

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 212 OF 2013

Sunil s/o Vithal Raut,
Age : 28 years, Occu. Labour,
R/o Dhobi Galli, Waluj,
Taluka Gangapur,
District Aurangabad

APPELLANT
(Ori. Accused No. 3)

VERSUS

The State of Maharashtra

RESPONDENT
(Prosecution)

Mr. S.S. Jadhavar, Advocate for the Appellant
Mr. K.S. Patil, A.P.P. for the respondent/State

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : 5th JANUARY, 2017

O R D E R

Due to our divergent views in respect of the nature of the offence established against the appellant and the quantum of punishment, the appeal was laid before the 3rd Hon'ble Judge of this Court for his opinion vide Section 392 of the Code of Criminal Procedure. Accordingly, the learned 3rd Hon'ble Judge delivered his opinion on 14th December, 2016, after considering the facts of the case as well as the evidence on record. The learned 3rd Hon'ble Judge opined that the offence established against the appellant is

that of "murder", punishable under Section 302 of the Indian Penal Code and not that of "culpable homicide not amounting to murder", punishable under section 304 Part-II of the Indian Penal Code.

2. The opinion of the 3rd Hon'ble Judge supports the view taken by one of us i.e. Justice S.S. Shinde. The judgment and order dated 25th October, 2016, passed by Justice S.S. Shinde would follow the opinion of the 3rd Hon'ble Judge. The opinion given by the 3rd Hon'ble Judge shall form part of this judgment. In the result, we pass the following order :-

O R D E R

- (i) The Criminal Appeal is dismissed.
- (ii) The appellant shall be given set off in respect of the period of detention undergone by him during the investigation and trial, vide Section 428 of the Code of Criminal Procedure.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE

