove his innocence, and his failure to enter the witness box under Section 340(2), Cr.P.C. or to produce defence evidence cannot by itself be made the basis of conviction or used to cure any lacuna in the prosecution case. The burden remains upon the prosecution to establish the charge beyond reasonable doubt through its own evidence, however, where the prosecution has independently established its case through reliable, confidence inspiring and legally admissible evidence a mere plea of false implication, unsupported by tangible material or cogent circumstances, cannot displace such evidence. The appellant's alternative version that the deceased was murdered by someone else is likewise unsupported by any evidentiary foundation. The defence, therefore, remains confined to a bare denial and an unsubstantiated plea of false implication. We are, thus, of the view that the appellant's plea under Section 342, Cr.P.C. does not furnish any plausible alternative consistent with his innocence or create a reasonable doubt in the prosecution case. Since the prosecution case stands independently established on the strength of its own reliable evidence, the unsubstantiated defence plea cannot be accepted or made a basis for extending the benefit of doubt to the appellant.

15. Criminal cases are to be decided on the cumulative effect of the evidence rather than by examining each circumstance in isolation. In the present case, the prosecution has produced a chain consisting of the ocular account of three witnesses, the evidence relating to the scissors obtained from Dilshad's shop, the medical evidence confirming homicidal death, the recovery of the crime weapon at the appellant's pointation and his subsequent ascendance. Each circumstance may have its own evidentiary value, but when considered collectively, the evidence points towards the guilt of the appellant and does not leave any reasonable alternative hypothesis consistent with his innocence. The discrepancies highlighted by learned counsel for the appellant are not of such magnitude as to strike at the root of the prosecution case. Minor variations concerning peripheral details are natural and do not justify rejection of otherwise reliable testimony. We are,

therefore, satisfied that the prosecution has discharged its burden of proving the guilt of the appellant beyond reasonable doubt. The learned trial Court was justified in recording the appellant's conviction under Section 302(b), PPC, and the same calls for no interference.

16. Having maintained the conviction, we have separately considered whether the extreme penalty of death awarded by the learned trial Court is warranted in the facts and circumstances of the present case. Section 302(b), PPC, provides the Court with a choice between death and imprisonment for life as tazir having regard to the facts and circumstances of the case. Thus, even after conviction for qatl-i-amd, the question of sentence requires an independent judicial determination. The Court is required to examine whether the circumstances of the case justify the ultimate penalty or whether the lesser sentence of imprisonment for life would adequately meet the ends of justice. The appellant is about 26 years of age, therefore, a young man and his age is a significant mitigating circumstance which, in our view, deserves due weight while determining the appropriate sentence. Youth by itself does not exonerate an offender nor does it dilute the seriousness of the offence nevertheless it is a legally relevant consideration when the Court is called upon to choose between death and life imprisonment. The jurisprudence of the superior Courts recognizes youthful age as a mitigating circumstance capable of persuading the Court to substitute life imprisonment for capital punishment. We are also mindful of the settled principle that both death and imprisonment for life are lawful punishments under Section 302(b), PPC, but the extreme penalty must be imposed only after the Court has carefully considered whether the circumstances of the particular case justify its application. The approach of the Hon'ble apex Court is that no hard and fast rule can be applied in every case of qatl-i-amd and that mitigating circumstances must be given meaningful consideration while determining the quantum of sentence. In the case in hand, although the prosecution has succeeded in proving the appellant's guilt and the offence committed by him is undoubtedly grave, we find that the appellant's young age of 26 years constitutes a substantial mitigating circumstance. He is a young man at the threshold of his life and still has to pass a long span of life ahead and therefore the possibility of his reformation and rehabilitation cannot be ruled out. This course would not

only meet the ends of deterrence but would also uphold the principles of proportionality, fairness and reformation in sentencing policy. The prospect of reformation and rehabilitation cannot be altogether excluded merely because the offence is serious. It includes encompasses the requirements of justice, proportionality, deterrence and where reasonably possible reformation and rehabilitation of the offender. In the circumstances of the present case, we are not persuaded that the record discloses such exceptional aggravating features as would make execution of the appellant the only appropriate response of the law. The sentence of life imprisonment while severe and commensurate with the gravity of the offence would sufficiently meet the ends of justice. It is pertinent to note that the Hon'ble apex Court has repeatedly maintained convictions in murder cases while converting death sentences into imprisonment for life where mitigating circumstances including youthful age were found sufficient. We, therefore, hold that the appellant's young age of about 26 years coupled with the overall circumstances appearing from the record provides sufficient mitigation to warrant interference with the quantum of sentence notwithstanding the fact that his conviction is fully sustainable on merits.

17. Taking an overall view of the matter and exercising judicial discretion in a balanced and cautious manner, we are persuaded to hold that the ends of justice would be adequately met if the sentence of death awarded to the appellant is converted into imprisonment for life. This course would not only meet the ends of deterrence but would also uphold the principles of proportionality, fairness and reformation in sentencing policy. Therefore, while treating the present case as one involving mitigating circumstances, we find guidance from the case of *Amjad Shah v. The State* (PLD 2017 Supreme Court 152), wherein it has been held that youthful tendency toward excitement and impulsiveness were treated by the law as a mitigating circumstance. The relevant extract is reproduced as under:-

"9.....Reference is made to Zeeshan Afzal v. The State (2013 SCMR 1602). Another ground for mitigation in sentence of the appellant is the fact that about two months after the occurrence, on 10.06.2002 the learned Trial Court whilst framing the charge has recorded the appellant's age to be 24 years and that of his co-accused to be 19/20 years. Youthful tendency toward excitement and impulsiveness are also treated by the law as a mitigating circumstance. Under section 302(b), P.P.C. imprisonment

for life is one of the lawful sentences for the commission of offence under section 302, P.P.C. In the light of the aforesaid discussion the sentence of the appellant merits reduction from death to life imprisonment".

In another case of *Ahmad Nawaz and another v. The State* [2011 SCMR 593], the Hon'ble Supreme Court has observed as under:-

"In Muhammad Riaz and another v. The State (2007 SCMR 1413) while considering the penalty for an act of commission of Qatl-i-Amd it was observed that "No doubt, normal penalty for an act of commission of Qatl-i-Amd provided under law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence, because no hard and fast rule can be applied in each and every case".

18. For the foregoing reasons and in view of the settled principles governing sentencing policy coupled with the dictum laid down by the Hon'ble Supreme Court of Pakistan in the cases (supra), we are persuaded to hold that the present case squarely falls within the ambit of mitigating circumstances warranting interference in the quantum of sentence. Accordingly, while maintaining the conviction of the appellant under Section 302(b), PPC, we in exercise of appellate jurisdiction and upon reappraisal of the mitigating circumstances available on record convert the sentence of death awarded to the appellant into imprisonment for life. It is, however, clarified that the amount of compensation imposed upon the appellant and the sentence awarded in lieu thereof shall remain intact. The appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. for the period already undergone by him during incarceration.

19. Subject to above modification in the sentence, the Criminal Jail Appeal No.57 of 2025 is dismissed on merits whereas the Murder Reference arising out of Confirmation Case No.10 of 2024 is answered in Negative and disposed of accordingly.

JUDGE

JUDGE